

**Statement  
by the  
American Hospital Association  
to the  
United States House of Representatives, Committee on Energy and Commerce  
Subcommittee on Health**

**“The Cost of the Medical Liability System Proposals for Reform, including H.R. 5,  
the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011”**

**April 6, 2011**

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 40,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to provide testimony to the committee as it begins the 112<sup>th</sup> Congress, and makes enacting liability reform a top priority.

The high costs associated with the current medical liability system not only harm hospitals and physicians, but also patients and their communities. Across the nation, access to health care is being negatively impacted as physicians move from states with high insurance costs or stop providing services that may expose them to a greater risk of litigation. The increased costs that result from the current flawed medical liability system not only hinder access to affordable health care, they also threaten the stability of the hospital field, which employed 5.3 million people in 2009, and continues to be one of the largest sources of private-sector jobs.

An estimated \$50 to \$100 billion is spent annually on defensive medicine – services not provided for the primary purpose of benefiting the patient, but rather to mitigate the risk of liability. To help make health care more affordable and efficient, the current medical liability system must be reformed.



There are proven models of reform enacted in several states across the country, and in fact California's model has previously been the core of legislation passed by the United States House of Representatives. This and other legislative proposals will likely be considered during this 112<sup>th</sup> session of Congress. The AHA and its members have examined additional approaches that could create a legal environment that fosters high-quality patient care. The result is a "Framework for Medical Liability Reform," which is outlined below:

### **What is our proposal?**

An administrative compensation system (ACS) would be created to compensate patients for injuries that could have been avoided during medical care. Decisions would be made using nationally developed evidence-based clinical guidelines and schedules for compensation amounts. The system would be part of a comprehensive approach to address injuries sustained during care. Robust regulatory and oversight activities would complement the system to protect patients from individual practitioners who may place their safety at risk.

### **What are the expected benefits of this system?**

*Quality and patient safety improvements* – Providers would have additional incentives to adhere to clinical protocols and evidence-based care; the focus would be quality and safety, not defensive medicine.

*Broader access to compensation* – The system would reach all eligible patients, not just a few; the amounts would be more consistent across similar cases, and awards would be reasonably predictable for patients; both the process and compensation would be faster.

*Reasonable compensation* – Patients should be made "whole" for the economic and non-economic costs of injuries.

*A more efficient system* – The claims process for patients would be simpler and less adversarial; compensation would be delivered with lower transaction costs; liability insurance should become more affordable.

### **What would an ACS look like?**

Claims for injury during medical care would be handled through an administrative process administered by the states and could not be brought directly to the courts. Intentional injuries and criminal acts would remain in the courts, outside of this system.

Compensation would be provided for those injuries that could have been avoided and that meet a minimum threshold of harm. The standard would be whether the injury was avoidable; the negligence standard would not apply.

Patients who believe they have been injured during medical care would submit a claim to a local panel that, using explicit nationally established decision guidelines and schedules, would make an initial decision about whether an injury was eligible for compensation and, if so, offer compensation. Hospitals, physicians and other providers could take the initiative before a claim is filed and offer compensation using the guidelines and schedules.

Patients who question the local panel's decision could bring their claim to an expert panel or administrative law judge who is part of a state system. Patients could ultimately seek review of the decision in court.

### **Conclusion**

The American Hospital Association appreciates the opportunity to present our views on behalf of our 5,000 members, and looks forward to working with the Committee and the Congress to enact meaningful medical liability reform legislation.