

# 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-Mt. Pleasant.

The Senate passed a bill last year to limit non-economic damages ("pain and suffering") to \$250,000. House leaders — particularly Speaker Gary Owen, D-Ypsilanti — 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 the Senate will drop its own bills and deal with the House versions in an effort to achieve compromise.

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

## analysis

The crisis extends to suits against governments and lawyers. Here are excerpts 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 plaintiffs to expect to collect the full amount from the party with the "deepest 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 a 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

This rule prohibits telling a jury that the plaintiff already has been compensated for injury by (for example) an insurance company. Critics say it 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 version is much the same, with some limitations.

### STRUCTURED PAYMENTS

Because of multimillion-dollar judgments, 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 excess of \$250,000 are awarded, allowing

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

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

### PREJUDGMENT INTEREST

Currently, plaintiff is entitled to 12 percent interest on the judgment, dating from the time the suit is filed.

Senate would tie the rate of interest to five-year Treasury bills. Prejudgment 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

Doctors and insurers complain that malpractice suits involving acts at birth aren't started until the child is 16; 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 8th birthday.

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

is the basis of the claim, except in limited circumstances.

House also would allow a child who is more than 16, but not yet 18, to sue if the claim weren't exercised by a parent or guardian.

### EXPERT WITNESSES

Senate would require that expert medical witnesses be persons who devote at least 75 percent of their time to clinical practice or teaching, eliminating out-of-state witnesses who testify for 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 malpractice 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 "breakfast in the evening" gathering will run 5:30-7 p.m. at Roma's of Bloomfield, 2101 Telegraph, Bloomfield Hills. 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, 838-1133.

Gingrich, a fourth-term congressman, is ranking minority member on the House subcommittee on investigations and oversight of the Public Works and Transportation Committee.

# Sweden has no-fault medical liability

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

"I find this to be eminently rational and even-handed for both consumers and doctors," said Marilyn Rosenblatt, U-M-D sociology professor. She spent three years studying methods of disciplining doctors in Sweden.

In Sweden, a patient who is injured while under a doctor's care is compensated — regardless of fault — at a set rate.

Michigan's system leaves the determination of fault and the amount of damages to a jury. A Senate bill sought to limit non-economic (pain and suffering) damages to \$250,000. The House

and the Michigan Trial Lawyers Association calls limit unacceptable.

In place since 1976, the Swedish system compensates about 90 percent of the complaints filed. Since then a special drug no-fault insurance system also has been established.

Instead of settling patient-doctor disputes by lawsuits, the Swedes set up a Medical Responsibility Board to hear complaints, Rosenblatt said.

Its nine members include: four members of Parliament, three representatives of union cartels, one representative from the council that runs the health

care system, and a Court of Appeals judge who chairs the group.

She said it provides strong consumer representation.

A private insurance company called Skandia administers the plan. There have been none of the complaints of shrinking profits that have stimulated 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, Rosenblatt 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.

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

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