Statement on Medical Malpractice Reform in New York State March 28, 20111
Special to AHA news

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The debate around medical malpractice reform too often ignores that the failure to act has public costs, not just private ones. The high premiums caused by excessive jury awards, the practice of defensive medicine, and the shortage of providers in some regions and specialties all add costs, both direct and indirect, to the Medicare and Medicaid programs. Tort reform should be part of the solution to the staggering budget deficits confronting legislators in Washington and many state capitals.

The New York State government came to this same conclusion when faced with a $10 billion budget deficit. In one of his first acts, Governor Andrew Cuomo appointed a Medicaid Redesign Team (MRT), a specially designated group of stakeholders charged with finding ways to save money and improve efficiencies. The group endorsed a package of malpractice reforms, including a $250,000 cap on punitive damages, that would achieve savings for hospitals and the Medicaid program; the package was supported by the governor and forwarded to the state legislature. The cap on "pain and suffering" awards was ultimately rejected in the final negotiations, but the other MRT recommendations stayed largely intact, including the establishment of a fund for the care of neurologically-impaired infants that should result in substantial premium savings for hospitals with high-volume obstetrical services. Our industry didn't get the comprehensive reform we were after, but for the state with perhaps the most hostile political climate toward malpractice reform, it's a start.

Truly comprehensive reform will have to come from the federal level. Congress and the Obama Administration should take note of the progress in New York and elsewhere -- that it is possible to break the stalemate on reform, and doing so can achieve savings for financially-stressed public insurance programs. Caps on punitive damages, as well as innovations such as specialty courts and "sorry works" initiatives, will lower premiums for hospitals and physicians. Medicare and other public health expenses will decline with the reduction in defensive tests and procedures, and patient access to services will improve in those specialty areas that have been witnessing a physician exodus. With an enormous budget deficit, a shaky financial future for Medicare and continued pressure from states to bail out their Medicaid programs, the time couldn't be more ripe for reform.