AMERICAN ACADEMY OF FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

MEDICAL LIABILITY REFORM

Recommendation

The American Academy of Family Physicians (AAFP) recognizes the trust that patients invest into their relationships with their family physicians. Medical liability laws exist to allow patients to seek recompense when physicians or other clinicians cause unwanted harm. Medical malpractice cases can be detrimental to physicians but also to patients because of increased system and health insurance costs. To appropriately address medical liability issues, AAFP encourages states to enact legislation that provides for conditional immunity from liability for certain clinicians, allows medical malpractice case materials to be confidential, and calls for stricter regulations in medical liability cases. The AAFP generally opposes legislation that increases the statute of limitations or raises the capitated amount of noneconomic damages allowable in medical liability payouts.

Statute of Limitations

Statute of limitations provisions have been established to allow litigants sufficient time to commence legal action against a tortfeasor. In the medical liability context, patients may generally file a malpractice claim against a clinician to seek damages upon discovery of medical negligence. While extended eligibility periods for filing malpractice generally favor the patient, longer statutes of limitations also increase the chance that necessary evidence gets lost or increases the probability of a long, protracted legal process.

States continue to consider legislation that would change the statute of limitations in medical liability cases. New York's SB 6800, passed in the 2017-2018 session, for example, would allow a patient up to seven years to file a liability suit against a physician for failing to diagnose a cancer or malignant tumor, rather than just two and a half years for other negligence

Noneconomic Damages

Patients who experience injury due to negligent care should exercise their right to civil action to seek compensation. However, patients' rights to noneconomic damages as high as $500,000 can be unreasonable and can have the spillover effect of increasing liability insurance premiums for all doctors, which can in turn lead to higher costs in services for the patient and the health system.

Twelve states (AL, AR, FL, GA, IL, KY, NH, ND, OR, PA, WA, WY) have constitutional provisions prohibiting caps on noneconomic damages in medical liability cases or have found caps unconstitutional. Other states have caps on noneconomic damages that are adjusted with inflation or increase annually.

Liability Immunity

Physicians who provide care during a natural disaster, whether on a voluntary or uncompensated basis, face difficult and sometimes unavoidable obstacles in providing care that would not exist in the office setting. Clinicians who provide services in disaster or other non-traditional circumstances should be protected from liability for injuries that may arise from this care.

Legislation signed into law in West Virginia in 2018 ensures that no behavioral health facility will be liable for damages relating to stabilization or detoxification if a patient refuses or voluntarily ends

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service. Other states have considered bills to exempt liability in certain cases, but none have passed in their 2018 sessions.

Confidentiality in Medical Liability
The adjudication of medical liability claims can result in a considerable amount of stress for all parties involved. The accessibility of the documents that relate to these proceedings not only adds to physician anxiety but may jeopardize other litigants' reputations. Confidentiality laws for malpractice case materials protect physicians and other parties from any other litigation that may arise from a medical liability proceeding. During the 2018 legislative session, Kentucky passed legislation that would add malpractice actions to a list of materials that are considered confidential and privileged, and therefore not subject to discovery, subpoena, or introduction in any other civil action.

Medical Liability Cases
Affidavits and certifications of merit provided for medical liability cases ensure that claims made against a clinician for negligence have a threshold level of validity. Legislation that requires the submission of an affidavit for medical liability cases, which are currently only required in 29 states, can save the physician, patient, and the health system unnecessary legal costs, protect valuable time, and decrease administrative burden. Additionally, increased regulation of expert witnesses in medical liability cases ensures that the court receives information about standards of care from a qualified professional.

Seven states (KY, MD, NJ, NY, TN, VT, WV) introduced legislation during the 2018 legislative session addressing the submission of affidavits and regulation of expert witnesses in medical liability cases. Although none of these bills passed, a number included language that would require a plaintiff to submit an affidavit signed by a medical professional or risk dismissal of the claim, require expert witnesses to be examined under oral disposition, or prohibit introduction of expressions of sympathy or compassion.

Moving Forward
Medical liability laws are important to protect patient and clinician rights; however, medical liability legislation should not seek to unfairly rebalance the system against family physicians. Legislators must also take into consideration the outcomes of new medical liability laws not only to individual litigants' immediate claims, but also to family physicians and the health system as a whole. The AAFP encourages state chapters to work with stakeholders to positively shape their state's medical liability legislation and support medical liability legislation that balances physician interests and the rights of injured patients.