



To: Members of the Kansas Legislature

From: Jerry Slaughter; Executive Director
Dan Morin; Director of Government Affairs

Date: January 14, 2010

Subject: Cap on non-economic damages

We would like to take this opportunity to welcome you to Topeka for the 2010 legislative session. We look forward to working with you on issues that affect the health care of all Kansans.

As you may know, a medical malpractice case challenging the constitutionality of the \$250,000 cap on pain and suffering, or non-economic damages, is awaiting a decision by the Kansas Supreme Court. The cap on damages was enacted by the legislature in 1988, and although an earlier Court upheld its constitutionality, the current Court is expected to reverse that ruling and strike down the law.

The impact of this case on health care in our state will be significant. Since the enactment of the cap as part of a comprehensive tort reform package, Kansas' liability environment has been remarkably stable compared to other states. If the law is struck down, physicians, hospitals and other health care providers can expect their liability insurance costs to increase sharply, most likely doubling in a year or two. That would have serious consequences, threatening access to essential medical services, making it more difficult to attract and retain physicians in the rural and underserved areas, and driving defensive medicine and health care costs even higher.

We are expecting the Court to rule in such a way that it will be impossible for the legislature to restore the cap by amending the current law. Consequently, in order to re-enact this law that has worked well for the past twenty years, we would have no other option but to seek a constitutional amendment to make it clear that the legislature has the authority to enact sensible tort reforms. We are preparing such a resolution for introduction just as soon as the Court releases its opinion.

We will keep you informed about the status of this issue as we await the decision of the Court. If you have any questions, please do not hesitate to contact either of us.

Thank you.