



Health Courts

Background

Since the first medical liability crisis in the 1970s, policy makers have been seeking solutions to this recurring problem. California's Medical Injury Compensation Reform Act of 1975 (MICRA) halted California's crisis after its enactment, and it has kept California's medical liability premiums in check while they have increased sharply in other parts of the country. MICRA's \$250,000 cap on non-economic damages has been the cornerstone of organized medicine's attempts to ensure a litigation system that does not hinder patient access to care. To date, close to 30 states have enacted caps with varying limits and exceptions. Limiting non-economic damages has remained politically elusive in the other states and at the federal level as well.

While MICRA-based reforms continue to be the best option for fixing the medical liability crisis, other reforms should be explored and tested as well. AMA policy indicates that health courts are a promising reform proposal that merits further investigation (Board of Trustees Report 32 (A-03) and D-435.987). The concept is receiving more attention from policy makers and the media, and this may lead to the implementation of a health court pilot project at the state or local level.

If properly constructed, health courts should have several positive effects. They should lead to a fairer and more expedited resolution of medical liability claims. Verdicts should be based more on whether or not there was a deviation from the standard of care and less on emotional appeals to juries. A higher percentage of victims of medical negligence should receive compensation, and a higher percentage of frivolous claims should be dismissed. Health courts provide an opportunity to create a system that resolves medical liability claims in a more balanced and equitable fashion than the current system. On the other hand, the costs of establishing health courts are unknown and could potentially be borne by physicians. Therefore, a health court system should include appropriate funding from government or foundation sources to protect participants from significant financial losses based on their participation under a health court format rather than the traditional medical liability system.

AMA Policy

D-435.987 Medical Courts

Our AMA will draft an alternative judicial model for addressing medical liability claims based on special medical courts that are composed of judges trained in medical standards that could render more accurate decisions regarding whether medical malpractice has

actually occurred and, if so, render a judgment as to the amount of monetary damages to be awarded.

Principles for Health Courts

The AMA supports the following six key principles. These principles are intended to serve as legislative guidelines for state medical associations and can be amended on an as needed basis.

- Health courts should be structured to create a fair and expeditious system for the resolution of medical liability claims - with a goal of resolving all claims within one year from the filing date.
- Health court judges should have specialized training in the delivery of medical care that qualifies them for serving on a health court.
- Negligence should be the minimum threshold for compensation to award damages.
- Health court judgments should not limit the recovery of economic damages, but non-economic damages should be based on a schedule.
- Qualified experts should be utilized to assist a health court in reaching a judgment.
- Health court pilot projects should have a sunset mechanism in place to ensure that participating physicians, hospitals, and insurers do not experience a drastic financial impact based on the new judicial format.

I. HEALTH COURT STRUCTURE

Jurisdiction

- Health courts should only be established at the state or local level.
- If a health court is established on a statewide or local basis, then it should be established within the state's trial court of general jurisdiction. Using the already established system would lessen the financial and administrative burden.
- To capture all medical liability cases, a health court that is established as a statewide or local program should have exclusive jurisdiction over any lawsuit (contract or tort) which involves an injury arising from the alleged negligence of a health care provider.
- Appeals should be handled within the health court system as well.
- The jurisdiction's discovery rules should be modified to be consistent with the timeline for resolving a case before a health court.
- Eventually, health courts should have expanded jurisdiction over the validity of advance directives, managed care independent review decisions, and other health law issues.

Trial Format

One option for a health court is to have a bench trial before a specially trained judge.

- Another option is for a health court to have a jury trial under the authority of a specially trained judge.

- Health courts utilizing a jury should provide juries with a specialized educational session on the basics of medical care delivery and the distinction between negligence and adverse outcomes as well as appropriate guidelines on the purpose of awarding non-economic damages.

Administrative Option

- An administrative system (e.g. established by a hospital or insurer) should include many of the same requirements that the AMA supports for a health court established within a jurisdiction's standard judicial system.
- Health court pilot programs established through an insurer or hospital should have jurisdiction over patients who choose to opt in to the system.

II. HEALTH COURT JUDGES

Selection of Health Court Judges

- Health court judges should be appointed by a health court task force.
- The health court task force should be comprised of four physicians, four lawyers, and four laypersons.
- The majority and minority leaders in each of the state's legislative chambers should pick one member for each category.
- The health court task force chairmanship should rotate on an annual basis.
- The majority and minority leaders in each legislative chamber should ask the state medical association for a list of health court task force candidates before making an appointment.
- Governmental entities should adjust the term of a health court judge based on the length of terms in their state for other special courts.

Training for Health Court Judges

- Health court judges should complete a judicial training program which provides an overview of medical and legal issues that often arise in medical liability cases.
- The curriculum should be established by the health court task force.
- The medical portion of the training program should include both in-classroom clinical training and an internship whereby the judge "shadows" a physician in different health care settings.
- States and other government bodies with an existing judicial training program should have this office administer the special training program for judges assigned to the health court.

III. HEALTH COURT PROCEDURE

Threshold for Patient Compensation

- Negligence must be proven for a patient to recover in a health court proceeding.

Damages

- Economic damages should not be limited. Injured parties should be fully compensated for their economic losses.

- Non-economic damage awards should be established by a schedule. Consistent injuries should result in consistent non-economic damage awards based on the schedule. The health court task force should establish the schedule.
- One option for the schedule is to base it on type/severity of the injury. Another option is to have the schedule link non-economic damages awards to the amount of economic damages included in the judgment.
- Punitive damages, if allowed, should not be awarded unless the party alleging such damages meets the burden of producing clear and convincing evidence of oppression, fraud, malice, or the opposing party's intent to do harm.
- Health court judges should give jury instructions that provide clear delineations between the purposes of economic damages (for economic loss), non-economic damages (for pain and suffering), and punitive damages (for punishment to prevent future bad behavior). The instructions should also distinguish the different burden of proof needed for punitive damages.
- Future damages should be paid on a periodic basis as authorized by a health court.

Other Procedural Issues

- Health courts should be designed to resolve claims within one year from the filing date.
- Health courts should limit attorney's fees to maximize the award to the patient.
- Collateral payment sources should be admissible as evidence in a health court proceeding.
- Health court damage awards should include mandatory offsets for collateral payments for the same injury.
- An affidavit/certificate of merit should be a prerequisite to filing a medical liability case before a health court.
- A pre-trial screening panel should be utilized prior to the start of a trial before a health court.
- The statute of limitations in a health court should be two years from the act or omission.
- The period for suspending the application of state statutes of limitations for minors should be no more than six years after birth. The statute should include a three year statute of repose from manifestation as well for minors.
- In a health court proceeding, statements of sympathy, apology or regret made by a health care provider or their staff to an alleged victim or family of the victim relating to the discomfort, pain, suffering, injury, or death resulting from an unanticipated outcome of medical care should be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

IV. MEDICAL ERROR REPORTING

Medical Error Reporting

- The AMA continually strives to advance efforts to improve patient safety through educational activities and all other available means to discover and promote "best practices" in the delivery of health care services. Toward this end, a health court system should encourage the reporting of medical errors.

- The reporting system should be non-punitive, and it should be confidential and not subject to discovery in legal proceedings.
- The medical error reporting system should collaborate with the Patient Safety Organization (PSO) (which will be established pursuant to the federal Patient Safety and Quality Improvement Act of 2005) in its state or region to encourage the efficient reporting and analysis of the data.

V. EXPERTS

Court Appointed Medical Experts

- The health court task force should maintain a list of qualified medical experts from which a judge may select to help clarify or interpret medical testimony given in legal proceedings.
- A health court judge should use and rely on the testimony of a court appointed medical expert.
- A court appointed medical expert must, at a minimum, meet the same qualifications as the medical experts who testify on behalf of a party in the presiding lawsuit.

Party Expert Witnesses

- Health courts should only allow expert witnesses to testify if the expert witness is licensed as a doctor of medicine or osteopathy.
- An expert witness should be trained and experienced in the same discipline or school of practice as the defendant or has specialty expertise in the disease process or procedure performed in the case.
- An expert witness should be certified by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association, or by a board with equivalent standards.
- An expert witness should, within five years of the date of the alleged occurrence or omission giving rise to the claim, be in active medical practice in the same discipline or school of practice as the defendant, or have devoted a substantial portion of his time teaching at an accredited medical school, or in university-based research in relation to the medical care and type of treatment at issue.
- A person who testifies as an expert witness in a health court should be deemed to have a temporary license to practice medicine in the state for the purpose of providing such testimony and should be subject to the jurisdiction of the state medical board.

VI. REVIEW AND SUNSET

Review

- The health court task force should be charged with reviewing the health court program on an ongoing basis. They should issue quarterly reports, open to the public, on claims filed, decisions rendered, claims paid, and claims resulting in no payment.

Sunset

- The health court task force may recommend to the governor and the legislative leaders that the health court system should be sunset if it is not financially viable or does not result in a more balanced and fair process.
- Given that the costs are unknown and could potentially be charged to physicians, a health court system should include appropriate funding from government or foundation sources to protect participants from significant financial losses based on their participation under a health court format rather than the traditional medical liability system.

Adopted by AMA House of Delegates June 2007