

Medical Liability Actions during the 2004 Legislative Session

Almost all of the states have addressed the medical malpractice insurance issue during the 2004 legislative sessions. The following are highlights of some of the actions taken up:

Mississippi and Oklahoma were the only states to enact comprehensive reforms that include caps.

Mississippi

On June 13 Mississippi Gov. Haley Barbour signed legislation “Tort Reform Act of 2004” (HB13) to reform the civil justice system. Included in the bill is a \$500,000 cap on jury awards for pain and suffering in medical malpractice lawsuits.

Oklahoma

Oklahoma Governor Brad Henry signed HB 2661 capping non-economic damages at \$300,000 in medical liability actions.

Other medical liability actions were:

Connecticut, Iowa and Missouri legislatures passed medical liability reform bills that were vetoed by their Governors.

Colorado

Colorado Governor Bill Owens signed a law requiring the state board of medical examiners to post on its Web site any medical malpractice jury verdicts against doctors.

Pennsylvania

A bill to amend the state constitution to allow for caps was approved by the state House of Representatives. Current state law prevents the legislature from placing limits on noneconomic damages awarded in lawsuits. The bill says lawmakers may, by statute, “limit the recovery of noneconomic damages” in suits involving doctors or hospitals. The amendment has to be approved by the state’s voters as a referendum before it can take effect. The measure has been moved to the Senate which would have to agree on the bill before summer recess for a referendum to be on the ballot by 2005.

New Jersey

On June 7, New Jersey Governor James McGreevey signed the “New Jersey Medical Care Access and Responsibility and Patients First Act” (A.50). The New Jersey Medical Society, which supports damage cap, accepted the bill without limits on pain and suffering awards after a provision was added for a 17-member task force that will study proposals for additional reforms and issue a report within two years. According to the Bureau of National Affairs (BNA), the new law:

- Creates a \$78.3 million fund to subsidize doctors’ and hospitals liability insurance premiums for three years;
- Gives judges more authority to lessen jury awards they deem too high;

- Changes the statute of limitations for filing a claim for birth-related medical malpractice from age 20 to 13;
- Establishes qualifications for expert witnesses and for doctors who execute an affidavit of merit in a malpractice action;
- Requires physicians to maintain medical insurance coverage of \$1 million per occurrence and \$3 million per policy year and allows physicians to form purchasing alliances to negotiate reduced malpractice insurance premiums;
- Requires malpractice insurers to offer lower rates to doctors who give up the right to agree to settle any case and bars them from increasing a doctor's premium based on a malpractice claim if the physician is dismissed from the lawsuit within 180 days after it is filed;
- Authorizes state insurance regulators to disapprove any rate increase of 15% or more if it is found to be excessive, inadequate, or unfairly discriminatory;
- Requires medical malpractice insurers to notify the Medical Practitioner Review Panel and the state insurance Commissioner in writing of any medical malpractice claim settlement, judgment, or arbitration award involving any licensed practitioner or insurers;
- Includes liability protections for health care professionals who respond in good faith to a patient emergency and stronger reporting requirements to ensure that physician misconduct is reported promptly to the state Board of Medical Examiners and to any health care facility affiliated with a physician who has been disciplined.

Four states have ballot initiatives that will be voted on during the November elections.

Oregon

Oregon has on the ballot an initiative to amend the state constitution that would restore a 1987 \$500,000 limit on payment of noneconomic damages in medical malpractice cases.

Wyoming

Wyoming legislators approved a tort reform amendment to the state constitution to allow caps on noneconomic damages in medical malpractices that will go to voters in November.

Florida

There is a ballot initiative in Florida to amend the state constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000 in all damages received by the claimant, and 90% of damages in excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

Nevada

Nevada's "Keep Our Doctors in Nevada" ballot initiatives if passed by the voters would:

- Create a hard cap on non-economic damages of \$350,000;

- Limit attorneys' fees to 40 percent of the first \$50,000 won, 33.3 percent of the next \$50,000, 25% pf the next \$500,000, and 15% of the amounts more than \$600,000;
- Allow damages totaling more than \$50,000 to be paid in installments, rather than in one lump sum;
- Hold doctors financially responsible only for their percentage of fault in the jury.

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