



Alternative Solutions to Florida's Medical Malpractice System White Paper Executive Summary

Subject Matter

The JMI Backgrounder titled “Alternative Solutions to Florida’s Medical Malpractice System” provides an overview and analysis of the key contributors to the rising cost of healthcare in Florida. A new Kaiser Family Foundation report shows that annual cost of an average family’s health insurance now exceeds \$15,000 per year. This cost continues to rise, despite repeated attempts to curb costs through tort reform intended to lower medical malpractice insurance premiums. Florida courts tend to frown upon solutions that impede a patient’s right to seek redress, and though there’s been significant reform as late as 2004, which slightly decreased the cost of malpractice insurance, the cost of healthcare remains disproportionately high as there is no mechanism in place that mandates savings are passed along to consumers. The JMI report suggests further tort reform cannot alleviate the situation because there is no causal relationship between reform and the practice of defensive medicine. The JMI report suggests that solutions outside tort reform should be investigated.

Methods of Analysis

The JMI report includes an extensive bibliography with Appendices, graphs and a thorough review of the relevant statutes and case law. Additionally, the report details several Supreme Court findings that suggest courts trend toward nullify existing tort reform laws that cap compensation and damages, potentially undoing what few gains have been realized. Further studies cited in the report detail the economic impact of the existing medical liability system and provide evidence of the cost of defense medicine.

Findings

The study provides a basis for policy makers to take steps to create an alternative to Florida’s overburdened courts. Patients who currently engage the tort system face long delays before their case is heard and their claim paid. Meanwhile, practitioners must deal with the high cost of malpractice insurance. To protect themselves against litigation, most physicians practice defensive medicine. All of these factors combine to increase the cost of care in Florida. An alternative to tort reform is the creation of an administrative system akin to the Worker’s Compensation program. Such a system would virtually eliminate the need for defensive medicine, which would almost immediately drive down the cost of healthcare, and save the state billions. Further, an administrative agency could improve quality of care and physician accountability without clogging up overburdened courts.

Conclusions

The JMI report concludes that the cost of healthcare in the state of Florida is becoming untenable, driven in part by defensive medicine. The existing system is one wherein only a handful of injured patients receive compensation, where malpractice cases take years to resolve, where damage awards are inconsistent and do not actually improve quality of care or lead toward standardization of care. Most claimants receive 40 cents for every dollar spent on malpractice insurance with the remaining 60 cents allocated to court costs, attorney charges, insurance administration and other administrative fees. Far from promoting patient safety, the current tort system discourages accurate medical error reporting among healthcare providers, as doctors try to protect themselves against the constant threat of litigation. Further, many courts are inclined to nullify capped awards, undermining the progress of existing tort reform.

Recommendations

- Take steps to create an effective and equitable solution to medical malpractice reform through an administratively based “patients compensation system”
- Build standards of care to guide practitioners as well as those charged with the responsibility of adjudicating claims of medical malpractice

Limitations of the report

Some questions for future study include:

- How will the system be financed?
- What disciplinary measures would be in place for errant providers?
- What kind of structure would pass muster with courts and stakeholders with competing interests?