

The Medical Liability Crisis: A Federal Problem Requiring a Federal Solution

A Nationwide Crisis

Despite successful reforms in many states, the national liability crisis has not passed, and states that have resisted reform find their doctors fleeing unfriendly legal climates, retiring early, or cutting back on vital care.

- Three-quarters of Americans surveyed in a 2006 poll by the HCLA said they wanted their elected representatives in Washington to support comprehensive medical liability reform.
- Seventy-four percent of those surveyed believe their access to affordable, high-quality health care is threatened because medical liability costs are forcing doctors out of medicine.
- A strong majority – 64 percent – of poll participants said medical liability lawsuits are one of the primary reasons behind rising health care costs.

American Taxpayers are Paying the Liability Crisis Bill

The practice of defensive medicine, often performed to avoid lawsuits, increases health care spending by billions of dollars and directly inflates taxpayer costs of Medicare and Medicaid.

- The overuse of imaging services driven by medical liability fears was associated with an increase in total Medicare spending of more than \$15 billion between 2000 and 2003.¹
- A recent update of those findings put the cost at as much as \$170 billion per year.²
- Comprehensive medical liability reform, including reasonable limits on non-economic damages, would reduce Medicare costs by \$17 billion to \$31 billion per year.³

Future Physician Shortages

While the immediate shortages of physician care caused by the liability crisis are severe, the outlook for the future is even more troubling, as fears of exposure to medical liability abuse are causing medical students and residents to avoid high-risk specialties and more litigious states.

- The American Hospital Association found that fifty-five percent of hospitals were reporting difficulty recruiting doctors because of the medical liability crisis.⁴

¹ “Malpractice Liability Costs and the Practice of Medicine in the Medicare Program,” by Katherine Baicker, Elliott S. Fisher, and Amitabh Chandra, *Health Affairs*, volume 26, number 3.

² “The State of Medical Liability Reform,” Winter/Spring 2009, HCLA.

³ “Addressing the new Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care,” Office of the Assistant Secretary for Planning and Evaluation, US Dept of HHS, 2003.

⁴ American Hospital Association, “Professional Liability Insurance: A Growing Crisis,” March 2003.

- Half of all medical students responding to an AMA survey said that the liability situation was a factor in their specialty choice; and 39% said that the liability crisis was a factor in which state they would choose to complete their training.⁵

Doctors are Changing the Way They Practice Medicine

The liability crisis has severely affected patient access to care, as many doctors cut back on life-saving and life-enhancing medical procedures that expose them to greater risk of lawsuit abuse.

- Three out of four emergency rooms reported diverting ambulances due to a shortage of specialists, and more than 25% of hospitals said they had lost specialist coverage due to the medical liability crisis.⁶
- Forty-four percent of neurosurgeons reported having to limit the type of patients they treat, reducing the number of aneurysm surgeries, brain tumor treatments, and operations on children.⁷
- Fifty-five percent of orthopaedic surgeons avoid certain procedures due to liability concerns, with 20% no longer performing emergency room calls.⁸

Federal Action is Not Only Appropriate, but Necessary

- Patients today often travel across state borders to find the medical care they need, and medical liability insurers no longer limit their services to a single state. These two reasons alone make it appropriate for Congress to take action.
- Additionally, many states face political and legal barriers to enacting their own effective medical liability reforms. Opponents in many states have managed to stifle or overturn meaningful state level reform attempts.

Individual states cannot fix the medical liability crisis on their own – Congress must take action.

⁵ American Medical Association Survey, “Medical Students’ Opinion of the Current Medical Liability Environment,” 2003.

⁶ The Schumacher Group, 2004 Hospital Emergency Department Administration survey, cited in “Federal Medical Liability Reform,” Alliance of Specialty Medicine, July 2005.

⁷ AANS/CNS, 2004 survey cited in “Federal Medical Liability Reform,” Alliance of Specialty Medicine, July 2005.

⁸ AAOS survey, cited in “Federal Medical Liability Reform,” Alliance of Specialty Medicine, July 2005.