

Preserving New Mexico's Medical Malpractice Act – Speaking Points

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Background:

In 1975 the last medical liability carrier left New Mexico, creating a crisis in access to health care. In 1976, the legislature passed the Medical Malpractice Act, which facilitated the creation of NM Physicians Mutual, which became American Physicians Assurance Corporation. Many features of New Mexico's Act are emulated by other states.

New Mexico's Act:

- Institutes a mandatory screening panel for medical liability claims (3 physicians and 3 lawyers)
- Caps non-medical damages (currently at \$600,000)
- Requires occurrence for policies (no tail)
- Assures payment for all past and future medical expenses (Patient Compensation Fund)

New Mexico's Experience Shows That the Cap on Non-medical Damages:

- Discourages frivolous litigation
- Sets reasonable settlement boundaries
- Makes losses and underwriting more predictable
- Controls spiraling liability premiums seen in other states without caps
- Increases recruitment and retention of physicians, especially in high-risk specialties (general surgery, obstetrics, neuro-surgery) and in rural areas

Raising the Cap:

- Creates higher awards and settlements for a small number of patients
- Generates higher revenues for lawyers

Unintended Negative Consequences of Raising the Cap as Experienced in Other States:

- Increases medical liability premiums an estimated 5% for each \$100,000 increase in cap
 - Increases costs to Medicare, Medicaid, and other public and private insurance through defensive medicine practices, at a time when the costs are straining or bankrupting individual patient, state and federal budgets
 - Reduces access to medical care, disproportionately affecting rural communities and physicians practicing in high-risk specialties
 - Encourages physicians to reduce hours, take early retirement, or move to a state with a more favorable malpractice/liability environment
 - Restricts patient choice of physicians and of which procedures are available in the state
 - Affects ALL physicians and ALL patients. Reducing the number of physicians in a state where 30 of its 33 counties are currently federally designated health professions shortage areas (HPSA's) will exacerbate patient access to health care
 - Increases overhead costs to physician practices that employ New Mexicans
 - Benefits a small number of individual patients, but harms many others by reduced access when physicians close their practice and move to other states with equitable caps
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