



Rodney Osborn: Illinois medical liability reform in hands of Supreme Court

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One of the most important health-care decisions this year will be made not by doctors in a hospital, but rather by the justices of the Illinois Supreme Court, who will determine the constitutionality of the state's embattled medical liability reform law.

Medical liability reform, passed by the Illinois legislature and signed into law by the governor in 2005, placed no dollar limit on economic harm but capped non-economic damages, such as awards for pain and suffering, at \$500,000 for doctors and \$1 million for hospitals. Unfortunately, those caps were dealt a setback last November when a Cook County judge ruled the bill unconstitutional, a ruling that has helped earn the county the American Tort Reform Association's designation as a "Judicial Hell Hole."

In fact, a better title might be "Economic Hell Hole," because the lack of reasonable limits on non-economic damages puts the state at a disadvantage in ways that affect every citizen — woman, man and child.

On the surface, it would seem that irrational awards to plaintiffs would affect only the pocketbooks of physicians and other health-care providers. And it is true that doctors are the first to be impacted. For example, in 2007 Illinois physicians specializing in obstetrics and gynecology paid on average \$138,484 for liability insurance, more than double the \$63,272 paid by their counterparts in California, where medical liability reform is in place.

But the ripple effect of high insurance costs and jury awards extends far beyond the obvious. Independent research shows they impact everything from the accessibility of medical care to the amount of money spent on defensive medicine and even the availability of jobs.

Consider these statistics gleaned from academic studies:

* **Availability of care:** The number of physicians per capita in rural counties is 4 percent larger in states with caps on non-economic damages than in those without. And, as citizens in some southern Illinois counties have experienced, this difference can range as high as 11 percent for surgical and surgical support specialists in fields such as obstetrics, ophthalmology and anesthesiology. Meanwhile, the American Medical Association reports that in Texas, where reform was enacted in 2003, practicing physicians are actually relocating to the state in droves.

* **Defensive medicine:** A study published last year concluded that the 60 percent increase in liability premiums between 2000 and 2003 was responsible for \$7.1 billion in incremental government spending on Medicare medical insurance. Another study in Mississippi showed that prior to medical liability reform in that state, medical expenditures per person ran 9

percent higher in so-called “plaintiff-friendly” counties than in areas of the state where juries were less generous.

* **Job growth:** In a poll of corporate attorneys, who have seats at most site-selection tables for companies seeking new or expanded locations, Harris Interactive found that Illinois ranked 46th among the 50 states in terms of having a legal system that delivers justice. The only states that did worse are Alabama, Arkansas, Mississippi and West Virginia. It is seen as no coincidence that Illinois’ 2.5 percent rate of job growth from January 2003 through December 2007 ranked 45th in the nation and was less than half the national average of 6.1 percent for the same period.

Therefore, when considering job growth in a state like Illinois, it is important to acknowledge that when corporate site-selection committees sit down to discuss possibilities, the availability of a skilled and eager workforce, while important, is not as critical as the answer to the question, “Does the site make economic sense?”

Unfortunately, for Illinois — a state where medical liability reform is in limbo and where lawyers outnumber doctors by a ratio of 2.4 to 1 — cold statistics make it clear the answer is, “Probably not.”

Might the Illinois job climate improve if corporate site selection and expansion decision-makers were confident that health care was accessible throughout the state and that costs were competitive with those of locations in other states? The answer is unequivocally “yes?”

The Illinois Supreme Court has an important decision to make. Will the Cook County judge’s decision against the state’s medical liability reform legislation be overruled, or will Illinois remain among the minority of states where irrational jury awards continue to be countenanced and the state’s quality of life and its economy suffers?

That decision will play a major role in determining the future strength of the economy in Illinois and the quality and availability of health care for our citizens.

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