

New Ideas for Liability Reform: Health Courts and Administrative Compensation

by Paul Barringer

In Pennsylvania and across the country, the medical liability system imposes crushing financial burdens on physicians – and impacts patient access to medical care. Moreover, the system has broader failings. In particular, injury cases drag on for years and administrative expenses are very high. The system is also highly adversarial, contributes to costly defensive medicine, and does little to promote advances in patient safety.

Fundamental changes to the tort system are urgently needed. One new approach for which momentum is building is the idea of creating new “health courts” or administrative processes to resolve injury disputes. With support from the Robert Wood Johnson Foundation, the national nonpartisan legal reform coalition Common Good has been working with researchers from the Harvard School of Public Health to develop a proposal for implementing such a system at the state level.

As proposed by Common Good, trained adjudicators would determine the standard of care, relying on independent experts. Non-economic damages would be paid pursuant to a schedule based on injury severity and patient circumstances. De-identified claims information would be provided to safety authorities and providers to examine patterns of errors. Ideally, the system would compensate claims for injuries that were “preventable” (that is, they could have been prevented had best practices been followed, and failure to do so caused the injury). Doing so could help to reduce the emphasis on blaming individual practitioners for things that have gone wrong in treatment.

Through the years, much effort has been devoted in Pennsylvania to understanding problems in the medical liability system and considering ways in which the system might be improved. For example, a major Pew Charitable Trusts initiative several years ago underwrote dozens of leading experts in researching medical liability issues in

the state. In addition, the General Assembly’s Joint State Government Commission has explored alternatives to the tort system. The Commission produced a report in March 2005 that discussed a number of innovative proposals, including the idea of creating an administrative process to compensate medical injuries. The report concluded that such an approach could save money and expedite compensation to injured patients.

The Joint State Government Commission’s report generated substantial interest in the legislature, and ultimately led to a bipartisan proposal to establish new demonstration projects to test the administrative approach. Senator Jane Orié (R – Allegheny) is the lead sponsor of the bill initially introduced on June 22, 2006 (S. 1231), and has reintroduced the bill in the current legislative session (S. 678). The bill would establish a new commission to award demonstration grants to hospitals and their affiliated physicians to develop and evaluate alternatives to tort litigation for medical injuries.

Preserving access to care, stabilizing costs, and patient safety require medical liability reform. Creating new demonstration projects to test the administrative compensation proposal may be just what’s needed to guide us to a future, more rational medical liability system. Let’s hope the legislature will act on this promising proposal.

** Editor's Note: This article has been written at PA ACOG request by Paul Barringer of Common Good. We asked Mr. Barringer to write about the proposed program as part of continuing efforts to keep you informed of the potential solutions to the professional liability crisis we all face. This program is currently being considered as a pilot project for Pennsylvania. While PA ACOG is participating in evaluation of this and other proposed programs, the opinions in the article are Mr. Barringer's.*