



## Medical Liability Reform

### Background

The high costs associated with the current medical liability system not only harm hospitals and physicians, but also patients and communities. Across the nation, access to health care is being negatively impacted as physicians move out of states with high medical liability insurance costs or stop providing services that may expose them to a greater risk of litigation. The increased costs that result from our flawed medical liability system not only hinder access to affordable health care, they also raise health care premiums and costs for everyone.

### AHA View

The AHA supports a more sensible liability system that uses evidence-based standards, reduces frivolous lawsuits, and produces prompt and fair compensation for injured patients. **Specifically, the AHA seeks to:**

- **Model federal proposals on proven state models of reform;**
- **Cap non-economic damages;**
- **Allow the courts to limit lawyers' contingency fees;**
- **Make each party liable only for the amount of damages directly proportional to its responsibility; and**
- **Enact a reasonable statute of limitations after the date of the manifestation or discovery of an injury.**

In previous years, several bills were introduced that would have helped curb skyrocketing medical liability costs. In 2013, we anticipate legislators will re-introduce several bills from the previous congressional session, including the most comprehensive medical liability reform bill thus far, the *Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act*. This AHA-supported legislation is modeled after reform enacted in California during the 1970s, and would:

- Cap compensation for pain, suffering and emotional distress – non-economic damages – at \$250,000;
- Cap punitive damages at \$250,000 or two times the award for economic damages, whichever is greater;
- Replace “joint-and-several” liability, which makes any defendant in a suit liable for all the damages, with a fair-share rule that sets damages for defendants in proportion to their share of responsibility for the injury;
- Allow defendants to inform juries of workers' compensation payments and other outside benefits for injured parties that could be subtracted from jury awards;
- Set the statute of limitations for filing a liability suit at a maximum of three years, with more lenient terms for injured children younger than age six; and

- Limit the amount of a jury verdict that plaintiffs' attorneys can receive in the form of contingency fees.

In addition, the issue of states' rights is increasingly relevant to the development of federal medical liability reform legislation. Several lawmakers who support meaningful reform do not favor a federal solution that would supersede state laws. Therefore, we expect that legislative proposals will carefully protect state reforms that are already in place.

Finally, the AHA also supports an administrative compensation system (ACS) in which decisions on compensation in medical liability cases are made by trained, impartial adjudicators outside of the regular tort system, based on whether the injury was avoidable. Specifically, an ACS would compensate patients for injuries that could have been avoided during medical care, based upon nationally developed, evidence-based clinical guidelines. The ACS would handle claims for injury during medical care through an administrative process administered by the states.