



Oppose Tort Reform

What is Tort Reform?

In the legal system, a *tort* is defined as a civil wrong against an individual or a violation of an individual's rights for which some kind of compensation – or damages - may be obtained. In nursing home cases, the most common damages are noneconomic damages and punitive damages. Noneconomic damages are to compensate for pain and suffering, while punitive damages are designed to punish the person or entity that committed the wrong and stop further harm from occurring. *Tort reform* refers to efforts by state and federal legislatures to place limitations on the amount of damages that can be recovered by individuals in certain cases involving personal injury or the improper care or treatment of a patient by a health care provider. Tort reform would limit the amount of damages nursing home residents - who are among the most frequent and vulnerable victims of abuse and neglect in health care institutions – could receive. Several states have passed tort reform laws, and there are efforts to pass a national law to cap damages.

Why is Tort Reform Harmful to Long-Term Care Consumers?

Tort reform would harm long-term care consumers by:

- *Making long-term care facilities less accountable for harmful actions*

Government studies have repeatedly shown that state inspection agencies fail to cite or penalize facilities for harming residents, even when they find serious injuries; moreover, many serious problems are never cited at all. Often the courts are the only branch of government that holds nursing homes accountable. By reducing damages, tort reform would lessen the degree of nursing home accountability. Less accountability could lead to more, not fewer, injuries.

- *Limiting consumer access to the civil justice system*

Many residents who have been abused or neglected - or their families - do not file suit because they are unable to find attorneys willing to take their cases. Lawyers are increasingly unable to accept cases because the amount awarded for damages under tort reform will not offset the high cost of handling the lawsuit. As a result, residents or their families are left with no legal representation and are shut out of the civil justice system.

- *Limiting compensation for long-term care consumers*

Noneconomic damages are often the only compensation most nursing home and other long-term care facility residents receive. A recent study found that eighty percent of nursing home awards are for noneconomic damages for residents' pain and suffering because most residents do not have earned income to replace. Noneconomic damages compensate residents for very real injuries—such as the loss of a limb due to a deep and infected pressure ulcer, the loss of mobility due to a preventable fall, or severe pain and permanent impairment. They also compensate for the loss of a spouse or parent. These are very real damages and should not be subject to arbitrary limitations.

- *Protecting corporations, not consumers*

Damages, particularly punitive damages, must be large enough to deter future poor care. Tort reform proposals protect the pocketbooks of health care providers, including multi-million dollar corporations operating nursing homes, by decreasing the amount of damages they are required to pay. If corporate behavior is to change, the size of the damages must get the attention of the corporate boardroom; otherwise, corporations simply see the amount as the “cost of doing business.”

*The Consumer Voice URGES Congress to
Protect Residents' Rights by Opposing
Tort Reform*

For more information on this issue,

please visit <http://www.theconsumervoice.org/advocate/tortreform>

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