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The James Madison Institute Releases Study Outlining “Patients’ Compensation System”

Tallahassee – The James Madison Institute today released a study in partnership with Patients for Fair Compensation. Titled “[Alternative Solutions to Florida’s Medical Malpractice System](#)” the report details the negative impact on patient care due to the practice of defensive medicine. Citing case law and recent quantitative studies, the JMI report reveals a Florida tort system that is deeply flawed, one wherein only a handful of injured patients receive compensation, where malpractice cases take years to resolve, and damage awards are inconsistent. The report suggests that far from promoting patient safety, the current tort system discourages accurate medical error reporting among healthcare providers, as doctors try to protect themselves against the constant threat of litigation. The study also outlines an alternative plan that could provide the basis for the Florida Legislature to act during its 2012 session, which convenes on January 10.

A recent survey suggests that Florida doctors’ spending on defensive medicine – the practice of ordering medical tests, procedures, and consultations of doubtful clinical value to protect themselves against malpractice suits – could run into the billions of dollars. Defensive medicine is a hidden driver of healthcare costs, responsible for, by some estimates, as much as 26 percent of overall healthcare spending. The JMI study proposes a policy approach that aligns the interests of patients and their physicians, reduces costs, and optimizes quality healthcare.

A recent Kaiser Foundation report noted the annual cost of an average family’s health insurance now exceeds \$15,000. Though recent tort reform resulted in a decrease in the cost of medical malpractice insurance, this did not directly decrease the cost of care in Florida. There is still no mechanism in place to mandate a reduction in patients’ healthcare costs – even when the provider realizes reductions in expense. Further, there is little evidence to suggest capping damages decreases a doctor’s likeliness to practice defensive medicine.

Creating a patients’ compensation system as an alternative to the courts could benefit patients who have been the victims of medical errors. It could take less time to resolve issues than Florida’s courts, which are currently jammed with cases related to foreclosures. It could also direct a greater share of any financial settlements to the victims and less to court costs, attorney fees, and other litigation expenses.

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“It is important to explore the viability of an administrative system similar to the Workers’ Compensation system,” said JMI Policy Director Robert F. Sanchez. “At present, the practice of defensive medicine inflates the cost of health care to cover the inflated cost of malpractice insurance. This needs to change.”

Under the patients’ compensation system, malpractice claims could be reviewed by a medical review board overseen by a special administrative agency, instead of clogging up Florida’s courts. Victims of medical malpractice would be awarded compensation by a patient’s compensation board. An entity akin to a quality improvement council would analyze the root causes of medical errors and establish standards for best practices. Florida’s Medical Licensing Board would discipline those who provide substandard care, and the entire system would be funded by *existing* insurance premiums from all providers.

“The JMI report clearly demonstrates the need for a more efficient, effective, and equitable solution for Floridians. I believe the JMI report made a compelling case for a Patient’s Compensation System, a system that would address the issues surrounding malpractice without enduring costly, time-consuming and ultimately ineffective tort reform,” said Rick Jackson, chairman of the nonprofit organization Patients for Fair Compensation.

Such a system could mean that patient complaints could be heard by neutral medical experts and settled and paid promptly. This alternative would greatly diminish the need for defensive medicine. That, in turn, would almost immediately drive down the cost of healthcare – not only for employers and individuals who pay for health insurance, but also for Floridians whose taxes help to provide the health care for low-income residents enrolled in Medicaid.

Under a patients’ compensation system, an administrative agency could facilitate innovation in the healthcare industry, concurrently improving the quality of care and physician accountability. Unfortunately, the courts, by their very function, cannot do this under the best of circumstances, and – given their current heavy caseloads – the current circumstances are far from the best. Accordingly, as the study demonstrates, it is time to create an alternative.

[“Alternative Solutions to Florida’s Medical Malpractice System”](#)

is available on-line at www.jamesmadison.org. To comment or request a copy, contact Tanja Clendinen at 850.383.4633 or Tanja@jamesmadison.org. The James Madison Institute is a nonpartisan, nonprofit public policy research organization based in Florida.