

KEY POINTS ABOUT HEALTH COURTS

WHY THEY ARE NEEDED, AND WHAT NEEDS TO BE DONE

- ▶ America's current medical malpractice system works poorly for patients and doctors. It raises costs and hinders quality medicine. It also creates unnecessary delays, litigation red tape, and legal uncertainties.
- ▶ America needs a new approach to resolving medical malpractice disputes. Creation of health courts is the practical, equitable reform America has been waiting for.
- ▶ Health court pilot projects would get the ball rolling on this important reform, and would provide states with key information about "best practices" about how best to develop health courts in the long-term.
- ▶ Both patients and doctors deserve a new system that is efficient and fair. Pilot projects can be an important step in making medical justice more reliable and less costly, for health care providers, patients, and employers.
- ▶ Efforts must be undertaken at the federal and state level to develop pilot projects.

DRAFT BOARD RESOLUTION FOR MEDICAL SOCIETIES

Introduced by: (insert name)

Subject: Health Courts

Date: (insert date)

WHEREAS: The current medical litigation process is inconsistent, inefficient and unfair; creating an adversarial environment that discourages the open communication required to improve patient safety; and, comprehensive reform is needed to redress the many failings of the current medical liability system in promoting quality care; and

WHEREAS: Health courts represent an appealing alternative for long-term reform that could eventually result in predictable justice for patients and health care professionals alike, as well as a rapid resolution of claims and assessment of damages; and

WHEREAS: Health court demonstration projects would be an effective way to gain empirical evidence about the potential of health courts; and

WHEREAS: Comprehensive medical litigation reform will require the active support of health professional organizations;

THEREFORE, BE IT RESOLVED: That our organization endorses the need for comprehensive litigation reform and supports the concept of health courts as an alternative to the current system, and one that is worthy of further research and demonstration projects.

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

—Allen H. Neuharth, Founder, Sept. 15, 1982

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'Health courts' offer cure

Our view:
Experiment could trim premiums, make trial awards more consistent.

A child falls and gets a nasty bump on the head. Worried parents rush the child to the emergency room. Observation for a couple of hours might be the right choice, but chances are doctors will order an expensive CT scan. Physicians often abandon their best judgment if they think a test might protect them in a malpractice lawsuit. In the bump-on-the-head case, a CT scan provides cover if a trial lawyer someday asks, "Why didn't you do more to rule out bleeding in the brain?"

Such defensive medicine can reassure patients, but it isn't benign. It results in unnecessary cesarean sections, painful breast biopsies in women with lumps unlikely to be cancerous, and hospitalization of patients who don't need that level of care.

The practice is pervasive and costs at least \$60 billion a year, according to the Department of Health and Human Services — paid by people's insurance premiums.

A survey of 824 Pennsylvania doctors, published June 1, found 93% admit to risk-aversion tactics such as over-ordering tests, abandoning high-risk procedures and avoiding the sickest of patients. This is just a symptom of an unhealthy medical liability system that forces some doctors out of practice and encourages others to hide mistakes instead of learn from them.

So far, the leading idea for a remedy has been President Bush's proposal to cap jury awards for pain and suffering, but it is stalled

in the Senate and is a partial cure at best. Caps might lower malpractice insurance costs, but they don't tackle deeper problems. One intriguing idea, backed by the bipartisan legal reform group Common Good, is special "health courts," where judges experimented in medicine would try cases without juries. Rep. Mac Thornberry, R-Texas, and Sens. Mike Enzi, R-Wyo., and Max Baucus, D-Mont., have introduced bills to let states experiment with these courts. Among the potential advantages:

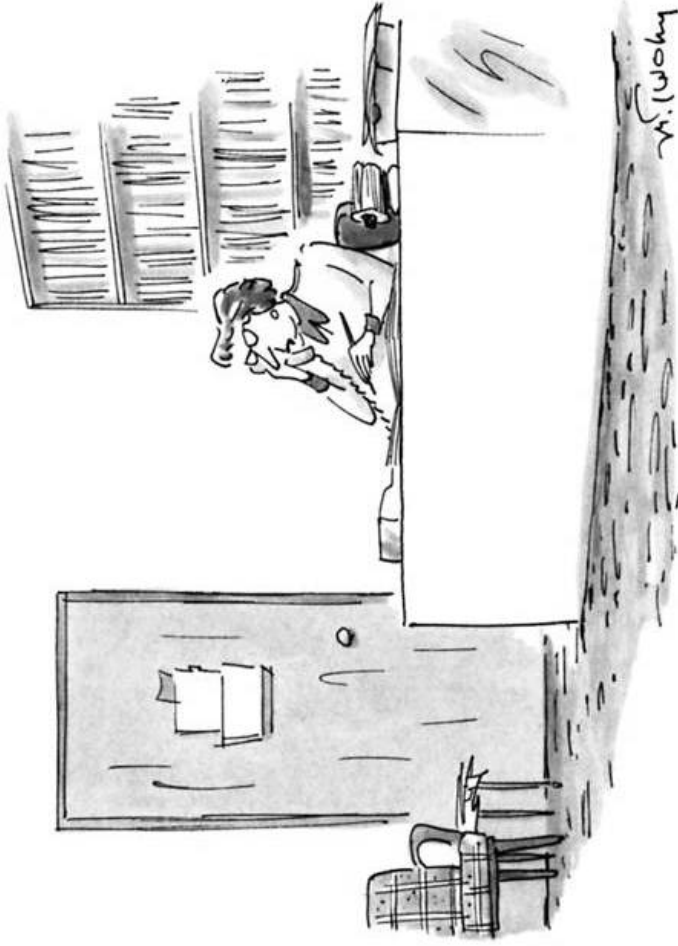
► **Eliminating hired guns.** Judges could pick impartial experts to guide them, instead of the present system of dueling experts hired by each side. Unlike juries, judges would issue written opinions that establish precedents and standards of care.

► **More consistent awards.** Juries sometimes base awards more on sympathy than facts. An injury worth \$100,000 in one place might bring a \$2 million award, or nothing at all, in another. Health courts could make awards based on a schedule of benefits, similar to workers' compensation, that would be fairer and more consistent.

Opponents say the right to trial by jury is too important to give up. But special courts already handle tax, bankruptcy, maritime and family disputes without juries.

The national malpractice roulette is inefficient and unjust. Health courts could show the way for quicker and fairer compensation to the deserving, and they might reduce the incentive for doctors to engage in defensive medicine that puts patients at risk.

Starting the experiment is the right medicine for an ailing system.



"The doctor is in court on Tuesdays and Wednesdays."