



Issue brief

'Apology' legislation

What is "apology" legislation?

"Apology," or benevolent gesture, legislation would allow health-care providers to speak openly with patients following an unforeseen medical outcome without the fear of litigation based solely on the conversation. Specifically, the legislation (H.B. 495 and S.B. 565) would allow health-care professionals to apologize, explain or show compassion without these statements being permitted as evidence in a court of law.

Does "apology" legislation prevent patients from seeking legal action?

No. The legislation does not relieve doctors, hospitals, nursing homes or other providers of liability, nor does it take away a patient's ability to sue or pursue other legal action. It simply permits a health-care professional to communicate openly and honestly with patients and their families without fear that their statements will be used against them in court.

How will "apology" legislation help reduce malpractice lawsuits, lower health-care costs?

Research shows that anger—not greed—is the driving force behind most medical malpractice lawsuits, according to the Pennsylvania Health Care Association (PHCA). But health-care professionals have been advised by lawyers and insurers to "deny and defend" when an adverse situation arises out of concern that personal injury lawyers will use benevolent gestures or admission of fault against them in court. When a health-care professional appears uncaring or unsympathetic, patients are left feeling frustrated and angry. In many cases, an apology or expression of concern is all that patients really want when a medical mistake has occurred. In one study noted in attorney James Saxton's book *"Sorry Works,"* more than a third of those while filed suit said they would not have done so if they had been given an explanation and an apology.

In states that have benevolent gesture legislation in place, medical malpractice claims have gone down. At the University of Michigan Health System, one of the first to experiment with similar disclosure policies, existing claims and lawsuits dropped from 262 in 2001 to 83 in 2007. Costs for legal defense and claims have been cut by two-thirds, and the time spent resolving cases has been halved.

At the University of Illinois Medical Center, malpractice filings have dropped by half between 2007, when its disclosure program started, and 2009. And, in the 37 cases in which the hospital acknowledged a preventable error and apologized, only one patient had filed suit.

Reducing the number of medical malpractice lawsuits could lead to lower health-care costs.

Do other states have "apology" laws in place?

Thirty-five states, including neighboring Ohio, Maryland and Delaware, have passed apology legislation.

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