

Opinion

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Register Editorial

Tort reform is not the answer

It would hurt right to redress, and save little money

Dr. Thomas Carlstrom has been keeping good notes. During a single day a few weeks ago, the Des Moines neurosurgeon, ordered about \$10,000 worth of what he calls "CYA" tests. That's an acronym for "Cover Your A--" medicine. He listed MRIs, CAT scans and blood work among the tests he said were not medically necessary, but he felt he needed to order to prove he did a thorough job in case he later faced a lawsuit.



Carlstrom

He took the calculations a step further. If the roughly 3,000 other neurosurgeons in the country order \$10,000 worth of unnecessary tests every day over 100 working days in a year, it would add \$3 billion to the country's health bill. It would be spending on so-called "defensive medicine."

The information he shared with

a Register editorial writer is part of an ongoing conversation we've had with Carlstrom about medical malpractice reform — generally proposals to cap the amount of money in non-economic damages a patient can collect from a malpractice lawsuit.

We asked the 63-year-old physician — who has been sued 13 times in 28 years — if he would change the way he works if someone could only collect, say, \$250,000 in these damages rather than potentially millions.

Carlstrom said he doubted it.

But here's what he'd like to see: He supports some kind of "loser pays situation" where the person filing a lawsuit has some financial skin in the game.

"People can sue us without any consequence whatsoever to them, and it's no cost to them," he said.

It is difficult to figure out how often doctors engage in "CYA" medicine. What one considers good medicine, another could

consider defensive medicine. Plus, the country pays doctors in a "fee-for-service" system that, as the name implies, gives them a fee for each service they provide. It's a built-in financial incentive to provide more care and conduct more tests.

As the debate over health-care legislation rages in Congress, there has been no shortage of calls for tort reform — including calls from Iowa Sen. Charles Grassley. In fact, among the long list of reasons the senator recently cited for voting against health reform legislation in the Senate was that it doesn't reward states with extra Medicaid dollars if they pass medical-malpractice reform.

Grassley and others argue tort reform could hold down health-care costs.

But what might be saved is relatively small — and comes at the expense of injured Americans' right to have their cases heard

and decided by a jury of their peers.

A new Congressional Budget Office report concluded a package of tort reforms that included caps on punitive damages "would reduce total national health care spending by about 0.5 percent."

Of that, 0.2 percent would come from reduced premiums insurance companies charge physicians — assuming they pass these savings along to doctors. The remainder — 0.3 percent — the CBO estimates would come from using less health care. However, the CBO also cited a study that concluded reducing malpractice liability would increase the number of Americans who die by 0.2 percent.

The truth is some Americans are injured by health-care workers. They contract infections when hospital workers don't wash their hands. They have the wrong foot removed in an amputation. They are victims of botched surgeries

Iowa's record

Calls for medical-malpractice reform assume the public believes the courts are clogged with "frivolous" lawsuits against doctors. However, information compiled by the Iowa Association of Justice from Iowa court records shows medical and dental malpractice cases accounted for only 4.6 percent of tort cases in 2008.

From January 2008 through March 2009 in Polk County, there were seven verdicts for medical or dental malpractice. One dental malpractice case awarded about \$47,000 to the injured patient. Another awarded about \$200,000 to four people, and included burial expenses but no damages for the loss of quality of life. In the other five, the court ruled in favor of the defendants.

and negligent practitioners and preventable medical errors.

These Americans have a right to pursue their complaints in the U.S. court system. Doctors do not deserve special protections from Congress in the event of such complaints.