

State Medical Liability Laws

The Need for Reform

Skyrocketing insurance premiums are debilitating the nation's health care delivery system. Liability insurers are leaving the market or raising rates to astronomical levels. In turn, more physicians, hospitals, and other health care providers are severely limiting their practices or are simply unable to practice medicine. Physicians in states across the country are already in crisis. Below you'll find quick facts about medical liability, legislative trends and what the ACC supports in medical liability reform. In addition, you'll find information about how one state handled a medical liability crisis, and what you can do to address medical liability reform in your state. For more information about any of these topics, please contact advocacydiv@acc.org.

Quick Facts about Medical Liability

- **Medical malpractice tort costs are growing.** From 1975 to 2006, medical malpractice tort costs have increased on average 11.1 percent per year, growing faster than the average 8.2 percent rate of other tort areas. In 2006, medical malpractice costs reached \$30.3 billion, up from about \$29.4 billion in 2005.¹
- **Medical malpractice premiums have stabilized – at high rates.** In 2006, medical liability insurers reported that close to 70 percent of premium rates have stabilized or decreased in some areas – nearly double the number who reported that in 2005, according to a survey conducted by the *Medical Liability Monitor*.² However, premiums over the past decade have risen 100 to 300 percent in some parts of the country, even for medical specialties not typically considered high risk, including cardiology.
- **Medical liability cost and its effects drive up health care spending.** Medical liability costs and defensive medicine spending account for 10 percent of health care spending.³ In 2005, U.S. spending on health care reached \$2 trillion, or \$6,697 per person.⁴ Spending on the medical liability system costs each U.S. household up to \$1,200 per year, according to data from America's Health Insurance Plans.

State Trends

Physicians continue to work hard at the state level for liability reform. Most state legislation addressing medical malpractice reforms in 2007 addressed similar issues as in 2006 legislation, such as limits on noneconomic damage awards, the allocation of plaintiff attorney fees as a percentage of damages awards, expert witness standards and the inadmissibility of apology statements by health care practitioners, but also featured bills focusing on greater accountability for insurance companies by requiring reports from medical liability insurance providers and proposing various state controls of premium rates.

Much of the legislative debate has focused on establishing fairness for both the injured party and the health care provider in the event of an alleged medical malpractice event. Many states considered measures that will require that all claims filed be reported to the state, which will benefit legislative efforts to improve the system. Other states have examined the way these cases are heard and amended existing law to either require pretrial hearing or certification of claims.

As health care reform is increasingly debated by lawmakers, payers and others, medical liability reform must be a key part of any overall reform effort, and, with real reform unlikely at the federal level, state reform efforts are especially crucial. The ACC supports several reforms to medical liability laws. Related to damages, the ACC supports the recovery of full economic damages with a meaningful limit on non-economic and punitive damages. The ACC also supports periodic payment of future damages.

In addition, the ACC supports: mandatory offsets for collateral sources; plaintiff lawyer fees limited on a sliding scale; proportionate liability among all parties; a statute of limitations; and the requirement of expert affidavits accompanying any claim filed in court or an Alternative Dispute Resolution.

Texas Case Study

In 2001, medical liability premiums in Texas were out of control as a result of a historic number of frivolous lawsuits and high-dollar settlements. In an effort to address the crisis, the medical community turned to tort reform. The Texas Liability Medical Trust, a medical malpractice insurer, and the Texas Medical Association led the way in forming an alliance called the Texas Alliance for Patient Access (TAPA). TAPA recruited multiple stakeholders, including cardiologists and other specialists and hospitals across the state. Through TAPA, stakeholders were able to pool their resources and unite around one strategy and message.

The Texas Chapter of the ACC got involved by participating in “White Coat Marches” on the state Capitol and a half-day physician walk-out in the Rio Grande Valley, both of which were intended to highlight the importance of physician access. As a consequence of these activities, the Chapter was able to increase member involvement in the political process and build relationships with state lawmakers.

Because of TAPA and the Texas Chapter’s efforts, the medical malpractice crisis in Texas has been averted. The number of applications for medical licenses has reached all-time high and the number of specialists has started to increase after years of decline. Meanwhile, the number of frivolous lawsuits and high dollar settlements has decreased. In addition, about half of physicians in the state are paying lower premiums than in they did in 2001.⁵

Getting Started

Tort reform in Texas is a great example of the power of state advocacy. The ACC encourages chapters to make state advocacy a priority.

- **Find your leaders and identify issues.** Use the state medical society and/or your chapter’s Advocacy Committee to identify key issues and politically active cardiovascular specialists. Don’t be afraid to form alliances. Work with medical specialty groups and other stakeholders to help build a stronger case to lawmakers and the public.
- **Don’t underestimate grassroots!** Invite lawmakers to be a “Cardiologist for the Day;” testify at hearings; hold lobby days; or throw a fundraiser. The ACC’s grassroots team can help.
- **Money talks.** Consider starting a state political action committee (PAC) or hiring a lobbyist. For the truly major issues, a lobbyist can open doors and help craft a successful strategy.

The ACC can provide tools and resources to Chapters to assist them in advocating for reform in their state. For additional information and access to these resources, e-mail advocacydiv@acc.org.

¹ Towers Perrin. “2007 Update on U.S. Tort Costs Trends,” December 2007.

² Sorrel, Amy Lynn. “Liability Insurance Rates Mostly Hold Steady or Drop This Year,” American Medical News, Dec. 11, 2006.

³ PricewaterhouseCoopers, prepared for America’s Health Insurance Plans. “The Factors Fueling Rising Healthcare Costs 2006,” Jan. 2006.

⁴ Kaiser Family Foundation, “Health Care Costs: A Primer,” August 2007.

⁵ Texas Medical Association. “Proposition 12 Produces Healthy Benefits,” Feb. 11, 2008.

