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Medical Malpractice Payments Fall Again in 2009

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The federal government's National Practitioner Data Bank's 2009 data, released on March 1, 2010, show that medical malpractice litigation costs continued to decline last year, playing an ever smaller role in health care costs. Foremost, the data show that the number and value of medical malpractice payments, as well as the total costs of medical malpractice litigation, all continued to decline in 2009. They remain a mere fraction of a fraction of health costs.

Lowest Number of Payments on Record. The number of medical malpractice payments made on behalf of physicians in 2009 was the lowest since the creation of the National Practitioner Data Bank (NPDB), which has tracked medical malpractice payments since 1990.¹

Lowest Value of Payments Since 1999, or on Record. The cumulative value of malpractice payments in 2009 was the lowest since 1999 in actual (unadjusted) dollars. If adjusted for inflation, payments were the either the lowest or the second lowest on record, depending on the method of adjustment.

Total Litigation Costs Just 0.46 of One Percent of Health Costs. Medical malpractice litigation's share of overall health care costs fell to less than 0.5 of one percent, even when defined generously as total liability insurance payments by doctors and hospitals. This figure encompasses not just litigation defense costs and payments to victims, but also liability insurers' profits and administrative costs.

Malpractice Payments to Victims Just 0.14 of One Percent of Health Costs. Payments to victims fell to 0.14 percent of all health costs, the lowest level on record.

Malpractice Payments Decline as Health Costs Skyrocket. Between 2000 and 2009, health care spending rose 83 percent while medical malpractice payments fell 8 percent. (Both figures in unadjusted dollars.)

Epidemic of Medical Errors. The real problem regarding medical malpractice remains an epidemic of medical errors, with little accountability and few incentives for improvement. In 1999, the Institute of Medicine (IOM) concluded that 44,000 to 98,000 people die every year due to avoidable medical errors.² Over the past decade, others have found higher death rates. Hospital rating company HealthGrades estimated in 2004 that more than 190,000 people die annually because of medical errors.³ The Hearst Newspapers concluded in a 2009 that the number of fatalities from medical errors approaches 200,000.⁴

Scant Compensation for Malpractice. In 2009, there were 3,537 medical malpractice payments for deaths due to negligence. This means that even if one uses the low end of the IOM estimate, about 12 times as many people were likely killed in hospitals in 2009 because of avoidable errors as the number of malpractice payments to survivors. Using the Hearst estimate, just one in 57 deaths was compensated. In other words, between 83 and 98 percent of deaths from medical negligence did not result in any liability payment.

¹ The NPDB began tracking the data in the fourth quarter of 1990. The first full year of data covered 1991.

² "To Err is Human: Building a Safer Health System," Institute of Medicine, National Academies Press, 1999, p. 1 (available at <http://www.nap.edu/openbook.php?isbn=0309068371>).

³ "HealthGrades Quality Study: Patient Safety in American Hospitals," July 2004, p. 6 (available at http://www.healthgrades.com/media/english/pdf/HG_Patient_Safety_Study_Final.pdf).

⁴ "Dead By Mistake," Hearst Newspapers, Aug. 9, 2009 (available at <http://www.hearst.com/press-room/pr-20090809a.php>).

A total of 10,772 malpractice payments were made on behalf of doctors in 2009. Thus, even by the IOM's low-end estimate – 44,000 deaths a year – about four times as many people were killed by avoidable errors as received a medical malpractice payment for any adverse outcome, including death. Using the Hearst estimate, about 19 people were killed for every payment compensating any type of injury.

These figures underscore what experts have said for years: doctors and hospitals, through their liability insurers, compensate victims for only a small fraction of medical errors that cause serious injuries or deaths. Most victims of malpractice do not sue and receive nothing outside the legal system.⁵ Meanwhile, errors continue unchecked.

High Financial Cost of Errors. The IOM concluded in 1999 that avoidable errors cost between \$17 billion and \$29 billion a year, and that figure doubtless would be much higher today. But even the lower of those figures is 59 percent higher than the sum of all doctors' and hospitals' malpractice insurance payments combined in 2008 (the most recent year available).⁶ A 2009 Public Citizen analysis of peer-reviewed studies found that implementing just 10 basic patient safety measures to protect patients would save \$35 billion annually.⁷ This is 227 percent higher than all medical malpractice liability insurance payments.

Calls for Malpractice Liability "Reform" Contradict the Evidence. Calls to limit malpractice liability, typically grounded in claims about a flood of "frivolous lawsuits," are divorced from the data, which show declining litigation costs, declining payments to injured patients, and an extremely low rate of compensation for even the most serious injuries.

Scope of Errors Makes "Health Courts" Unrealistic. One popular proposal on malpractice liability is to create so-called "health courts." In theory these administrative bodies would provide less compensation than is available in court to each injured patient, but would compensate a higher percentage of the patients. There are many criticisms of such proposals, but one factor makes them simply unrealistic: the sheer number of errors. The number of injured patients is so great that there is no way a health court system could fulfill its objectives without wildly increasing costs – the opposite of what health court proponents want. Recall that between 83 and 98 percent of deaths from malpractice are completely uncompensated (this says nothing of injuries). It is impossible to create a system that compensates for these errors without increasing costs by tens of billions of dollars each year, if not hundreds of billions.

Reducing Medical Errors Is the Only Solution. The best is course is clear. Policymakers should reduce the need for redress, not the right to redress. Purported solutions like "health courts" would only cost billions while do nothing to reduce the epidemic of deaths and injuries from medical errors. Reducing medical errors, in contrast, would save lives and money.

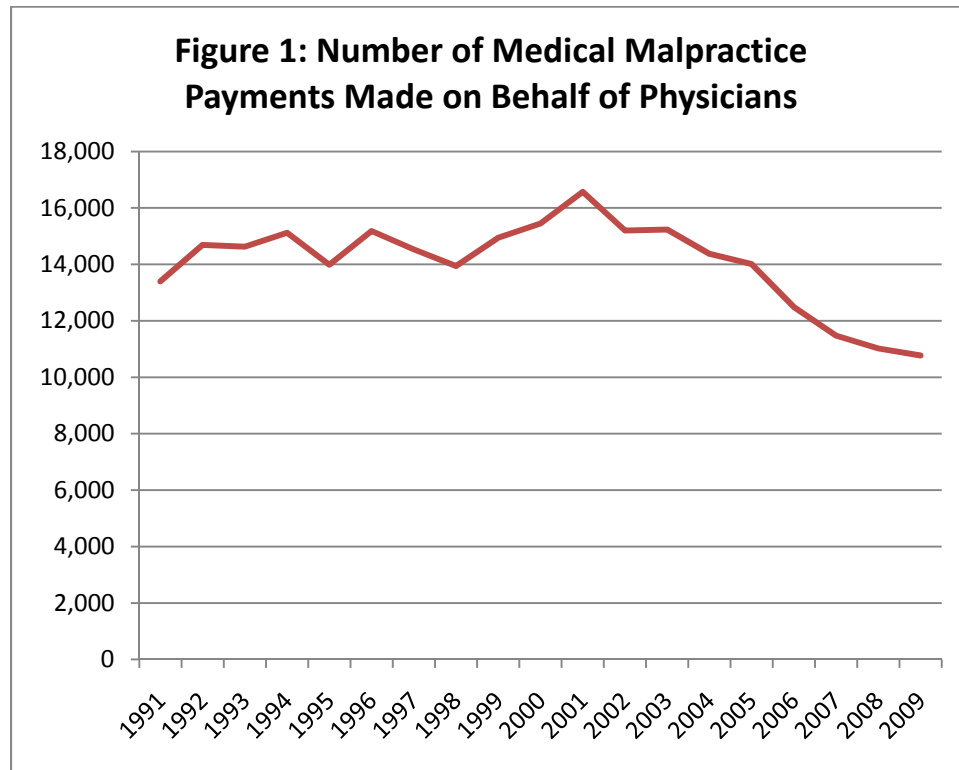
⁵ See Tom Baker, "The Medical Malpractice Myth," University of Chicago Press, 2005, p. 24-38

⁶ "To Err is Human: Building a Safer Health System," Institute of Medicine, National Academies Press, 1999, p. 27. (available at <http://www.nap.edu/openbook.php?isbn=0309068371>); A.M. Best & Co, cited in Americans for Insurance Reform, "True Risk," July 22, 2009 (available at <http://insurance-reform.org/TrueRiskF.pdf>).

⁷ Public Citizen, "Back to Basics: Ten Steps to Save 85,000 Lives and \$35 Billion a Year in Health Care Delivery" August 2009, p. 1 (available at <http://www.citizen.org/documents/BackToBasics.pdf>).

Number of Medical Malpractice Payments Fell to All-Time Low in 2009

The number of malpractice payments made on behalf of doctors fell for the sixth straight year in 2009, setting another all-time low through the history of the NPDB. In absolute terms, payments in 2009 were 19.6 percent fewer than in 1991, the first full year in which the NPDB tracked the data. Compared to the U.S. population, the number of payments was 33.9 percent lower in 2009 than in 1991. [See Figure 1; Data for Figure 1 are in the Appendix]

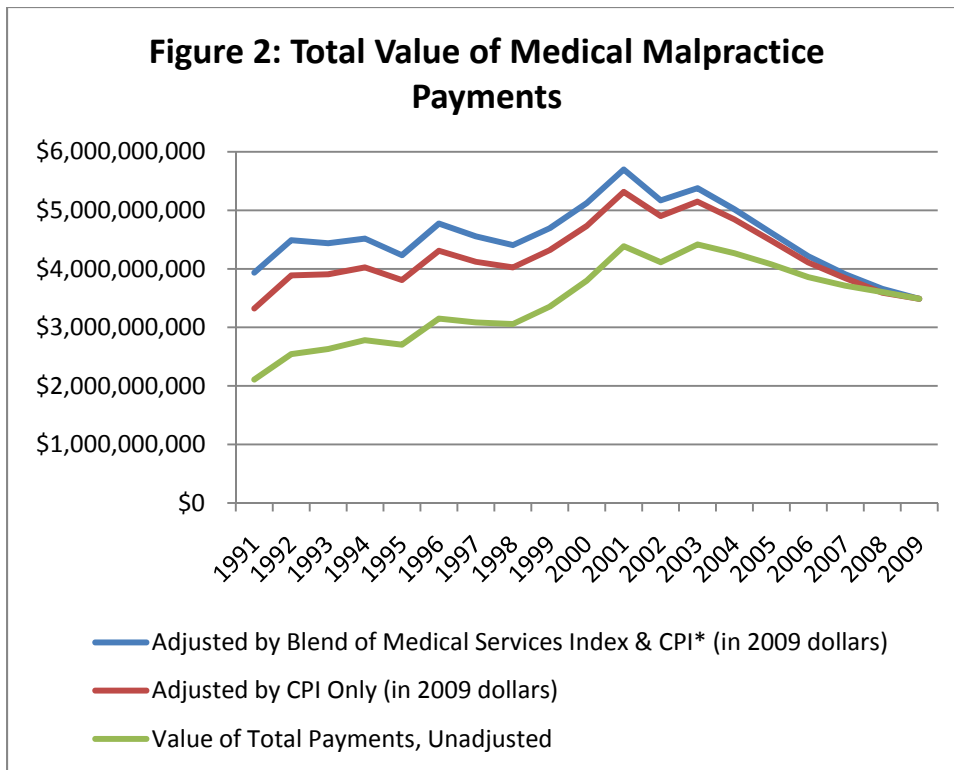


Source: National Practitioner Data Bank

Total Value of Medical Malpractice Payments Was at or Near the Lowest Level on Record in 2009, Depending on Method of Inflation Adjustment

The total number of dollars paid out for medical malpractice in 2009 was the lowest since 1999 in actual (unadjusted) dollars. If adjusted by the consumer price index (CPI), payments were the second lowest on record. If adjusted by a blend of the CPI and the medical services index, which is proper because a significant share of medical malpractice payments compensate for future medical costs, payments were the lowest on record. Researchers analyzing the seminal 1992 Utah-Colorado patient safety study concluded that 53 percent of the compensation for medical injuries involved future health care costs.⁸ The blue (top) line in Figure 2 (below) uses a 53 percent-47 percent blend. [Data in the Appendix]

⁸ David M. Studdert, et al, "Beyond Dead Reckoning," Indiana Law Review, Vol. 33, No. 4, page 1684.

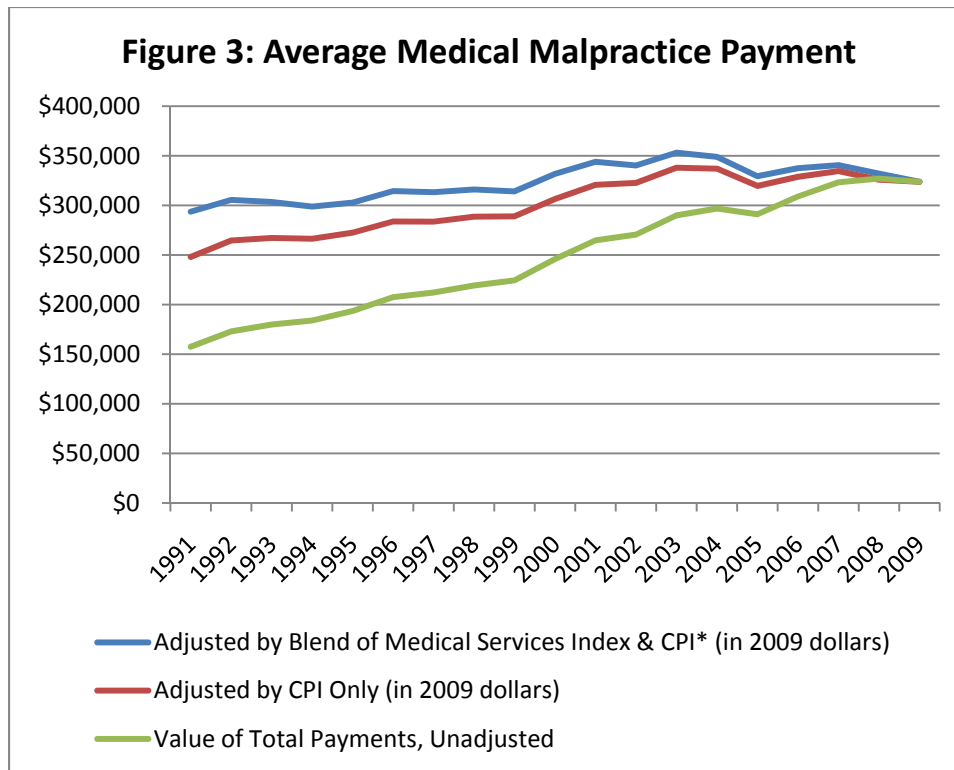


Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series)

* Weighted 53% medical services index, 47% consumer price index.

Mean Value of Medical Malpractice Payments Fell in 2009

Although the mean (average) value of payments is the one index that has typically increased through the life of the NPDB, it also dropped in 2009, for the second straight year. Mean payments in 2009 were 30.6 higher than in 1991, as adjusted by the CPI and 10.3 percent higher than in 1991 if adjusted by a blend of the CPI and medical services index. [See Figure 3; Data in the appendix]



Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series)

* Weighted 53% medical services index, 47% consumer price index.

Medical Malpractice Costs Remained a Tiny Percentage of Overall Health Costs

Total litigation costs, as measured generously by total liability insurance payments, declined further as fraction of overall health costs.

Total direct premiums written were \$10.69 billion in 2008, or just 0.46 of one percent of the cost of health care that year (2009 data not yet available).⁹ This figure encompasses not just litigation defense costs and payments to victims, but also liability insurers' profits and administrative costs. For 2009, actual payments to victims were only 0.14 of one percent of overall costs.

As medical malpractice litigation has declined, the amounts that doctors and hospitals pay for medical malpractice insurance premiums has risen. Total malpractice premiums on behalf of doctors and hospitals were 41.1 percent higher in 2008 than in 2000, even though the number and value of medical malpractice payments fell during the same period. Medical malpractice payments on behalf of doctors were 5.4 percent lower in 2008 than in 2000. [See Figure 4]

⁹ A.M. Best & Co, cited in Americans for Insurance Reform, "True Risk," July 22, 2009 (available at <http://insurance-reform.org/TrueRiskF.pdf>).

Figure 4: Medical Liability Costs and Medical Malpractice Costs as Percentage of Total Health Care Spending, 1991-2009

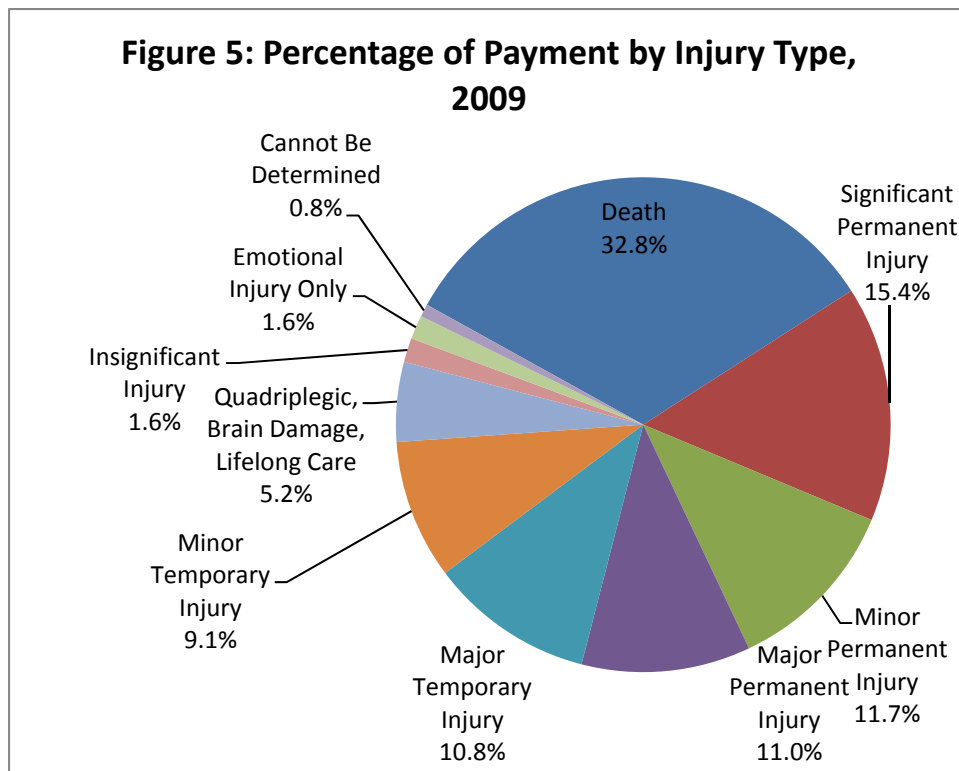
Year	Total National Health Care Costs (in billions)	Sum of Direct Premiums Written for Physicians and Hospitals Liability Insurance (in billions)	Value of Malpractice Payments Made on Behalf of Doctors (in billions)	Medical Liability Premiums as a Percentage of Overall Health Care Costs	Medical Malpractice Payments as a Percentage of Overall Health Care Costs
1991	\$781.59	\$5.04	\$2.11	0.65%	0.27%
1992	\$849.07	\$5.23	\$2.54	0.62%	0.30%
1993	\$912.48	\$5.47	\$2.63	0.60%	0.29%
1994	\$962.13	\$5.95	\$2.78	0.62%	0.29%
1995	\$1,016.63	\$6.11	\$2.71	0.60%	0.27%
1996	\$1,068.48	\$6.00	\$3.15	0.56%	0.29%
1997	\$1,125.12	\$5.86	\$3.08	0.52%	0.27%
1998	\$1,189.99	\$6.04	\$3.06	0.51%	0.26%
1999	\$1,265.19	\$6.05	\$3.35	0.48%	0.27%
2000	\$1,352.86	\$6.30	\$3.80	0.47%	0.28%
2001	\$1,469.22	\$7.29	\$4.39	0.50%	0.30%
2002	\$1,602.39	\$8.93	\$4.11	0.56%	0.26%
2003	\$1,735.20	\$10.14	\$4.42	0.58%	0.25%
2004	\$1,855.39	\$11.50	\$4.27	0.62%	0.23%
2005	\$1,982.54	\$11.58	\$4.08	0.58%	0.21%
2006	\$2,112.54	\$11.88	\$3.86	0.56%	0.18%
2007	\$2,239.71	\$11.14	\$3.71	0.50%	0.17%
2008	\$2,338.75	\$10.69	\$3.60	0.46%	0.15%
2009	\$2,472.21	N/A	\$3.49	N/A	0.14%

Sources: National Practitioner Data Bank, A.M. Best & Co (as cited by Americans for Insurance Reform), Centers for Medicare and Medicaid Studies

Most Medical Malpractice Payments in 2009 Compensated Serious Injuries

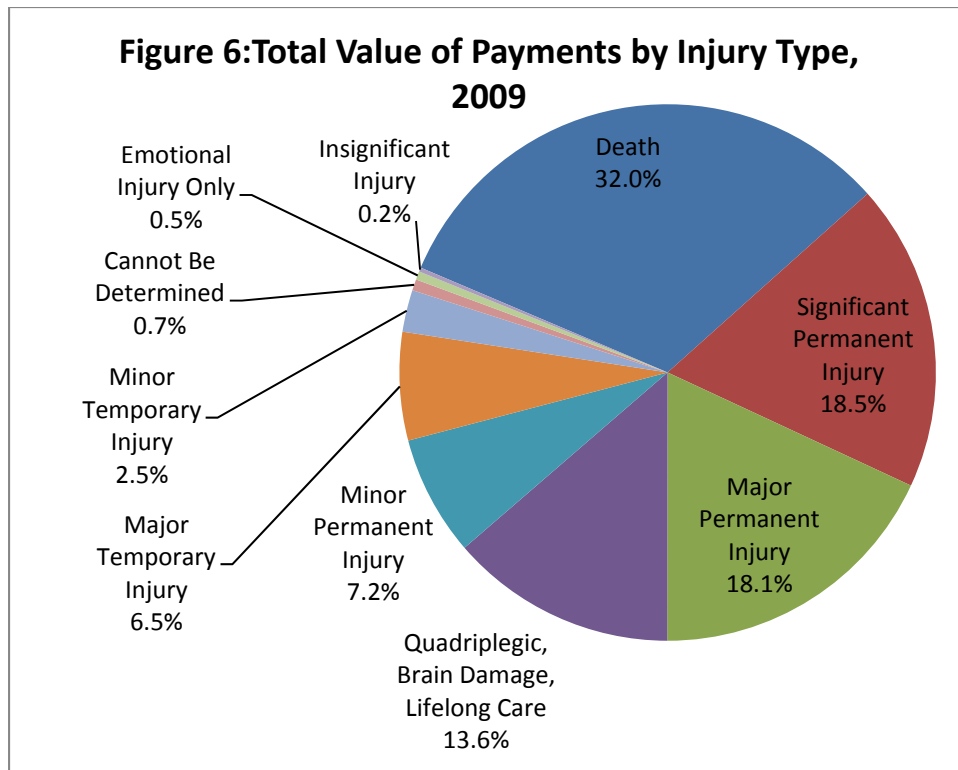
Despite rhetoric about “frivolous lawsuits,” the vast majority of medical malpractice payments compensate injuries that no one would deem frivolous.

Of the 10,772 medical malpractice payments in 2009, nearly two-thirds (64.5 percent) compensated for negligence that resulted in “significant permanent injury;” “major permanent injury;” quadriplegia, brain damage or the need for lifelong care; or death. [See Figure 5; Detailed data in the Appendix]



Source: National Practitioner Data Bank

More important, the dollar value of payments for these serious injuries accounted for an even higher proportion – more than four-fifths (82.2 percent) of the total value of malpractice payments last year. “Insignificant injury” and “emotional injury only” accounted for between 0.2 percent and 0.5 percent of dollars paid in 2009. [See Figure 6; Detailed data in the Appendix]



Source: National Practitioner Data Bank

“Health Courts” Will Not Provide Justice

In the early 1990s, researchers from the Harvard School of Public Health conducted a seminal study on medical errors in hospitals in Utah and Colorado and assessed whether an administrative compensation system would be economically viable in the United States.

Despite finding a total of 170 medical injuries due to negligence, the researchers found that only 18 patients in their sample filed medical malpractice suits.¹⁰

To make the system viable, researchers proposed far more draconian restrictions than any state has implemented, and which would not conceivably constitute fair compensation:

- Cap damages for pain and suffering at \$100,000
- Only compensate patients who are disabled for more than four weeks
- Replace only two-thirds of wages¹¹

Other models based on the Utah-Colorado data have sought to bring the cost of health courts closer to the status quo by prohibiting payments to patients who were disabled for eight weeks or fewer¹² or by

¹⁰ David M. Studdert, et al, “Beyond Dead Reckoning,” *Indiana Law Review*, Vol. 33, No. 4, p. 1659-60.

¹¹ *Ibid.*, p. 1675.

¹² David M. Studdert, et al, “Can the United States Afford a ‘No-Fault’ System of Compensation for Medical Injury?” *Law and Contemporary Problems*, Vol. 60, No. 2, p. 26.

prohibiting compensation to the families of patients killed by avoidable errors.¹³ Health care models in federal legislation would also limit damages by requiring a predetermined schedule of compensation and distribution of payments on a periodic basis instead of in full.¹⁴ A schedule set by political appointees effectively caps damages and disregards the individual facts and circumstances of each injured patient. Periodic payments would also be standard without consideration of the patient's needs or the payer's ability to compensate the patient.

Finally, schemes like health courts have an additional disadvantage: they diminish accountability for negligent doctors and hospitals. For example, in 1987, the state of Virginia created an administrative fund that would pay the medical costs of injuries sustained during birth, which operated in a manner similar to that of many "health court" proposals. With medical malpractice claims shut out of the courts, state disciplinary boards became the sole source of accountability for doctors and hospitals. Eighteen years later, not a single action has been brought against a doctor or hospital for a birth-related injury.¹⁵

¹³ Ibid., p. 29.

¹⁴ Patients' Choice Act, S. 1099, 111th Cong., (1st Sess. 2009).

¹⁵ Bill McKelway, "Birth-Injury Aid's False Expectations Result In Disarray Deficit Swells Even As Fewer Children Than Expected Were Helped," Richmond Times Dispatch, Jan 2 2005.

Appendix

Figure 1: Number of Medical Malpractice Payments Made on Behalf of Physicians, 1991-2009

Year	Number of Payments	Number of Payments per 1 Million People (U.S. Population)
1991	13,399	53.1
1992	14,692	57.6
1993	14,629	56.7
1994	15,123	58.1
1995	13,988	53.2
1996	15,185	57.3
1997	14,531	54.3
1998	13,944	51.6
1999	14,945	54.8
2000	15,447	54.7
2001	16,571	58.1
2002	15,200	52.8
2003	15,233	52.5
2004	14,373	49.1
2005	14,008	47.4
2006	12,490	41.8
2007	11,475	38.0
2008	11,021	36.2
2009	10,772	35.1

Sources: National Practitioner Data Bank and U.S. Census Bureau

Figure 2: Value of Medical Malpractice Payments, 1991-2009

Year	Value of Total Payments Adjusted by Blend of Medical Services Index & CPI* (in 2009 dollars)	Value of Total Payments Adjusted by CPI Only (in 2009 dollars)	Value of Total Payments, Unadjusted
1991	\$3,934,386,420	\$3,322,869,635	\$2,109,542,150
1992	\$4,489,753,009	\$3,887,766,804	\$2,542,469,050
1993	\$4,438,317,579	\$3,907,769,110	\$2,632,052,450
1994	\$4,515,722,376	\$4,025,610,413	\$2,780,851,150
1995	\$4,232,373,004	\$3,808,339,408	\$2,705,318,550
1996	\$4,774,176,748	\$4,308,818,605	\$3,151,221,650
1997	\$4,553,517,216	\$4,121,443,039	\$3,083,345,100
1998	\$4,405,814,420	\$4,024,489,251	\$3,057,709,150
1999	\$4,694,115,184	\$4,318,847,566	\$3,353,827,100
2000	\$5,122,664,137	\$4,731,428,649	\$3,797,722,600
2001	\$5,698,415,324	\$5,313,679,067	\$4,386,434,800
2002	\$5,170,306,538	\$4,903,071,171	\$4,111,470,300
2003	\$5,378,509,239	\$5,148,453,388	\$4,415,627,250
2004	\$5,015,631,054	\$4,844,826,323	\$4,265,873,450
2005	\$4,614,465,003	\$4,476,938,508	\$4,075,502,550
2006	\$4,215,224,922	\$4,106,702,851	\$3,859,060,650
2007	\$3,907,998,197	\$3,838,674,010	\$3,709,935,100
2008	\$3,658,807,022	\$3,591,418,463	\$3,604,241,550
2009	\$3,488,144,100	\$3,488,144,100	\$3,488,144,100

Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series)

* Weighted 53% medical services index, 47% consumer price index.

Figure 3: Average (Mean) Medical Malpractice Payment, 1991 to 2009

Year	Mean Payments Adjusted by Combination of Medical Services Index & CPI* (in 2009 dollars)	Mean Payments Adjusted by CPI Only (in 2009 dollars)	Mean Payments, Unadjusted
1991	\$293,677	\$248,031	\$157,464
1992	\$305,592	\$264,618	\$173,051
1993	\$303,392	\$267,125	\$179,920
1994	\$298,837	\$266,403	\$184,028
1995	\$302,767	\$272,433	\$193,527
1996	\$314,401	\$283,755	\$207,522
1997	\$313,366	\$283,631	\$212,191
1998	\$315,988	\$288,639	\$219,301
1999	\$314,093	\$288,983	\$224,411
2000	\$331,628	\$306,301	\$245,855
2001	\$343,920	\$320,700	\$264,737
2002	\$340,197	\$322,613	\$270,527
2003	\$353,106	\$338,002	\$289,891
2004	\$348,938	\$337,055	\$296,777
2005	\$329,463	\$319,644	\$290,983
2006	\$337,488	\$328,799	\$308,972
2007	\$340,566	\$334,525	\$323,306
2008	\$331,985	\$325,870	\$327,034
2009	\$323,816	\$323,816	\$323,816

Sources: National Practitioner Data Bank; Bureau of Labor Statistics Consumer Price Index, (All Urban Consumers, Current Series) and Medical Services Inflation Index (All Urban Consumers, Current Series)

* Weighted 53% medical services index, 47% consumer price index.

Figure 5: Percentage of Payment by Injury Type, 2009

Injury Type	Frequency	Percentage
Death	3,537	32.8%
Significant Permanent Injury	1,659	15.4%
Minor Permanent Injury	1,258	11.7%
Major Permanent Injury	1,190	11.1%
Major Temporary Injury	1,158	10.8%
Minor Temporary Injury	982	9.1%
Quadriplegic, Brain Damage, Lifelong Care	562	5.2%
Insignificant Injury	169	1.6%
Emotional Injury Only	168	1.6%
Cannot Be Determined	89	0.8%

Source: National Practitioner Data Bank

Figure 6: Total Value of Payments by Injury Type, 2009

Injury Type	Total Value	Percentage
Death	\$1,116,251,850	32.0%
Significant Permanent Injury	\$646,629,800	18.5%
Major Permanent Injury	\$631,127,850	18.1%
Quadriplegic, Brain Damage, Lifelong Care	\$476,109,750	13.7%
Minor Permanent Injury	\$252,779,300	7.3%
Major Temporary Injury	\$227,192,300	6.5%
Minor Temporary Injury	\$88,339,450	2.5%
Cannot Be Determined	\$23,570,750	0.7%
Emotional Injury Only	\$17,561,750	0.5%
Insignificant Injury	\$8,581,300	0.3%

Source: National Practitioner Data Bank