



Tort Reform – Not a Health Care Panacea

Written On October 14, 2009 By [Bob Kraft](#)

An editorial in the [Salt Lake Tribune](#) provides insight into the current debate on the effect of medical malpractice on the costs of health insurance. The editorial puts things into perspective by pointing out that the total savings if all medical malpractice claims were to be eliminated would be only ½ of 1% of the total costs. Here are excerpts:

U.S. Sen. Orrin Hatch is on a mission to reform medical malpractice litigation. He got some supporting evidence the other day from the Congressional Budget Office, which estimated that a package of medical malpractice reforms could save the federal budget about \$41 billion in health care costs and increase federal tax revenues another \$13 billion, both over a 10-year period.

That could pay for a lot of swine flu vaccine. But to put the numbers into perspective, the CBO estimates that the package of reforms it studied would reduce total national health care spending by about .5 percent (one-half of 1 percent). When it comes to health care, any reduction in rocketing costs is a good thing, but reforming malpractice law is hardly a panacea.

The other side of the coin is that doctors and hospitals regularly kill people through their negligence. In 1999, the Institute of Medicine of the National Academies reported, "Based on the findings of one major study, medical errors kill some 44,000 people in U.S. hospitals each year. Another study puts the number much higher, at 98,000. Even using the lower estimate, more people die from medical mistakes each year than from highway accidents, breast cancer, or AIDS."

There's a reason why there are medical malpractice suits. People, including doctors, make mistakes.

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Still, one reason for malpractice reform is to reduce the number of unnecessary tests and procedures that doctors order to protect themselves in case of malpractice suits. The CBO says the evidence that doctors practice so-called “defensive medicine” is mixed, but it probably does exist.

Another is to reduce the cost of malpractice insurance.

The goal should be to reform the process without denying people who have been injured or killed their day in court and just compensation.

One reform would cap awards for noneconomic damages, such as pain and suffering. Utah already caps these damages at \$480,000. Another would replace joint-and-several liability, which allows a plaintiff to recover the entire amount of a damage award from any one of the responsible parties, with a fair-share rule. There also could be time limits on how long after an injury was discovered that a suit could be filed.

These all would save money. But one study cited by the CBO says they also could increase the nation’s mortality rate, presumably because health-care providers would not be as careful. Another study says that wouldn’t happen.

Not an easy gamble, is it?