



National Business
Coalition on Health

August 2005

Protecting accountable, high performance health care providers from undue medical malpractice liability

Our national medical malpractice system is in crisis. The number of medical liability claims has increased drastically, 40 to 97 percent since 1996, namely in tort-friendly states.¹ Good doctors are quitting their jobs or moving to escape the high costs of paying for the problems and mistakes of others. These situations impact the cost of and access to health care as well as provider performance, quality and patient outcomes. The National Business Coalition on Health (NBCH), which represents nearly 80 coalitions of health care purchasers throughout the United States, urges federal legislative and regulatory action to create a safe, consistent and accountable health care system.

NBCH is committed to supporting and adopting the following strategic “first steps” to improve patient safety, reduce medical errors, and, ultimately impact the medical malpractice system in a constructive manner. We believe these key steps merit an investment of time and funding by Congress and the Bush administration.

1. Support standardized voluntary and mandatory reporting of medical errors by doctors and hospitals to advance patient safety and quality issues.
2. Encourage utilization of approved health information technology systems by providers to enhance the quality, safety and efficiency of health care.
3. Support and develop efforts to increase consumer awareness of safe patient care.
4. Support and demonstrate the development of organizational indicators of safe practice to be used by consumers, purchasers, policymakers and providers.
5. Support and demonstrate the creation of innovative provider reimbursement models with the goal of rewarding them for safe, high performance health care that results in superior outcomes for patients.
6. Support the development and demonstrate the effective use of contractual standards for safety for use by purchasers, directly or through their health plans.
7. Support a reliable medical court system that provides balance of all interests, predictability of damages and awards, and provides incentives for care improvement.
8. Support a liability system that recognizes the adherence to industry-standards, evidence-based medical protocol as an affirmative defense to malpractice.

We advocate a balanced approach to address the treatment of medical malpractice claims in our nation’s state and federal court systems without sacrificing cost, access, quality of care and system performance. Fair treatment and prompt compensation for legitimate losses to consumers should not be jeopardized. The current system of arbitrary state laws with no federal guidelines in

¹ National Practitioner Data Bank, 2000 Annual Report

managing malpractice claims does not appear to be working resulting in inequities in cost, awards, access, accountability, outcomes and quality.

The centerpiece of the medical liability issue is that providers need the ability to practice evidence-based medicine without external micromanagement but also must function in an environment of accountability.

- According to a 2002 U.S. Department of Health and Human Services report² doctors spent \$6.3 billion in 2001 to obtain malpractice coverage with rates increasing 10 percent that year and accelerating even more quickly, at approximately 20 percent, in 2002.
- The medical liability insurance industry incurred \$1.53 in losses and expenses for every dollar of premium collected in 2001, according to A.M. Best, the leading insurance industry-rating agency.

In a punitive and arbitrary environment, hospitals and physicians are less likely to voluntarily report medical errors, thus stifling quality and performance improvement.

- Between 1996 and 1999, the average jury award in medical liability cases increased 76%.³ Further, the median compensation in jury awards has steadily escalated every year since 1994 from approximately \$363,000 to \$1 million in 2000.
- According to the National Academy of Sciences' Institute of Medicine (IOM), 95 percent of adverse events go unreported.
- As indicated in the IOM 2000 report, "[To Err is Human: Building a Safer Health System](#)," mistakes typically are not the failings of an individual but weaknesses in a complex system. Improvement involves collaboration to identify and fix these issues. Voluntary reporting is an intricate and necessary component of high performance care.

The time is right to reform medical malpractice. Reform must promote a medical care environment that encourages and rewards provider accountability and performance. Unfortunately, the proposals currently being offered, such as capping jury awards and attorney fees, do not address the underlying problems of our malpractice system and may not adequately protect those who suffer from negligent or malicious treatment. The real need is for a system that defines and quantifies high performance health care, rewards it accordingly, and fixes problems that hinder optimal outcomes.

The mechanisms and tools can be negotiated, but our approach is clear: the National Business Coalition on Health, its member associations and their health care purchaser constituencies will work with other interested parties to develop and generate support for state and national policies and laws that protect accountable, high performance health care providers from the burdens of undue medical malpractice liability.

² U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, "Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System," July 24, 2002.

³ U.S. Department of Health and Human Services, PIAA

The National Business Coalition on Health (NBCH) has a membership of nearly 80 employer-led coalitions across the United States, representing over 7,000 employers and millions of covered lives. NBCH employer coalitions are committed to community health reform, including improvement in the value of health care provided through employer-sponsored health plans and to the entire community.