

11-2-2009

Health Care, Medical Malpractice and Conservative Greed

Joanne Doroshow

Health Care, Medical Malpractice and Conservative Greed

11/02/2009 12:49 pm ET Updated May 25, 2011

Remember when all of those “conservative” Members of Congress and Governors screamed and yelled about the stimulus [only to grab](#) as much money as they could as soon as it passed? What do you call that kind of thing? Hypocrisy? Political expediency? Greed? Are we seeing a repeat of the same shameless behavior on health care?

A little personal background first. I’m as disappointed as the next guy at the state of health care legislation. As one of [Sicko’s](#) Associate Producers, responsible for fact-checking the film and dealing with media smears, like from [CNN’s Sanjay Gupta](#), you’ll never convince me that anything short of single-payer is a huge mistake. But strategy-wise, I’ll defer to the [many great activists](#) with far more expertise than I, who are trying to make sure the final bill is as effective as possible .

I’ve downsized my day-to-day work to something that not many people pay attention to, but is the plight of hundreds of thousands of health care consumers each year: unsafe medical care, i.e., “medical malpractice.”

ADVERTISING

Ads by Teads

It is astonishing that the health care bill could contain anything that could lessen the accountability of unsafe hospitals or try to solve insurance problems on the backs of injured patients and further add to their misery. Yet unfortunately, due to the lobbying power of organized medicine and the insurance industry, and the apparent continuing muscle of some right-wing politicians, we are actually having to fight this battle long after the exit of [George W. Bush and Karl Rove](#).

What do these people want? They want to severely limit compensation to injured patients, like they did in California in 1975 and have continued to do, state-by-state, for the last 35 years. Now, almost every state has *already* made it difficult for medical malpractice cases to go forward. The widely-quoted *New Yorker* [magazine piece](#), which explored why McAllen, Texas, “was the country’s most expensive place for health care,” told this story pretty well. The following exchange took place with a group of doctors:

“It’s malpractice,” a family physician who had practiced here for thirty-three years said. “McAllen is legal hell,” the cardiologist agreed. Doctors order unnecessary tests just to protect themselves, he said. Everyone thought the lawyers here were worse than elsewhere.

That explanation puzzled me. Several years ago, Texas passed a tough malpractice law that capped pain-and-suffering awards at two hundred and fifty thousand dollars. Didn’t lawsuits go down? “Practically to zero,” the cardiologist admitted.

“Come on,” the general surgeon finally said. “We all know these arguments are bullshit. There is overutilization here, pure and simple.” Doctors, he said, were racking up charges with extra tests, services, and procedures.

Here’s another way to look at it. So-called “tort reform” takes money out of the hands of catastrophically injured children and puts it into the pockets of insurance companies, like [some of these families](#). Dennis Quaid, whose newborn twins were nearly killed in a California hospital, actually had some choice things to say about this [before Congress](#):

The law is stacked against ordinary people. For instance, in my home state of California, a 1975 law caps compensation to malpractice victims. The cap has never been raised for inflation. The practical effect is that people without the wealth to pay legal fees up front are unable to get their cases before a judge or jury.

Now, we find mention of [some of these issues](#) in the House health care bill. While we don’t agree that limits on anyone’s legal rights has any place in this bill, at least the House version merely recognizes that states might want to consider a couple of litigation changes that [do not necessarily](#) hurt patients. To accomplish this, Congress may provide money to states to explore them - but not to explore “caps.” And why should it? When a state enacts a “cap”, it’s like taking a sledgehammer to the legal system. What’s the point of paying a state to explore a “litigation alternative” law where legitimate cases can’t go forward anyway? The Senate already rejected caps five times under W’s reign. Congress was right then, as they are now, for wanting nothing to do with these cruel laws.

Nonetheless, witness the temper tantrums on the right, like [Ed Gillespie complaining](#) Sunday on *This Week* that state lawmakers are being “punished” (translation: no federal

handout) for considering caps. Hypocrisy? Political expediency? Greed? Anything new here?

Caps are terrible laws. They apply no matter the extent of misconduct and regardless of the severity of an injury, in fact, hurting only the most seriously injured. They must not be used as a health care "bargaining chip." And federal taxpayers are already shouldering enough burdens without adding this one to the list.