

Health debate could spur malpractice changes

By ERICA WERNER – March 17, 2009

WASHINGTON (AP) — The Obama administration and key congressional Democrats are taking a hard look at the nation's medical malpractice system as part of a broader health care overhaul.

"It's an essential piece for there to be enduring reform, reform that will stick and will get a significant bipartisan vote in the United States Senate," said Sen. Ron Wyden, D-Ore., who has a bipartisan health bill that includes incentives to get states to enact malpractice reforms.

Reviving the issue could provoke a fierce fight from trial lawyers, who, along with doctors, have the most at stake.

Already the trial lawyers' lobby is preparing to distribute a brief on Capitol Hill casting medical malpractice as a small cost in the overall health system. The brief cites an Institute of Medicine finding that as many as 98,000 deaths in the U.S. each year result from medical error.

Trial lawyers and their Democratic Senate allies helped kill attempts under the Bush administration to cap punitive and pain and suffering payouts in malpractice lawsuits. The Congressional Budget Office says such caps could have saved the federal government \$4.3 billion from 2010-2019.

Capping judgments likely remains a nonstarter.

John McDonough, a top health adviser to Sen. Edward Kennedy, D-Mass., told a conference of urologists this week that doctors must improve quality of care.

"The solution in terms of medical malpractice is not putting arbitrary caps on pain and suffering that discriminate against lower-income folks," McDonough said.

The urologists responded with a chorus of "boos."

But many top Democrats and administration officials say something must be done to curb medical malpractice costs to help pay for revamping the nation's \$2.4 trillion health system.

Obama himself told business leaders last week that ideas to save money like "medical liability issues — I think all those things have to be on the table."

Senate Finance Committee Chairman Max Baucus, D-Mont., cites costs including fast-rising medical malpractice insurance premiums and so-called "defensive medicine" whereby doctors prescribe treatments that may be unnecessary to guard against getting sued if they fail to do so.

There's agreement from some in the House including Rep. Rob Andrews, D-N.J., who chairs an Education and Labor health subcommittee.

"It's hard for me to imagine a result that gets to the president's desk that doesn't deal with the medical malpractice issue in some way," Andrews said in an interview Tuesday.

Proposed solutions include alternative dispute resolution, some similar to legislation that Obama co-sponsored with Hillary Rodham Clinton when both were in the Senate in 2005. Their bill would have created a program to allow patients to learn of medical errors and establish negotiated compensation with the offer of an apology.

Baucus has proposed giving states grants to develop alternate litigation, such as "health courts" whose judges have health care expertise.

Both lawyers and doctors say they're open to alternative dispute ideas.

But "changing the legal system will not make anyone healthier or save one life," said Linda Lipsen, senior vice president of public affairs at the American Association for Justice.

Meanwhile doctors are calling malpractice reform a top issue in the health reform debate.

"We need meaningful tort reform," Nancy H. Nielsen, president of the American Medical Association, told Obama health adviser Ezekiel Emanuel at a recent conference.

"Stay tuned," Emanuel told her.