

IMPLEMENTING HEALTH REFORM Medical Malpractice

Physicians have long sought an overhaul of the nation's tort system in the hope of reducing the financial and emotional costs involved with medical malpractice. The Affordable Care Act took a small step by funding demonstration projects to develop litigation alternatives. The law provides \$50 million to states for 5-year grants in fiscal year 2011. The Obama administration said it will give preference to states that develop programs that improve access to liability insurance and improve patient safety by reducing medical errors.

Dr. Albert L. Strunk, deputy executive vice president of the American College of Obstetricians and Gynecologists, discusses the current malpractice environment and the impact of health reform.

CARDIOLOGY NEWS: Is this proposal a step in the right direction?

Dr. Strunk: Any step that is undertaken

to reduce the cost of litigation and improve determinations of good vs. bad medical care is a very good idea. So we're very anxious to have trial or pilot programs go forward.



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DR. STRUNK

We are grateful for any impact from the Affordable Care Act, but I think that real innovation also is occurring apart from the grants. And although the 112th Congress may be more receptive to tort reform, primarily, we have to look to the states for legislative solutions.

CN: How does the cost of medical malpractice impact the practice of obstetrics and gynecology?

Dr. Strunk: Because of the size of awards attached to neurologically impaired or neonatal encephalopathy types of cases, which allege primarily economic damages based on the life-care of an impaired infant, traditional tort reform involving caps on noneconomic damages are of little assistance.

Also, we know from survey results that the anxiety associated with this risk greatly influences the behavior of obstetricians and gynecologists, as does the cost and availability of liability insurance. The anxiety causes our physicians to leave obstetrics in their 40s, so we believe that defensive medicine and fear of litigation does add to our total health bill.

CN: Is ACOG working to reform tort laws at the state level?

Dr. Strunk: We are, and it's quite a different approach that one takes. Most of the state initiatives tend to relate to traditional California MICRA (Medical Injury Compensation Reform Act)-style tort reform, addressing noneconomic damages through caps, as well as limiting contingency fees, for instance. The most successful initiative has been in Texas. The impact of the state cap on noneconomic damages – coupled with a constitutional amendment that prevented the courts from overturning the legislation – has resulted in a huge influx of doctors. Access to care, particularly in low-income populations, has been dramatically increased.

Some states are also exploring a contractual arrangement between the patient and the physician to provide for pre-dispute voluntary binding arbitration. Another long-term goal would be the implementation of health courts. ■

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