

LETTER

'Early offer' is unfair to injured patients

David Slawsky, Hopkinton

For the Monitor
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Re "Bad bill deals all the cards to insurers" (Sunday Monitor editorial, March 25):

Good for the Monitor for recognizing that SB 406 (the "early offer" bill from the insurance industry) will hurt those most in need of protection. As a lawyer representing patients in such cases, I have seen the difficult decisions patients and families must make when a medical error has caused a chronic or life-ending injury. Rather than a fair discussion and an honest effort to resolve the matter early, the insurance defense industry often spends outrageous amounts to inflict another injury - this time through the legal process.

The Legislature has long favored the insurance interests. Internal hospital investigations are protected by the "quality assurance" privilege that prevents families from learning what happened. Unlike other cases, patients and their families are required by statute to hire an expert physician, usually from outside the state because New Hampshire doctors almost never testify against each other, no matter how obvious the negligence. This allows the defense attorneys at trial to persuasively argue that the patient had to go to Massachusetts, Florida or California to find an expert who would fault the care received in New Hampshire.

Juries are not allowed to speculate that their verdict will be paid by insurers, so they assume (wrongly) that the doctor personally will have to pay the verdict.

And now, the "early offer" proposal. Reject the early offer, and patients will find the rules changed - they no longer have a case they can hope to win. Now they'll have to prove by "clear and convincing evidence" that there was "gross" negligence. This is virtually impossible.

Why punish patients who reject an unreasonable early offer?

SB 406 is another bad idea from an insurance industry that hopes to tip the balance even further against injured patients.

DAVID SLAWSKY

Hopkinton

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