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## Malpractice Bill Ready for Full House

Margaret Dick Tocknell, for HealthLeaders Media | May 13, 2011

A bill which would impose a limit on the medical liability costs paid by healthcare providers, passed through the U.S. House Energy and Commerce Committee late Wednesday night.

In a 30-20 vote in favor of H.R. 5, mostly along party lines, the committee placed a \$250,000 cap on non-economic damages. Democrats presented more than 10 amendments to the bill but were denied.  
(<http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.5>.)

A House vote has not yet been scheduled. The bill will face stiff opposition in the Senate and President Obama is known to oppose caps on damages.

Stakeholders are divided along typical lines with the American Medical Association and American Hospital Associations in support of H.R.5 while consumer advocates and the American Bar Associations opposed the bill.

In a February letter to the committee, Thomas Susman, director of the ABA, challenged the limit on compensatory damages saying "patients should not be told that, due to an arbitrary limit, they will be deprived of the compensation determined by a fair and impartial jury."

The ABA also opposed the preemption state laws providing for joint and several liability in medical malpractice cases; imposing a sliding scale for contingency fees; and the elimination of the collateral source rule, which bars evidence that a plaintiff has received health insurance proceeds or other benefits from a third party.

The National Conference of State Legislatures expressed its opposition to what it views as a federal takeover of what has long been a state issue. In an April letter to the energy committee, William Horne, chair of the NCSL, said, "Federal medical malpractice legislation inappropriately seeks to preempt various areas of state law. All 50 states have statutes of limitations for medical malpractice suits. All 50 states have rules of civil procedure governing the admissibility of evidence and the use of expert witnesses. Many states have caps on noneconomic damages and limitations on attorney's fees in medical malpractice cases. The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 5 and other related measures would undermine that diversity and disregard factors unique to each particular state."

The Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act includes these provisions:

- Limits the award of punitive damages to malicious intent or instances where the provider deliberately failed to avoid injury
- Limits the monetary award for punitive damages to twice the amount of economic damages or \$250,000.
- Requires a plaintiff to file a lawsuit within 3 years of manifestation of the injury or within one year of discovery of the injury
- Sets a sliding scale for attorney contingency fees
- Allows the introduction of evidence of collateral-source benefits, such as Medicare or Medicaid, to prevent double recovery
- Prohibits a physicians or pharmacist from being named a party in a product liability suit for prescribing or dispensing an FDA-approved product.



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H.R. 5 would not apply to civil actions brought for vaccine-related injury or death.

The price tag of malpractice liability and defensive medicine comes to \$55.6 billion a year, or 2.4% of healthcare spending, a Harvard study says. While tort reform efforts to reduce malpractice lawsuit threats, such as those suggested in the Affordable Care Act, might reduce that cost, other efforts underway, such as the remodeling of the healthcare delivery system with "alterations to the fee-for-service system and the incentives it provides for overuse, probably provide greater opportunities for savings," the report states.

<http://www.healthleadersmedia.com/content/PHY-256076/Tort-Reforms-Impact-on-Lowering-Medical-Malpractice-Litigation-Costs-Limited>

The Congressional Budget Office estimated that enacting H.R. 5 would increase federal revenues by \$6 billion in 10 years and reduce federal spending for Medicare, Medicaid and a portion of the Federal Employees Health Benefits program by \$34 billion over 10 years.

See Also:

**Tort Reform's Impact on Lowering Medical Malpractice Litigation Costs May Be Limited**

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