



90 Broad Street ♦ Suite 401
New York, NY 10004
(212) 267-2801 ♦
info@insurance-reform.org
www.insurance-reform.org
(A project of the Center for Justice & Democracy)

MEDICAL MALPRACTICE LITIGATION: THE SIGNIFICANT COSTS OF ALTERNATIVE SYSTEMS

In their book *Medical Injustice: The Case Against Health Courts* (2007), Case Western Reserve professors Maxwell J. Mehlman and Dale A. Nance, find that placing all medical malpractice cases into alternative systems, like health courts, “would entail some huge potential increases in total system costs.” The authors find:

Overall costs would significantly grow.

- Taking health care proponents at their word that an alternative system will make it easier for negligently injured patients to obtain compensation, bringing so many more people into the process “would multiply the number of claims involving negligence by a factor between 33 and 50.”
- Even “health court advocates concede that, if the system actually compensated substantially more patients, it probably would not be cheaper than the tort system. The Republican Policy Committee states, for example: ‘The health court proposal is not about reducing costs overall (since many more people may be compensated at smaller amounts).’”

New bureaucracies would also create new costs.

- “Health court proposals involve the creation of a new judicial bureaucracy, including specially-trained judges, a cadre of experts to advise them, and what are effectively investigating magistrates located within hospitals or otherwise working with providers.”
- Costs “would certainly be substantial, vastly more than the public (taxpayer borne) judicial costs currently associated with the adjudication of malpractice claims,” which now account for only about four percent of all tort cases, tort cases being a small percentage of civil cases overall.

As cost would grow, patients would be compensated less.

- Assuming many more claims are filed under an alternative system, it is likely that average compensation per patient would have to be reduced in order to save system costs. The authors say that in order to save costs, “[A]number of processes can be expected to be implemented, processes that suppress the levels of patient recoveries below any fair measure of actual losses sustained.”
- But even if compensation per patient were cut 70 percent, “that still leaves total direct system costs multiplied by a factor of about 8.5, again as a low end estimate.”