



Health Care – Tort Reform Is Not The Answer

Written On August 26, 2009 By [Bob Kraft](#)

In a column in the Baltimore Sun today Jay Hancock discuss some of the [myths about health care reform](#). One is that “tort reform” would significantly cut the costs of medical care in the United States. His conclusion is that it would make little difference. Here are the relevant paragraphs from his article:

“Why is it ... in this grand health care debate we hear not a word about one of the worst sources of waste in American medicine: the insane cost and arbitrary rewards of our malpractice system?” syndicated columnist Charles Krauthammer asked last month.

Actually we hear plenty about tort reform – fixing the laws pertaining to medical malpractice and other personal injury. Talk radio is full of it. Krauthammer wrote about it again this month. I get reader e-mails all the time asking the same question.

There’s lots to talk about. Malpractice awards and “defensive medicine,” in which doctors over-scan and over-treat patients to fend off lawsuits, cost tens of billions a year.

Trial lawyers bring dubious cases along with deserving ones. Juries deliver nonsensical verdicts. Every few years, malpractice insurance costs drive neurosurgeons or obstetricians to retire, move to other states or otherwise withhold badly needed care.

There is nothing about tort reform in the Democrats’ health care legislation. No accident there. Trial lawyers give millions to Dems and hardly anything to Republicans.

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But tort reform is not the solution to the health care crisis. The absence of tort reform is not a reason to reject what's going on in Washington.

"Tort reform as discussed in the United States would probably have very little impact," says Gerard Anderson, a professor at the Johns Hopkins Bloomberg School of Public Health. "The states that have enforced tort reform have about the same amount of litigation – and the awards are comparable – as states that don't."

A more drastic malpractice makeover would deliver substantial gains – but only once. New Zealand has a no-fault medical injury system in which lawsuits are essentially banned and experts decide how much to award victims. But even such a system, which nobody is talking about in the United States, would cut health care costs by maybe 7 percent at the most, Anderson said.

That includes costs from defensive medicine. At a time when employers and patients often see medical costs rise by double-digit percentages every year, 7 percent is a footnote.

The nonpartisan Congressional Budget Office, as usual the best source for this kind of analysis, says malpractice costs make up only 2 percent of health care spending. "The evidence available to date does not make a strong case that restricting malpractice liability would have a significant effect," the CBO says.

Even WellPoint, the insurance giant whose CEO likes to complain about malpractice lawsuits, says litigation and defensive medicine "are not considered a recent significant factor in the overall growth of health care spending."