



THEIR VIEW: Cato slams caps on med mal awards

10/27/2011

By Andrew Cochran

WASHINGTON -- "Reducing physician liability for negligent care by capping court awards, all else equal, will reduce the resources allocated to medical professional liability underwriting and oversight and make many patients worse off. Legislators who see mandatory liability caps as a cost-containment tool should look elsewhere."

That's the conclusion of a new study released by the Cato Institute, the most respected libertarian think tank in Washington, declaring that capping medical malpractice damages is a very bad idea for consumers, and further declaring that awards in medmal lawsuits aren't excessive compared to actual damages.

This study will rock the AMA's world, even as it continues to press Congress for special protection through an unconstitutional limit on awards in all health care-related cases. The study wasn't conducted by trial lawyers or a bunch of liberals, but by an academic for the Cato Institute, which has lots of fans among the new House Republican majority and among the GOP Senate minority.

Read it yourself and send it to your favorite tort reform proponents. Here are selections from the Executive Summary:

Supporters of capping court awards for medical malpractice argue that caps will make health care more affordable. It may not be that simple. First, caps on awards may result in some patients not receiving adequate compensation for injuries they suffer as a result of physician negligence. Second, because caps limit physician liability, they can also mute incentives for physicians to reduce the risk of negligent injuries ...

This paper reviews an existing body of work that shows that medical malpractice awards do track actual damages. Furthermore, this paper provides evidence that medical malpractice insurance carriers use various tools to reduce the risk of patient injury, including experience rating of physicians' malpractice premiums. High-risk physicians face higher malpractice insurance premiums than their less-risky peers ...

In particular, caps on damages would reduce physicians' and carriers' incentives to keep track of and reduce practice risk. Laws that shield government-employed physicians from malpractice liability eliminate insurance company oversight of physicians working for

government agencies ...

There's even more in the body of the study, such as:

Some observers are skeptical that medical malpractice awards are the driving force behind excessive tests and procedures, claiming that physicians deliver these services because they are risk-averse, to please patients, or to generate additional income rather than to avoid liability.

Furthermore, defensive medicine is not necessarily undesirable. A well-functioning malpractice system would not eliminate defensive medicine. Rather, it would discourage the use of inefficient defensive medicine, where the expected costs of a test or treatment exceed the expected benefits, and promote efficient defensive medicine, where expected benefits exceed expected costs.

Opponents of damage caps rightly point out that caps shift the costs of malpractice injuries from negligent providers to their victims.

The study recounts the moving story of a tort reform lobbyist who became the victim of his success in capping damages after he had suffered from medical negligence, and later wrote, "Make no mistake, damage caps ... remove the only effective deterrent to negligent medical care."

It also slams state medical boards for letting bad doctors continue to practice. "State medical boards do a poor job of informing the public about high-risk physicians, often to the point of protecting those physicians from public scrutiny. Another mark against the state system is that the regulatory apparatus can be manipulated by special interest groups to limit competition through scope-of-practice restrictions."

Every Member of Congress, especially those on the deficit reduction "Supercommittee," should be forced to read this study.

Cochran operates a website called [The 7th Amendment Advocate](http://www.7thamendmentadvocate.org). Its goal is to educate the public and policymakers on the centuries-long history of the right enunciated in the 7th Amendment to a jury trial for civil suits, the accelerating erosion of our 7th Amendment rights, and current issues illustrating the problem and need for restoration of the Founders' original intent. It can be found at www.7thamendmentadvocate.org