

Opinion: Doctors, Patients Need Legal Reform
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Doctors in America are spending more time in courtrooms – and less time with patients – as personal injury lawyers wage a war on providers that's harming the quality of health care. Some states are taking steps to curb this abuse, and other states have good reason to follow their lead.

One of eight doctors is hit with a medical liability lawsuit every year. Doctors prevail in 90 percent of cases that go to trial, but the average defense cost per trial approaches \$100,000.

From 1986-2002, the average insurance payment for a medical liability claim more than tripled, from \$95,000 to \$320,000. Yet, in 40 percent of all cases, there is no evidence of medical error or injury. The average jury award for medical liability also skyrocketed to nearly \$638,000 in 2006, the most recent year for which data is available. The average settlement was about \$336,000. Insurance premiums for doctors and hospitals have jumped to keep pace with increasing awards.

Suing health care providers has other costs, too. Most doctors – 93 percent, by one estimate – practice defensive medicine, meaning they order unnecessary tests, referrals and procedures to protect themselves against allegations of negligence. Such overtreatment adds \$191 billion each year to the nation's health care bill and 3.4 million Americans to the rolls of the uninsured.

An efficient medical tort system is vital because it compensates injured patients and deters negligence. But today's system is overly expensive and rife with abuse. Lawyers flood courthouses with bogus lawsuits, driving up costs and compromising the quality of care.

Fortunately for patients, some states have begun to fix their problems.

Idaho requires a pretrial hearing panel review pending cases to weed out meritless claims that needlessly clog courts and to resolve legitimate disputes without lengthy and costly trials. By ensuring that judges and juries consider only relevant cases, screenings save the legal system money, lower insurance premiums and lower costs for patients.

Michigan requires expert medical witnesses in tort cases to be licensed and board-certified in a similar specialty as the physician being sued. Such witnesses also must be actively practicing or teaching in the year preceding the lawsuit. Such rules ensure that doctors get a fair shake, preventing quacks from swaying a verdict.

When insurance premiums become too burdensome, physicians retire or move to states with more balanced legal climates. In some cases, patients are left with no access to local care. To prevent this outcome, some states, such as California, limit noneconomic-damage awards or punitive awards. This helps retain the physicians they have and attract new

ones.

Texas, for example, welcomed more than 18,000 doctors after adopting damages caps in 2003. Indeed, states with caps have 12 percent more physicians per capita than states without them, according to a study from the U.S. Department of Health and Human Services.

Caps also lower health care costs. Research from Stanford University professor Daniel P. Kessler and Brookings Institution scholar Mark McClellan shows that caps and other reforms can lower medical expenditures by 5 percent to 9 percent without adverse effects on patients.

Some progress is evident, but some lawyers continue to file bogus lawsuits, driving away good doctors, increasing health care costs and reducing patient access to quality care. To improve health care and lower costs, legislators in abusive states should make medical liability reform a top priority.