Background

The broken medical liability system remains one of the most difficult issues for physicians. It places a communications barrier between physicians and their patients. It forces physicians to practice defensive medicine. Lawsuits put physicians at emotional, reputational and financial risk and they drain resources out of an already financially strapped national health care system, which could be used for medical research or expanded access to care for patients.

The numbers are staggering:

- 61 percent of physicians ages 55 and older have been sued at some point in their career;
- 9 out of 10 surgeons ages 55 and older have been sued;
- 64 percent of claims filed against physicians are dropped or dismissed;
- $70-126 billion per year – the cost of defensive medicine.

Both Republicans and Democrats along with President Obama have acknowledged that the system needs to be improved. For many years, comprehensive medical liability reform has been introduced in Congress, but not enacted. On April 25, 2012 the House Judiciary Committee approved H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act, sponsored by Representative Gingrey, MD (R-GA), a comprehensive bill similar to the California and Texas laws, that includes a $250,000 cap on non-economic damages in medical malpractice cases.

Recommendations

SVS strongly supports H.R.5; it would be positive for both vascular surgeons and their patients. The estimated savings for this bill is $41 billion over 10 years.
SVS also supports parties having the opportunity to arbitrate grievances prior to any litigation. If this is unsuccessful at resolving the issues, the claims could be adjudicated in special Health Courts. Members of the courts hearing cases could include the following: physicians, lawyers and lay people. Arbitration by these courts would be final and preclude additional liability claims.

In addition, physicians could voluntarily disclose medical errors to patients, next of kin, their respective health systems and patient safety organizations as soon as they occur. Physicians offering disclosure and compensation should be held harmless from subsequent liability claims and disclosure could not be used as an admission of guilt in any subsequent legal claims.

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