



Health Policy Snapshot

Health Care Costs

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January 2012

What are the best ways to control medical liability costs?

Takeaways:

- Research suggests that noneconomic damage caps are moderately successful in constraining the growth of liability insurance premiums, but that a mix of measures may be most effective.
- The Affordable Care Act of 2010 authorizes new pilot projects to test innovative approaches to resolving liability cases in fairer and less expensive ways.
- Movement toward alternative liability approaches or expanding traditional lawsuit restrictions has been stalled by the political impasse over health care reform.

Overview

Experts estimate that medical liability suits cost the U.S. health care system an annual total of about \$56 billion in direct litigation costs and the indirect costs of defensive medicine.¹ About a decade ago, medical liability insurance premiums were rising fast. Medical providers and insurers said liability costs were making health care more expensive and hurting access to care. Other medical experts said malpractice claims were high because of systemic patient safety problems. States have responded by passing a variety of laws to curb suits and some hospital systems have adopted alternative ways to resolve cases. But dissatisfaction with the current

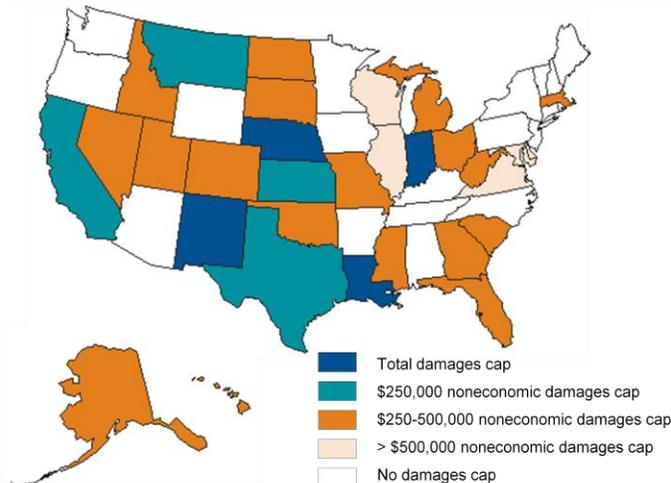
liability system remains widespread because of its relatively high cost and flawed performance in quickly and fairly compensating injured patients.

DAMAGE CAPS HAVE SOME IMPACT

Research shows that noneconomic damage caps modestly constrain the growth of liability insurance premiums but don't reduce the number of claims.² Studies have estimated caps reduce liability premiums by 13.6–16.9 percent.³ One study found that states with low levels of malpractice liability payouts, such as California, Virginia and Colorado, generally had a combination of damage caps, tighter statutes of limitation, and restrictive requirements regarding expert witnesses.

The Congressional Budget Office (CBO) estimated in 2009 that a package of federal tort law changes—including a \$250,000 cap on noneconomic damages, a cap on punitive damages, a tighter time frame for bringing cases and certain other reforms—would reduce national health spending by about 0.5 percent, including both direct liability costs and defensive medicine outlays.⁴ The CBO noted that a significant share of potential savings already had been realized as a result of prior tort law changes at the state level. This year, the CBO estimated those tort law changes would reduce the federal budget deficit by about \$57 billion from 2012 to 2021,⁵ still less than one percent of the total deficit over the same time period.⁶ Most experts say other factors, such as fragmented and wasteful health care services, account for a much larger share of the nation's health cost problem.⁷

Caps on Damages by State, April 2006



Source: http://www.rwjf.org/pr/synthesis/reports_and_briefs/pdf/no10_policybrief.pdf

In addition, researchers question whether medical liability changes ultimately lower costs paid by consumers. One study found no evidence that state-level caps on noneconomic damages have had any significant impact on the cost of employer-sponsored health insurance.³

NEW APPROACHES ARE BEING TESTED

The 2010 health reform law authorized \$50 million for states and health care providers to test new approaches to medical liability cases. In addition, the Obama administration requested \$250 million in fiscal year 2012 for the Justice Department to explore alternative approaches. But Congress has yet to fund either program. The Agency for Healthcare Research and Quality awarded \$23 million for such projects in 2010. Many projects funded under these initiatives focus on encouraging providers to adopt safer systems and deliver high-quality care.⁸

- **Disclose, apologize, and settle.** Providers proactively disclose unanticipated adverse outcomes to patients, conduct an expedited investigation, provide a full explanation, offer an apology, quickly offer compensation, and make

process improvements to prevent recurrences. This model was pioneered by the University of Michigan Health System in 2001, which saw its liability costs drop dramatically.⁹ The model has been adopted by many other health systems around the country.

- **Special judicial handling.** Courts assign malpractice cases to a specially trained group of judges assisted by a full-time nurse-attorney. The judges meet often in private with the plaintiff and defense attorneys to promote rapid settlements.
- **Preventing adverse events.** Hospitals increase use of evidence-based practices to reduce injuries, improve communications with patients and among care team members, implement a rapid response to adverse events, engage patients in shared decision-making and redesign care processes.
- **Safe-harbor legal defense.** Courts offer doctors a “safe harbor” defense if they followed clinical practice guidelines and are sued in connection with care that complied with the guidelines.
- **No-fault compensation.** Insurers voluntarily offer patients compensation on a no-fault, out-of-court basis if they suffer injuries resulting from avoidable classes of medical events.

Some policymakers and researchers hope these experiments offer a way through the political stalemate on medical liability reform, and demonstrate better ways to control costs and improve clinical care.

WANT TO KNOW MORE?

- [Spotlight on Malpractice Reform \(RWJF\)](#)

¹ <http://content.healthaffairs.org/content/29/9/1569.full.html>

² <http://www.hks.harvard.edu/news-events/news/commentary/chandra-oped-jul09>

³ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2614003/>

⁴ http://www.cbo.gov/ftpdocs/106xx/doc10641/10-09-Tort_Reform.pdf

⁵ <http://www.cbo.gov/ftpdocs/122xx/doc12209/HR5.pdf>

⁶ http://www.cbo.gov/ftpdocs/120xx/doc12039/01-26_fy2011outlook.pdf

⁷ <http://healthaffairs.org/blog/2011/09/26/common-sense-and-malpractice-reform/>

⁸ <http://healthpolicyandreform.nejm.org/?p=14235>

⁹ <http://www.annals.org/content/153/4/213.abstract>