

Medical Liability Reform

Frivolous medical malpractice suits cost billions in defensive medicine and health care inflation

Legal liability costs have skyrocketed in recent years due to the fact that it requires little effort to file such lawsuits, and the awards to victims can be huge. In 1972, legal fees constituted 0.9 percent of the nation's Gross Domestic Product (GDP). By 1990, that number had more than doubled, to 2.1 percent of the GDP. In 2003, the total tort costs had increased 35.4 percent from 2000, and it continues to rise today.

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 millions of dollars wasted.

Medical malpractice reforms that set limits on awards lead to increased numbers of practicing physicians. 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 such reforms.

Medical malpractice reform legislation has stalemated once again in the Senate. Numerous times in the last two Congresses (108th and 109th), the House passed legislation aimed at curbing outrageous awards. In July 2005, the House passed the *Help Efficient, Accessible, Low-Cost, Timely Healthcare Act of 2005 (H.R. 5)*. Similar language (S.22) failed to pass a Senate cloture vote in May 2006 and was subsequently tabled. GOP leaders have maintained their goal of passing this important legislation, however it is doubtful that there will be enough Democratic support to move the issue in the 110th Congress.

Medical malpractice reforms would make a number of important changes including establishing a statute of limitations of three years; requiring court sanctions for frivolous lawsuits; limited non-economic (pain and suffering) damages to \$250,000 from the provider with a maximum amount of \$500,000 in the case of multiple defendants named in one case; restricting liability to the amount of damages directly attributable to the claimant named; allowing courts to restrict contingency fees (lawyer fee based on percentage of award); and limiting punitive damages (those intended to punish the defendant) to the greater of \$250,000 or two times the economic damages.

Beyond traditional medical malpractice laws, NSBA would support some kind of safe harbor for physicians. 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.

A recent NSBA survey shows 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 18 states where there are no stipulations whatsoever on medical malpractice lawsuits. The broad variance in states' laws encourage attorneys to forum shop, which simply increases the need for a federal solution.

NSBA urges Congress to enact much-needed medical malpractice reform as a first step in reigning-in out-of-control health care costs.