



## **Support Proven Medical Liability Reforms**

The *Accessible Care by Curbing Excessive lawSuitS (ACCESS) Act* strives to fix a medical professional liability (MPL) system that fails to adequately serve patients and healthcare professionals. Currently, claims take too long to resolve, too much money is spent on legal and administrative costs, and a majority of claims lack merit, yet still consume vast resources. Congress can and should fix this broken MPL system by passing proven reforms that have been vetted by the states, and avoiding untested schemes.

### **Traditional Reforms with Demonstrated Success**

The Accessible Care by Curbing Excessive lawSuitS (ACCESS) Act includes the following reforms which have a long history of enhancing patient access to care and lowering healthcare costs in the states, and are appropriate for Congressional action:

- Reasonable limits on subjective, noneconomic damages, with full recovery of all economic losses.
- A sliding scale for legal contingency fees to ensure that any damage award or settlement goes primarily to the victim and not their attorney.
- Collateral source rule reform allowing evidence of outside payments to be admissible in court, thereby reducing the potential for healthcare expenses to have to be paid twice.
- A ban on subrogation from collateral sources to ensure victims keep more of their award.
- A statute of limitations of three years after the date of the injury or one year after the claimant discovers the injury, whichever comes first.
- Periodic payment of future damages for awards in accordance with the Uniform Periodic Payment of Judgments Act to ensure victims have the resources to address needs as they arise.

In addition, each of these provisions include substantial flexibility to allow states to adapt these reforms to their specific medical liability environment.

### **Alternative Reforms with Demonstrated Success**

The Accessible Care by Curbing Excessive Lawsuits (ACCESS) Act also encompasses additional reforms that have been tested in the states and have had a positive effect on the medical liability system:

- Legal protections for compassionate communications to allow healthcare providers to express sympathy following an adverse outcome without fear that such expressions will be used against them in court.

- Cooling-off periods before a claim may be filed to allow for issues to be resolved without resorting to litigation.
- Certificates of merit to verify that a claim is meritorious before it is filed.
- Expert witness standards to ensure that only true experts in the appropriate field of medicine are eligible to testify in a medical liability case.

### **Unproven MPL Reforms**

Congress should not be tempted by calls to pass unproven “reforms” which have not been tested and demonstrated successful at the state level, as such proposals could actually exacerbate the current system’s problems or create new, unanticipated problems for patients and health professionals alike. Proposals to avoid include:

- *Safe harbors* (based on clinical practice guidelines) – While intriguing in concept, such protections could be used against physicians or prove detrimental to patient health if guidelines are unable to keep up with medical advances. Clinical guidelines are helpful as guidance, but should not establish a legal standard of negligence.
- *Health courts* – While utilizing judges with expertise in medical liability issues could be helpful, these proposals remain untested (and, in many cases, undefined), and thus have not been shown to have a positive impact on the medical liability system.
- *Early Offer* programs – Proposals that establish artificial deadlines for the resolution of claims hinder the claim analysis process, making it more difficult to determine the validity of a claim, and thus the proper resolution of that claim. Efforts to resolve unanticipated outcomes prior to litigation are certainly beneficial, but proposals that allow for insufficient time to study complex claims may be detrimental to patients.
- *Patient Compensation Systems* – The creation of a no-fault system to adjudicate medical liability claims will drastically inflate the frequency of claims, increase payments for meritless claims, reduce payments for meritorious claims, and raise costs for patients, healthcare payers, healthcare professionals, and taxpayers.

Medical liability reforms should improve patients’ access to care as cost-effectively as possible. The aforementioned proven reforms have a long track record of success and should be enacted by Congress to bring stability to the current system. At the same time, Congress should avoid untested plans that cannot be demonstrated to create significant improvements to the system to benefit both patients and health professionals.

### **Support the “ACCESS Act” Today**

For more information, please contact our Government Relations Department at (301) 947-9000 or [governmentrelations@mplassociation.org](mailto:governmentrelations@mplassociation.org).