

# Health System Reform INSIGHT



May 19, 2011

Given the new direction for the nation's health system, the AMA has developed *Health System Reform Insight* to help you understand the Affordable Care Act and what it means to you and your patients.

## Medical liability reform bill continues to advance

An essential component of health system reform is repairing the nation's costly litigation system. A federal bill, H.R. 5, the Help Efficient, Accessible, Low-cost Timely Health Care (HEALTH) Act, would help accomplish that. The HEALTH Act, which includes time-tested liability reforms, recently took a big step toward a vote in the U.S. House of Representatives but it continues to face challenges.

The House Energy and Commerce Committee began its process of considering amendments, known as a "mark-up," to the HEALTH Act on May 10. The AMA supports the bill, which is based on comprehensive reforms, including a cap on noneconomic damages, reasonable time limits for filing lawsuits and limits on attorneys' fees, that have proven successful in states such as California and Texas. An amended version of the HEALTH Act was already voted on and approved in February by the House Judiciary Committee.

As occurred during the Judiciary Committee's mark-up of the HEALTH Act, Democrats and a few Republicans on the Energy and Commerce Committee raised concerns about the constitutionality of federal medical liability law. Rep. Lee Terry (R-Neb.) was joined by Ranking Member Henry Waxman (D-Calif.) and Rep. Lois Capps (D-Calif.) in expressing concerns about passing a federal law on medical liability, an issue that has traditionally been regulated at the state



### June 6

Comments are due on proposed rules covering the Centers for Medicare & Medicaid Services' accountable care organization program.



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level.

The National Conference of State Legislatures also voiced concerns to the committees that a federal medical liability law could override existing state legislative efforts on medical liability reform.

However, the American Tort Reform Association (ATRA) released a [report](#) prior to the Energy and Commerce Committee mark-up indicating that the HEALTH Act was not only constitutional but that the federal bill preserves state medical liability laws that are already on the books, regardless of whether a state has enacted a limit on non-economic damages that is higher or lower than the \$250,000 cap provided in the federal legislation.

ATRA also concluded that the HEALTH Act provides states with the flexibility to adopt their own limits on damages in health care lawsuits even after the passage of the federal bill into law. States will continue to have a wide range of options for addressing medical liability and will be able to maintain stronger state protective laws.

In further support of the bill, the Congressional Budget Office estimated in March 2011 that nationwide implementation of medical liability reforms similar to those in the HEALTH Act, including caps on noneconomic damages, would reduce the federal budget deficit by more than \$62 billion over 10 years.

The AMA pursued an [ad](#) campaign prior to the mark-up and called on lawmakers to pass the HEALTH Act because the reforms in the bill have already been demonstrated to work in states such as California and Texas to stabilize the medical liability system, reduce the growth of health care costs, and preserve patients' access to medical care.

During the mark-up, all amendments were defeated with the exception of one offered by Rep. John Dingell (D-Mich.) that would exclude from protection against punitive damages a defendant who caused a medical product to be misbranded or adulterated. The HEALTH Act was approved along party lines by the Energy and Commerce Committee by a vote of [30-20](#), and will now make its way to the Rules Committee prior to a full House vote.

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