



American Hospital
Association®

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 hinder access to affordable health care and raise health care premiums and costs. The Congressional Budget Office and other deficit reduction committees have found that medical liability reform could save \$17–\$62 billion over 10 years, depending on the policies implemented.

AHA View

The AHA supports a more sensible liability system that relies upon 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;**
- **Enact a reasonable statute of limitations after the date of the manifestation or discovery of an injury; and**
- **Establish “safe harbor” protections for providers who follow evidence-based clinical practice guidelines.**

In recent years, several bills were introduced that would have helped curb escalating medical liability costs, including comprehensive legislation based on California's Medical Injury Compensation Reform Act (MICRA), which capped non-economic damages and attorneys' fees, among other reforms. These federal bills have repeatedly failed to pass both houses of Congress. While the AHA continues to press for comprehensive reform, we anticipate that during 2014, legislators will focus on more limited but targeted solutions to reform the medical liability system.

Legislation introduced in the 113th Congress includes:

- **Health Care Safety Net Enhancement Act of 2013 (H.R. 36/S. 961)** – This AHA-backed legislation provides medical liability protections under the Federal Tort Claims Act to hospitals and physicians providing emergency care during a federally declared national disaster. Specifically, the bill extends to hospitals, emergency departments and physicians who provide services pursuant to the Emergency Medical Treatment and Labor Act, the same medical liability protections given to employees of Community Health Centers. The bill's sponsors are Sen. Roy Blunt (R-MO) and Rep. Charlie Dent (R-PA).

- Medical Care Access Protection (MCAP) Act of 2013 (S. 44) – Introduced by Sen. Rob Portman (R-OH), this AHA – supported legislation establishes a statute of limitations for lawsuits for medical liability claims of three years after the date of manifestation of an injury or one year after discovery. Additionally, this bill makes each party liable only for the amount of damages directly proportional to liability, limiting non-economic damages to \$250,000 from the health care provider, and a total of \$500,000 from multiple health care institutions. Under this legislation courts would be required to limit contingency fees paid to attorneys.
- Steps Toward Access and Reform Act of 2013 (S. 1860) – Introduced by Sen. Dean Heller (R-NV), this legislation includes several MICRA-based provisions, such as capping noneconomic damages and limiting the time a claimant may file a lawsuit. It also seeks to improve access to rural health care by directing the secretary of Health and Human Services (HHS) to provide loan repayment up to \$100,000 for primary care providers who agree to serve in a medically underserved community for a period of at least four years.
- Standard of Care Protection Act of 2013 (H.R. 1473/S. 1769) – This legislation would limit the establishment of certain standards of care or duties of care owed by health care providers to patients in any medical malpractice or medical product liability action or claim. The bill was introduced by Reps. Phil Gingrey (R-GA) and Henry Cueller (D-TX) and Sens. Thomas Carper (D-DE) and Pat Toomey (R-PA).
- Saving Lives, Saving Costs Act of 2014 (H.R. 4106) – Introduced by Reps. Andy Barr (R-KY) and Ami Bera (D-CA), this bill seeks to establish “safe harbors” from medical liability lawsuits for those health care professionals following certain clinical guidelines. H.R. 4106 would apply to care involving a federal payer and would instruct HHS to work with professional organizations to determine which clinical guidelines would create “safe harbors.”

Administrative Compensation System. The AHA 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.