



Administrative Compensation for Medical Injuries

Proposals & Barriers: 1970-2008

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Road Map

- o Context
- o Proposals: 1970s, 1980s, 1990s, today
- o Lessons/observations: workers compensation, auto no-fault, vaccine injury compensation, FL/VA
- o Looking forward



Context

- o Advance an alternative to caps on non-economic damages
- o Focus on quality, deterrence, patient safety, expanded compensation
- o Reduce emphasis on blaming individual practitioners for adverse events



Proposals: 1970s

- First “crisis” in medical liability
- Academic interest
- HEW report
- Consideration of no-fault by Carter administration in other contexts
- But then ...
 - Crisis subsided
 - Political shift – late 1970s/early 1980s



Proposals: 1980s

- o Second “crisis” in medical liability
- o Republicans loathed “no-fault.” “*Why should you pay if you did no wrong?*”
- o Various “alternative” proposals in mid-1980s; considerable federal focus on arbitration in late 1980s
- o FL/VA?



Proposals: 1990s

- ~~Third “crisis” in medical liability~~
- Lots of data: HMPS; CO/UT
- Interest in a number of states: NY/CO/UT
- Timing/politics/policy



Consistent Theme: Timing

- When crisis arises ... stakeholders say, “Give me relief now; we’ll do fundamental reform later.”
- When crisis dissipates, they say, “Problem? What problem? Why bother with fundamental reform?”



Consistent Theme: Politics

- o Lawyers hate non-tort proposals
- o Doctors are lukewarm on “no-fault”
- o Policy versus politics
 - **Policy (BLUE)**
 - **Politics (RED)**



Workers Compensation

- o More workplace accidents
- o Hard to recover ... but a successful lawsuit could be devastating to a company
- o Labor/management bargain



Auto No-Fault

- o Perfect theory: no one *wants* to get into a car accident
- o Anathema to legal profession: fewer lawsuits!
- o Lawyers shaped/blocked
 - Federal & state levels
 - Preserving right to sue along with no-fault benefits (and high costs)



Vaccine Injury Compensation

- Congress motivated to act
 - Down to 2 DPT manufacturers
 - Threats of loss of access more real than doctor claims can ever be
- Parent/manufacturer bargain
- Funded by small fee on vaccines



Florida/Virginia

- o Part of broad package of tort reforms
- o Driven primarily by desire to protect and maintain access to ob/gyn care
- o New idea (at the time!)



Lessons Learned

- o Workers comp: bargain
- o Auto no-fault: opponents will shape
- o Vaccine-injury: real threats, real change
- o FL/WA ...



Proposals: 2000 – 2008

- o Health courts/administrative compensation
- o Considerable policy maker interest (e.g., Baucus report)
- o Timing/politics/policy
- o Looking forward: voluntary/market approaches most promising

Questions?

