

May 2011

MEDICAL LIABILITY REFORM

RECOMMENDATION

We recommend that the Congress pass the *Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act* of 2011 (HR 5 and S 218), sponsored by Rep. Phil Gingrey, MD (R-GA) Sen. John Ensign (R-NV). We support reducing liability insurance premiums and the costs of defensive medicine by enacting key provisions modeled on California's highly effective law, which includes:

- Imposing a hard cap on non-economic damages;
- Limiting attorneys' contingency fees;
- Informing juries of prior insurance payments to patients and reduce awards by the amount of compensation from collateral sources;
- Replacing joint and several liability with proportionate liability, so each party would pay a share of a malpractice award based on the proportion for which he is liable;
- Allowing periodic payment of future damages at a defined award limit;
- Providing for alternative dispute resolution systems; and
- Requiring an expert witness who possesses knowledge and expertise and practices in the same medical specialty as the defendant.

Background

For over thirty-five years, California's *Medical Injury Compensation Reform Act* of 1975 (MICRA) has served as a model for medical tort reforms and has placed a greater share of insurer payouts in the hands of injured patients. According to a 2004 RAND study, the sliding scale on plaintiffs' attorney fees imposed by MICRA has had a dramatic effect of these reducing fees by 60 percent.

The current medical liability system fails both patients and health care providers. Liability reform must more equitably and quickly compensate those truly injured in the course of medical care without needlessly diverting health care dollars. By lowering liability insurance premiums and exorbitant legal fees associated with litigation and by reducing the need to practice defensive medicine, we can decrease the cost of health care.

Congressional Budget Office (CBO)

According to the CBO, the reforms proposed in the *HEALTH Act* (HR 5) would "lower costs for health care both directly and indirectly: directly, by lowering premiums for medical liability insurance; and indirectly, by reducing the use health care services prescribed by providers when faced with less pressure from potential malpractice suits." The CBO analysis released in March estimates that enacting the *HEALTH Act*, as ordered reported by the House Judiciary Committee on February 16, would reduce federal direct spending for Medicare, Medicaid, and other federal health benefits programs. CBO estimates that enacting HR 5 would reduce federal deficits by almost \$10 billion over the 2011-2016 period and by about \$40 billion over the 2011-2021 period. Private health spending would be reduced by about 0.4 percent according to that CBO cost estimate.