



THE MEDICAL LIABILITY CRISIS: A FEDERAL PROBLEM THAT REQUIRES A FEDERAL SOLUTION

The Nationwide Crisis Stretches From Coast To Coast

- According to the American Medical Association (AMA), at least a dozen states face a full-blown medical liability crisis – a crisis that is threatening access to health care for millions of patients. Those states are: Florida, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington and West Virginia.
- And the problem is spreading. The AMA has discovered that more than 30 additional states face a “looming” crisis.
- An HCLA-sponsored survey revealed that 78% of Americans are concerned that access to health care may be compromised because of soaring liability premiums. Some 71% agree that medical liability lawsuits are one of the main factors behind rising health care costs.

Federal Taxpayers are Paying the Liability Crisis Bill

- The Federal Government – through its funding of Medicare, Medicaid and other programs – pays an additional \$28-\$47.5 billion per year for health care due to the costs of medical liability coverage and defensive medicine. (*U.S. Department of Health and Human Services, July 24, 2002*)
- Medical liability reform would save the Federal Government nearly \$12 billion in lower health care expenditures, according to a September 2002 report by the non-partisan Congressional Budget Office. This does not even include an estimate on the savings from a reduction in the practice of defensive medicine.

Doctors Nationwide Are Seeing Their Insurers Quit the Market

- In December, one of the nation’s largest medical malpractice insurers – The St. Paul Companies – stopped providing medical liability insurance for doctors in any state, not just excessively litigious locations. Roads don’t stop at state borders and neither do patients. Citizens living along the thousands of miles of state borders very often obtain their medical care across that line.

- St. Paul's decision left 10% of all doctors nationwide scurrying to find another insurer. In Nevada, where St. Paul was the primary medical liability provider, 60% of the state's physicians were left without insurance. Soon after St. Paul announced its decision, three additional medical liability companies also left the state.

Federal Action is Appropriate and Necessary

- Given the fact that medical liability insurers no longer limit their services to a single state, but engage in interstate commerce, it is appropriate and essential for Congress to pass federal liability reforms.
- Federal action would not preempt limits set by state laws. Not only is the HEALTH Act modeled after a successful effort in California to reform medical malpractice litigation, but other states include all or some of the provisions in the Act. Under the HEALTH Act, states without any cap will have a \$250,000 cap on non-economic damages, but will be free to pass their own, different, caps.

The HEALTH Act provides that "No provision of this Act shall be construed to preempt ... any State statutory limit (whether enacted before, on, or after the date of the enactment of this Act) on the amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, whether or not such State limit permits the recovery of a specific dollar amount of damages that is greater or lesser than is provided for under this Act ..."

- In many states, opponents of liability reform have used the courts to create barriers to any meaningful reforms at the state level or even to overturn reforms passed by state legislatures. It's time for Congress to take action.

The States Cannot Fix The Medical Liability Crisis Alone ... Only Congress Can