House, Senate at odds over malpractice 'cap

A compromise on medical malpractice reform could come in February or March, a key state senator says, although Senate and House leaders are still far apart on key issues.

The major issue is a cap on liability, said Senate Majority Leader John Engler, R.M. Pleasant.

The Senate passed a bill last year to limit non-conomic damages ("pain and suffering") to \$250.00. House leaders—particularly Speaker Gary Owen, Dypsilanti—oppose any cap, arguing juries should decide.

Engler said the interests supporting a cap—insurers and doctors—fell two votes short in the House and may try again this year.

He said Monday has the best will drop with a ball said word with the House word will are the said word of the component of the fort to achieve component.

versions in an circuit to accusive com-promise.

The "liability crisis," as it's called, stems from soaring liability insurance rates, which the industry blames on an explosion of lawsuits and overly gener-ous juries, particularly in Wayne Coun-ty. Trial lawyers blame it on greedy insurance companies and bad doctors.

analysis

The crusis extends to suits against governments and taverns.
Here are excepts from a Senate analysis of the differences between the two chambers on medical malpractice.

JOINT AND SEVERAL LIABILITY

Under present law, all defendants are considered liable for the full amount of a jury award. It leads plantiffs to expect to collect the full amount for much party with the "depest pockets" — a government or large business — although its share of fault may be small.

Senate would require the court to apportion the relative fault between defendants and assign a percentage of liability to each defendant and percentage of fault. It abolishes joint and several liability for defendants who are less

than 50 percent at fault.

House allows for setting percentage limits but allows a party, one year later, to move for reallocation if the amount hasn't been collected.

COLLATERAL SOURCE

COLLATERAL SOURCE
This rule prohibits telling a jury that
the plaintiff already has been compensated for injury by (for example) an insurrance company. Critics as ji i allows
'double dipping' — collecting twice for
the same injury.
Senate bill would modify the rule to
reduce any, judgment by an amount
equal to collateral source payments.
But the judgment couldn't be reduced
by more than 50 percent.
House verifon is much the same,
with some limitations.

STRUCTURED PAYMENTS

Because of multimillion-dollar judg-ments, the idea would cap the amount a losing defendant could be required to pay in any one year. Senate would establish guidelines for a court to follow when damages in ex-cess of \$250,000 are awarded, allowing

The Senate passed a bill last year to limit non-economic damages (pain and suffering) to \$250,000. House leaders oppose any cap, arguing juries should decide.

defendant to pay over a period of years. The Senate bill requires the trial judge to review the jury award and ei-ther concur with it, grant a new trial or attempt to increase or reduce the award.

award.

House would allow periodic payments, but not where a plaintiff is 60 or

r. Prejudgment interest

PREJUDGMENT INTEREST
Currently, plaintiff is entitled to 12percent interest on the judgment dating from the time the suit is tiled.
Senate would the the rate of interest
to live-year Treasury bills. Projudgment interest wouldn't start accruing
until six months after the suit is served.
House would set the prejudgment
rate at 1 percent over five-year T-bills.

Interest would be calculated from the date the suit was filed except under limited circumstances.

TIME LIMITATIONS

TIME LIMITATIONS

Doctors and insurers complain that malpractice suits involving acts at birth aren't started until the child is 18; therefore, it is difficult to set up reserves for delayed suits.

Senate would provide that the general two-year statute of limitations for medical malpractice actions also apply to children, except that a claim involving a child under age 8 would have to be brought prior to the 9th birthday.

House would provide that a medical malpractice suit could not be started more than six years after the act which

EXPERT WITNESSES

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Sensie would require that expert
medical witnesses be persons who devote at least 75 percent of their time to
cilinical practice or teaching, eliminating out-of-state witnesses who testify
or plaintiffs for a living.

House would require expert witness
to be licensed health care provider in
Michigan. Court would have to evaluate the person's educational and professional training.

MALPRACTICE FUND

Senate has no provision.

House would create a state malprac-tice insurer similar to the old Brown-McNeely Fund.

GOP to hear Rep. Gingrich

U.S. Rep. Newt Gingrich, R-Ga, will speak to the Oakland County Republican 300 Club Friday, Feb. 7.
The "breaktast in the evening", gathering will run 5:30-7 p.m. at Roma's of Bioomfield, 2010 Telegraph, Bloomfield Township.
Hors d'oeuvres will be served. Tickets are \$10 for 300 Club members and \$15 for non-members. For reservations, call Pat Evans, Oakland Republican headquarters, \$35-1133.
Gingrich, a fourth-term congressman, is ranking minority member on the House subcommittee on investigations and oversight of the Public Works and Transportation Committee.

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Sweden has no-fault medical liability

Michigan could have avoided its long political battle over medical malpraculation lattice lawnits with a Swedish-style no-fault insurance plan, says a University of Michigan-Dearborn professor.

"I find this to be emitently rational even-inanded for both consumers and doctors," said Marilyan Rosenthal, UM-D sociology professor. She spent influint on fault and the amount of a black size of the special drug no-fault insurance system inaction of fault and the amount of a black size of the special drug no-fault insurance system inaction of fault and the amount of a black size of the special drug no-fault insurance system inaction of fault and the amount of a black size of the special drug no-fault insurance system in the special drug no-fault insurance system insurance system in the special drug no-fault insurance system ind special drug no-fault insurance system in the special drug no-f

rs of Parliament, three reprentati

care system, and a Court of Appeals judge who chairs the group. She said it provides strong consumer representation.

ropresentation.

A private insurance company called Skandia administers the plan. There have been none of the complaits of ahrinking profits that have slimulated the "malpractice crisis" in the U.S., she said.

A NO-FAULT system was recommended for the state in a report commissioned by Gov. James J. Blanchard. The report was written by Robben W. Fleming, U-M president emeritus.

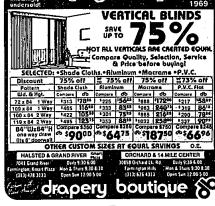
A no-fault system could be implemented on a state-by-state basis, Rosenthal said, although it might be fought by lawyers and some in the insurance industry.

But a patient-doctor coalition could push it through she said.

She called the Swedish model desirable because fault isn't a factor. Many fine physicians who get less-than-perfect results aren't subject to lawsuits. Titls, she said, leaves the medical.

This, she said, leaves the medical profession free to weed out the really bad physicians.







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