

MEDICAL MALPRACTICE TORTⁱ REFORM

The cost of medical malpractice is significant.

- ▶ The Congressional Budget Office estimates approximately 2 percent of total health care expenditures in 2009—or \$35 billion—will be the direct costs of medical malpractice liability, including insurance premiums, settlements, awards and all other costs not covered by insurance.

States have led the way with tort reform, experimenting with several approaches.

- ▶ Tort reform aims to limit some of the costs associated with medical malpractice by adopting new regulations that govern civil (noncriminal) liability. These regulations primarily limit *who* can be found liable, *when* they can be held liable, *for how much* they are liable and *to whom* they must pay.
- ▶ One of the most commonly enacted types of tort reform is placing caps on noneconomic damages a defendant—in this case, a health provider—must pay. Noneconomic damages are those damages that are intangible, such as pain and suffering, and are often not easily quantified.
- ▶ About one-half of states have placed legislative caps on noneconomic damages, with caps ranging from \$250,000 to \$1,000,000.



According to the Robert Wood Johnson Foundation, there are several types of tort reform commonly used by states:

- ▶ **Caps on damages:** Limits the amount of money that can be awarded in a malpractice suit.
- ▶ **Joint liability/fair share rule:** Limits the liability of each defendant to only that percentage of the damages for which they are found liable.
- ▶ **Statutes of limitation:** Legislation may change or limit the amount of time a plaintiff has to file a claim for damages.
- ▶ **Attorney contingency fees limited:** Limits the amount or percentage of money attorneys can collect as their fee from the total award in a malpractice suit.
- ▶ **Collateral-source rule:** May allow a defendant held liable for malpractice to deduct payments to the plaintiff from other sources, such as insurance payments, from the amount they have to pay in damages or allow evidence of such payments to be entered as evidence at trial.
- ▶ **Periodic payment:** Rather than pay a damages award up front in one lump sum, this reform may allow or even require insurers to pay that award in installments over time.
- ▶ **Pretrial screening panels:** Develops panels that review malpractice cases early in the legal process and provide an opinion as to their merit.

- ▶ Continued on next page.

MEDICAL MALPRACTICE TORTⁱ REFORM, *continued*

There are many potential impacts of tort reform.

- ▶ Although it is difficult to quantify the exact economic impact of tort reforms, a recent CBO study estimates that a prescribed set of national tort reforms (including setting a noneconomic damages cap, changing the statute of limitations and implementing a fair share rule) would reduce the cost of total national premiums for medical liability insurance by approximately 10 percent.
- ▶ That 10 percent reduction in premiums, coupled with indirect impacts such as changes in the utilization of health care services, would result in a one-half percent overall reduction in total national health care spending. In 2009, this would have meant savings of \$11 billion.
- ▶ The CBO estimates such reforms would reduce federal budget deficits by approximately \$54 billion over the next 10 years. Those savings would come largely from reducing mandatory spending in Medicare, Medicaid, the Children's Health Insurance Program and the Federal Employees Health Benefits program.
- ▶ While tort reform may help reduce health care spending, there are concerns about the constitutionality of such legislation. For example, in 2009, the supreme courts of Georgia and Kansas reviewed the constitutionality of statutes that place a cap on noneconomic damages (\$350,000 in Georgia, \$250,000 in Kansas). Both cases are still pending a decision.
- ▶ In years past, other state courts in Alabama, New Hampshire and Washington have ruled that such laws are unconstitutional, but most statutes that cap noneconomic damages survive constitutional challenge. The constitutionality of other types of reform—such as requiring pretrial screening panels or allowing evidence of collateral sources—have also been challenged, with mixed results.
- ▶ In addition to concerns about constitutionality, opponents of tort reform argue that such limitations will have a negative impact on the quality of health care and on health outcomes, although there is limited research to either support or disprove this argument.
- ▶ Because health care reform is a primary concern, states will likely continue to explore the costs and benefits of tort reform in 2010, striving to maintain the appropriate balance between preserving patients' rights and constitutional protections with keeping the cost of quality health care down.

ⁱNote: A tort is a breach of duty. In the case of a medical malpractice tort, this breach of duty is by a health care provider that results in personal injury. Plaintiffs can bring a suit in civil court against a health care provider, seeking damages that are compensatory (medical costs and lost wages) and noneconomic (pain and suffering).

DAMAGES CAPS

State	Damage Cap	Non-Economic Damages Cap	Total Damages Cap	Punitive Damages Cap
Alabama				
Alaska	X	\$250,000–\$400,000		
Arizona				
Arkansas				
California	X	\$250,000		
Colorado	X	\$300,000	\$1,000,000	
Connecticut				
Delaware				
District of Columbia				
Florida	X	\$500,000–\$1,000,000		
Georgia	X	\$350,000–\$1,050,000		\$250,000
Hawaii	X	\$375,000 with exceptions		
Idaho	X	\$250,000—adjusted based on average state wages; some exceptions		
Illinois	X	\$500,000–\$1,000,000—ruled unconstitutional but on appeal		
Indiana	X		\$250,000–\$1,250,000	
Iowa				
Kansas	X	\$250,000		
Kentucky				
Louisiana	X		\$500,000 with some exclusions	
Maine	X	\$500,000 in wrongful death actions		
Maryland		\$675,000–\$843,750		
Massachusetts	X	\$500,000 with exceptions		
Michigan	X	\$410,800–\$733,500		
Minnesota				
Mississippi	X	\$500,000		
Missouri	X	\$350,000		
Montana	X	\$250,000		
Nebraska	X		\$500,000–\$1,750,000	
Nevada	X			
New Hampshire				
New Jersey	X			Greater of \$350,000 or 5x compensatory damages
New Mexico	X		\$200,000–\$600,000	
New York				
North Carolina				
North Dakota	X	\$500,000		
Ohio	X	\$250,000–\$1,000,000		
Oklahoma	X	\$400,000 with exceptions		
Oregon	X	\$500,000 in wrongful death actions		
Pennsylvania	X			2x actual damages
Rhode Island				
South Carolina	X	\$350,000–\$1,050,000—adjusted for inflation		
South Dakota	X		\$500,000	
Tennessee				
Texas	X	\$250,000–\$500,000		
Utah	X	\$400,000—adjusted for inflation		
Vermont				
Virginia	X		\$2,000,000	
Washington				
West Virginia	X	\$250,000–\$500,000		
Wisconsin	X	\$750,000 for medical negligence Wrongful death: \$500,000 for minors \$350,000 for adults		
Wyoming				

Source: American Medical Association Advocacy Resource Center, 2009.