

Striking caps on liability damages will fuel medical cost growth

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If the Supreme Court of Tennessee eliminates caps state legislators placed on noneconomic damages, doctors say patients and physicians in the Volunteer State will face a future in which health care costs are even higher and physicians are likelier to leave the state or avoid high-risk procedures.

The state's highest court is considering a case, *McClay v. Airport Management Services LLC*, that will determine whether limiting noneconomic damages in personal injury cases is constitutional. The Litigation Center of the American Medical Association joined the Tennessee Medical Association and several other organizations in filing an amicus brief urging the court to keep limits in place because they are "effective" and "critical" in the medical liability arena.

"They lead to lower insurance premiums, higher physician supply, improved patient access to care, lower defensive medicine and health care costs and lower claim severity and frequency," the AMA Litigation Center brief tells the court. "Placing reasonable constraints on the subjective portion of awards is critical for ensuring that adequate, affordable health care is available to the public at large, particularly in states such as Tennessee that have significant rural areas where health care can be scarce."

Tennessee places a \$750,000 cap on noneconomic damages in personal injury cases—or \$1 million in cases where there was a catastrophic injury. Like other states with limits on noneconomic damages, Tennessee does not limit economic damages that include tangible items such as future medical expenses and lost wages.

A woman is challenging the limit after injuring her foot in the Nashville International Airport when a beverage cooler panel fell when she closed its door. She suffered a "crush injury and associated soft-tissue damage and bruising." A jury awarded her \$444,500 for future medical expenses and \$930,000 in noneconomic damages. Airport Management Services asked the court to reduce the noneconomic portion of the award to the statutorily limited \$750,000.

The woman then challenged whether the limit is constitutional, a question the Supreme Court of Tennessee is now considering. While the case does not stem from a medical incident that happened in a hospital or clinic, the court's decision will apply to physicians facing medical liability lawsuits and will affect Tennessee's health care environment.

Caps reduce costs, improve care

Tennessee enacted caps on noneconomic damages as burgeoning jury awards threatened businesses, the medical profession and liability insurance affordability. About half the states have similar damage award caps in place.

Adjusted for inflation, the median damage award in medical liability jury trials in state courts was 2.5 times higher in 2005 than in 1992—\$682,000 versus \$280,000.

"Tennessee's law has brought needed stability and predictability to tort liability," the AMA Litigation Center brief tells the court. "This has proven to be particularly critical to ensuring broad access to affordable health care for Tennesseans."

The brief tells the court that a significant body of literature—some of which is outlined in the AMA's *Medical Liability Reform NOW!* report—shows that constraining noneconomic damages can reduce medical liability premiums physicians pay, as well as claim severity and claim frequency.

For example, studies have found that internists in states with noneconomic damage limits saw 17.3% lower medical liability premiums than internists in states that lacked constraints; general surgeons and ob-gyns in states with limits saw 20.7% and 25.5% lower insurance premiums, respectively, than those specialists in states without caps.

Caps are constitutional

The AMA Litigation Center brief tells the court that Tennessee's law is "well within the mainstream," with some states having significantly lower limits.

"Courts spanning from Maryland to Alaska have found that a limit on noneconomic damages represents policy judgment that does not interfere with the right to a trial by jury," the brief states.