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Crs Report for Congress: Medical Malpractice Liability Reform: Legal Issues and Fifty-State Survey of Caps on Punitive Damages and Noneconomic

By Henry Cohen

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Medical malpractice liability is governed by state law, but Congress has the power, under the Commerce Clause of the U.S. Constitution (Art. I, A 8, cl. 3), to regulate it. In the 108th Congress, the House passed virtually identical bills (H.R. 5 and H.R. 4280) that would have preempted state law with respect to certain aspects of medical malpractice lawsuits, and it seems likely that the 109th Congress will also consider medical malpractice reform proposals. This report does not examine the effects of medical malpractice litigation or medical malpractice liability reform on the health care system or on the cost of liability insurance premiums. In other words, it does not consider whether tort reform would be a good idea. Rather, it explains specific tort reform proposals that have been included in past legislation, and discusses their individual pros and cons from a legal perspective. These proposals include imposing caps on noneconomic damages and punitive damages, permitting defendants to be held liable for no more than their share of responsibility for a plaintiff's injuries, requiring that damage awards...



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