

AFTER ACTION REPORT
MEDICAL MALPRACTICE SUBCOMMITTEE
COUNCIL OF STATE GOVERNMENTS
Chicago, September 17th

FILE

The most depressing aspect of this meeting was that many of the states which had adopted a very comprehensive program to solve the medical malpractice problems of their states; notably Indiana and Iowa were disappointed with the results.

They felt that many of the bills which passed were in no way related to the crux of the problem and either served only to cause problems for the patient and his lawyer or simply created another bureaucracy. Their advise to us was to go slowly and not be forced into a chasm by some smooth talking lobbying groups. In short we are going to have to provide some special legislation to aid our medical professionals and institutions but we must avoid the tendency to overkill the problem.

Some of the major points which arose and recommendations which followed are:

1. The collateral source rule should be modified to allow government health care payments to be introduced as evidence.
2. The statute of limitations should be reduced to two years from the date of occurrence with a special cut off age before the statute begins running on infants (probably six years of age).
3. Limitation on the attorney's contingency fee structure drew a complete disagreement. Every suggestion from no change to a 15% limitation was introduced. However most of the proponents of limiting fees had no evidence that this would help solve the malpractice problem but merely disliked attorneys.
4. Good peer review systems with immunity for the board members was a unanimous recommendation.
5. Some sort of a screening or arbitration panel was suggested and discussed. However, Iowa, which just adopted a panel type arrangement stated that the configuration of the panel's membership has already become a political football with the consumer representative being relegated to a minor role. This area deserves some real study before a move is made.
6. The limitation on recovery idea probably has the widest number of variations. Not only does the ceiling figure widely differ but many states adopted some pretty important exceptions, for example, not applying any cap to actual damages but only limiting the recovery for pain and suffering. According to a St. Paul Insurance Company lobbyist who was present this is one of the key areas of consideration.

I would hope that we can draw a lot of knowledge from other states' experience and move cautiously toward a solution.

Rep. Loren Hohman