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Medical malpractice reform steers debate off course

BY TOMAS F. GAMBA AND HECTOR J. LOMBANA
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The debate over the Obama Administration's push for major changes to the American healthcare system has taken a perilous turn with the introduction of medical malpractice tort reform as part of measures being debated in Congress. It now appears initiatives aimed at curbing medical malpractice claims and awards will be included as part of the bills for broader changes, and these med-mal tort reforms are likely to be a significant boon for doctors and their insurers but a heavy burden for injured patients and their families.

Lawmakers in Washington should look to Florida as an example. Since caps on noneconomic damages and attorney fees were implemented in the state five years ago, malpractice claims paid by insurers have declined, and insurers have enjoyed consistent profits. Yet medical costs have continued to rise and are now among the highest in the nation, demonstrating that malpractice insurance premiums and jury awards make up a very small part of the overall cost of medicine.

While doctors have enjoyed lower insurance premiums and insurers have seen strong and steady profits, medical errors continue to claim thousands of lives every year, and serious errors happen more in the U.S. than in other rich countries, as the Robert Wood Johnson Foundation recently found. In Florida and other states with caps, the victims are finding it very difficult to retain qualified attorneys to take on their cases because the economics of the system have become heavily skewed in favor of the healthcare providers and insurers.

The president has said he believes doctors are driving up healthcare costs by practicing "defensive medicine" in which they perform more tests and procedures than may be needed so as to minimize the odds of being successfully sued. In response, he has directed the Department of Health and Human Services to call for proposals for demonstration projects that would improve patient safety and doctor-patient communication, ensure timely payments to injured patients and reduce insurance liability premiums for providers. Federal funds will be dedicated to some of these projects beginning early next year.

The demonstration projects that merit federal funding are those that will expedite claims resolution or early mediation in malpractice suits. These projects should put the onus on hospitals and large medical institutions to have adequate malpractice insurance and take full liability for patient errors. One of the best ideas is creating standards of care checklists to reduce errors and enable doctors to defend themselves against malpractice claims by demonstrating they adhered to the evidence-based guidelines.

We should also fund projects that encourage doctors to confess errors promptly, apologize to patients forthrightly and offer them fair compensation for injuries.

The reforms based on arbitrary caps on damage awards should be avoided. All Americans

enjoy fundamental rights to life, liberty and the pursuit of happiness, and when these rights are taken away at the hands of negligent caregivers who fail to adhere to the accepted standards of practice, victims and their families must be able to turn to our justice system for relief based on the specifics of their cases and not on preconceived arbitrary figures aimed at protecting doctors and their insurers.

In whatever fashion these malpractice reforms take shape, patients must retain the right to go to court and seek just compensation. Their ability to do so has proven to be the only effective means for deterring negligence by doctors, hospitals and other healthcare providers. Rather than focusing on protecting the finances of doctors and malpractice insurers, the reforms should focus on efforts to reduce medical errors and discipline doctors who make repeated mistakes. The most important goals should be to actually reduce medical errors and malpractice, not lawsuits.

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