

### **The Need for Medical Liability Reform**

The AMA continues to believe that medical liability reform is essential to any health care cost containment strategy. We have strongly urged Congress and the Obama Administration to include meaningful medical liability reform as a critical component of health system reform.

- The cost of our medical liability system is borne by everyone as defensive medicine adds billions of dollars to the cost of health care each year, which means higher health insurance premiums and medical costs for all Americans. A 2003 U.S. Department of Health and Human Services (HHS) report estimated the cost of defensive medicine to be between \$70 billion and \$126 billion per year. Updating this to national health expenditure data from 2005, the cost is \$99 billion to \$179 billion dollars per year (“Addressing the New Health Care Crisis,” U.S. Department of HHS, March 2003).
- Physicians who win at trial still have large fees to pay for their legal defenses. The average defense costs for these cases average nearly \$94,000. And, in cases where the claim was dropped or dismissed, costs to physicians average nearly \$19,000 (Physician Insurers Association of America, 2005).
- For states that have not been able to pass comprehensive medical liability reform laws, the AMA supports federal grants to allow the exploration of state or local-based demonstration or pilot programs that have the potential to improve the current litigation climate through measures that could expedite equitable resolutions of disputes and contribute to the reduction of litigation costs and the practice of defensive medicine.
- The House Energy and Commerce Committee adopted an amendment to H.R. 3200, the “America’s Affordable Health Choices Act of 2009,” offered by Representative Bart Gordon (D-TN) that would provide financial incentives to states that enact certificate of merit and/or early offers programs in medical liability cases. The amendment encourages the states to explore alternatives to the costly liability system through reforms that ensure court cases have merit and that allow providers to quickly compensate patients without litigation. This is an important step in the right direction toward reforming our broken liability system, and AMA will continue to work for much needed liability reform.
- On September 22, the Senate Finance Committee began considering the “America’s Healthy Future Act of 2009,” as introduced by Chairman Max Baucus (D-MT). Due to jurisdictional objections raised by Senate Judiciary Committee

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Chairman Patrick Leahy (D-VT), the Finance bill does not contain liability reform provisions. Instead, the Chairman’s mark expresses Sense of the Senate language that “health care reform presents an opportunity to address issues related to medical malpractice and medical liability insurance and that states should be encouraged to develop and test alternatives to the current civil litigation system as a way of improving patient safety, reducing medical errors, encouraging the efficient resolution of disputes, increasing the availability of prompt and fair resolution disputes, and improving access to liability insurance, while preserving and individual’s right to seek redress in court.” The mark also expresses the Sense of the Senate “that Congress should consider establishing a state demonstration program to evaluate alternatives to the current civil litigation system.”

- During the Finance Committee markup, amendments to address medical liability reform and to limit non-economic damages in medical liability lawsuits were offered by Senators John Cornyn (R-TX) and Jon Kyl (R-AZ). Both of these amendments were ruled out of order by the Chairman as non-germane to the legislation. Therefore, there were no roll call votes on the amendments.
- On September 17, President Obama directed Health and Human Services (HHS) Secretary Kathleen Sebelius to launch a new medical liability demonstration project. The demonstration will provide financial incentives to states and health care systems to test models that meet four goals: 1) Put patient safety first and work to reduce preventable injuries; 2) Foster better communication between doctors and patients; 3) Ensure that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits; and 4) Reduce liability premiums
- The HHS initiative will consist of three prongs: 1) Grants to jump start efforts – Grants for up to three years, for up to \$3 million each, will be given on a competitive basis to states and health systems for implementation and evaluation of evidenced-based patient safety and medical liability demonstration; 2) Planning grants – States and health systems that want to implement and evaluate evidence-based demonstrations will be eligible for competitive one-year grants for up to \$300,000 (applicants will also be eligible for technical assistance); and 3) Review of what works – A rapid review of initiatives that improve health care quality and patient safety and decrease medical liability will be conducted by the Agency for Healthcare Research and Quality (AHRQ) and reported in December 2009. This review will guide the initiative and provide information to applicants and help evaluate grant submissions.

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- The Secretary said she will act in an expedited fashion to implement this program, stating money will begin to be released in “early 2010.” AHRQ will handle the grant application and award process and will publish details of the process in the Federal Register right before or on October 15. Total funding for the initiative is \$25 million and will go to directly fund grants only. The evidence base review of what works and overall program evaluation will be conducted by contracts with existing AHRQ funding. AMA Advocacy staff will be working with AHRQ and HHS to discuss the process and shape of this initiative.