

A remedy for medical liability reform

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The suggestion by President Obama to provide a paltry \$50 million to institute a medical liability pilot program is just another example of how insincere, deceptive and ignorant he remains on the substantive issues affecting our health care system. To infer that giving each state \$1 million to study the medical malpractice liability issues it faces is laughable. I would propose he look no further than Mississippi, Texas and California as models of reasonable tort reform that protects the rights of patients while being fair to trial attorneys and physicians.

What is indisputable is that there continue to be more lawsuits and larger settlements, especially damaging in a down economy. The current medical-legal climate has left physicians with little confidence that they won't be sued for the omission of tests or for treatments that they failed to perform. The result is an expansion in the practice of defensive medicine. Defensive medicine is defined as "the ordering of diagnostic or therapeutic measures primarily not to ensure the health of the patient, but as a safeguard against possible malpractice liability. This may include tests, prescriptions, hospitalizations and referrals to specialists that may not be medically necessary, but viewed as providing protection from a potential lawsuit."

Why do doctors find this necessary? Unlike other workers and professionals, physicians are not legally protected through their business, employer or insurance. Malpractice insurance covers their liability up to a fixed amount, occasionally, well below what a jury may award. Their reputations, careers and personal assets are at risk because they are individually liable for their medical decisions. As physicians work in an environment that promotes risk aversion, it is inevitable that costs increase, while quality and access to care decline.

These measures of protection by physicians certainly add significant expense to our health care system. The cost of defensive medicine and malpractice premiums to all health care providers and facilities is estimated to be \$200 billion to \$400 billion per year. Of course, this cost is reflected in higher health insurance premiums, which may add up to \$2,000 per year to a family's premium. Interestingly, research demonstrates that even in states that have instituted "traditional" tort reform, the problem is so endemic that physicians still practice the same amount of defensive medicine. This is precisely the reason why we must devise a system of compensation that is fair to injured patients yet protects physicians' decision-making.

I have seen many proposals for tort reform, but the model most likely to help us reduce the financial burden of defensive medicine while providing fair and expedient restitution to patients will incorporate the following steps. Steps 2 and 3 are based on our current workers' compensation system:

- Eliminate physicians' personal financial liability for unintended errors.
- Have medical review boards decide whether negligent patient care has occurred.
- Have a non-physician board determine fair patient compensation.

If Mr. Obama is serious about this issue and truly wants to achieve "comprehensive" health care reform, Congress must bypass the wasteful Band-Aid approach of pilot studies and either adopt the tort-reform remedies of the aforementioned three states or implement a system based on the workers' compensation program. Endorsing proven methods for medical liability reform would require a bold demonstration of presidential leadership and principle that certainly would raise the ire of his party's dominant campaign donors: trial lawyers. Taking the above effective steps would be a tremendous good-faith gesture in bipartisanship and would be a catalyst in moving the health care reform process forward.

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Docs4PatientCare is a 501(c)6 organization of concerned physicians committed to the establishment of a health care system that preserves the sanctity of the doctor-patient relationship, promotes quality of care, supports affordable access to all Americans, and protects patients' personal health care decisions.

