

## 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:

- State statutes of limitation for minors
- Periodic payments of damages
- Caps on noneconomic damages
- Abolition of collateral source rules
- Use of a sliding scale for plaintiff lawyer fees
- "Fair share" rules that permit allocation of damage awards fairly and in proportion to degree of fault
- Limitations on punitive damages

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:

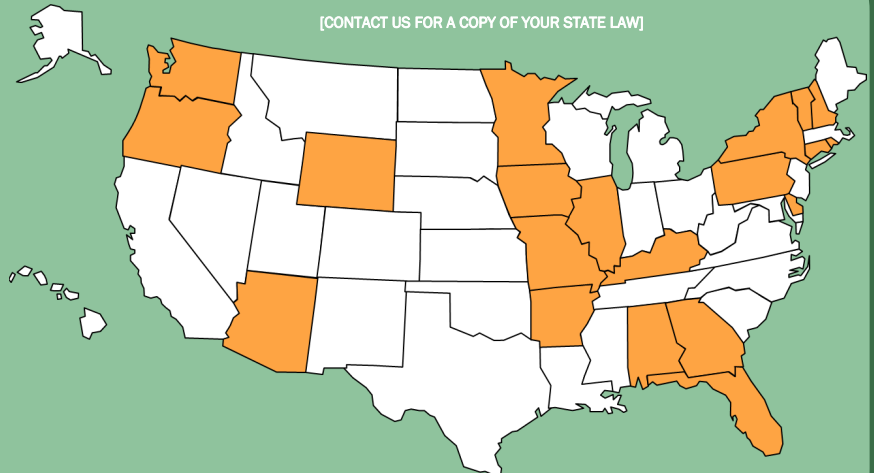
- Enhanced expert witness qualifications
- Health courts
- Early disclosure and compensation programs based upon a compensation schedule
- Liability protections for use of evidence-based medicine guidelines

## FACTS

- 1 in 3 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. Pediatricians accounted for 2.9% of the more than 247,000 closed malpractice claims that occurred between 1985 and 2009.
- 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



Pending Legislation:  
[2015 StateTrack Profile: Medical Liability Reform](#)

## MORE

- [AAP Position—Advocating for Medical Liability Reform](http://www.aap.org/en-us/professional-resources/practice-support/medical-liability/Pages/Advocating-Medical-Liability-Reform.aspx) – [www.aap.org/en-us/professional-resources/practice-support/medical-liability/Pages/Advocating-Medical-Liability-Reform.aspx](http://www.aap.org/en-us/professional-resources/practice-support/medical-liability/Pages/Advocating-Medical-Liability-Reform.aspx)
- [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>