

latimes.com/news/nation-and-world/la-na-health-malpractice19-2010jan19,0,924448.story

**latimes.com**

## Malpractice system survives healthcare overhaul intact

**Democratic lawmakers were prepared to make concessions to Republicans on the subject. But after hard lobbying by trial lawyers and a series of party-line votes, little is likely to change.**

By Tom Hamburger and James Oliphant

January 19, 2010

Reporting from Washington

Last year, as Democrats launched their healthcare drive, the nation's trial lawyers thought they were in trouble.



Critics, especially Republicans and doctors, had long complained that the medical malpractice system showered huge fees on attorneys, did little for ordinary Americans and added billions of dollars in costs.

[Why hair loss supplements don't work](#)

With Democratic strategists looking for ways to woo Republican support for the overall healthcare bill, changes in so-called tort law seemed likely. Even President Obama in a speech to the American Medical Assn. said he recognized the issue as a problem.



[Celeb trainer discovers natural strength supplement](#)

But after a massive lobbying campaign and party-line votes in Congress, the malpractice system is largely untouched by the Democrats' healthcare overhaul. Drug makers and the insurance industry, in contrast, were forced to make costly concessions.



"Whoever organized this lobbying effort for the trial lawyers deserves congratulations," said one rueful senior Senate staffer. "They kept meaningful medical malpractice reform out of the House and Senate -- and out of the final bill."

### 'Guts real reform'

About the only concession the attorneys made is a provision in the House and Senate bills authorizing pilot projects to study possible modifications to the tort system.

Even then, the projects are limited. The House bill, for example, forbids the imposition of caps on attorney's fees or damages.

"The language effectively guts real reform," said Lisa A. Rickard, president of the Chamber of Commerce Institute for Legal Reform, which has allied with the GOP over the last decade to change tort laws.

Democrats acknowledge the trial lawyers' clout in preventing significant changes.

The legislators "did not want to take on the trial lawyers in addition to everybody else they were taking on," former Democratic National Committee Chairman Howard Dean, a physician, said last year as the healthcare bills began to take final form.

The trial lawyers are among the most significant donors to Democratic campaigns, and no Democrat running for reelection wants to offend them, even though some privately say that malpractice changes might be a good idea.

The nonpartisan Congressional Budget Office recently estimated that revamping the tort system could save \$55 billion over 10 years. In addition, many doctors say that the threat of malpractice suits often forces them to order extra tests and other costly procedures -- prime culprits in the booming cost of healthcare.

Trial lawyers counter that the courts are often the only recourse for thousands victimized by medical malpractice. By some estimates 98,000 patients are killed each year by medical errors. The lawyers say that malpractice lawsuits ultimately produce better care.

"Forty-six states have passed some kind of tort reform, and it has not lowered costs or covered the uninsured, proving that such attempts to limit patient legal rights have no place in the healthcare bill," said Linda Lipsen, chief lobbyist for the trial lawyers association.

As the healthcare debate moved forward last year, House and Senate staffers and the White House prepared for a massive battle over the issue.

They expected that Republicans would make it a major theme, and Democrats assumed they would have to win some GOP votes.

Last June, Obama acknowledged the malpractice issue during his address to the American Medical Assn., telling doctors that he understood that they "feel like they are constantly looking over their shoulder for fear of lawsuits." Obama was pleading for support from the AMA, which he ultimately received.

### **Coalition unity**

Republicans drafted 16 malpractice overhaul amendments.

But as it turned out, Senate Majority Leader Harry Reid (D-Nev.) was able to keep the Democratic coalition together without having to incorporate more restrictive anti-lawsuit language to win over Republicans.

Keeping the coalition together was, in no small part, a result of the furious lobbying by the American Assn. of Justice, the trial lawyers' national lobby.

In addition to its 90 full-time staffers, the association paid \$1 million in 2009 to lobbying and advertising firms to help fight a malpractice overhaul.

During the 2008 campaign, association members sent \$3 million to candidates through the organization's political action committee alone, according to the nonpartisan Center for Responsive Politics. In 2009, an additional \$1.1 million went to congressional candidates. In both cycles, more than 95% of the funds went to Democrats.

"Throughout the debate we continually talked about patients and the 98,000 that are killed every year from preventable medical errors," Lipsen said. "I think we really moved the focus to that concept and illustrated what's actually at stake."

The lawyers' campaign escalated in the summer, as conservatives at town hall meetings suggested that "lawsuit abuse" was a big cost driver in healthcare.

The trial lawyers ramped up their effort with a massive amount of advertising on Capitol Hill, including all of the billboards in the Metro station that serves the Senate side of the Capitol.

### **Few amendments**

Early on, the lobbyists focused more on the House of Representatives, which would vote first on healthcare legislation. Several malpractice-related amendments were expected, including some offered by Democrats.

Ultimately, the House approved only the pilot-project idea, offered by Rep. Bart Gordon (D-Tenn.), a self-described advocate of changes in malpractice law.

"This is all I could get done," Gordon said. "This is what I could get the votes for."

The White House helped draft a similar provision that was inserted into the Senate healthcare bill. Unlike the House version, it did not expressly forbid states to cap damages or attorney fees in the pilot projects, but it allowed patients to opt out of any alternative claims system, substantially weakening its effect.

Reid's office said the legislation was not written to benefit the trial bar.

"It's flat-out ridiculous," said Reid spokesman Jim Manley. "This is a good-faith effort to set up some pilot programs throughout the country" as an alternative to malpractice litigation.

During the Senate debate, Reid did allow a vote on an amendment offered by GOP Sen. John Ensign of Nevada that would limit attorney fees.

Lobbyists for the trial lawyers learned about the vote the day before. By the time of the vote the next day, the lawyers and their allies had faxed nearly 700 letters to lawmakers.

The Senate's only vote on a medical malpractice proposal was a decisive win for the trial lawyers. The amendment was defeated, 66 to 32.

[tom.hamburger@latimes.com](mailto:tom.hamburger@latimes.com)

[joliphant@latimes.com](mailto:joliphant@latimes.com)

Copyright © 2010, [The Los Angeles Times](#)