

## Medical Liability Reform

**Medical Liability Reform** is another key issue addressed by ACOFP. ACOFP is working toward the enactment of legislation that reduces the frequency and severity of medical liability claims by addressing the role of caps on non-economic damages and looking at alternatives such as health courts, arbitration, pre-litigation panels, and tax credits. ACOFP is also advocating to protect physicians ability to practice medicine by reducing mandated reductions in services by insurers and protecting office-based surgery and high-risk procedures.

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### “Medical Justice Act of 2007” Introduced

The most recent medical liability reform bill was introduced on September 10 by Congressman Michael Burgess, MD (R-TX), “Medical Justice Act of 2007” (H.R. 3509). Based on the model of medical malpractice liability limits implemented in Texas in 2003, this legislation aims to provide a national solution to the issue of tort reform, an issue that is currently decided on the state level. Implementing several “caps” on the non-economic damages sought by individuals bringing suit

The limit on non-economic damages for medical malpractice cases varies based on whether the defendant is a health care provider or a health care institution. When an individual is injured or dies as the result of health care and final judgment is rendered against a health care provider, a \$250,000 per plaintiff cap applies to non-economic damages, regardless of the number of defendant health care providers.

If final judgment is rendered against a single health care institution, a \$250,000 cap per individual claimant applies to non-economic damages. If the judgment is against more than one institution, a \$250,000 per claimant cap applies to non-economic damages per defendant; however the total non-economic damages awarded are further capped at \$500,000 per claimant.

In a wrongful death or survival claim, if final judgment is rendered against a health care provider, a \$500,000 per claimant cap applies to all damages, including compensatory, punitive, statutory, and other damages, regardless of the number of defendant providers. This cap is adjusted annually for inflation, based on the consumer price index.

Additionally, the legislation strengthens the national focus of tort reform by providing for periodic payment of future damages, establishing a statute of limitations for two years and repose for 10 years, setting more rigorous standards for expert witnesses and establishing that an insurer cannot be held liable for damages beyond the policy limits simply because the insurer previously rejected a settlement offer that was within the policy limits.

H.R. 3509 was referred to the Committee on the Judiciary. There is currently no indication by leadership that the Committee will take any action on it. The legislation provides an alternative to the HEALTH Act, based on California’s MICRA law, introduced earlier this summer.