
# Medical Malpractice Tort Reform

## Background

*Updated July 25, 2005*

Since 2000, the tension between the medical community, the insurance industry, attorneys, and victims' rights advocates has heightened astronomically on the issue of medical malpractice. Each of the groups blame one or more of the other sectors for the escalating costs of medical liability insurance premiums.

### State Activity

Medical malpractice tort law has always been maintained at the state level. All states have laws governing medical liability lawsuits. The vast majority of states have statutes of limitation of two years for standard medical malpractice claims. Over half of the states have limits on damages awards. Almost all states have eliminated joint and several liability in malpractice lawsuits, and many states have established limits on attorney fees.

In 2005 alone, **48 states** responded to the fevered calls for medical liability reform by **introducing over 400 bills** in their legislative sessions to address the situation. Solutions range from enacting limits on noneconomic damages, to malpractice insurance reform, to gathering lawsuit claim data from malpractice insurance companies and the courts for the purpose of assessing the connection between malpractice settlements and premium rates. Just in the last six months, **29 states have passed over 50 bills** that have been signed into law by the state governors. Some states chose to enact a number of reforms within one bill; other states enacted a number of bills, each addressing one or two points of medical liability reform. The plethora of solutions proposed and the variety of aspects addressed in the state legislation demonstrate the diversity of the problem of medical liability insurance costs from state to state. 2003 and 2004 also saw a lot of discussion and debate in the state legislatures as they progressed through the thorny territory of concerns on medical liability costs.

### Federal Activity

Despite the extensive state work on medical liability costs this year and in previous years, many parties in the medical liability conflict have seen fit to take their complaints to Capitol Hill and have found a receptive audience. Medical liability reform was made a centerpiece of the 2004 Presidential election, as well as many Congressional races.

Congress has repeatedly ignored state medical malpractice reform efforts in the past, and 2005 is no different. The disconnect between federal and state work on medical malpractice issues has become more pronounced in the last two years. The 109th Congress has seen the introduction of many federal bills on medical malpractice tort reform that operate under the premise that the states are *not*

**State Resources**

- State Medical Malpractice Tort Laws
- 2005 State Medical Malpractice Reform Action by State
- 2005 State Medical Malpractice Reform Action by Topic
- 2005 Enacted State Medical Malpractice Reform

**Federal Lobbying**

- NCSL Medical Malpractice Policy
- NCSL Tort Reform Policy
- Talking Points
- Letters, Action Alerts, Testimony
- 2003-2004 Congressional Summary
- U.S. Senate Judiciary Committee
- U.S. House Judiciary Committee
- U.S. House Energy & Commerce Committee

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**Other NCSL Resources**

- Law and Criminal Justice Committee
- Health Committee
- Financial Services Committee
- State-Federal Relations

addressing medical liability reform, focus solely on the litigation angle, and ignore other relevant issues related to insurance and medical standards of care. Traditional supporters of federalism have turned their backs on their states in favor of intrusive legislation that will nullify the work of their state legislatures executed over the last three years. It will completely eliminate any opportunity for states to continue to craft laws addressing further malpractice issues and formulating responses applicable to specific problems. Federal legislation will also mean that areas of law traditionally regulated by states – torts, evidence and civil procedure – will no longer be under the purview of the states, but rather the federal government.

**The proposed federal legislation would dismantle state judicial authority and preempt all existing state laws governing medical malpractice lawsuits with the following:**

- Caps on noneconomic (pain and suffering) damages at $250,000;
- A 3-year statute of limitations to initiate lawsuits, or one year from discovery; statute of limitations for children until age 8;
- Limits on attorneys fees whether in settlement or judgment;
- Collateral source benefits may be introduced into evidence in court;
- Periodic payments are ordered for future damages exceeding $50,000;
- Standard guidelines for awarding punitive damages (clear and convincing evidence) and limitations on the amount awarded;
- Prohibitions on instructing a jury about any limitations to damage awards;
- Punitive damages may not be awarded against the manufacturer or distributor of a medical product approved by the Food and Drug Administration;
- A specific statement that the provisions would preempt all state laws not in conformance with the standards presented.

**NCSL Policy**

Due to the bipartisan mandate of the organization, NCSL does not take a substantive position in the medical liability tort reform debate or make recommendations of best practices. NCSL does, however, maintain that any tort reform efforts belong under the purview of the states and that any federal legislation on this issue inappropriately interferes with state jurisdiction.

NCSL has policy opposing any federal legislation that preempts state regulation of medical malpractice tort reform, especially in the areas of statutes of limitation, rules and standards of evidence, the drafting of pleadings, the awarding of attorney fees, and damages limits. NCSL strongly encourages state legislators to speak with the members of their Congressional delegations to prevent this voiding of state authority and the work of so many state legislatures.



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