Our tax dollars to study "tort reform" - What about patient safety?

By Catherine D. Bertram - 7/28/2010

Massachusetts obtained a $3 million grant to study "alternatives" to a consumer's 7th Amendment right to a jury trial when it comes medical malpractice claims. The grant is part of a U.S. Department of Health and Human Services program to investigate ways to improve compensation for people injured by medical errors and has a secondarily identified goal of lowering malpra premiums.

One of the grant's goals is to "ensure that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits." We can save significant tax payer funds and save many lives by doing what the Institute of Medicine suggested more than 10 years ago, in the 1999 report called "To Err Is Human" -- focus on patient safety and preventing patient injuries during the delivery of health care. Please leave consumers' constitutional rights alone. For more than 10 years it has been common knowledge that 98,000 patients die year year from preventable errors during the delivery of health care. This study does nothing to reduce that shocking statistic.

That is the correct goal and the only goal that will result in less harm and less need to compensate consumers who have been injured due to the fault of others.

It sounds great to talk about reducing frivolous lawsuits, but as tax payers and patients what we need to ask is where is the data that

demonstrates there are "frivolous" medical malpractice claims being filed and more importantly, where is the evidence that such meritless cases result in significant awards that are paid?

There are procedural requirements in place that safeguard against consumers filing cases without expert support. In Maryland and Virginia, consumers and their lawyers have to have written reports from qualified medical experts in hand before pursuing a medical malpractice claim. In the District of Columbia, the injured consumer is required by law to send a detailed notice letter to the heath care provider outlining the claim before the lawsuit can even be filed.

Putting laws in place to limit damages simply shifts the burden of paying for a lifetime of care away from the wrongdoer and back onto the U.S. tax payer. It does nothing to try to make health care safer. What it does is protect insurance companies from paying out legitimate claims after a jury has determined that the patient was entitled to compensation to balance the harms done. That patient is still permanently injured and in most circumstances cannot work. That patient still needs a lifetime of care. Who pays for that care? We do and we have still done nothing to reduce these claims and make health care safer. How tragic.

About the author:

Catherine Bertram is board certified in civil trials and was recently nominated as a 2010 Super Lawyer for Washington, D.C. Ms. Bertram has 20 years of trial experience and is unique in that she was formerly the Director of Risk Management for Georgetown University Hospital. Ms. Bertram is a member of the bar for the U.S. Supreme Court. She is a partner with the firm and lectures regularly to lawyers and health care providers, nationally and locally, regarding patient safety, medical negligence and other related issues. She has also recently published a chapter in a surgical textbook. She can be reached by email at cbertram@reganfirm.com or by phone 202-822-1875 in her office in Washington, D.C.