

# States still grapple with med mal caps

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by Erin Madigan  
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Thirty-four states debated medical malpractice reform this year, and nine states – Arkansas, Idaho, Montana, Nevada, New Hampshire, Ohio, Texas, Utah and West Virginia – enacted laws, according to the National Conference of State Legislatures.

The issue is still being considered in special sessions in some statehouses and policy analysts expect it to be back next year.

“It’s an incredibly contentious issue and that is largely the reason why it’s so difficult to come to a compromise and get something passed in the legislature,” said Trudi Matthews, chief health policy analyst for The Council of State Governments (CSG).

The most common and controversial medical malpractice reform measures would cap jury awards for non-economic damages, better known as “pain and suffering.”

Proponents of such caps – doctors groups and insurance companies – blame excessive jury awards for soaring malpractice insurance premiums. They say limiting the amount of money insurance companies could potentially pay out for negligent doctors would decrease risk and lower premiums.

A cap enacted almost 30 years ago in California is often credited for stabilizing the insurance market in that state and serves as a model for current proposals.

Trial lawyers and other opponents of caps say high premiums are due to poor investment practices by insurance companies. They say caps undermine the victims’ ability to gain fair compensation for injuries due to medical error and question whether caps will solve the problem.

Large lobbying groups, such as the American Medical Association (AMA) and the Association of Trial Lawyers of America (ATLA), made the debate over caps a top legislative priority and have put state legislators under tremendous pressure to act immediately, policy analysts said.

Of the 19 states determined by the AMA to be in “crisis” situations, only three – New York, North Carolina and Georgia – did not consider malpractice measures this session, according to AMA and NCSL data.

“(Caps) are what everybody’s focused on because there are such strong interest groups surrounding this issue,” said Mimi Marchev, a senior policy analyst at the National Academy of State Health Policy (NASHP), a research organization based in Portland, Maine.

Health care analysts tracking the issue said state lawmakers recognize that caps are not a quick fix and are also considering more comprehensive reforms.

“It’s not you’re either for caps or against caps. It’s not that cut and dry. Unfortunately, the trial lawyers and physicians have said it’s an either-or proposition and I think that for most people it’s a gray area,” the NGA’s Cornell told Stateline.org.

“I haven’t heard anybody say the crisis is over, everything is peachy-keen, no need to worry again, everything is fine,” the NGA’s Cornell said. “In some states somebody’s plugged the dam, but whether or not it’s a permanent fix or temporary fix is hard to say.”

Meanwhile, in Washington, the debate continues following a report that questioned whether the problem is as serious in the states as some doctors have claimed.

Democrats earlier this year blocked a bill to limit damages across a range of cases, but Republicans say they may sharpen the issue this fall by proposing caps only on one type of medical malpractice suit — those involving obstetrical care — or in a limited geographical area. □