

Draft Medical Professional Liability Bill

A coalition of physician and health care organizations have developed a proposed medical liability reform bill that will provide protection and compensation for injured patients while not unfairly punishing health care providers in medical liability cases.

Proposed reforms in the draft legislation include:

- Enhancing **requirements for experts** by requiring that the expert devote three fourths of their time to active clinical practice in their relevant field of specialty.
 - Doctors who testify in medical liability cases should be experts in the field of medicine that they are testifying about so that there truly is an “expert opinion” about whether appropriate care was given to a patient. For example, a specialist in foot care would not be able to testify about the standard of care in a case involving head trauma.
- **Limiting liability for non-economic** loss to \$250,000 with an adjustment each year for inflation
 - Limits on non-economic, or “pain and suffering” damages, do not limit a person’s ability to be fully compensated for economic damages such as medical expenses and lost wages. Non-economic damages are often awarded on a highly subjective basis and according to the Office of Technology Assessment (OTA) a cap on damages is the single most effective way to **slow growth** of insurance premiums.
- **Elimination of joint liability** in favor of several liability with each defendant responsible only for damages in proportion to their degree of fault. In assessing percentages of fault a plaintiff’s settlement with a non-party may be considered and damages reduced in proportion to the percentage of fault assigned to the settling party or non-party.
 - Under current law defendants who may be only 25% at fault can be held liable for 100% of damages in medical liability cases. This provision will ensure that each defendant is responsible only for the damages for which they are at fault, not the one with the “deepest pockets”.
- **Collateral source payments** are admissible to the court after a verdict and a process is outlined to determine the amount of the plaintiff’s expenses or losses that have been paid or are payable by a collateral source prior to final determination of reimbursement.
 - Plaintiffs are allowed to sue a doctor for damages and losses that have already been recovered from health insurance and workers compensation. Under this provision the judge would be made aware of any expenses that had already been paid by an insurance company when awarding further damages. This prevents double dipping for injuries that have already been paid for.

- A procedure for **periodic payments** for future damages above \$100,000 is established.
 - Periodic payment means making payments on a schedule over time as opposed to in a single lump sum. In less populated states, one large verdict can cause significant premium increases. This reform would not affect a plaintiff's ability to receive the full payment for any past or present damages, such as medical bills or lost wages incurred through the date of the trial. The plaintiff may still receive these damages in a lump sum at the time of judgment or settlement. In addition, the injured patient receives more of the award under periodic payment reform, and the attorney less.
- Liability claims against providers rendering care necessitated by **traumatic injury** are limited to \$500,000 if the care is rendered in good faith and in a manner not amounting to reckless, willful or wanton conduct.
 - Patients who are seen in a trauma situation are highly unstable and in danger of losing their life if medical care is not rendered quickly. Because of the need for speedy treatment they may not receive all of the tests or diagnostic work-ups that could be performed if it were not an emergency situation. In the trauma setting patients are dependent upon the doctor's judgment about how best to save the patient's life. In these instances there may not be time to do everything that could be done and unless the doctor is shown to have been negligent in their treatment, damages would be limited to \$500,000 in trauma cases.
- Places consumer safeguards on **attorney contingent fee** arrangements.
 - Contingency fees are meant to ensure that those with limited financial resources are still able to obtain legal representation. Traditionally, the standard attorney contingency fee was one third of the plaintiff's recovery. However, forty percent contingency fee arrangements have become standard and in some cases it can even be higher. The contingency fee generally covers only the attorney's professional fee. Litigation expenses are deducted separately from the plaintiff's recovery, and can be quite high, depending on the length of the litigation, the number of depositions taken and the number of expert consultants involved. Most persons with small health care injury claims never get access to the civil justice system, because the contingency fee stimulates lawyers to be primarily interested in "big ticket" cases. Placing limits on attorney contingency fees will ensure that the consumer gets more of the damages awarded to them for injuries instead of the attorney.