

MEDICAL MALPRACTICE LIABILITY/TORT REFORM

POSITION

The American Nurses Association (ANA) supports a balanced, multi-pronged legislative approach to address the current medical malpractice liability problem, which includes:

- Systemic changes to improve patient safety and reduce medical errors, such as establishment of a nation-wide mandatory, state-based error reporting system; the enactment of whistle blower protections; and other reforms identified in the statement on “Building Safe Health Care Systems for Informed Patients” that was adopted by the ANA House of Delegates in 2000;
- An independent commission to study and report to Congress and the President on the factors that have contributed to the current problem and on the impact that limitations on health care liability litigation and recoveries have had at the state level;
- Common-sense liability reforms, such as periodic payment of future damages, adoption of the collateral source rule, and providing liability protections for health care workers providing care in emergency situations; and
- More vigorous oversight and regulation of professional liability insurance industry practices and premiums;
- Opposition to dollar caps on health care liability litigation, which ANA views as premature, before receipt of the report of an independent commission on the liability issue.

BACKGROUND

As the costs of medical malpractice liability insurance have continued to rise, posing a threat to patient access and provider availability, the issue of medical malpractice/tort reform has generated increasing attention and concerns from the health care, legal and insurance communities as well as from state and national policy makers, consumers, and the media. The resolution of the Medical Malpractice/Tort Reform issue is a priority for the Bush Administration, and many organizations are being asked to engage in advocacy on this issue. Multiple factors have contributed to the recent cycle of medical malpractice rate increases including the health care liability system, failure to adequately prevent medical errors, short staffing in many health care facilities, and the need for reforms within the insurance industry.

Although there is general agreement among the stakeholders that this issue remains a problem for some specialties and in some areas of the country, there is little agreement on the causes and even less agreement about possible solutions to address the issue. Physicians and insurance companies—which are on one side of the issue lobbying for

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caps on non-economic damages—are pitted against the trial lawyers, who are advocating for insurance reform. Consumer advocacy groups are lobbying for legislation on medical errors, including disclosure rules and safety standards. They maintain that high malpractice premiums also reflect weak insurance profits and investment decisions, not just frivolous malpractice suits.

RATIONALE

A problem that arises from multiple factors cannot be solved by legislation that addresses only one of these factors, such as the imposition of limits on health care liability litigation and recoveries. The impact of such limitations at the state level is the subject of much debate and an impartial evaluation of what has happened in the states is needed in order to inform the decisions of policy makers on whether such limitations should be adopted at the federal level. 