GOVERNMENT & MEDICINE

Doctors pledge to fight after federal tort reform bills stall

Studies released in the days following the vote continue to fuel the fire.


The U.S. Senate in early May halted Republican-backed medical liability reform legislation for the fifth time in four years, but trial lawyers and organized medicine continue to wrangle over the issue. Doctors vowed anew to fight for a national solution to stabilize premiums and preserve access to care.

The effort, led by Senate Majority Leader Bill Frist, MD (R, Tenn.), fell short of the 60 votes needed to advance two measures to the Senate floor for formal consideration. One bill would have capped total noneconomic damages against multiple defendants at $750,000 and against individual physicians or health care professionals at $250,000.

A second bill would have applied a similar $250,000 limit on pain and suffering awards against doctors and facilities providing obstetric care. Total damages would have been capped at $500,000.

The issue was a high priority for President George W. Bush who said he was "disappointed" that the Senate did not respond to "a national problem that deserves a national solution." Bush reiterated that "frivolous and abusive lawsuits are encouraging the use of defensive medicine, which imposes substantial and unnecessary costs on all Americans."

Doctors say they remain optimistic because a majority of senators voted in favor of medical liability reform.

"The reality is that just because the Senate does not act, it does not mean the crisis is over," said Cecil B. Wilson, MD, chair-elect of the American Medical Association. "Our plan is that we will continue to fight hard at both the federal and the state level."
The U.S. House passed a similar cap last year that still has the potential for Senate consideration this session. Although, given the response to the two recent measures, Dr. Wilson said it is unlikely senators will give it a look. The bill would cap noneconomic damages against doctors and health care professionals to $250,000, as well as limit attorneys' fees.

"If nothing happens this year, we will be starting over and will need to get the House to step up to the plate as they have in the past," Dr. Wilson said. The AMA will also "encourage the U.S. Senate to act before more patients are restricted from seeing a doctor in their hour of need," he added.

Stuart L. Weinstein, MD, chair of Doctors for Medical Liability Reform, also said he is encouraged that "the majority sided with the majority of the American public who says that there is indeed a problem." He was referring to a Harris Interactive poll conducted in April for the Health Coalition on Liability and Access, in which 75% of Americans surveyed said they want federal lawmakers to pass comprehensive reforms. The HCLA is a group of organizations, including the AMA, representing doctors, hospitals and insurers that advocates for noneconomic damage caps and other reforms.

Trial lawyers, on the other hand, applauded the Senate action. "This one-size-fits-all approach is unfair to victims and limits their ability to hold wrongdoers accountable, letting those who are negligent off the hook for providing inadequate care," said Ken Suggs, Assn. of Trial Lawyers of America president.

He cited a competing poll conducted in April by GarinHartYang Research Group for the ATLA in which 84% of respondents said they would rather have a jury decide compensation than Congress.

Although the failure of the Senate bills appears to have taken tort reform off the table for this year, a number of studies released in the days following the vote have further intensified the square-off over the existence of a medical liability crisis.

Both sides are touting the findings in a Harvard School of Public Health study released in the New England Journal of Medicine in May, which analyzed 1,452 closed claims from five national insurance companies. The report found that 37% of the injury claims did not involve medical errors, and 3% involved no injuries. The study also concluded that "the overhead costs of malpractice litigation are exorbitant," with 54 cents of every dollar of compensation going to legal costs.

The AMA's Dr. Wilson said the study is "proof positive that meritless medical liability lawsuits are clogging the courts" and taking away from patient care.

Consumer advocates disagree, however, and say that the study
shows the majority of cases are meritorious, disproving evidence of a crisis.

"The authors came out with a strong statement that frivolous lawsuits and payments are not a problem and that the vast majority of claims paid are for legitimate cases with real errors," said Joanne Doroshow, executive director of the Center for Justice and Democracy, a consumer group fighting against tort reform.

She also pointed to the study findings that 15% of the cases analyzed were decided by trial verdict and said this demonstrates that most medical liability cases do not end up in court.

"Certainly [the study] is evidence that Congress should not be wasting time with legislation it knows is going to fail and that studies show is completely unnecessary," she said.

Perceptions of insurance industry price-gouging are refuted in a study put out 10 days after the Senate vote by the Manhattan Institute's Center for Legal Policy, which found that medical liability insurance premiums are closely related to tort awards.

"States with higher awards per doctor, simply put, have higher insurance premiums," the report states.

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ADDITIONAL INFORMATION:

Vote tallies

MEDICAL CARE ACCESS PROTECTION ACT OF 2006 (S 22)

Vote:  Defeated in the U.S. Senate when in a 48-42 vote it failed to get the 60 votes needed to prevent a filibuster.  
What it would do:  Cap noneconomic damages against individual doctors, institutions or health care professionals at $250,000. Limit total noneconomic damages against multiple defendants at $750,000.

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003 (S 23)

Vote:  Defeated in the U.S. Senate when in a 49-44 vote it failed to get the 60 votes needed to prevent a filibuster.  
What it would do:  Cap noneconomic damages against doctors or institutions providing obstetric care at $250,000. Limit total noneconomic damages against multiple defendants at $500,000.

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