

American Medical Association

Physicians dedicated to the health of America



Memo to: Executive Directors
Government Affairs Directors
State Medical Associations
National Medical Specialty Societies

From: Michael D. Maves, MD, MBA

Date: February 21, 2005

Subject: Federal Medical Liability Reform Update

Thank you!

We appreciate the positive response to our call to action outlined at the January State Legislative Meeting and subsequent Federation conference calls.

In-state meetings with Members of Congress

Below and attached, please find information that should be useful as you prepare to host in-state meetings with Members of Congress regarding medical liability reform (MLR). This document gives an overview of the current legislative environment. Attached you will find AMA testimony recently presented to the House Small Business Committee. In addition, we attach a document entitled, "America's Medical Liability Crisis: We All Pay for the Broken System," detailing the need for effective, federal medical liability reform.

General Overview

Enactment of comprehensive, federal medical liability reform remains one of the AMA's top priorities for the 109th Congress. We have been working closely with House and Senate Leadership, as well as with the Administration, to increase the visibility of the nation's medical liability crisis and to develop an effective strategy for the 109th Congress.

To date, House and Senate leadership has not determined which legislative vehicles will be used to effectuate their strategy and when such bills will be introduced. Leadership has reserved lower bill numbers for their legislative priorities, one of which will likely be comprehensive medical liability reform. In addition, it has not been decided which Representative(s) and Senator(s) will be the designated bill managers for the medical liability reform effort. With that said, several bills have already been introduced in the 109th Congress. A summary of those bills follows.

Senate Activities

On Thursday, February 10, 2005, three medical liability reform bills were introduced in the U.S. Senate.

- **S. 354**, the “Help Efficient, Accessible, Low-cost, Timely, Healthcare (HEALTH) Act of 2005,” was introduced by Senator John Ensign (R-NV) and cosponsored by Senators Judd Gregg (R-NH), Craig Thomas (R-WY), James Inhofe (R-OK), and Jon Kyl (R-AZ). S. 354 is a comprehensive bill that contains MICRA-type reforms, including unlimited economic damages, a “hard” \$250,000 cap on non-economic damages, limitations on punitive damages, joint and several liability reform, and limits on attorney fees. The bill is virtually identical to S. 607 (which was introduced by Senator Ensign in the 108th Congress), except it eliminates the provisions addressing punitive damages for FDA-compliant products [Sec. 8(c)(1),(3) and (4)]. The AMA looks forward to working with the bill sponsors to address concerns regarding the collateral source/subrogation language. S. 354 has been referred to the Senate Committee on Health, Education, Labor, and Pensions (HELP) for consideration.
- **S. 366**, the “Healthy Mothers and Healthy Babies Access to Care Act,” was introduced by Senators Gregg and Ensign and contains similar MICRA-type reforms included in S. 354 (referenced above). However, the bill would only apply such reforms to health care providers providing obstetrical and gynecological services related to childbirth. In addition, S. 366 includes a \$250,000 “flexi-cap” on damages, rather than a “hard” \$250,000 cap on non-economic damages. The “flexi-cap” allows states the flexibility to establish or maintain their own laws on damages, whether higher or lower. Similar legislation (S. 2061) failed to acquire the 60 votes necessary to overcome a filibuster on the Senate floor during the 108th Congress. S. 366 has been referred to the Senate Judiciary Committee.
- **S. 367**, the “Pregnancy and Trauma Care Access Protection Act,” was introduced by Senators Gregg and Ensign and would establish MICRA-type reforms contained in S. 354 for health care providers providing trauma/emergency services and services related to childbirth. However, like S. 366, the bill includes a “flexi-cap” on damages. Similar legislation (S. 2207) failed to overcome a filibuster on the Senate floor last Congress. S. 367 has been referred to the Senate Judiciary Committee for consideration.

House Activities

- On February 2, 2005, Representative Chris Cox (R-CA) introduced **H.R. 534**, the “Help Efficient, Accessible, Low-cost, Timely, Healthcare (HEALTH) Act of 2005.” Identical to H.R. 5 from the 108th Congress, H.R. 534 provides for comprehensive MICRA-type medical liability reforms, including a \$250,000 “flexi-cap” on non-economic damages. The bill has been referred to the House Judiciary Committee and the House Energy and Commerce Committee for consideration.

Attachments