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Malpractice reform that has worked

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For Californians, the malpractice liability crisis sweeping across the nation is a case of deja vu. In the mid-1970s, the story in California was much the same as it is today in a number of states spiraling into crisis. Obstetricians and other physicians who perform high-risk procedures faced a growing number of lawsuits, huge malpractice premiums, and the devastating decision of whether to close their practices—just like in Florida today. Nonprofit clinics vital to the community were unable to afford insurance and shut down, just as they are now in Pennsylvania. In Northern California, doctors walked off their jobs, just as West Virginia physicians have.

Today, California faces significant challenges to health care delivery but the cost of protection for malpractice liability is not one of them. Physicians in California pay malpractice premiums that are among the lowest in the nation. Injured patients receive a greater share of their awards, and they are receiving their settlements one-third faster than the rest of the country. California doctors no longer fear losing their practices because of high malpractice premiums. They therefore perform less defensive medicine, saving billions of precious dollars that would otherwise be drained from our health care system.

States now in the grip of a malpractice liability crisis have one advantage unavailable to California 28 years ago. They have a proven package of reforms to look to as a model to solve their problems.

California forged new ground when it enacted the landmark Medical Injury Compensation Reform Act (MICRA) of 1975. MICRA directly addressed "jackpot justice" by placing a $250,000 cap on non- economic ("pain and suffering") damages while not limiting awards for economic losses or medical bills. It also limited attorney contingency fees on a sliding scale to ensure that injured patients—not lawyers—received the lion's share of awards.

Opponents of caps often cite dubious studies that imply that the average award is relatively small and therefore should not have an impact on premiums. But what they fail to mention is that in nearly four out of five malpractice cases nationally, the lawsuit is found to be without merit.

There is still a significant cost that must be factored into premiums for defending doctors in these cases. The Doctors Company, which writes insurance in every state and serves approximately 28,000 physician policyholders, has spent over $400 million in defense of doctors who were fully vindicated.

The driving force behind premium increases nationwide is that the cost of the most expensive claims has exploded in a manner that is absolutely unprecedented. In just one year (1999-2000), the median malpractice award claim jumped 43 percent nationally from $700,000 to $1 million. Between 1996 and 2000, the proportion of jury awards exceeding $1 million in malpractice cases increased from a third of all awards to more than half.

The average jury award has now increased to about $3.5 million nationally, with about 57 percent of that going to attorneys' fees. By comparison, the California Department of Insurance says the state's malpractice insurers made a 1 percent profit between 1991 and 2000. Insurers annually pay as much as 40 percent more in claims than they receive in premiums.

There is a clear correlation between skyrocketing awards, the consequent premium increases and diminished access to care that states other than California now experience. A handful of juries may feel that they are sending a message, but the reality is that they are dealing a devastating blow to the availability of health care in their states.

There are two choices states can make. They can fairly limit awards for non-economic damages—without capping economic damages such as lost wages and medical costs—as California has done successfully, or they can allow unlimited awards. But insurance is not magic: If the path they choose is unlimited awards, the premiums needed to pay for those judgments must increase accordingly.

The health care nightmare that so many states now experience should serve as a wake-up call to Californians, who haven't experienced similar problems for nearly a generation. If they want a reminder of where California would be without MICRA, they only have to read newspaper coverage of how real people are losing care in Pennsylvania, West Virginia, Florida, and numerous other states. That may be the best evidence of MICRA's success.

California led the way in malpractice liability reform more than a quarter century ago, and it's a success story that can be imitated. California proved that it is impossible to sue your way to better medicine, but that it is possible to protect the rights of individual injured parties and access to quality care for all patients.

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