

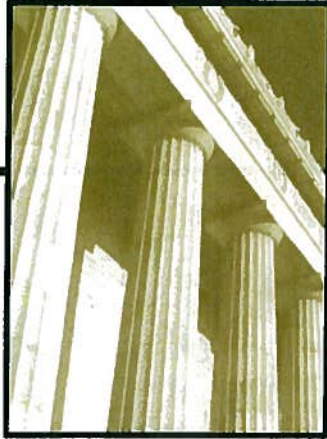
LEGISLATIVE
& POLICY
SERIES

**RESOURCE PACKET:
PROFESSIONAL
LIABILITY
RESOURCE PACKET**



AMERICAN COLLEGE
of NURSE-MIDWIVES

With women. for a lifetime.



PART 3:
LEGISLATION AND POLICY

Part 3 – Legislation and Policy

Introduction

Part 3 of the Professional Liability Resource Packet will provide you with the necessary information to implement legislative changes to improve the professional liability insurance issues impacting your practice. This type of legislative change is called tort reform.

Tort reform has been proposed on both the federal and the state level; both are important. State legislation typically occurs faster than federal legislation. Federal legislation, however, has the potential for more comprehensive reform than might be possible at the state level.

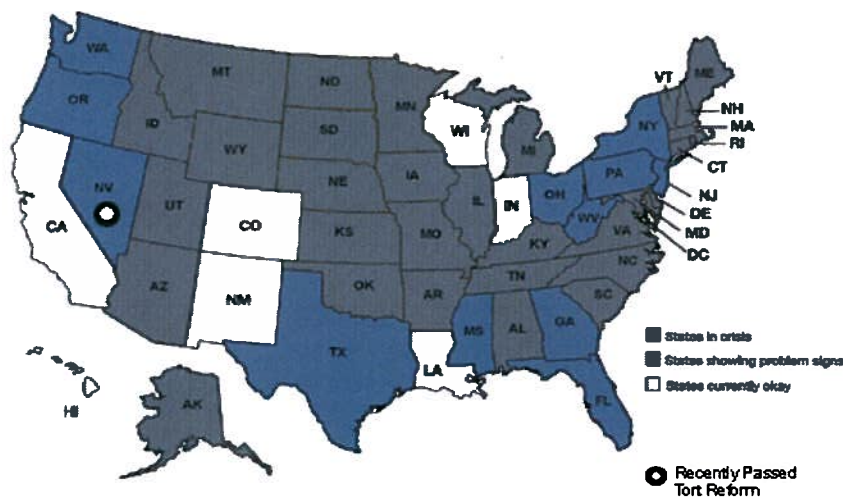
It can be confusing to keep up with the latest in tort reform. On both the federal and state level, bills are frequently introduced and may be amended and debated (and generate a lot of press) but not passed. In this packet, we have provided a brief overview and some tools; watch the ACNM web site for up-to-date information.

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State Legislation

Effective tort reform that includes midwives in the language has been passed in several states, including California's MICRA law, which is considered the "gold standard." State legislation, which typically occurs faster than federal legislation, has the potential to significantly impact the premiums of your professional liability insurance by decreasing rates and thus ensuring continued access to your health care services by your patients.

Professional Liability Crisis: A State by State View



Who has been impacted?

- Florida, Indiana, Mississippi, Pennsylvania, Tennessee, Texas and West Virginia have experienced large liability insurance rate increases. (Source: USA Today, December 4, 2001, *Soaring Malpractice Premiums Stun Many Doctors*)
- In 2001, eight states saw two or more liability insurers raise rates by at least 30% and more than a dozen states saw one or more insurers raise rates by 25% or higher since 2000. (Source: AMA News, January 7, 2002, *Professional Liability Insurance Rates Go Up; Doctors Go Away*)
- Pennsylvania's Attorney General, Mike Fisher, wrote "... Insurers have requested increases for 2002 as high as 20 percent on the heels of 20 to 60 percent hikes in 2001." (Source: NMLRC Testimony to Committee on Judiciary US House of Representatives)
- The Mississippi State Medical Society stated that the premiums for pregnancy-related care liability insurance has risen from 20% to 400% (Source: NMLRC Testimony to Committee on Judiciary US House of Representatives.)
- In rural Arizona, after 4 out of 6 physicians stopped attending births due to skyrocketing premiums, women were forced to travel over 35 miles to the next hospital. (Source: AMA Testimony to Committee on Judiciary US House of Representatives)

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- In the past two years, Philadelphia, PA, has lost seven out of its 39 maternity units, with the most recent being at Methodist Hospital and Mercy Hospital. This was directly related to increases in malpractice premiums. (Source: McCullough, *Philadelphia Inquirer*, 7/7/02)
- New York and Florida obstetricians, gynecologists, and surgeons routinely pay \$100,000 to 200,000 a year for \$1 million in coverage. (Source: *BNA Vol. 10, No. 25*)

Access to Health Care for Women is at Risk

Every midwife needs to take a proactive approach in addressing the professional liability crisis and *now* is the time to communicate the message to your community leaders and elected officials. Any statement given, whether testimony, letters to your legislator/governor/insurance commissioner, letters to the editor of your newspaper, or face-to-face conversations should focus on the issue of limited access to health care. Specify how this crisis has impacted access for women to health care services and providers; give lots of examples. Your public officials need to know how this issue is impacting their constituents as an entire population. It is also important to include recommendations for resolving the problem. The following ideas should be included in your statements:

Inclusion of advanced practice nurses, certified nurse-midwives, and certified midwives in all legislative and regulatory changes

- Establishment of limits on non-economic damages
- Mandating offsets for collateral sources
- Limitations on contingency fees
- Creation of periodic payment of future damages
- Reduction of the statute of limitations
- Establishment of alternative dispute resolutions

Resources

The ACNM policy staff has developed a number of resources to facilitate your efforts:

- Sample Consumer Letter. This sample letter in Appendix A can be altered to reflect the specifics of your practice.
- Talking Points are included in Appendix B.

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- Web Sites. Check the ACNM Web site, www.midwife.org, for updates on the professional liability crisis, tort reform, and a host of other issues of importance to you. The following Web sites are also recommended for information about tort reform:
 - Health Coalition on Liability and Access: www.hcla.org
 - The Doctors Company: www.thedoctors.com
 - Californians Allied for Patient Protection: www.micra.org
 - Colorado Physicians Insurance Company (COPIC): <http://callcopic.com>
 - Texas Alliance for Patient Access: www.tapa.info
 - Common Good: <http://cgood.org>

Federal Legislation

ACNM is an active member of the National Medical Liability Reform Coalition. This coalition is a broad-based group of organizations gathered for the purpose of promoting medical liability reform.

The National Medical Liability Reform Coalition believes that Congress should enact effective medical liability reform. Cost containment and health access objectives of comprehensive health system reform cannot be achieved without effective medical liability reform. The coalition supports strengthened patient safety efforts, alternative dispute resolution mechanisms, and demonstration projects to test the effectiveness of developing practice parameters for quality of care and use as an affirmative defense. The coalition strongly supports the adoption of the following tort reforms:

- Periodic payment of future damages over \$100,000
- Limit on non-economic damages
- Mandatory offsets for collateral sources
- Plaintiff lawyer fees limited by sliding scale
- Proportionate liability among all parties
 - Each defendant is liable for the percentage of damages that he or she caused
- Statute of Limitations
 - Two year “reasonable discovery” rule with 4 year statute of repose
 - Special exception to statute of limitations for minors, which would allow up to 4 years for children under 6 to initiate claims
- Special obstetrics rule for drop-in patients
 - If a health professional has not previously treated a patient for pregnancy, burden of proof is “clear and convincing evidence.”

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- Expert Affidavit
 - Any claim filed in court or an ADR proceeding must be accompanied by an affidavit from an individual qualified to be an expert witness asserting that the claim has merit.

- Federal Preemption of State Law
 - These federal tort reform provisions preempt corresponding provisions of state law unless the latter are more effective.

- Scope of Reform
 - Reforms should apply to any claim arising from health care services offered by health care professionals or institutional providers in any state or territory.

 - All claims arising from the delivery of blood services should be included in this reform legislation; suppliers of blood services should be included in definition of health care providers.

 - Reforms do not create a federal cause of action or otherwise alter federal court jurisdiction or state choice of law and venue.

H.R. 4600: Help Efficient, Accessible, Low-cost, and Timely Healthcare Act of 2002 (the HEALTH Act)

California's Medical Injury Compensation Reform Act (MICRA) went into effect in 1976, and has proved immensely successful in increasing access to affordable medical care. MICRA's reforms include a \$250,000 cap on noneconomic damages, limits on the contingency fees lawyers can charge, authorization for defendants to introduce evidence showing the plaintiff received compensation for losses from outside sources (to prevent double recoveries); and authorization for courts to require periodic payments for future damages instead of lump sum awards that prevent bankruptcies in which plaintiffs would receive only pennies on the dollar.

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Appendix A:

Sample Consumer Professional Liability Letter

Feel free to alter this letter to reflect the specifics of your practice and/or state.

Date:

Legislator's or Governor's Name and Address

Dear _____,

Currently, I receive care from _____, a certified nurse-midwife (CNM)/certified midwife (CM) at _____ in CITY, STATE. SHE/HE receives reimbursement from Medicaid, Medicare, _____, _____, _____, and _____. The CNM/CM currently collaborates with Dr. _____, who is available for consultation, collaboration, and transfer of care if needed.

As a woman, I value the philosophy and access to care that I receive from _____. However, I fear that the current crisis involving professional liability insurance for health care providers will decrease, if not eliminate, my access to women's health care and my choice to obtain services from a nurse-midwife/midwife. As a resident of CITY, STATE, and your constituent, I am requesting that you ensure that my access to health care will not be compromised by enacting effective tort reform. My needs as a woman are at stake.

_____, CNM/CM is a highly trained licensed professional who is experienced in providing clinical care for low-risk women, health education, and follow-up for mothers and their families. My care from a midwife is a safe, cost-effective and patient-responsive health care alternative that produces good outcomes and high levels of patient satisfaction. The costs associated with midwifery care are lower as a result of fewer technological interventions, fewer cesarean sections and other surgical procedures, and shorter hospital stays. I do not want to lose my access to cost-effective health care.

I know that you are committed to ensuring that my needs as a woman are accessible to high quality, cost-effective care. It is my belief that tort reform is essential to secure my needs today and in the future. Your immediate attention to this issue is appreciated.

Sincerely,

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Cc: Your midwife and her/his collaborating physician

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Appendix B:

Quick Reference: Talking Points

Please feel free to alter this document to reflect the specifics of your practice and/or your state when speaking to community leaders and policy makers.

Background

- Since the 1970's, obstetrical and gynecological health care professionals have been faced with increasing overhead costs, decreasing reimbursement for services, and decreasing availability and affordability of liability insurance. Thus many professionals have been forced to move to states with effective malpractice reform, or retire early. As a result, many women are left without access to health care services and professionals.
- Dramatic jury awards and frivolous lawsuits have pushed the insurance industry to drive up premiums to unaffordable levels.
- To stabilize risk pools, insurers have significantly increased premiums or have refused to cover high-risk specialties like obstetrics.
- The consequences of the professional liability crisis are limiting access for women to needed services.

What YOU Can Do

- Enact professional liability legislation (tort reform) that promotes women's access to high-quality, cost-effective midwifery and obstetrical and gynecological care.
- Ensure that patients affected by professional negligence have an opportunity to be compensated.
- In addition, we recommend the following for all legislative and regulatory initiatives:
 - Inclusion of all licensed health care professionals, including certified nurse-midwives, certified midwives, and advanced practice nurses.
 - Establish limits on non-economic damages for pain and anguish.
 - Mandate offsets for collateral sources of compensation for injuries.
 - Limit contingency fees.

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- Create periodic payment of future damages.
- Reduce the statute of limitations to sue in the field of midwifery, obstetrics and gynecology.
- Establish alternative dispute resolution.