

OPINION EXCHANGE

EditorialOpinion

Medical Testing

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It may be impossible to get Democrats and Republicans to agree on even whether there is a medical malpractice insurance crisis in this country, let alone agree on what to do to fix it, following a recent General Accounting Office report.

Republicans cite American Medical Association claims of widespread problems resulting from rising malpractice insurance premiums. The doctors' organization said in March that 18 states were in a "full-blown medical liability crisis."

But a General Accounting Office study of nine states — five of which are AMA-labeled crisis states — came to a somewhat different conclusion. Congressional investigators cited "localized but not widespread access problems." The report added that these instances "often occurred in rural locations, where maintaining an adequate number of physicians may have been a long-standing problem."

Additionally, investigators found that "some reports of physicians relocating to other states, retiring or closing practices were not accurate or involved relatively few physicians."

The study found that the growth in recent years in premiums and payments by insurance companies was slower in states that have enacted limits on malpractice awards. But it said it could not determine whether the differences were the result of the state-passed laws or other factors.

The report was requested by three House Republicans who support limits on malpractice damage awards. Not surprisingly, they have interpreted the findings as supporting the need for tort reform.

But if anything, the report seems likely to stiffen the resistance from Democrats who think the "crisis" is a manufactured one, part of a pay off to HMOs and insurance companies.

David S. Casey Jr., president of the American Trial Lawyers Association, issued a statement saying that the GAO report "has now shown that the medical malpractice 'crisis' is a political fabrication created for political ends."

AMA's president, Dr. Donald J. Palmisano, countered with a statement saying that the GAO report "confirms that America's medical liability crisis is causing access to health care problems in high-risk medical specialties."

All of which brings us to U.S. Sen. Mike Enzi, Republican, of Wyoming, and his proposed remedy. Enzi maintains that even those in the Senate who have opposed reforms agree that the system is not perfect. So he has introduced innovative legislation designed to create a new, more reliable system of medical justice.

"Let's face it, our medical litigation system is broken. It doesn't work for patients or healthcare providers. Even worse, it replaces the trust in the doctor-patient relationship with distrust and fear, fear of the law," said Enzi.

Enzi's "Reliable Medical Justice Act," S. 1518, would take a fresh approach by encouraging state solutions. It would do this by funding for states to create demonstration programs to test alternatives to current medical tort litigation.

Enzi's bill outlines three possible model programs that the Secretary of Health and Human Services may fund:

- Early Disclosure and Compensation – a state would establish a program to provide health care providers with immunity from lawsuits in exchange for making a timely offer to compensate an injured patient for his or her net economic loss, plus a scheduled payment for pain and suffering if appropriate. Patients could still go to court if a provider chose not to make an offer of compensation under this model.

- Administrative Determination of Compensation – a state would set up classes of avoidable injuries and establish an administrative board to resolve claims related to those injuries. The state would have the option to choose whether to administer the program as a fault-based or no-fault model. The administrative board would develop a schedule of compensation that would include payment for the patient's net economic loss, plus a scheduled payment for pain and suffering if appropriate.

- Special Health Care Court – a state would establish a special court for adjudication of disputes over injuries allegedly caused by health care error. The state would ensure that the presiding judges have expertise in and understanding of healthcare. Such judges would make binding rulings on causation, compensation, standards of care, and related issues.

Under Enzi's bill the Secretary of Health and Human Services would also have the option of approving an alternative plan proposed by a state if the state sufficiently demonstrates that the plan would be an improvement over the current system.

"We clearly have a crisis on our hands. While we continue to debate in Washington, we ought to lend a hand to states and encourage them to create alternatives that would be more fair and predictable for both patients and healthcare providers," says Enzi.

For every dollar paid in malpractice insurance premiums, about 60 cents goes to legal fees, court costs and other administrative expenditures.

"It's time for a change. We need a system that restores a sense of order and proportion. My bill would put us on that path," says Enzi.

His state-based proposal could be the right pill, one both Democrats and Republicans could swallow. □