

Destroying access to health care

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It's easy to get sidetracked in the debate over whether there should be caps on noneconomic damages in medical malpractice lawsuits. The real danger of unlimited damages is that they reduce access to health care, but opponents of damage caps offer phony arguments to divert attention from the crisis.

Their most common refrain is that it's unjust to limit compensation to patients who have been harmed by a badly performing doctor. On first blush, that seems reasonable. We want justice for any patient who suffers because of medical errors. But the "justice" argument ignores the fact that legislative plans to limit damages do not cap compensation for actual economic harm. That would still be fully compensated.

Proposed limits would simply require that vague "pain-and-suffering" awards bear some relationship to the level of actual harm. A person who suffers \$5,000 in lost wages because of a misdiagnosis, for instance, ought not to be entitled to an additional \$10 million in non-economic damages simply because his attorney plays on juror sympathy.

That brings us back to the real problem with unlimited damages: They create sky-high malpractice insurance rates for physicians — especially for those who practice in high-risk fields. You may not care whether a doctor has high insurance premiums, but you might care if a doctor moves away to a state that has damage caps or stops performing a procedure that you or a loved one might need some day.

That's happening in New York state and elsewhere. Physicians in New York were just hit with a 14 percent increase in malpractice insurance rates. Neurosurgeons in parts of the state will now pay more than \$309,000 per year for malpractice insurance, according to the Medical Society of the State of New York. An ob-gyn doctor may shell out \$173,000.

Many ob-gyns across New York are giving up obstetrics and focusing only on gynecology, an official with the American College of Obstetricians and Gynecology told The New York Times. She said women could wind up having to drive greater distances to find a doctor who will deliver their babies.

Does lack of access to health care serve the cause of "justice"?