Is It Time for a National Tort Reform?

With the Supreme Court upholding the nationwide implementation of the ACA, the topic of tort reform adoption on a national scale has been in the limelight again. Since the 1970s, the issue of national tort reform has had several reincarnations in the country’s different legislative bodies (1). The duration of the debates and discussions are largely dependent on the interest and influence of the two major stakeholders - the insurance companies and the physicians.

Currently, 38 states have implemented various versions of tort reform, mostly centered on the caps on noneconomic damages (2).

Groups advocating for national tort reform argue that having no limits on medical malpractice financial awards, has fueled the practice of ‘defensive medicine’. This leads to costly but ineffective medical interventions and higher insurance premiums. Both consequences are cited as major contributors to the country’s spiraling healthcare expenditure (1,2). Proponents also contend that the absence of tort reform negatively affects the size and composition of the physician workforce (3). Statistics show that states with damage caps have 12% more physicians per capita than those without (4). On the other hand, those against national tort reform claim that caps on medical malpractice lawsuits would lead to more medical errors and negligent physician practices. They also cited the lack of supporting evidence of tort reform’s favorable effect on the reduction of healthcare spending (1).

Most studies on tort reform are related to healthcare spending and based on state-level enforcement. The data show that healthcare costs are only modestly affected by increases in malpractice premiums and litigation costs (3,5). The CBO estimated that if a national tort reform package was enacted, healthcare spending would be reduced by 0.5% (5). Baiker and Chandra (3), showed that state implementation of tort reform did not lead to physician shortages except for a minor reduction in some rural areas. The CBO (2009) reported that state tort reforms did not result in adverse patient health outcomes (2,5).

It is evident from these findings that there needs to be a comprehensive tort reform that does not solely focus on the cost and risk of malpractice litigation. Tort reform should be approached from a different perspective where the emphasis is on interventions that improve physicians’ efficiency, promote patient safety and reduce costs. Once studies consistently show the benefits of a multidimensional tort reform package adhering to nationally-accepted standards, then its nationwide implementation may be closer to becoming a reality.

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References


