

AAP Position Paper – Advocating for Medical Liability Reform

The current medical liability system is inefficient and inequitable. It drains resources from our financially pressured health care system. Annual medical liability costs including defensive medicine are estimated to be a staggering 50 billion dollars per year. Beyond that, the litigation process inadequately compensates victims with nearly 60 percent of all awards going toward legal fees. Most victims (6 out of 7) do not file a malpractice claim for a variety of reasons including lack of access to legal counsel. Many malpractice cases are without merit. Nearly 70 percent of the claims against pediatricians are dropped, withdrawn or dismissed. Only 5 percent go to trial, and of those, most are verdicts in favor of the defendant physician. The current system is expensive, protracted, inefficient and unfair to the people it is supposed to help.

Pediatricians are in the unenviable position of being among the specialties with the lowest salaries and the highest malpractice payouts. Although pediatricians are not sued as frequently as many other specialists, average payments in pediatric cases are 21 percent higher than average payments for all physicians (\$394,729 vs \$325,914). This is largely because pediatric indemnities are allocated over the entire lifespan of minors—a much longer period than that of adults. Defending a pediatric malpractice claim is disproportionately expensive, costing 19 to 33 percent more than other specialists. Beyond financial costs, the average physician spends 50.7 months—or almost 11 percent of an assumed forty-year career with an unresolved, open malpractice claim. This takes a huge toll on a physician’s mental, physical, personal and professional health. In most states, pediatricians can be sued for care provided decades previously because of the long statute of limitations for minors for malpractice claims.

Without medical liability reform:

- Those harmed by medical errors will not have access to timely, fair and appropriate compensation.
- Access to affordable health care will remain hindered due to physicians choosing not to practice in states with harsh medical liability environments.
- The professional liability insurance market will continue to experience cycles of instability which impacts health care access, quality, and medical costs.
- Ongoing fear of lawsuits will foster the practice of defensive medicine, impede open communication with patients and potentially compromise the quality of physician/patient relationship.
- The stability of the health care system, which employs nearly 6 million people—one of the largest sources of private-sector jobs—will be threatened.

The following reforms are needed to allow pediatricians and pediatric medical and surgical subspecialists to deliver needed health care services to our nation’s infants, children, adolescents, and young adults:

- Reducing the statutes of limitation for minors for medical liability to a reasonable period for the patient and the physician;
- Limiting liability for non-economic damages to a reasonable amount;
- Structuring periodic payments over \$100,000 for future damages;
- Setting controls on attorney’s contingency fees to be fair to victims;
- Imposing reasonable punitive damages only with “clear and convincing” evidence and when the defendant is directly responsible;
- Tightening the requirements for expert witnesses in medical malpractice proceedings to improve its quality, obviate the use of spurious testimony, and hold experts accountable for what they say;
- Recognizing collateral sources of compensation to prevent plaintiffs from “double-dipping.”
- Allocating federal grants to study state or local-based demonstration or pilot programs aimed at improving the current litigation climate, expediting equitable dispute resolutions, reducing litigation costs, and minimizing the practice of defensive medicine. Grants exploring the effectiveness of Birth-Related Neurological Injury Compensation Programs, Disclosure of Medical Errors and Early Compensation Programs, Health Courts, State-based Administration of a Determination of Compensation Models, and Liability Protections for Use of Evidence-Based Medicine Guidelines are prime examples of future approaches to improving the medical liability system.

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