



## Daily Policy Digest

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### Health Issues

October 25, 2011

### **Could Mandatory Caps on Medical Malpractice Damages Harm Consumers?**

Reform of medical malpractice tort law and the institutions involved must be analyzed carefully -- changes within that field have far-reaching implications and affect the motivations and incentives of interested parties at every level. In discussing potential caps on damages for malpractice lawsuits, advocates emphasize what they see as obvious benefits. Caps will limit exorbitant payouts for frivolous suits and allow health care workers to perform their job comfortably without constant fear of costly litigation. However, the costs of such a proposal are twofold and they undermine the very goals of tort law, says Shirley Svorny, an adjunct scholar at the Cato Institute.

Tort law as a whole and within the medical sector specifically has at its helm two basic objectives.

- First, victims who have suffered an identifiable harm due to negligence should be compensated for their loss.
- The second goal is that by holding the negligent actor responsible for compensation, tort law will have a deterrent effect that will place a comprehensive check on risky behavior within the profession.

However, the implementation of a cap on damages partially undermines both of these objectives.

- The cap undermines victim compensation because it prevents them from receiving a just allocation for the harm that was done to them.
- Respondents argue that courts, in adjudicating malpractice suits, are inconsistent and arbitrary in rewarding damages.
- However, studies show that there is a strong correlation between financial reward and degree of injury.

A cap also undermines the deterrent effect of tort law.

- First, it reduces the financial incentives of physicians to avoid risky behavior by insulating them from the higher malpractice insurance costs that often accompany frequent lawsuits.
- It also reduces the incentive for malpractice insurance carriers to exercise oversight over their covered physicians and to encourage safe and stable procedures.
- Instead, such a cap reduces risk throughout the malpractice insurance system and leaves physicians free to act autonomously.

Source: Shirley Svorny, "Could Mandatory Caps on Medical Malpractice Damages Harm Consumers?" Cato Institute, Policy Analysis No. 685, October 20, 2011.

For text:

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