



MEDICAL LIABILITY REFORM

October, 2009

RECOMMENDATION

We recommend the enactment of medical liability reforms modeled on California's highly effective law. Medical liability reform legislation should:

- Impose a hard cap on non-economic damages;
- Limit attorneys' contingency fees;
- Inform juries of prior insurance payments to patients and reduce awards by the amount of compensation from collateral sources;
- Replace joint and several liability with proportionate liability, so each party would pay a share of a malpractice award based on the proportion for which he is liable;
- Allow periodic payment of future damages at a defined award limit;
- Provide for Alternative Dispute Resolution Systems, and
- Require an expert witness who possesses knowledge and expertise and practices in the same medical specialty as the defendant.

Background

California enacted the Medical Injury Compensation Reform Act of 1975 (MICRA) over thirty years ago. MICRA has served as a model for federal tort reform and in California has successfully placed a greater share of insurer payouts in the hands of injured patients. In a RAND study, MICRA's reforms reduced attorney fees 60 percent, while net recoveries to patients were reduced by 15 percent overall.

The current medical liability system fails both patients and health care providers. Liability reform must more equitably and quickly compensate those truly injured in the course of medical care without needlessly diverting health care dollars. By reducing liability insurance premiums and exorbitant legal fees associated with litigation and by ending the need to practice defensive medicine, we can decrease the cost of health care.

Congressional Budget Office

According to the CBO, these proposals for tort reform could lower costs for health care both directly and indirectly: directly, by lowering premiums for medical liability insurance; and indirectly, by reducing the use of diagnostic tests and other health care services when providers recommend those services principally to reduce their potential exposure to lawsuits. The CBO analysis released on October 9, 2009, estimates that implementing tort reform nationwide would reduce both total U.S. health care spending by about 0.5 percent (about \$11 billion in 2009) and federal budget deficits by roughly \$54 billion over the next 10 years. Further, CBO acknowledged studies which concluded that tort reform generated no significant adverse outcomes for patients' health.

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