



# Health Policy Snapshot

Health Care Costs

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## What are the issues surrounding medical liability reform?

### Takeaways:

- Medical liability generates direct costs, such as higher liability insurance premiums, and indirect costs, such as the extra medical services ordered to protect providers from liability risk. Together, these costs total nearly \$60 billion a year.
- Premiums for medical liability insurance have remained stable since 2006 and most states have taken action to curb damage awards or attorneys' fees in liability suits.
- Debate continues over the need for medical liability reform and what approach such reform should take.

### OVERVIEW

After decades of controversy, medical liability continues to be at the center of an emotional debate over U.S. health care costs and patient safety. Some policy-makers, backed by physicians and insurers, advocate tough federal limits on medical malpractice lawsuits as a means to curb the nation's relentlessly rising health spending. Other policymakers, backed by plaintiff attorneys, consumer advocates, and some researchers, say restricting suits does little to contain costs and punishes patients injured by medical negligence.

### INDIRECT COSTS ARE DIFFICULT TO MEASURE

Many say the threat of lawsuits forces physicians and other health care providers to practice defensive medicine, defined as medical services ordered mainly to minimize liability risk. But there's great uncertainty about the definition and extent of defensive medicine. One study estimated the indirect costs of medical liability at \$45.6 billion in 2008 dollars. Combined with \$10 billion in direct costs, the study found that the total cost of medical liability is \$55.6 billion a year, or 2.4 percent of total health care spending.<sup>1</sup>

### FEW PATIENTS SUE, THOUGH MANY HURT

According to a 2011 study, as many as 187,000 U.S. patients die each year from adverse medical events in hospitals, and 6.1 million suffer injuries in and out of hospitals.<sup>2</sup> The Society of Actuaries estimated that 1.5 million injuries were associated with medical errors in 2008 and these errors cost the U.S. economy \$19.5 billion.<sup>3</sup>

Yet it's estimated that 3 percent or less of medical negligence cases lead to a malpractice claim.<sup>4</sup> Of patients who file a claim, one in six receives no compensation.<sup>5</sup> Researchers also found that two-thirds of malpractice claims were well-founded, and lawsuit-related payouts were appropriate in most cases.<sup>6</sup> Some experts believe that growing public and private efforts to reduce medical errors and health

### Overall Rate Change in Physicians' Liability Insurance 2003–2011



Source: <http://publications.milliman.com/publications/pc-published/pdfs/from-crunchy-candy-to-simmering-frogs.pdf>

care-acquired infections and conditions are decreasing liability claims.

### PREMIUMS ARE STABLE

Although medical liability insurance premiums rose sharply in the early 2000s, by 2011 physicians paid about the same rates as they paid in 2010, or in many cases less, according to *Medical Liability Monitor*.<sup>7</sup> Annual premiums vary widely across the country, from \$207,000 for obstetrician/gynecologists (OB/GYNs) in Nassau County, N.Y., to \$16,000 for Minnesota OB/GYNs, and from \$47,000 for Miami internists to \$3,700 for South Dakota internists.

Nationally, premiums have been stable since 2006, a trend that's attributed to a sustained drop in the number of claims beginning in 2002–2003. This stability followed a period of dramatic premium hikes; in 2003 and 2004, rates shot up about 20 percent annually. Although some say those hikes were the result of insurers' poor investment returns and competition that prompted insurers to set premiums too low, others say the rate hikes were because of a sharp increase in the average cost per claim.

### STATES ACT TO CURB SUITS

Although federal efforts to pass tort reform have

been stymied for many years, most states have enacted significant changes. More than half the states impose caps on noneconomic (pain and suffering) awards ranging from \$250,000 to \$700,000, some limit punitive damages, and a few—Colorado, Indiana, Louisiana, Nebraska, New Mexico, and Virginia—cap all damages. Many states have limited plaintiff attorney fees, tightened the time frame to bring suits, and modified rules on expert witnesses, liability, and offsetting awards with money collected from sources such as health or disability insurance.<sup>8</sup> About half the states impose percentage limits on plaintiff attorney contingency fees.<sup>9</sup>

### INTEREST CONTINUES IN LIABILITY REFORM

Despite stable or declining medical liability insurance premiums over the past six years, some policymakers again are pushing for lawsuit limits, particularly caps on damage awards primarily for noneconomic and punitive damages. The Affordable Care Act authorized \$50 million for states and health care providers to test new approaches to resolving medical liability cases, aiming to address both direct and indirect costs. And the Obama administration requested \$250 million in fiscal year 2012 for the Justice Department to explore alternative approaches. Congress has yet to fund either program.

### WANT TO KNOW MORE?

- [Spotlight on Malpractice Reform \(RWJF\)](#)
- [Medical Malpractice System Breeds More Waste \(New York Times\)](#)

<sup>1</sup><http://content.healthaffairs.org/content/29/9/1569.abstract>

<sup>2</sup><http://content.healthaffairs.org/content/30/4/590>

<sup>3</sup><http://www.soa.org/files/pdf/research-econ-measurement.pdf>

<sup>4</sup><http://www.ncbi.nlm.nih.gov/pubmed/2057025>

<sup>5</sup><http://www.rwjf.org/pr/product.jsp?id=53988>

<sup>6</sup><http://www.nejm.org/doi/full/10.1056/NEJMsa054479#t=articleTop>

<sup>7</sup><http://www.ama-assn.org/amednews/2011/10/17/prsb1017.htm>

<sup>8</sup><http://content.healthaffairs.org/content/26/2/500.full.html>

<sup>9</sup>[http://www.aafp.org/online/etc/medialib/aafp\\_org/documents/policy/s\\_tate/liability-fees.Par.0001.File.tmp/stateadvocacy\\_Liability\\_Attorney%20Fees.pdf](http://www.aafp.org/online/etc/medialib/aafp_org/documents/policy/s_tate/liability-fees.Par.0001.File.tmp/stateadvocacy_Liability_Attorney%20Fees.pdf)