

American College of Physicians releases policy paper on medical liability crisis

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The American College of Physicians (ACP) today released a [policy paper](#) on the medical liability crisis, which continues to have a profound effect on the medical system. "Medical Liability Reform—Innovative Solutions for a New Health Care System" provides an update of the medical liability landscape, state-based activity on medical liability reform, and summarizes traditional and newer reform proposals and their ability to affect system efficiency and encourage patient safety.

"While medical liability premiums have leveled off in the past few years, physicians still fear litigation, expect lawsuits, and feel the psychological burden of navigating the complex medico-legal system," said Molly Cooke, MD, FACP, president of ACP. "Patients harmed by medical negligence also suffer under the existing medical liability system."

Medical liability claims may take years to be decided, and verdicts and award amounts may hinge on the laws and legal climate of the state in which they are filed. ACP's previous policy paper on medical liability reform in 2003 was published in the wake of a medical liability crisis seemingly brought on by surging plaintiff awards and court costs, which in turn propelled liability premiums to historically high levels. That paper reflected ACP's support for a number of federal medical liability reforms, including caps on noneconomic damages, limitations on punitive damages, and a sliding scale for attorney's fees. Many of those reforms were included in the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002, but the bill was never passed, indicating the lack of Congressional action and the polarized

nature of the issue. The HEALTH Act continues to languish in Congress; the latest version was introduced in April 2012.

While traditional medical liability reforms may currently have little chance of passing at the federal level, states have taken action to approve laws that not only establish caps on noneconomic damages, but also delve into alternative dispute resolution, injury funds, and statute of limitations on the time frame during which injury claims can be filed.

"Perhaps more promising is the testing of innovative liability protection models, such as health courts, enterprise liability, safe harbor protections, and disclosure laws, which seek to break through the political impasse and create a system that encourages the prevention of errors, improved [patient safety](#), and timely resolution of legitimate claims," Cooke noted. "Both proponents and opponents of tort reform must realize that the existing health care system allows for too many preventable injuries and that fear of liability undermines the patient–physician relationship"

As outlined in the paper, evidence suggests that traditional tort reforms, particularly noneconomic damage caps, may help reduce liability claims and [health care](#) costs. Yet even in states where stringent tort limits have been enacted, physicians remain concerned about medical liability, which may undermine career satisfaction and influence their relationship with patients. It remains unclear whether traditional tort reform improves patient safety and outcomes. There has been a renewed focus on medical liability reforms that move beyond traditional tort reforms, toward creating alternatives to jury trials in favor of quick decisions made by judicial experts, enhanced liability protection for physicians who follow established clinical guidelines and take responsibility for errors, and risk management efforts that focus on ensuring patient safety.

"While preventing errors should remain the paramount goal, these reforms may help lessen physician's liability fears while ensuring that patients are adequately and fairly compensated for any errors that do occur," Cooke continued. "Promising strides have been made since ACP's last position paper on medical liability was released in 2003."

A 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.

The American College of Physicians paper provides nine approaches that should be incorporated into a multifaceted medical liability reform initiative.

- Continued focus on patient safety and prevention of medical errors;
- Passage of a comprehensive tort reform package, including caps on noneconomic damages;
- Minimum standards and qualifications for expert witnesses;
- Oversight of medical liability insurers;
- Testing, and if warranted, expansion of communication and disclosure programs;
- Pilot-testing a variety of alternative dispute resolution models;
- Developing effective safe harbor protections that improve quality of care, increase efficiency, and reduce costs;
- Expanded testing of health courts and administrative compensation systems;

- Research into the effect of team-based care on [medical liability](#), as well as testing of enterprise liability and other products that protect and encourage team-based care.

Provided by American College of Physicians

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