

Tort reform must be included in health care discussion

As Congress discusses health care and how to change it, attention is on the continuing escalation of costs. The nationwide feeling that “we’ve got to do something” arises because medical costs are rising much faster than any other sector of the economy.

Why? Contributing factors include greater life expectancy, burdensome paperwork and especially, defensive medicine, which is driven entirely by fear of lawsuits.

A doctor faces the very grim reality of getting sued into bankruptcy if he or she misses a diagnosis, and that’s what causes the defensive strategy. People often quip about a doctor “playing god,” and hence expect perfection. That may be incorrect reasoning, but very large financial awards testify that plenty of jurors think that way. Any error by a doctor is a “fortune cookie” for a patient.

Being a doctor in clinical practice can be a precarious profession. Therefore, doctors buy expensive malpractice insurance. In addition, they also engage in defensive medicine. That absolutely needs to change; doctors can’t conduct their practice with a sword hanging over their necks.

The solution is to take the fear of lawsuits out of the picture. If it weren’t so easy to sue a doctor for not being perfect, then doctors would cease ordering expensive, marginally-interesting tests. What we need is tort reform. Here’s one startling opening bid: Make it almost impossible to sue a doctor; take away the catch-all charge of “negligence.” Shift the burden of proof to the plaintiff. When lawsuits start getting dismissed, malpractice insurance costs will drop and irrelevant unnecessary testing will cease.

Unfortunately, tort reform is nearly impossible to pass through any legislature, federal or state, because they’re made up primarily of lawyers, who oppose tort reform.

Now consider the alternative: allow the lawsuit game to continue, but cut medical

costs by rationing health care. The obvious question, “who will lose out in the rationing?”

Formerly, withholding care and letting someone die was “unthinkable.” But with costs spiraling out of control, something has to give. Already there are statistics suggesting that 80 percent of medical expenses occur during the last year of life. That final year is an obvious place to save money by withholding treatment. A taxpayer at age 40 doesn’t think about living to be 83. There will be creeping “adjustments,” devised by medical-ethics boards, that will effectively bring about rationing of health care. The definitions of “futile care” will expand to cover more and more conditions of old age. Patients with Alzheimer’s or ALS will be painlessly terminated, and everyone will “be understanding.”

The reality will become that old people will be expected to die and get out of the way. That has been the accepted custom in China for thousands of years, where human life has much less value. In America we thought we were better than that. But financial limitations are going to force the change in ethical values, even in Catholic hospitals.

The only way to avoid this gloomy future is via tort reform. It will take a colossal grass-roots effort to move Congress in that direction.

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