



STATEMENT
of the
American Academy
of Family Physicians

Submitted for the Record

To The

House Energy & Commerce Subcommittee on Health

Concerning

Innovative Solutions to Medical Liability

July 13, 2006

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This statement is submitted to the House Energy & Commerce Subcommittee on Health hearing entitled Innovative Solutions to Medical Liability, on behalf of the 94,000 members of the American Academy of Family Physicians.

Our nation's medical liability system is broken. The Centers for Medicare and Medicaid Services reported liability premiums for all physicians nationwide rose by 15 percent between 2000 and 2002 - nearly twice as fast as total health care spending per person. In a 2004 Congressional Budget Office (CBO) brief *Limiting Tort Liability for Medical Malpractice*, CBO reported malpractice costs amounted to an estimated \$24 billion in 2002. These costs are unsustainable.

Although efforts to reform the system at the federal level have been successful in House of Representatives, legislation has consistently stalled in the Senate. Several states have passed legislation that includes limits on non-economic damages and those states have seen a substantial drop in medical liability premiums. In 2003, the Department of Health and Human Services released a report *Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care*. According to this study, over the previous two years, states without caps experienced a 45-percent increase in liability premiums while states with non-economic damage caps of \$250,000 experienced an average increase of 26 percent. A recent RAND study reported that California's Medical Injury Compensation Reform Act of 1975 (MICRA) reduced attorney fees 60 percent, while net recoveries to patients were reduced by 15 percent overall. From 1976 to 2003, total premiums in the rest of the U.S. rose 920 percent while the increase in California premiums was only 282 percent. Texas reforms, including non-economic damage limits, have successfully reduced premiums 17 percent in the few years since the law passed. Meanwhile, in those states without liability reform escalating premiums continue to threaten patients' access to care.

While AAFP advocates limits on non-economic damages, we believe a number of complementary solutions, including those detailed in Senator Enzi's *Fair and Reliable Medical Justice Act* (S.1337), can be utilized to help repair the system. AAFP encourages the creation of special health courts as one important component of reform. Precedent for such special courts already exists in tax courts and domestic disputes, among other areas of law. These courts can help expedite claims for plaintiffs genuinely harmed, putting damage awards in the hands of those who legitimately need financial assistance as well as eliminating extended costly trials for innocent defendants. As part of a comprehensive health court system, AAFP maintains that expert physician witnesses called upon to testify should be specialists in the same medical specialty as the defendant physician, with specific knowledge and expertise to identify the standard of care. Witnesses must have recent clinical experience in their specialty that allows them to understand current standards for providing care to patients. Physicians hold an ethical responsibility to assist in the administration of justice and are a critical component in efforts to achieve equitable outcomes in medical liability cases.

AAFP considers malpractice reform among its highest priorities and will continue to work to advance health courts and other proven methods of reform including reasonable limits placed on recovery for non-economic damages.