

**Editorial**  
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**The next hurdle for malpractice reform**

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Just a few years ago it would have been unthinkable for a Democratic governor to sign a bill limiting medical malpractice lawsuit awards or for many Democratic lawmakers to support that kind of legislation. Democrats, after all, have been closely allied with trial lawyers who represent malpractice plaintiffs.

But recently Gov. Rod Blagojevich, surrounded by southern Illinois Democrats, signed legislation capping non-economic damages that juries can award.

They came to embrace ceilings after skyrocketing medical malpractice premiums discouraged doctors from practicing in Illinois. The shortage is particularly acute south of Springfield, where it's hard to find a neurosurgeon or obstetrician. The caps - \$500,000 for awards against doctors and a \$1 million limit against hospitals - are intended to lower insurance rates and encourage more doctors to practice in the state.

Before that can occur the Illinois Supreme Court will have to bless the new law. Two similar laws, passed in 1975 and 1995, have been struck down as unconstitutional on the basis that they were "arbitrary" and "not rationally related to legitimate government interest." Beyond that, the court ruled the caps discriminate against those most severely injured and violate the separation of powers by imposing the legislative will on juries. Those seem like big objections to overcome.

But the law and the landscape have changed since then. Arbitrary? Lawmakers tied the caps to tighter insurance regulations and doctor discipline. The state will have more control over rates than ever before. Government interest? Language in the bill specifically says caps are intended to promote the public welfare. It seems reasonable for the Supreme Court to find that having more doctors in underserved portions of the state is a legitimate government interest. Discriminatory? The caps would be limited to damages for pain and suffering, which would seem to affect the poor no more than the rich. There would be no ceiling on recovery for lost wages, continued care and medical bills.

The separation of powers argument is trickier, though it is a legislative prerogative to give courts direction in other areas; the General Assembly sets limits on criminal sentences, for example. Twenty-six states have found that caps meet constitutional standards.

Besides the law, the makeup of the Supreme Court has changed since 1995. Just last year, the most expensive judicial campaign in the state's history was seen as a referendum on limiting damage awards. Voters from southern Illinois elected a justice who presumably will be more sympathetic to caps.

With any luck, he and others of like mind will be able to convince a court majority that this legislation clears Illinois' constitutional hurdles. After 30 years of debate, Illinois needs reasonable medical malpractice reform.