

May 23-24, 2017

## Reforming our Medical Liability System

**Congress should enact reforms to our medical liability system to improve patient safety and reduce costs by passing legislation that would (1) provide safe harbors for physicians who follow evidence-based guidelines, (2) enact caps on non-economic damages, limitations on attorney's fees and punitive damages collected in medical malpractice lawsuits, and (3) authorize a national pilot on health courts, as explained below in the "What is ACP Asking of Congress" section.**

### What's it all about?

Our nation's medical liability laws are in need of reform and currently are not working to adequately protect patient safety, resolve medical liability disputes in a fair or efficient manner, or reduce the costs associated with defensive medicine. Patients also continue to suffer in the present system as medical liability claims may take years to be resolved, and verdicts and award amounts may hinge on the laws and legal climate of the state in which they are filed. Physicians also feel threatened by lawsuits and may order more tests and procedures for patients than needed to protect themselves from medical liability claims. A study published by Health Affairs estimated that overall costs associated with our medical liability system, including defensive medicine, totaled \$55.6 billion in 2008 dollars.

- ✓ [View](#) a study by Health Affairs on the National Costs of the Medical Liability System
- ✓ [View](#) ACP's policy paper on Medical Liability Reform

### What's the current status?

To date, Congress has been unable to reach a bipartisan agreement to enact legislation to reform our medical liability laws. In the past, the House of Representatives has passed legislation that includes caps on non-economic damages and other reforms that would lower the cost of defensive medicine but this legislation has not been considered by the Senate. The Agency for Health Quality and Research (AHRQ) developed a grant program that allowed states to apply for funding to test medical liability reforms to lower health costs and improve patient safety. This program ended in 2013 and AHRQ concluded that these demonstration projects have developed a foundation of knowledge on how to develop and sustain an operational patient safety and medical liability program.

Several bills have been introduced in the 115<sup>th</sup> Congress, with ACP's support, that attempt to bring about meaningful reforms, and they include:

**H.R. 1565, the Saving Lives, Saving Costs Act:** On March 31, 2017, Representatives Andy Barr (R-KY) and Henry Cuellar (D-TX) introduced the Saving Lives, Saving Costs Act, which provides a bipartisan alternative to reduce costs associated with defensive medicine. It offers physicians who document adherence to certain evidence-based clinical-practice guidelines and, when applicable, appropriate use criteria, a safe harbor from medical malpractice litigation; aims to reduce the practice of defensive medicine and resulting health care costs; improves quality of care and patient safety, permits organizations with relevant expertise to participate in the selection of clinical practice guidelines, and permits professionals with relevant expertise to participate and benefit from liability reform. H.R. 1565 is currently pending approval by the House Committees on Energy and Commerce.

Equally important is that H.R. 1565 provides a mandatory review of evidence by an independent review panel of three qualified experts in the field of clinical practice, before the costly discovery phase of a medical liability case, if the physician can document adherence to clinical guidelines. The panel will determine if defendant physicians complied with the guidelines, which are to be recognized as the standard of care. The panel should use their medical expertise to determine when departing from recommendations in the guidelines is appropriate for individual patients. The findings, opinions, and conclusions of the review panel shall be admissible as evidence in any and all subsequent proceedings before the court, including for purposes motions for summary judgment at trial. If the panel made a finding that there

was an applicable practice guideline that the physician adhered to, the court shall issue summary judgment in favor of the physician unless the claimant is able to show otherwise by clear and convincing evidence.

**H.R. 1215, the Protecting Access to Care Act:** On February 24<sup>th</sup>, 2017, Representative Steve King (R-IA) introduced, the Protecting Access to Care Act of 2017. This legislation would set a federal limit on the amount of non-economic damages at \$250,000 and would enact a fair share rule that specifies that in any health care lawsuit, each party shall be liable for that party's share of damages only and not for the share of any other person. It would limit the amount of contingency fees charged by attorneys in any health care lawsuit and would allow for the introduction of evidence of collateral source benefits regarding any payments that the plaintiff may receive from sources other than the defendant as a result of their injury or illness. It would impose a statute of limitations of three years after the date of an injury or one year after the claimant discovers the injury occurred. H.R. 1215 has been approved by the House Judiciary Committee and is awaiting consideration by the House of Representatives.

- ✓ [View](#) ACP's support letter for the Saving Lives, Saving Costs Act (H.R. 1565)
- ✓ [View](#) ACP's support letter for the Protecting Access to Care Act (H.R. 1215)

### Why should the 115<sup>th</sup> Congress address it?

Any solution to the broken medical liability system in the U.S. should include a multifaceted approach. Because no single program or law by itself is likely to achieve the goals of improving patient safety, ensuring fair compensation to patients when they are harmed by a medical error or negligence, strengthening rather than undermining the patient-physician relationship, and reducing the economic costs associated with the current system. A multifaceted approach should allow for innovation, pilot-testing, and further research on the most effective reforms. In addition, the Congressional Budget Office (CBO) estimated in 2011 that the federal government could save \$57 billion over 10 years by reforming our medical liability tort system.

Medical liability reform does have bipartisan support in Congress. Secretary of Health and Human Services (HHS), Dr. Tom Price, a former member of Congress, has publically supported legislation over the years to address the problem of frivolous lawsuits. The time is ripe for members on both sides of the aisle to develop and pass common-sense reforms.

### What is ACP asking of Congress?

**Members in the House should cosponsor H.R. 1565, the Saving Lives, Saving Cost Act, and Senators should introduce companion legislation in that chamber.** This legislation allows physicians who document adherence to certain evidence-based clinical-practice guidelines and, when applicable, appropriate use criteria, a safe harbor from medical malpractice litigation.

**Members in the House should cosponsor H.R. 1215, the Protecting Access to Care Act, and Senators should introduce companion legislation in that chamber.** This legislation would set a federal limit on the amount of non-economic damages at \$250,000 and would enact a fair share rule that specifies that in any health care lawsuit each party shall be liable for that party's share of damages only and not for the share of any other person, among other things.

**Authorize a National Pilot on Health Courts:** [Health courts](#) would offer patients access to a specialized "no fault" administrative process where judges, experienced in medicine and guided by independent experts determine contested cases of medical negligence without the unpredictability and unfairness of jury trials.

### Who can I contact to learn more?

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Digital version of this issue brief can be found at: <https://www.acpservices.org/leadership-day/policy-priority-issues>.