



## [Will There Be a Major Overall of Medical Malpractice Liability? Obama Debt Commission's Proposal Is Sweeping Change. It's Scary and You Need to Know About This.](#)

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[First thing this month, President Barack Obama's debt commission issued a big report](#) regarding the huge amount of federal government debt — which no one can contest is astonishingly, amazing huge — and as part of its recommendations, there's a section dealing with medical malpractice liability. The [National Commission on Fiscal Responsibility and Reform](#) reports that \$2 billion could be slashed from the federal budget each year, with some changes to the current malpractice liability process.

[\(Read the complete report online, or download and print it as a pdf here.\)](#)

*What's up with the medical malpractice proposal?* The report is pointing to the current civil tort system — where injured victims or their loved ones sue doctors, hospitals, and other health care providers for errors they have made which resulted in serious injury or death. Medical malpractice lawsuits can involve some of the most tragic, emotionally-charged scenarios seen in any courtroom.

The commission, concerned with finding ways to cut that federal debt, are pointing at this ability of injured plaintiffs to sue those medical professionals that are responsible as being the cause of higher health care costs in the country today. How? Medical providers have to pay higher insurance premiums (malpractice coverage). Health care providers also charge for most things that they do (tests, etc.) to try and protect themselves from being sued. The report calls this "...indirect costs in the form of over-utilization of diagnostic and related services (sometimes referred to as 'defensive medicine')." "

*From the perspective of an attorney representing someone who has been harmed or had a loved one die, "defensive medicine" sounds like a good idea, probably has saved a life or two.*

**What the Report Want to Do.**

Within the “health care cost containment” section of the report by co-chairmen Erskine Bowles, a Democrat, and Alan Simpson, a Republican, is the following language:

**3.3.12 Medical malpractice reform.**

*(Saves \$2 billion in 2015, \$17 billion through 2020)*

*Most experts agree that the current tort system in the United States leads to an increase in health care costs. This is true both because of direct costs – higher malpractice insurance premiums – and indirect costs in the form of over-utilization of diagnostic and related services (sometimes referred to as “defensive medicine”). The Commission recommends an aggressive set of reforms to the tort system.*

*Among the policies pursued, the following should be included: 1) Modifying the “collateral source” rule to allow outside sources of income collected as a result of an injury (for example workers’ compensation benefits or insurance benefits) to be considered in deciding awards; 2) Imposing a statute of limitations – perhaps one to three years – on medical malpractice lawsuits; 3) Replacing joint-and-several liability with a fair-share rule, under which a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury; 4) Creating specialized “health courts” for medical malpractice lawsuits; and 5) Allowing “safe haven” rules for providers who follow best practices of care.*

*Many members of the Commission also believe that we should impose statutory caps on punitive and non-economic damages, and we recommend that Congress consider this approach and evaluate its impact.*

**Response by Consumer Groups.**

There is a growing outcry to this proposed legislation, as well there should be. Please read the following letter, sent on December 2, 2010, to the Commission by a large group of concerned organizations, which we provide to you here ([available online here](#)) in its entirety:

December 2, 2010

National Commission on Fiscal Responsibility and Reform

1650 Pennsylvania Ave NW

Washington, DC 20504

via email:

[commission@fc.eop.gov](mailto:commission@fc.eop.gov)

Re: Commission recommendation 3.3.12 medical malpractice liability reform

Dear Chairmen Simpson and Bowles and Members of the National Commission on Fiscal

## Responsibility and Reform:

We, the undersigned consumer and patient safety advocacy organizations, strongly oppose the Commission's recommendation 3.3.12 in its "Moment of Truth" report. The recommendation to impose cruel liability restrictions on patients injured by the medical errors of private medical workers and institutions demonstrates a significant lack of forethought about the consequences to the country's health care system as well as its fiscal health.

Last month, we expressed our concerns to the Commission regarding Chairmen Alan Simpson's and Erskine Bowles' previously released deficit reduction proposal, which dedicated a vague paragraph to recommending medical liability restrictions. Unfortunately, instead of removing the recommendation, the Commission's report identifies specific liability proposals and principles, each of which we discuss and disprove in the accompanying analysis. We urge all commissioners to reject the report if medical liability restrictions are included, and to offer proposals that represent true health care cost savings, such as efforts to reduce unnecessary medical errors.

The prevalence of medical mistakes continues to be an ongoing health care crisis, which is quickly turning into a fiscal crisis as well. In fact, a few days after the release of the cochairmen's proposal, the Department of Health and Human Services Inspector General (HHS) released a patient safety report illustrating that the frequency of medical errors in the U.S. health care system is a big contributor to the expanding deficit. HHS found that 1.6 million Medicare patients suffer injuries every year from medical mistakes, amounting to an annual taxpayer price tag of at least \$4.4 billion. While the Commission claims that limiting providers' liability would save \$17 billion through 2020, eliminating avoidable medical errors could potentially save \$44 billion over the same period.

Limiting patients' legal rights in the middle of these urgent circumstances will only worsen the safety and fiscal problems. Injured patients will be further restricted from seeking compensation from the private parties who caused the harm and the associated costs will shift to others. State and federal governments will have to be prepared to bear the brunt of covering patients' health care costs because the actual culprits will be let off the hook. As the HHS study indicates, Medicare already bears a substantial amount of the burden of paying for others' medical mistakes. If the restrictions are implemented, it will be forced to pay significantly more. Finally, medical providers, shielded from accountability as this proposal promises to do, will have no impetus to improve patient care, which will again increase medical mistakes and their associated costs.

We support the federal government's effort to practice fiscal responsibility, however, the medical liability recommendation only promises to be ineffective and dangerous. If the commissioners fully consider the consequences of these restrictions that shield negligent parties and shift the costs of care to government entities, they will reject the present proposal contained within the report.

Sincerely,

Alliance for Justice

Center for Justice & Democracy

Consumer Watchdog

National Consumer Voice for Quality Long-Term Care

National Consumers League

Public Citizen

US Action

Citizens for Patient Safety, Denver, CO

Coalition For Patients' Rights, Baltimore, MD

Connecticut Center for Patient Safety, Harford, CT

Empowered Patient Coalition, San Francisco, CA

HealthCare PSI, Springfield, MO

James's Project, Wayne, PA

Mothers Against Medical Error, Columbia, SC

MRSA Survivors Network, Hindale, IL

New Hampshire Patient Voices, Bow, NH

Ohio Infectious Disease Forum, Raleigh, NC

Patient Safety America, Houston, TX

Patients Right To Know, Centennial, CO

Save The Patient, Chicago, IL

South Carolina Voices for Patient Safety, Chesterfield, SC

Texas Watch, Austin, TX

Voice4Patients, Warren, ME

Woodymatters, Minneapolis, MN