

My Turn

'Early choice' comes with a blindfold

Proposal unfair to medical victims

By Chuck Douglas / For the Monitor

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'We are sorry for your loss, but if you sign right now I can give you this \$200,000 check.'

It is standard practice for airline insurers after a fatal plane crash to visit the home of each person a week later and offer checks for \$200,000, right on the spot. They save a lot of money by getting people at that moment of grief to take what sounds like a big settlement. The cases for people who do not fall for that trick are always above \$1 million.

The New Hampshire version of that game is SB 406, a bill now pending in the House in Concord. That bill gives hospitals the opportunity to sucker patients they injured into a system whereby they receive far less for their injuries than they would receive under a traditional malpractice claim against a guilty health care provider.

The early offer medical negligence legislation in New Hampshire runs counter to the way we value life in this state. Under the proposal a hospital or other provider can kill a patient and the compensation is only \$117,500. To put that in perspective, the lowest amount paid to the innocent victims at the World Trade Center was \$356,000. Even an illegal alien maintenance man with no education and no family had a human dignity value three times higher than the value SB 406 places on human life.

Furthermore, the bill is premised on the fact that elderly folks on Social Security who have no earned income, or stay-at-home moms who have no income, are not worth paying for pain and suffering. The bill covers payments only for lost wages. If you have no lost wages, your loss of enjoyment of life is worth zero.

If the thing that brings you the greatest pleasure in life is playing the piano, and a doctor cuts your hand off - too bad. You get no compensation unless you can't work. If the thing you do in your life is hiking, and a doctor's error leaves you in a wheel chair, too bad. No lost wages, your compensation is zero for pain and suffering.

The bill was drafted by a Virginia professor and has a payout formula like workers' compensation schedules. An example of what would probably be considered a low-end payment under the formula for a "permanent injury involving minor harm" (\$29,750) is the article that appeared in the New Hampshire Union Leader on March 30 describing how a nurse cut off a child's finger after the 8-month-old arrived at a hospital with a chest infection.

They could not reattach the tiny finger that the nurse mistakenly cut off. That permanent lifelong mutilation would only be worth \$29,750 according to SB 406 - less than \$500 per year over the life of the child. That does not begin to compensate the child.

The bill also requires that the information go only in one direction. The claimant has to explain how the injury is alleged to have been caused, but the hospital does not. It keeps its investigation a secret from you.

Years ago, a young mother went to the hospital to deliver a baby and ended up getting herpes. The hospital refused to tell her what it had learned as to staff or other patients who had herpes because state law gives them that right to keep their internal review from you the patient under RSA 151:13-a.

Shouldn't the playing field be level? If the patient makes a claim then the hospital should be totally forthcoming. You cannot go into a gun fight holding a dagger.

Another stacked deck problem with the bill: If there is a dispute, it will be decided by an employee of the Department of Insurance. The Insurance Department is financed totally by premiums from - guess who? - insurance companies. How will that work?

At least the medical malpractice panels are made up of a doctor, a lawyer and a judge. They should be involved in this process, not someone who is on the payroll of the insurance industry, whether directly or indirectly.

As further evidence of the one-sided nature of what goes on inside a hospital is a recent study published in the Journal of Health Affairs two months ago. Research physicians from the Harvard and University of Massachusetts Medical Schools revealed that one-third of physicians do not agree with even disclosing serious medical errors to patients and one out of 10 physicians admitted they lied to their patients in the previous year.

The patient does not have full information regarding what a physician did wrong and some will not be candid about it. The financially strapped patient may make an early offer decision with their hands tied behind their back in terms of false information.

Finally, whatever happened to the medical malpractice panels? They were the nirvana of all solutions to medical malpractice, according to the insurance industry, but the review of their effectiveness keeps getting delayed. We went from a report due by law on Dec. 1, 2010, to currently the report not being due until Dec. 1, 2013.

Until the screening panels have been thoroughly studied and vetted, new untested experiments like SB 406 should not be tried.

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