

## Medical Liability Reform

*Small businesses need medical malpractice reform now.*

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Health care costs remain the number one concern for small businesses with respect to whether they can provide health insurance to their employees and their families. Medical malpractice reform is a significant component of the health care system that is contributing towards unsustainable health care costs for many small businesses, and thus must be addressed.

The Congressional Budget Office estimates that a modest medical malpractice reform law would save over \$50 billion through 10 years. However, those savings would continue to increase as the cost of medical malpractice litigation in the U.S. continues to grow, steadily increasing at almost 12 percent annually since 1975. Moreover, according to the Harvard School of Public Health, 40% of malpractice suits filed in the U.S. are “without merit.” In general, studies place the direct and indirect costs of malpractice between 5 percent and 10 percent of total US medical costs.

The growth of medical malpractice suits set off a chain of reactions that resulted in decreased access to health care and increased health care costs. Rural areas are particularly hard hit by specialty physicians and those in high-risk fields opt out of practicing medicine due to the astronomical cost of malpractice insurance. Defensive medicine has become commonplace; doctors trying to avoid malpractice suits will frequently perform tests and procedures they otherwise would not have—resulting in as much as \$210 billion wasted annually.

Medical malpractice reforms that set limits on awards have shown to lead to increased numbers of practicing physicians. For example, according to a study in the Journal of the American Medical Association, the average physician supply increased by 3.3 percent three years after adoption of the reforms. Moreover, the American Medical Association reports that the Texas reforms have led to a 27 percent cut in liability rates.

Despite demonstration grants in the recent health care law, efforts to pass comprehensive medical malpractice reform legislation are gaining steam in Congress. Sens. Rob Portman (R-Ohio) and Roy Blunt (R-Mo.) and Reps. Lamar Smith (R-Texas), Phil Gingrey (R-Ga.), and David Scott (D-Ga.) have introduced the *Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act* of 2011. The legislation would, among other things, establish a statute of limitations on claim filings, target provider liability to the specific procedures they were involved in, cap non-economic damages, and limit punitive damages.

Beyond traditional medical malpractice laws, NSBA supports some kind of safe harbor for physicians, as well as the use of health courts. Any safe harbor rule would have to be in conjunction with federally-defined, evidence-based medical procedures. Physicians, who abide by those standards and report outcomes, would be allowed a certain level of protection from medical liability. Health courts would allow for the establishment of specialized courts for dealing with medical malpractice claims.

NSBA surveys show 83 percent of small businesses support monetary caps in medical malpractice cases. That survey also found that a majority support addressing the issue federally. Tort reform traditionally has been dealt with at the state level; however, the National Conference of State Legislatures cites 17 states where there are no stipulations whatsoever on medical malpractice lawsuit caps. The broad variance in states' laws encourages attorneys to forum shop, which simply increases the need for a federal solution.

NSBA urges Congress to enact much-needed medical malpractice reform. The benefits are clear: greater access to more affordable, high-quality health insurance.