

## Medical Liability Reform

### OVERVIEW

Pediatricians and other physicians who care for children face unique medicolegal and actuarial consequences as a result of the extended period of patient care, the dynamics of child development and growth, and the role of parental and caregiver consent in clinical decision making.

With state level reforms, courts can equitably balance the needs of parties alleging injury and those of physicians facing suit.

States have been innovators in finding policy solutions on this issue; the Medical Injury Compensation Reform Act (MICRA), California's 1975 landmark legislation, has a proven record of making medical liability insurance available and affordable.

In the absence of federal action, policy making on medical liability will likely continue to be addressed on a state-by-state basis.

### AAP POSITION

The AAP believes that reform is needed on these liability issues:

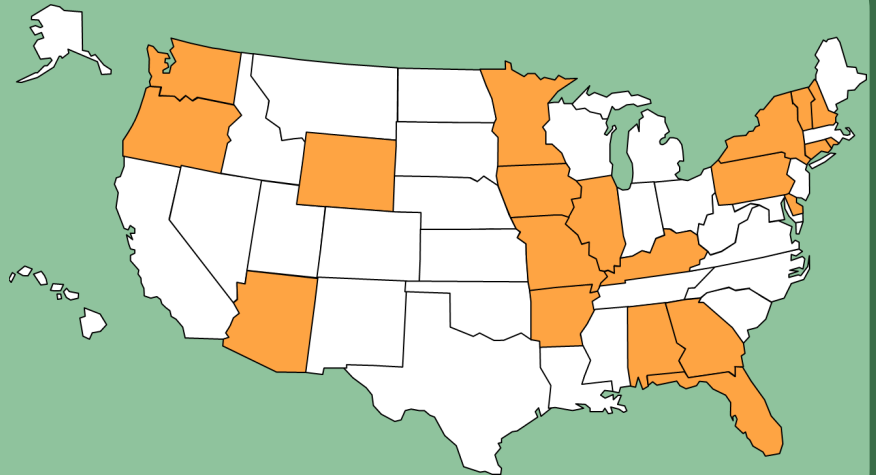
- Reducing the statutes of limitation for minors for medical liability to a reasonable period for the patient and the physician.
- Limiting liability for noneconomic damages to a reasonable amount.
- Structuring periodic payments over \$100,000 for future damages.
- Setting controls on attorney's contingency fees to be fair to victims.
- Imposing reasonable punitive damages only with "clear and convincing" evidence and when the defendant is directly responsible.
- Tightening the requirements for expert witnesses in medical malpractice proceedings to improve its quality, obviate the use of spurious testimony, and hold experts accountable for what they say.
- Recognizing collateral sources of compensation to prevent plaintiffs from "double-dipping".
- For states that have been unable to successfully enact comprehensive medical liability reform laws, the AAP supports state or local programs that use alternative methods, such as allocating federal grants to study state or local-based demonstration or pilot programs aimed at improving the current litigation climate expediting equitable dispute resolutions, reducing litigation costs, and minimizing the practice of defensive medicine.

## FACTS

- 1 in 4 pediatricians will be sued in the course of their career, including 1 in 10 for care delivered during training (residency/fellowship).
- Pediatrics ranks approximately 10th among 28 medical specialties in the number of closed malpractice claims.
- While child-related malpractice claims are only half as likely to result in payments as adult-related claims, payments from child-related claims tend to be significantly higher. Closed claims against pediatricians between 2003 and 2012 resulted in an average indemnity of greater than \$394,000, placing pediatrics ahead of the \$325,000 average for all specialties, and 4th among 28 specialties in total average payouts.
- Top reasons for child-related malpractice payments:
  - Failure to diagnose (18%)
  - Improper performance (9%)
  - Delay in diagnosis (9%)
  - Improper management (6%)

## PROGRESS

- 20 states – no caps on noneconomic damages in medical liability cases



For information on current law or pending legislation in your state, please contact the AAP Division of State Government Affairs at [stgov@aap.org](mailto:stgov@aap.org)

## MORE

- [AAP Position – Advocating for Medical Liability Reform](https://www.aap.org/en-us/Documents/AdvocatingforMedicalLiabilityReform2015.pdf) – <https://www.aap.org/en-us/Documents/AdvocatingforMedicalLiabilityReform2015.pdf>
- [American Academy of Pediatrics – Medicolegal Issues in Pediatrics, 7th edition](http://shop.aap.org/Medicolegal-Issues-in-Pediatrics-7th-Edition-eBook) – <http://shop.aap.org/Medicolegal-Issues-in-Pediatrics-7th-Edition-eBook>