



Mal Practice Reform

***Update:** On September 17, President Obama directed the Secretary of the Department of Health and Human Services (HHS) to launch a new \$25-million demonstration initiative immediately to help states and health care systems to test models for mal practice reform.*

Physicians care about:

- 1. the cost of mal practice insurance and**
- 2. the practice of “defensive medicine”**

Overview of Caps: Reducing the burden of mal practice costs is needed, but caps are not the best solution.

What are Caps?

Proposals aimed at capping award payments place a ceiling on the amount a jury can award for pain and suffering damages, but do not limit awards for economic damages (medical costs, continuing care, and lost wages).

How many lawsuits suits would actually be affected by a cap?

The Physician Insurers Association of America estimates that of all medical malpractice claims filed in the United States, only 5 percent go to trial and 80 percent have defense verdicts. A mere 0.9 percent end in a jury verdict for the plaintiff, and would be thus subject to these caps.

Bottom Line:

- Caps are likely to have a negligible and probably indirect effect on health care costs.
- Cap do not address the issue of “defensive medical practice” that doctors so often dislike
- Caps only provide a "band-aid" fix and do nothing to promote patient safety
- California and Texas physicians still argue that they have to practice defensive medicine even though they have caps on malpractice insurance

Ways the current Health Reform Legislation addresses “defensive medicine”:

As we invest in quality and safety in the health care system –this will foster a safer practice environment for physicians and safer care environment for patients.

Improving Practice Environment:

- Quality improvement initiatives through Medicare (expanding PQRI)
- Improved care coordination (though new delivery models and new payments for care coordination)



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- Large recent investment in HIT (health information technology) that will drive decision support tools

Increased Comparative Effective Research:

- Evidence based medicine will help physicians make sound decision about treatment options

Other Options for Malpractice Reform

1. Disclosure-and-offer programs: health care providers disclose unanticipated outcomes of care to patients and make prompt offers of compensation in appropriate cases.

- Patients do not waive their right to sue by accepting the offer, but reportedly, few go on to file lawsuits.
- While he was a senator, [President Barack Obama co-sponsored legislation](#) to promote this approach.
- The University of Michigan Hospital System's full disclosure program reduced the number of pending lawsuits against the hospital by half and cut the average defense litigation cost by \$30,000.

2. Health tribunals: either an administrative panel that would award damages on the basis of judgments by neutral experts about the avoidability of the injury or specialized judicial courts presided over by judges with medical expertise.

- Currently juries make decisions with scant guidance on complex scientific issues and what constitutes “reasonable” damages awards.
- This approach would give precedent building guidelines to the process

3. Federal “safe harbor” for adherence to evidenced based practice: retains the current process of adjudication but protects physicians from liability if they adhered to evidence-based medical practices.

- Creates a rebuttable presumption that care was not negligent if the physician followed accepted clinical practice guidelines.
- Physicians could be given immunity or a favorable presumption if they practiced in accordance with findings of credible comparative-effectiveness research (CER).

4. Anonymous Non-punitive Reporting of errors: currently it is not easy to find and understand the systemic weakness exist in our health care system. This type of non-punitive reporting would foster continued quality improvement initiatives to building a safer health care system.