

## Why Medical Liability Reform is Good for Patients

### Reforms Promote Access to Care

*America's medical liability crisis has many casualties, but patients are suffering the most. Across the nation, patients are finding it harder and harder to get access to vital medical services. The reason? Out-of-control litigation is making medical liability insurance either unaffordable or unobtainable at any price. As a result, more and more doctors are curtailing services, being forced to leave litigious states, or abandoning the practice of medicine altogether.*

- Fifty-five percent of hospitals were reporting difficulties recruiting doctors because of the medical liability crisis.<sup>1</sup>
- 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 liability crisis.<sup>2</sup>
- Forty-four percent of neurosurgeons reported having to limit the type of patients they treat, with 71% no longer performing aneurysm surgery, 23% no longer treating brain tumors, and 75% no longer operating on children.<sup>3</sup>
- Fifty-five percent of orthopaedic surgeons avoid some procedures due to liability concerns. One out of five has stopped performing emergency room calls, 6% have eliminated all surgery, and one out of twenty retired early.<sup>4</sup>
- Liability concerns forced 70% of all OB/GYNs to make changes in their practice and have driven some seven to eight percent to stop practicing obstetrics altogether.<sup>5</sup>
- Eight counties in New York presently do not have a single obstetrician, and eighteen counties have less than five.<sup>6</sup>
- There is currently no trauma center to treat the half million residents of the Philadelphia suburb of Chester County, and 17 maternity units have closed in the Philadelphia area in the last decade due to the medical liability crisis.<sup>7</sup>

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<sup>1</sup> American Hospital Association, 'Professional Liability Insurance: A Growing Crisis,' March 2003.

<sup>2</sup> The Schumacher Group, 2004 Hospital Emergency Department Administration Survey, cited in "Federal Medical Liability Reform," Alliance of Specialty Medicine, July 2005.

<sup>3</sup> American Association of Neurological Surgeons and Congress of Neurological Surgeons, 2004 Survey, cited in "Federal Medical Liability Reform," Alliance of Specialty Medicine, July 2005.

<sup>4</sup> American Association of Orthopaedic Surgeons, cited in "Federal Medical Liability Reform," Alliance of Specialty Medicine, July 2005.

<sup>5</sup> ACOG Survey, The American College of Obstetricians and Gynecologists, November 3, 2006.

<sup>6</sup> Center for Health Workforce Studies, cited in "No Place To Be Born," *New York Sun*, August 25, 2008.

<sup>7</sup> "Building for Babies," *Bucks County Courier Times*, February 23, 2009, and "It's time for a Chester County Trauma Center," *West Chester Daily Local News*, July 6, 2008.

## **Reforms Keep Health Care Affordable**

*America's medical liability crisis is driving up the cost of health care – both the direct costs of rising liability insurance premiums for doctors and hospitals, and the indirect costs of “defensive medicine,” where patients are subjected to unnecessary and expensive treatments in order to reduce the risk of litigation.*

- According to a study by Elliott Fisher of the Dartmouth Medical School, the overuse of imaging services driven by medical liability fears increased Medicare spending by more than \$15 billion between 2000 and 2003. A recent updating of those findings put the cost at as much as \$170 billion per year.<sup>8</sup>
- Comprehensive medical liability reform would reduce health care costs by a similar amount, and Medicare spending would be reduced by \$17 to \$31 billion per year.<sup>9</sup>
- Physicians' liability insurance premiums seem to have reached a plateau at very high levels. Since 2000, insurance premiums rose 221% for OB/GYNs in Philadelphia – bringing the average premium to a staggering \$167,000 in 2008.<sup>10</sup>
- General surgeons in New Jersey saw an increase of 149% in premiums from 2000 to 2008, and internists in Connecticut saw their insurance premiums rise by 348% as well.<sup>11</sup>

## **Today's System is Designed for Lawyers, not Patients**

*Patients are losing access to health care... doctors are under siege... and health care costs are rising due to soaring premiums and out-of-control litigation.*

- One-third of orthopaedists, obstetricians, trauma surgeons, emergency room doctors and plastic surgeons can expect to be sued in any given year.<sup>12</sup>
- Practicing neurosurgeons can expect to be sued more often – every two years, on average.<sup>13</sup>
- The data show that most of these cases are meritless: in 2006, 71% of cases were dropped or dismissed, and only 1% resulted in a verdict for the plaintiff.<sup>14</sup>
- However, the cost of these lawsuits is staggering. Even cases that result in no payment to the plaintiff cost an average of \$25,000 to defend against.<sup>15</sup>
- The average jury award has escalated from \$347,000 in 1997 to \$637,000 in 2006.<sup>16</sup>

***Medical liability reform is the best way to ensure that health care is accessible, affordable, and available for all patients who need it.***

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<sup>8</sup> “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.

<sup>9</sup> “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, U.S. Department of Health and Human Services (2003).

<sup>10</sup> “Med lawsuit abuse crisis still a crisis,” *Philadelphia Business Journal*, July 4, 2008.

<sup>11</sup> *Medical Liability Monitor* Rate Survey, Year by Year results.

<sup>12</sup> “Defending the Practice of Medicine,” by Richard E. Anderson, MD, *Archives of Internal Medicine*, June 2004.

<sup>13</sup> “Effective Legal Reform and the Malpractice Insurance Crisis,” by Richard E. Anderson, MD, *Yale Journal of Health Policy, Law and Ethics*, December 2004.

<sup>14</sup> Physicians Insurers Association of American Data Sharing Project

<sup>15</sup> Physicians Insurers Association of American Data Sharing Project

<sup>16</sup> Physician Insurers Association of America, PIAA Claim Trend Analysis: 2006 ed. (2007)