

Wisconsin Hospital Association, Inc.

NEWS



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Court Decision Risks Patient Access to Health Care

Loss of Non-Economic Damage Cap Will Exacerbate Future Physician Shortages

MADISON (July 5, 2017) ---- The Wisconsin Hospital Association (WHA) is concerned it will become more difficult for patients to find care in their communities, particularly in rural and inner city areas, if today's Wisconsin Court of Appeals ruling on the constitutionality of Wisconsin's cap on non-economic damages in medical malpractice cases is upheld.

"We disagree with the Court of Appeals conclusion that there is no evidence or rationale supporting the Legislature's policy decision to protect access to health care in Wisconsin by enacting Wisconsin's cap on non-economic damages in medical malpractice cases," said Eric Borgerding, WHA President and CEO. "Upsetting the Legislature's informed policy decision by invalidating Wisconsin's cap on noneconomic damages will negatively impact Wisconsin communities' efforts to attract physicians to provide accessible, quality health care to their residents."

"Wisconsin's unique, balanced medical malpractice system that includes a cap on non-economic damages is a key policy that has helped Wisconsin retain and attract high-quality physicians to Wisconsin communities," said Borgerding. "Without a sufficient supply of physicians in communities throughout the state, Wisconsin's high rankings in health care access and quality would not be achievable."

In 2016, the Wisconsin Council on Medical Education and Workforce (WCMEW) released a report indicating that Wisconsin may face a shortage of more than 2,000 physicians by 2030. To address that shortage, one of that report's recommendations was to maintain public policies that preserve Wisconsin's medical liability environment because of their impact on retention and in-migration of physicians.

Included in the WCMEW report is a 2012 study by economists John Perry and Christopher Clark published in *Business Economics* that concluded, "We find robust evidence that noneconomic damage

caps impact physician populations. This finding is present in the majority of prior literature....The inference from this work is that physicians are less likely to move away from states and more likely to move to states that have implemented certain medical malpractice liability reforms.”

“The Wisconsin Council on Medical Education and Workforce report highlights the challenges that Wisconsin faces in ensuring Wisconsin’s supply of physicians meets patient demand for accessible health care,” said Chuck Shabino, MD, WHA chief medical officer. “The competition nationally to recruit physicians is fierce. Wisconsin must continue to focus on ensuring the aspects of our state that attract physicians, such as a favorable medical malpractice environment, are maintained.”

Unlike patients in most states or other successful plaintiffs in non-medical liability suits, Wisconsin patients who are injured by medical malpractice have access to unlimited economic damages through the Injured Patient and Family Compensation Fund. Funded exclusively by assessments on health care providers, the Fund places Wisconsin medical liability plaintiffs in a better position than patients in other states and other injured plaintiffs—recipients are guaranteed recovery. Other injured parties are not guaranteed recovery, left instead to hope that a tortfeasor has sufficient insurance coverage for not just non-economic damages but also all past and future medical costs, lost earnings, and other economic damages incurred by the injured party.

The public policy balance of guaranteed recovery for injured plaintiffs to better protect injured patients and a cap on non-economic damages to support accessible health care has served Wisconsin well and is key to Wisconsin’s comprehensive medical liability system. The current cap on non-economic damages was passed with bipartisan support in the Legislature and signed into law by Governor Jim Doyle in 2006.

“We are expecting that today’s decision will be reviewed by the Wisconsin Supreme Court, and we believe the Court will uphold the well-supported and bipartisan public policy balance set by the Legislature to help ensure accessible health care in Wisconsin,” said Borgerding.

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