

Beyond Health Care Reform: What Could Medical Malpractice Reform Mean for Us?  
By R. Gerald Chambers, Jr.

What impact could President Obama's proposed health care reform have on the future of medical malpractice cases? Well, I hope that you are not expecting me to provide an answer to that question! After all, no one in Washington has successfully tackled this question. In fact, one could argue that health care reform and medical malpractice reform are two separate issues, and that neither is relevant to the other.

Health care reform was a hot topic even before the current Administration took office, and has only been escalated by President Obama's attempts to pass his bill. While we've heard several national addresses and seen town hall meetings erupt into near violence, little has been said about medical malpractice reform. Neither the House nor Senate bills offer workable alternatives in this area, which begs the question: "What would medical malpractice reform attempt to solve?"

For example, some might say that malpractice reform should tackle jury awards. Already, 35 states have capped damage awards in medical malpractice claims, and many advocates for health reform would prefer to keep this decision in the hands of local governments. However, in his recent address to the American Medical Association (AMA), President Obama said he would not endorse limiting jury awards in malpractice cases. Proponents of caps on liability awards for noneconomic damages argue that it will lead to lower premium rates and fewer malpractice lawsuits being filed. Additionally, constitutional challenges to such caps exist as well.

Would malpractice reform actually lower the costs of high premiums for physicians? The debate on this topic rages with conflicting reports. Americans for Insurance Reform recently announced that, with adjustment for inflation, medical malpractice premiums are nearly the lowest they have been in 30 years. However, the AMA reports that medical liability premiums increased more than 1,029% throughout the country from 1976 through 2007, except in California, where premiums grew by less than one-third of that amount during the same span. This stagnant growth is attributed to reasonable limits on non-economic damages that have been in place for more than three decades. These reductions in premiums could have an impact both on physicians' fees and overall health care spending.

Much has been said by proponents and critics of health care reform alike about defensive medicine, a practice in which a doctor authorizes tests – sometimes without apparent merit – to reduce his or her risk of being sued later by the patient. Physicians and policy makers often point to this as one of the most significant factors for the soaring cost of health care. Would medical malpractice reform reduce this practice? While the answer remains to be seen, it is difficult to capture the actual cost of defensive medicine since so many factors – including the minimization of risk – contribute to which and how many tests and exploratory procedures are ordered by physicians.

Another important question is whether malpractice reform could reduce the number of medical errors. One of the most obvious ways to reduce malpractice claims is to reduce the number of errors made by medical professionals. Prudent risk management, combined with technological

advances, has led to significant progress in this area, but perhaps legislation could provide viable alternatives as well.

There is no doubt that other potential objectives could be addressed as well in this debate. The likely outcome of this issue is unclear, but its potential impact immense.

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