

A chasm exists between the goals of the medical liability system and the harsh reality.

Sadly, it's patients who ultimately pay the price.

An effective medical liability system should meet three goals:

- 1) Fairly compensate injured patients and their families.**
- 2) Improve safety by ensuring that physicians and other healthcare providers learn from errors.**
- 3) Hold physicians and other providers accountable for the quality of the care they offer.**

The current medical malpractice system falls far short in all three areas:

1) *Compensation is unpredictable and inequitable.*

Many patients cannot afford to access the judicial system. Those who can access it may get nothing if they cannot legally prove negligence – regardless of their needs. Even if they win a settlement or verdict, it may take years and they typically get less than half of the money spent on their cases.

2) *Errors don't necessarily lead to improvements.*

Just the threat of lawsuits creates a bunker mentality that makes physicians and other healthcare providers less likely to report and address emerging safety issues before they result in more harm.

3) *Litigation does a poor job of identifying medical errors.*

Only about 2-3% of errors result in claims yet research shows there is no negligence in as many as five out of six medical malpractice claims.

As the nation considers broad healthcare reform, it's time to take a hard look at how to align Colorado's medical liability system with patients' best interests and the overall goals of healthcare reform.

Nowhere are the failures of the current medical liability system more evident than the cases of children born with neurological impairments – a category that includes those with cerebral palsy. These children may require a lifetime of care, putting tremendous strain on families who as a result may face bankruptcy and divorce.

Yet a 2003 study by the American College of Obstetricians and Gynecologists concluded that, in the vast majority of cases, the neurological impairment was not caused by any error in the delivery process. In other words, there may be no doctor to blame – or sue.

Does this make the children's challenges any less serious or expensive? Of course not.

Anyone who examines these issues is likely to conclude that there must be a better alternative to the tort system, which many frustrated families have come to call the "torture" system due to the financial and emotional burdens it places on them.

Please turn over to see how this problem is being addressed.

United Cerebral Palsy of Colorado pioneers a better way.

Piloting a system that doesn't make support for patients contingent on assigning blame could give immediate relief to the families of neurologically impaired children while pointing the way to better healthcare for all Coloradans.

While this initiative is new, encouraging precedents are offered by the workers' compensation system and the National Vaccine Injury Compensation Program, among other time-tested programs that don't tie compensation to a finding of fault.

The respected Colorado Health Institute will conduct research to help determine how a demonstration project could be created, addressing important questions such as eligibility and what specific costs would be covered.

That research will help identify how such a program might be structured, how much it would cost, how many families could be helped, and how it might be funded.

"It's about the child. It's about that family. We have a wonderful opportunity in this state to be on the cutting edge in solving this problem."

Judith Ham, President and CEO of United Cerebral Palsy of Colorado

At the same time, lawyers, physicians and other experts are working to develop related improvements to the existing provider accountability and patient safety systems – im-

provements that could be made possible by the move away from a lawsuit-based system.

"At the end of the day, finding fault is not as important as helping a child, a family and a community. Just as the national conversation on healthcare is covering many topics and searching for new approaches, so should the conversation in Colorado."

- Penfield Tate, Vice Chair of United Cerebral Palsy of Colorado and former Colorado State Senator and Representative

At the table for these discussions are groups offering a variety of different perspectives – from patient advocates to healthcare providers.

Wherever this research and these discussions lead, this much is certain: The initiative will be driven by a commitment to the best interests of these children and their families.

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