



Health Stew

John E. McDonough on health care policy, politics, and more

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MASSACHUSETTS HEALTH POLICY

Welcome News on Medical Liability Reform

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Today's announcement by the Massachusetts Medical Society and six other major health care organizations of a new approach to medical liability/malpractice is a welcome event and breakthrough.

Patients harmed by medical errors at Mass. General Hospital, three Baystate hospitals in western Mass., and three Beth Israel Deaconess hospitals will be offered an apology and financial compensation as an alternative to litigation. This program is modeled on a ten-year successful model in Michigan. Development of the program was supported by a \$300,000 federal grant from the Obama Administration. [Michelle Mello](#), my colleague at the Harvard School of Public Health, will be the principal evaluator.

It is rare when I give a talk on health reform or the Affordable Care Act that the topic of malpractice does not come up. The ACA does not include the kind of liability changes promoted by Republicans, though it does include support for a demonstrations of new liability alternatives -- though the Obama Administration found alternative funding for the demos when Congress could not agree on how to appropriate the funding.

There is broad agreement across the land that our current medical liability (physicians hate the word "malpractice") system does not work well. Every year, our U.S. health care system produces vast numbers of patients injured during medical care through no fault of their own. Most injured patients receive no compensation, and those who do see most of their financial awards lost to litigation costs, including attorney fees. Often, patients sue because it is the only way to find out what actually happened that led to their injuries.

The Republican-favored approach -- which House Republicans are advancing right now -- is to impose strict limits on pain and suffering awards to patients under the guise of curbing "frivolous lawsuits." Yet these arbitrary Texas/California-style caps don't discriminate in

any way between frivolous and non-frivolous suits. They do discriminate, though, against non-working and lower-income patients; when the only recoverable costs are medical and economic losses, higher-income patients will still find legal representation while lower-income patients will find themselves unable to find lawyers who will agree to represent them.



That's why the "disclosure, apology, and offer" (DAO) plan is welcome -- an alternative to the stale and limiting debate over arbitrary and discriminatory caps. And congratulations to Dr. Alan Woodward, former President of the Mass. Medical Society, who has been spearheading this effort for a number of years. This is the kind of initiative that raises objections from both side of the political spectrum -- both physicians and trial attorneys. Alan brings a long history of leadership and activism for the public good, and he's comfortable taking the flak from both sides to move forward.

Congratulations to everyone involved in this, especially to Alan.

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