



American Academy of Family Physicians

Liability: Limits on Attorney Fees

AAFP State Government Relations

Issue

Limits on attorney fees in medical malpractice suits are a contentious issue in the debate over how to abate the medical liability insurance crisis. While the federal government has yet to pass a law addressing liability insurance, the states continue to be the battleground for malpractice tort reform. Proponents of limiting the fees an attorney may charge litigant claim that such limitations will help reign in the lottery-like atmosphere presently surrounding liability litigation. Those on the other side put forward that any limitations on what an attorney can collect will water-down the pool of available and qualified attorneys and thus limit access to the justice system by the economically disadvantaged.

As many attorneys collect a portion of jury awards in successful litigation, incentive exists to press frivolous cases and push juries to offer higher and higher awards. Exorbitant jury awards are partly to blame for the recent period of crisis regarding liability insurance. As premiums have risen rapidly, the ability of physicians to practice how and where they choose has been restricted. This problem has proven particularly acute for family physicians wishing to practice obstetrics, especially those wishing to do so in underserved areas.

Considerations

AAFP constituent chapters have made great progress in advancing this central tenet of effectively addressing the liability insurance crisis. Chapters should continue to educate state legislators, particularly, around the importance of this issue. Limiting attorney fees is an effective strategy for decreasing the number of suits brought forward—and reducing the lottery-like atmosphere surrounding medical tort—in addition to stabilizing liability insurance premiums in the mid- to long-term; short-term gains are unlikely to materialize. Chapters can anticipate, though, the likelihood of court challenges to limits on attorney fees, as this issue, quite literally, hits physicians traditional opposition on liability reform in their pocketbook.

State Activity

As of October 2005, 23 states (CA, CT, DE, FL, HI, IL, IN, IA, KS, ME, MA, MI, NV, NH, NJ, NY, OK, OR, TN, UT, WA, WI, WY) limit attorney fees. Generally, these laws dictate a sliding scale specifying what percentage of an award may be collected by an attorney. In Illinois, for example, the sliding scale specifies attorney fees are not to exceed 1/3 of the first \$150,000; 25 percent of \$150,001 to \$1 million; and 20 percent of awards over \$1 million. Conversely, 27 states (AL, AK, AZ, AR, CO, GA, ID, KY, LA, MD, MN, MS, MO, MT, NE, NM, NC, ND, OH, PA, RI, SC, SD, TX, VT, VA, WV) do not place limits on the fees an attorney may collect through liability litigation.

AAFP Policy

The AAFP Professional Medical Liability policy may be viewed at www.aafp.org/x7019.xml.

The AAFP *Medical Liability Strike Force Report* may be viewed at http://members.aafp.org/members/PreBuilt/congress_boardreportI.pdf (*Members Only*)

Additional Resources

Medical Liability/Medical Malpractice from the National Conference of State Legislatures
<http://www.ncsl.org/programs/health/medmalmain.htm>

State	Limits on Attorney Fees
Alabama	<i>No limitations.</i>
Alaska	<i>No limitations.</i>
Arizona	§12-568. <i>Not limited, but court may review reasonableness of fees upon request of either party.</i>
Arkansas	<i>No limitations.</i>
California	Business and Professions §6146. Sliding scale, not to exceed 40% of first \$50,000, 33 1/3% of next \$50,000, 25% of next \$500,000, and 15% of damages exceeding \$600,000.
Colorado	<i>No limitations.</i>
Connecticut	§52-251c. Sliding scale, not to exceed 1/3 of first \$300,000; 25% of next \$300,000; 20% of next \$300,000; 15% of next \$300,000; and 10% of damages exceeding \$1.2 million.
Delaware	§18.6865. Sliding scale, not to exceed 35% of first \$100,000; 25% of next \$100,000; and 10% of all damages exceeding \$200,000.
Florida	Adopted 2004: Florida Constitution, Article I, Section 26. Limits attorney fees in malpractice lawsuits to 30% of first \$250,000; 10% of any award over \$250,000.
Georgia	<i>No limitations.</i>
Hawaii	§663.10.9. When negligence is less than 25%, noneconomic damages awarded in proportion according to degree of fault.
Idaho	<i>No limitations.</i>
Illinois	§735 5/2-1114. Sliding scale, not to exceed 1/3 of first \$150,000; 25% of \$150,000 to \$1 million; 20% of damages over \$1 million.
Indiana	§34-18-18-1. Plaintiff's attorney fees may not exceed 15% of any award made from Patient Compensation Fund.
Iowa	§147.138. Court to review plaintiff attorney fees in any personal injury or wrongful death action against specified health care providers or hospitals.
Kansas	§7.121b. Attorney fees must be approved by court.
Kentucky	<i>No limitations.</i>
Louisiana	<i>No limitations.</i>
Maine	§24.2961. Sliding scale, not to exceed 1/3 of first \$100,000; 25% of next \$100,000; and 20% of damages exceeding \$200,000.
Maryland	<i>No limitations.</i>
Massachusetts	§231.601. Sliding scale, not to exceed 40% of first \$150,000; 33.33% of next \$150,000; 30% of next \$200,000 and 25% of award over \$500,000.
Michigan	Court Rules 8.121(b). Maximum contingency fee for personal injury action is third of amount recovered.
Minnesota	<i>No limitations.</i>

State	Limits on Attorney Fees
Mississippi	<i>No limitations.</i>
Missouri	<i>No limitations.</i>
Montana	<i>No limitations.</i>
Nebraska	§44.2834. <i>No limitations, but court can review for reasonableness at request of prevailing party.</i>
Nevada	§7.095. Sliding scale for attorney fees, not to exceed 40% of first \$50,000; 33 1/3% of next \$50,000; 25% of next \$500,000; 15% of any amount over \$600,000.
New Hampshire	§507-C:8. Sliding scale, not to exceed 50% of first \$1000; 40% of next \$2000; 1/3 of next \$97,000; 20% of excess of \$100,000. If settled out of court, fee limited to 25% of up to \$50,000.
New Jersey	Court Rules §1:2107. Sliding scale, not to exceed 1/3 of first \$500,000; 30% of next \$500,000; 25% of third \$500,000; and 20% of fourth \$500,000. 25% limit for minor or incompetent plaintiff.
New Mexico	<i>No limitations.</i>
New York	Jud. §474-A. Sliding scale, not to exceed 30% of first \$250,000; 25% of second \$250,000; 20% of next \$500,000; 15% of next \$250,000; 10% over \$1.25 million.
North Carolina	<i>No limitations.</i>
North Dakota	<i>No limitations.</i>
Ohio	§2323.43 (F). <i>No limitations but court must approve if fees exceed limits on damage award.</i>
Oklahoma	§5-7. Fee may not exceed 50% of net judgment.
Oregon	§31.735. No more than 20% of punitive damages to attorney, no limitation of percentage of economic damages.
Pennsylvania	<i>No limitations.</i>
Rhode Island	<i>No limitations.</i>
South Carolina	<i>No limitations.</i>
South Dakota	<i>No limitations.</i>
Tennessee	§29.26.120. Fees limited to 1/3 of award to plaintiff.
Texas	<i>No limitations.</i>
Utah	§78.14.7.5. Contingency fee not to exceed 1/3 of award.
Vermont	<i>No limitations.</i>
Virginia	<i>No limitations.</i>
Washington	§7.70.070. Court to determine reasonableness of each party's attorney fees.
West Virginia	<i>No limitations.</i>
Wisconsin	§655.013. Sliding scale, not to exceed 1/3 of first \$1 million, or 25% of first \$1 million recovered if liability is stipulated within time limits, 20% of any amount exceeding \$1 million.
Wyoming	Ct. Rules, R. 5. Recovery \$1 million or less: 1/3 if claim settled prior to 60 days after filing; 40% if settled after 60 days or judgment; 30% over \$1 million.

Source: National Conference of State Legislatures. *State Medical Malpractice Laws: Section 1.* (<http://www.ncsl.org/standcomm/sclaw/statelaws1.htm>, accessed 13 October 2005.)