

The Limits to Legislative Limits on Medical Malpractice Damages:

Finding A Better Way to Control Medical
Malpractice Premiums

Overview

- Section I: Introduction
- Section II: The Debate
- Section III: Federal and State Legislative Actions
- Section IV: Constitutional Issues
- Section V: Is Legislation the Answer?
- Section VI: Proposed Solution

II. The Debate

- The Call for Reform:
 - Liability insurance premiums are too high causing physicians to:
 - Retire early
 - Avoid high-risk practice areas
 - Practice defensive medicine by ordering unnecessary tests and limiting high-risk, perhaps unnecessary, procedures
 - Relocate to states with lower insurance rates.
 - The Cost of Insurance is Tied to “Out of Control” Jury Awards
 - Legislatures must limit medical malpractice jury awards

The Debate

- Opponents of Reform:
 - Jury awards are not the problem
 - Liability insurance premiums are too high because:
 - Insurance companies made bad investments decisions and lowered premium rates in the early 1980s “to the point of absurdity.”
 - Maurice R. Greenberg, President and Chief Executive Officer of American International Group, Inc.
 - Damage caps are not constitutional
 - Damage caps do not achieve their intended goal of keeping malpractice premiums low

III. The Call for Action

- Health care providers and insurance companies are leading the charge for legislative change in the way the judicial system responds to medical malpractice claims, believing that it will lead to lower insurance premiums.

Legislative Solutions

- State legislation
 - Caps on damages, limits on choice of venue, shortened statutes of limitations, modification of collateral source rule
- Federal legislation
 - The Help Efficient, Accessible, Low-cost, Timely Healthcare Act of 2005 (the “HEALTH Act”)
 - Passed in the House of Representatives
 - The Senate is considering similar bill

Do The Legislatures Have the Authority to Offer Life Support to the Health Care Industry?

- A Real Life or Death Debate: In re Terri Schiavo
- Can the Legislatures Constitutionally Save The Medical Profession?
 - State Court decisions vary
 - State courts, themselves, are divided
 - Federal authority limited by doctrine of federalism
 - Gonzales v. Oregon
 - Assisted Suicide Decision
 - Relevant?
 - Reinforcing the limits of federalism and how far the federal government may go in regulating health care.

Is Legislation The Answer?

- Recent Wisconsin Supreme Court decision
 - “We must test whether the legislative hypothesis that a \$350,000 cap on noneconomic damages bears a rational relationship to malpractice insurance premiums has a basis in reality.”
- California model
- Empirical data
 - Recent study found “no relationship between the level of malpractice premiums and the presence of traditional tort reform measures such as damage caps.”

A Proposed Solution

- Improve the service
 - Anesthesiologists
 - Surgeons
 - Intensive care
- Inform the public
 - Improve the Health Care Quality Improvement Act
 - Allow the public to make informed choices

Conclusion

- Medical Malpractice Premiums are High
- Is There a Medical Malpractice Crisis?
 - No one is happy
 - Health Care Providers
 - Public
 - Causes unclear
 - Out of control juries?
 - Insurance decisions?
 - Solution unclear
 - Legislation?
 - Damage Caps
 - Insurance Reform
 - Market forces?
 - Better care
 - Informed patient choice