



What's really at stake in the jackpot liability game?

Eager lotto players huddle in lines snaking around city blocks. Reality TV promises instant millions to ordinary wage earners. Endless late-night infomercials peddle the secrets to effortless cash. These national obsessions all testify to a single truth: Americans love a jackpot. Entire cities and a colossal gaming industry have arisen to satisfy our craving for monetary luck.

It should come as no surprise that the nation's legal system has followed suit. I'm talking about the spate of high-stakes awards in medical liability cases, the immense sums levied for noneconomic damages for intangible losses such as pain and suffering.

Earlier this year, the president moved efforts to curb such judgments to the front burner of his national agenda, but this issue

has sharply divided the parties. Still, even the opponents of recent legislation on medical liability concede that we are living in a time of crisis.

The toll of ever-increasing damages

This country may provide the best health care in the world, but we also have the highest per capita cost of litigation—and it's getting higher as we speak. The dramatic rise in jackpot liability awards is an important component of this cost. A recent Health and Human Services Department report analyzes the problem.

Here are a few highlights:

- In 1999 and 2000, a full 50% of all verdicts that specified damages awarded the plaintiff more than \$1 million.
- Since 1995, 21 verdicts in Mississippi specified damages of \$9 million or more, including one for \$100 million.
- From 1996 to 1999 the mean medical liability award jumped a staggering 76%, and from 1999 to 2000 the median award increased by more than 40%.¹

The TABLE offers a glimpse at a few recent jackpot awards. Such awards impair the stability and effectiveness of the medical liability system. Notably, in every case, the majority of damages assessed were for "pain and suffering."

The formula for reform

Unless these excesses are squeezed out of the liability system, the quality of our health-care system will be unnecessarily

TABLE

Notable jackpot liability awards¹

JURY AWARD	STATE	YEAR
\$13 million	Kentucky	1998
\$21 million	Massachusetts	2002
\$100 million	Mississippi	2002
\$6 million	Nevada	2001
\$5.4 million		2001
\$94 million	New York	2002
\$23.5 million	North Carolina	1997
\$8.1 million		2001
\$100 million	Pennsylvania	1999

undermined. As Peter A. Schwartz, MD, observed in a guest editorial in *OBG MANAGEMENT* in May 2002, reforming the system will require joint federal and state action.² The basics needed to reduce the size of jackpot awards are clear:

- A hard cap on noneconomic awards,
- elimination of “joint and several” liability (also known as “deep pockets”),
- a strict limit on attorney fees (less than half of every medical liability dollar reaches the patient), and
- a reduction of prejudgment interest to current market rates rather than an arbitrary number such as 12%.

A look at legislation

The HEALTH Act (Help Efficient Accessible Low-Cost Timely Healthcare) (HR 5), introduced by Rep. Jim Greenwood (R, Pa), passed in the House (for the second time) in March 2003. In June, a similar bill was introduced into the Senate by John Ensign (R, NV). Unfortunately, certain members of the Democratic minority attribute the skyrocketing insurance premiums to a high rate of medical errors on the part of physicians—rather than to a liability system that is out of control. Thanks to a Democratic filibuster, therefore, this legislation was killed in the Senate.

Now Sens. Dick Durbin (D, Ill) and Lindsey Graham (R, SC) have proposed an alternative bill. As the battle wages on with no resolution in immediate sight, pundits speculate that the issue of capping medical malpractice awards will become a hot topic in the next presidential election.

Pregnant women are the ultimate victims

The president and the secretary of Health and Human Services, both strong supporters of liability reform, have detailed their case in the report mentioned earlier, entitled *Confronting the New Health Care Crisis:*

Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System. The report is available at <http://aspe.hhs.gov/daltcp/reports/litrefm.pdf>. I encourage you to take the time to read it and to contact your legislators. Join the 72% of Americans who favor a limit on pain and suffering awards by adding your voice to the ongoing debate.

When Ob/Gyns cannot afford professional liability insurance, they are forced to stop delivering babies. Ultimately, pregnant women could suffer the most. And that is a gamble we can't afford to take. ■

REFERENCES

1. US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System.* Washington, DC: US Department of Health and Human Services; July 24, 2002.
2. Schwartz PA. The medical liability crisis: a case for tort reform. *OBG Management.* May 2002;14:8-12.



What's your take

on the medical liability battles being waged in Washington?

How do you feel about this latest crop of legislation?

Send your thoughts to:

Letters

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