

Healthcare and Medical Liability

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The American view of justice is to let everyone hire the best legal gunslinger and duke it out. But it may be fairer to create a more consistent system without the unpredictable and sometimes unjust results you get now.

The current healthcare system, expensive and confrontational, discourages doctors from owning up to errors, thereby missing the opportunity for many physicians to learn from another's mistake. Perhaps more than any other aspect of civil justice, the medical malpractice system needs to be overhauled, protecting doctors from liability for injuries they did not cause, insuring the right of patients to fair and timely compensation and encouraging physicians to share information that could improve the practice of medicine. Drastic changes are required, perhaps eventually leading to a no fault system, at least for less serious cases. Medical liability has become a crisis because the current medical litigation system is out of control. Medical liability awards are on the rise together with the skyrocketing insurance premiums. In some places medical liability insurance is unavailable and this has struck fear in doctors across the country. An atmosphere such as this has put patient access to medical care in jeopardy. Physicians are no longer performing complex and high-risk medical procedures. Doctors, trauma centers and other medical providers are closing their doors. Many doctors are also moving to states with more favorable medical liability climate. The pervasive crisis scenario has put the state of America's health now and in the future at risk. This has become truly a national problem that requires a federal solution. Every American pays for the cost of the current medical litigation system. States face significant barriers to implementing medical liability reforms. The federal government must take the initiative for liability reform which in turn will save federal government money.

Medical liability reform legislation should be patterned after California's MICRA. MICRA fully compensates injured patients. MICRA significantly minimizes premium increases as proven over many years. Furthermore, federal government review has validated that MICRA works. Justification for federal reform legislation, such as this, is based on overwhelming support by Americans for a MICRA-style solution.

Physicians, hospitals, insurers, the Bush administration and most Republicans say that tort reform that includes a \$250,000 cap is desperately needed to stop doctors from leaving certain states or from discontinuing services. They point to California's experience with the \$250,000 cap on non-economic damages-the state has not seen the same rate of insurance premium increases as states without such a limit-as the reason why a federal

award ceiling is needed. Having a few people get huge and arbitrary awards encourages a culture of lawsuit gamblers. Awards are related more to a lawyer's ability to exaggerate a client's pain and suffering than to the actual economic losses. Medical claims settlement increased 43% in the year 2000 alone. Jury awards increased from 1.5 million to over 6 million in a decade. Business leaders outside medicine fear the same pressures. Schools, hospitals, and non-profit agencies have curtailed services to avoid legal exposure. Over $\frac{3}{4}$ of Americans want general tort reform according to recent polls, and nearly 80% are concerned about reduced access to medical care. Despite such clear constituency opinion, politicians have held back on reforms because of pressure from well-financed, contrary interests.

We have reached a very important juncture in the evolution of the U.S. health care system. At a time when lifesaving scientific advances are being made in nearly every area of health care, patients across the country are facing a situation in which access to health care is in serious jeopardy. Thus as the Congress deliberates the many facets of this issue, we should continue to keep in mind that this issue is not about doctors, lawyers and insurance companies. Rather, it is about patients and their ability to continue to receive timely and consistent access to quality medical care. By reforming medical legislation system, the crisis will ultimately be abated. Patients are calling for reform. Doctors are calling for reform. President Bush is calling for reform. We urge the Congress to heed these calls and at the minimum, pass the **Health Act** so all Americans are able to find a doctor when they most need one. Ultimately when the question is "Will your doctor be there?" is asked, the answer must be an unqualified yes. Our mission is to improve access to quality medical care for all Americans at an affordable price. If we do the same to fix the larger, structural problems with the Medicare program, Congress will have taken great strides to ensure continued access to quality healthcare in our country. The practice and promise of medicine depend on it. At stake is the health, indeed the very lives, of our patients.

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