Providers want Trump to stay out of tort reform

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President Donald Trump's tort reform proposal is being met with skepticism by providers who are criticizing the effort as a broken promise for state flexibility.

The Trump administration's proposed budget released Monday proposed to cap medical malpractice awards for noneconomic damages at $250,000, instill a three-year statute of limitations for claims, and exclude provider expressions of regret or apology from lawsuit evidence. All in all, tort-related reforms outlined in the budget are estimated to save approximately $31.8 billion over 10 years.

A chunk of the proposed savings stem from nixing unnecessary services and discouraging defensive medicine. The term refers to the practice of recommending a diagnostic test or medical treatment that the patient may not need, but is performed anyway to protect a physician against a malpractice suit that claims a doctor didn't do all they could to treat an illness.

But the proposed changes contradict the administration's earlier promises to reduce broad Washington directives to the states on how malpractice should be governed. Rather than dictate tort reform, the administration should be providing states with increased enforcement flexibility, according to Dr. Jane Orient, an internist and executive director of the Association of American Physicians and Surgeons, a far-right provider group.

"A bad federal law can do 50 times more damage than a state law," Orient said.

Tort law falls under state purview, and several have constitutional language addressing malpractice issues. In addition, at least 30 states already have some type of cap on malpractice suit damages.

If Trump's tort reforms become law, a state could legally challenge the changes for overstepping their sovereignty, according to Rachel Rose, a Houston-based attorney who focuses on healthcare liability issues.

Not everyone is opposed to federal tort reform. A federal mandate on malpractice caps will better protect doctors by providing more certainty and uniformity surrounding claims payout, according to Michael Stinson, vice president of government relations and public policy at PIAA, the trade group representing professional liability insurers. Caps now range from $250,000 to more than $700,000 and some states don't have limits at all. There are also some instances in which state laws allow the caps to be surpassed in the event there is a permanent injury or death.

Federal tort reform could also address malpractice issues in telemedicine or other practices that cross state lines, according to Stinson, adding that as telemedicine becomes more commonplace, malpractice claims will likely increase thanks to differing state laws.

More than 7 million patients will utilize telemedicine in 2018, compared to just 350,000 in 2013, according to Jackson Healthcare, a healthcare staffing and technology company.
Trump’s malpractice reforms would require legislation to become reality. The Protecting Access to Care Act, which passed out of the House Judiciary Committee in March, has many of the proposals outlined in Trump’s budget.

Some experts worry that federal medical liability reform could prevent states from making their own changes to tort law.

"We don't want federal law to be the ceiling for medical liability reform," said Dr. John Meigs, president of the American Academy of Family Physicians. "It should, instead, be the floor for medical liability reform."