



2009 ISSUE BRIEF MEDICAL MALPRACTICE REFORM

Issue

No discussion of changing the delivery system and expanding health care coverage to all Americans is complete without discussing professional liability and related tort reforms. AMGA wants to ensure that Congress address meaningful medical malpractice reform in legislative proposals to reform the health care delivery system.

Background

The high costs of professional liability insurance coverage, more commonly known as medical malpractice insurance, continue to be an unabated problem. Medical malpractice insurance costs have skyrocketed due to oftentimes frivolous lawsuits and excessive jury awards. These high costs have resulted in physicians avoiding or refusing high-risk cases, reduced access to care, and increased overall healthcare spending.ⁱ Further, most physicians practice defensive medicine, i.e., undertaking unnecessary, duplicative, or excessive diagnostic testing and other treatments as a preemptive measure to stave off accusations of medical negligence or “failure to diagnose.”ⁱⁱ

Position

Tort reform for medical malpractice insurance could reduce the high cost of claims by placing a cap on non-economic damage costs. With tort reform changes and caps on damages, physicians will have a reduced fear of damaging lawsuits, insurance companies will be able to lower premiums for medical liability insurance, and physicians will regain confidence in high-risk cases like delivering babies and performing high-risk surgeries. This change would maximize patient recovery of awarded damages and place structured limits on attorney contingency fees.

In addition to tort reform, proper use of evidence-based guidelines should provide mitigating protections in professional liability cases and, under certain circumstances, immunity. Evidence-based medicine provides the best research evidence to make decisions about medical care and helps doctors properly diagnose illnesses and select the best treatments. In addition to improving patient treatment and outcomes, evidence-based medicine can help physicians and institutions measure performance and identify areas for further study and improvement.

In order to avoid frivolous lawsuits, penalties should be placed on plaintiffs or attorneys if the court deems lawsuits to be frivolous. Qualifications should be set for people to serve as expert witnesses in medical malpractice litigation (for example, must be a local physician, practicing in the same specialty as the defendant). Traditional rules regarding “joint liability,” under which the entire award may be recovered from any defendant, should be modified to that of “several liability” which requires payment of damages only proportional to defendants’ fault or responsibility.



AMGA Asks Congress To:

- Include professional liability and related tort reform issues in health care delivery reform legislation.
- Place a cap on non-economic damage costs.
- Allow use of evidence-based guidelines to provide mitigating protection in professional liability cases.
 - In some circumstances allow these guidelines to offer immunity.
- Encourage states to set qualifications for expert witnesses in professional liability cases.
- Encourage states to enact penalties in cases the court deems frivolous.

ⁱ Guirguis-Blake, J., Fryer, G., Phillips, R., Szabat, R., Green, L. (2006). The US Medical Liability System: Evidence for Legislative Reform, *Annals of Family Medicine*, 4: 240-246.

ⁱⁱ Kessler, D., McClellan, M. (1996). Do Doctors Practice Defensive Medicine? *Quarterly Journal of Economics*, 445:353-389.