

up the cost of many medical procedures. Consequently, many of our best and brightest in the medical field are limiting services, retiring early, or move to States where liability premiums are stable in order to carry out their Hippocratic Oath. The true victims of this disturbing trend are the vulnerable and sick among us whose access to quality care becomes more restricted with each day that this crisis is not addressed. It is time for responsible legislators to do what is right for our health care system and the medical community and pass S. 22, the Medical Care Access Protection Act of 2006 and S. 23, the Healthy Mothers and Healthy Babies Act.

The consequences of this trend fall hardest on women and children. Contrary to what the other side may say, the exploding cost of liability insurance has limited access to OB/GYNs. It has caused women to receive less prenatal and preventive health care, and many low-income women to lose critical access to community clinic services.

This is not happening because of a sudden increase in physician negligence. It is happening because of the ever increasing number of lawsuits filed against health care providers each day. By and large, these are meritless suits filed by trial lawyers who seek to take advantage of the justice system in order to enrich themselves. I urge members of the Senate not to fall prey to the influence of these trial lawyers, and we know they have it. Every time this issue has come before this body, the trial lawyer lobby has flexed its muscle to put a stop to its progress. If we work together we can come to a plan to address this situation.

Who is it that these trial lawyers are opposing? It is not only the pleas for help from doctors, who overwhelmingly support reform, it's also the will of the American people, who support medical liability reform at a rate of 75 percent. And the reason they support it is not because they think those who have been harmed by a doctor's negligence shouldn't be compensated, it's because they know how these trial lawyers are hurting them, their families and neighbors. They see the commercials from these so called law firms on late-night television offering to sue any doctor over anything and everything possible. Or they or someone they know has had difficulty finding an OB/GYN to deliver a baby.

In fact, to give this issue even more of a human face, my daughter had to give up delivering babies because she could no longer afford the crushing burden of inflated insurance costs imposed upon her by these trial lawyers bringing frivolous lawsuit after frivolous lawsuit against OB/GYNs.

Of course, insurance companies—we have heard they make all kinds of money. I tell you, in my State of Montana I think only a very few companies offer any kind of medical liability. While the trial lawyers' bank accounts

have continued to grow, the number of doctors able to perform one of the most important acts a doctor can perform has gone down and patients are the ones being hurt.

Given the choice between siding with doctors and patients or the legal community, I think I will take the side of the doctors and the patients every time.

That is not to say if a person has been wronged or harmed by negligence, they shouldn't be able to recover their economic loss. It is time for us to step up to the plate and set the policy and finally do something to ease this cost of not only insurance but our total health care system.

Those who would oppose medical liability reform will say there is no problem, there are no frivolous lawsuits, and these reforms only harm those who have been hurt by doctors' negligence. Those assertions are simply false. No two ways about it. Let's look at the facts. On any given day there are nearly 125,000 lawsuits pending against health care providers, and 75 percent of these will close with no payment.

Some would say that is not bad, there is no harm, 75 percent will close with no payment—so what? The cost comes to the medical community when you have to pay for and provide a defense. Statistics show that of cases that do go to trial, 86 percent of the doctors will be found not liable. Still, the cost of defending the case is very costly. Consequently, the doctors who are targeted by these lawsuits will spend an average of \$90,000 to defend themselves. That is added into the cost of our health care, not only for providers but also into our insurance premiums.

More striking is the impact these suits have on American access to quality medical care. One in seven obstetricians no longer delivers babies due to the fear of being sued; 30 percent to 50 percent of high-risk specialists are sued every year. That is a high number. How would you want to spend all this time and money, and then fall into a category that, once you go into practice, you have a 30- to 50-percent chance of being sued every year while you are in practice?

Mr. President, 79 percent of physicians practice defensive medicine. What is that? It is ordering costly and unnecessary tests due to the fear of being sued, of not covering all the bases—not only covering all the bases but maybe covering them twice. This adds between \$83 billion and \$151 billion per year in added costs to patients and their physicians.

The impact on my State of Montana and other rural States has been even more disturbing. Today there are only 104 obstetricians practicing in Montana. The population of Montana is 900,000. Over the past decade, liability premiums for many hospitals, including many nonprofit critical access hospitals in Montana, have risen nearly 1,000 percent.

I am a big proponent of rural health in order to maintain smaller hospitals, critical access hospitals, and delivery of health care services closer to the people. I think I have 12 or 13 counties that have no doctors at all—none, zip. That concerns me. People who live in those counties should have access to health care providers. Right now those of us in rural America simply cannot afford this. Right now, in Montana, we are very thin in those low populated counties that are remote from a bigger city that may have a larger medical corridor. As a result, many in my State travel hundreds of miles to see a doctor, sometimes all the way to cities such as Seattle and Minneapolis, Salt Lake City, or Denver, CO, for specialized care. I fear this situation will only worsen if we do not act now.

We can't continue to sit back and allow this to go on, and allow this situation to damage our health care system. Our doctors cannot afford it and, more importantly, our loved ones who rely on access to affordable health care cannot afford it, either.

I urge my colleagues to pass both of these bills, S. 22 and S. 23. These bills bring a fair and reasonable reform to medical liability systems, the system that will work. In fact, the model we are sort of patterning this one after is working in Texas. Since the enactment of similar laws in the State of Texas, the largest liability carrier has dropped its premium by 22 percent, competition in the health care liability market is increasing, premiums are stable or down, and access to health care is up. I think that is what we want to see happen.

Clearly this approach is working to the benefit of doctors and patients and, more importantly, I want to put the emphasis on patients. The only people hurt by these commonsense reforms are the folks who make a living in frivolous lawsuits. So I call upon this body to reject their money, their influence, and do what is right for the American people, especially young mothers, and for healthy babies.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHAFEE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEDICAL LIABILITY CRISIS

Mr. BURR. Mr. President, some in this institution suggest that there is no liability crisis in health care in America. I am here today to say that I don't think anyone in America believes that. They may believe it in this institution. As a Senator from North Carolina, I can state no one from North Carolina believes it.

Not only has the out-of-control litigation in health care over the last decade inflated the cost for every American, it has now begun to affect the access we have to health care services.

Doctors across the State in North Carolina report they have been forced to reduce the coverage of critical medical services, especially in obstetrics, neurosurgery, orthopedics, plastic surgery, and primary care because of the sharp increase in the cost of medical malpractice insurance coverage. It has gotten so high they cannot afford the coverage.

Hospitals are concerned about the potential reduction in their services to their communities in the future as a result of the current crisis in medical liability insurance where premium increases and declining reimbursements continue. Hospitals report that the insurance crisis is making it increasingly more difficult for their medical staff to obtain adequate insurance coverage, and more importantly, at affordable prices.

The crisis is real. We can no longer in this institution act like an ostrich, put our head in a hole in the ground, and believe because we cannot see it, it does not exist.

Some nursing homes in North Carolina this year have no choice but to operate without liability insurance in order to stay open. The oldest and the frail in this country would not have the facilities to live in but for the brave decision of some owners that forego the insurance they can't afford.

Other long-term care facilities, faced with the huge increase in premiums, have been forced to reduce staff hours, freeze wages and reduce residents' activities. Those are things we do not want to see happen to that population.

North Carolina faces a medical liability insurance crisis. I had a friend who graduated from Wake Forest with me and was lucky enough to go to medical school. Today he is a nephrologist. I don't even know what a nephrologist is. I am not sure that too many people in America know what a nephrologist is. But I can tell you that he tells me nephrologists rarely get sued. In the last 3 years, his liability insurance has increased 300 percent. He has had a 300-percent increase in his cost to continue to practice medicine in a specialty that rarely sees lawsuits.

North Carolina hospitals have experienced medical liability insurance premiums increasing from 400 to 500 percent for the past 3 years, with small rural hospitals experiencing the greatest increases.

According to two recent studies, North Carolina's nursing homes are experiencing a tremendous increase in their medical liability premiums. Premiums for some nursing homes in North Carolina have skyrocketed by as much as 1,800 percent since 1995. But some in this institution suggest there is not a liability crisis in health care in America.

The U.S. Department of Health and Human Services has concluded that the

leading cause of the national liability insurance crisis is the recent explosion in multimillion dollar litigation awards and the resulting instability this creates in the medical liability insurance market.

The U.S. Department of Health and Human Services cited that North Carolina is tied with Nevada for the most mega malpractice awards in recent years. But some in this institution suggest that there is not a medical liability crisis in America.

Not only is it a crisis, health care services are out of the realm of the average American. It is driving doctors out of the profession of delivering medical services. In medical schools across the country this year, just as last year and the year before, many students will make a decision as to the specialties they choose for their entire medical profession based upon the likelihood of being sued in a court versus where their interests and their love might exist in health care. But some suggest there is not a liability crisis in America.

In North Carolina today we have a shortage of OB/GYNs, we have a shortage of neurosurgeons, we have a shortage of thoracic surgeons. When you look at the demographic shift that is happening in America, the Census Bureau projects that in North Carolina alone we will have a 53-percent increase in the State's population over the next 20 years. We will be the seventh most populated State. The OB/GYNs better move there because without OB/GYNs we are not going to deliver new babies. If they move there for retirement, which is probably our largest growth area, they may find out that they are moving to a State that has a tremendous health care infrastructure but the state does not have the specialists in neurology, in neurosurgery, and thoracic surgery available for their age group, and then they will have not made the wisest decision. But some suggest there is no crisis.

Lawsuits today are the leading cause of liability insurance increases. Changes are needed to protect patient access to health care. States that have enacted comprehensive common sense liability reforms have experienced much lower increases in medical liability insurance premiums compared to States such as North Carolina and Nevada because we have yet to adopt such reforms.

It is imperative this institution accept the national responsibility to end this crisis in health care, to make sure that the next students in our medical schools make decisions based upon where they want to practice and who, in fact, they want to help and not based upon where their fear exists of where the trial bar is most likely to target for the next lawsuit.

Over the years, I have heard from a lot of folks in North Carolina. I received this letter from a doctor in Greensboro, NC, in the month of April. It says:

As an orthopaedic trauma surgeon, I urge you to pass medical liability reform this year. Each year, reform legislation passes the House of Representatives, but stalls in the Senate. Special interests are standing in the way of reform.

I can say that special interests are not the patients across this country, it is not the patient who is looking for the specialist in North Carolina.

The letter goes on to say:

I can tell you from the point of view of someone on the front line of medicine that America's (and North Carolina's) medical liability crisis has to be solved. Medical lawsuit abuse and unpredictable and huge verdicts are forcing good doctors out of practice. Fewer young doctors are entering important, but high risk specialties, including orthopedics, obstetrics, and emergency medicine. Others are cutting back on critical, but risky procedures, leaving patients to wonder where they will get care when they most need it.

The cost of defensive medicine alone is staggering. I see it all the time: doctors ordering tests and referring patients to specialists more out of fear of lawsuits than because doctors believe the tests or extra visits are medically indicated. These costs are dragging down our health care system and our economy, and they ultimately increase out-of-pocket patient costs. It is time we fix this broken system.

I am not sure that anyone summed up the crisis in America in a one-page letter better than this doctor, this doctor who said that he is on the front line of medicine in America and in North Carolina. He put his finger on the point that if we don't solve it today, fewer young doctors will be entering the profession. That means less choice. Fewer doctors doing high-risk procedures in trauma care, something that doctors perform because they are trying to save a life.

Others are cutting back on critical but risky procedures, leaving patients to wonder who will be there to do these procedures.

In this institution, we fight cost and access. In America, we fight cost and access. Many times the decisions we make as Americans, such as choosing to move to a particular area because the schools are good, also includes the big component that there is a major medical facility available for us and our family.

The realities are, as this goes on, those major medical areas are going to be more and more important because in rural America there will not be doctors. And if there are no doctors, we know today, based upon what doctors tell us, there won't be OB/GYNs. We will have to tell pregnant women, let us know when you think you are going to go in labor because it is a 2-hour drive to the nearest facility that delivers babies. Or, as we have seen in some places, no natural child births, only Caesarian, because there is a risk of litigation to natural delivery that does not exist with the procedure of Caesarian birth. But some suggest in this institution that the liability crisis does not exist in America.

We come to the Senate to debate how we change health care policy so that health care is accessible and affordable for all Americans. We understand today how many Americans, or we think we do, go without insurance, without coverage, without the security at night of knowing that whatever happens to them, they have a policy to take care of.

If we did not solve this problem, it does not matter what the policy says. If the doctor is not there, where is our level of security? Where is the level of security of an American today that lives in a rural market where their hospital is closed? Not just their doctor left, but because of an 1,800-percent increase in the cost of liability insurance, they have decided to close the doors.

The burden falls on the payer—us—on insurance companies to try to raise the reimbursements big enough to make the payments for liability coverage. Why? Because of mega-awards, because of the influence those mega-awards have, in fact, had on the insurance product itself.

Dr. Handy was not the only one who wrote me. I had an interesting note from a doctor in Fayetteville, a member of a four-person neurology practice that cannot attract physicians to join the practice because of the inhospitable liability environment that exists. She and her husband are both neurosurgeons. They want to stay in North Carolina, but they may need to move and are actively looking elsewhere because they cannot even attract a neurologist to come into an existing practice.

They realize, as two neurosurgeons, if your practice cannot grow based on today's reimbursement structure, there is no way they can survive. Increases in their costs of insurance have limited their ability to deliver charity care. They have also decreased their participation in workers' comp. Their practice writes off more than \$1 million a year in uncollectible accounts. There are currently only four neurosurgeons in Fayetteville, NC—the pentagon of the Army, Fort Bragg, NC, where over 55,000 men and women in the U.S. Army call home.

But some still suggest there is not a crisis. You see, it is easy to suggest that something does not exist because I think there is a tendency in our system that until it directly affects us, it really does not exist.

The reality is that every day we meet in this incredible, historic institution, there are people across this country who do not have access to a doctor, who cannot afford the services, who have been affected by the fact that the liability crisis in America is, in fact, real and has affected them.

Well, the challenge for this Senate, as we move forward, is to make sure our voices are louder than those who suggest there is not a crisis, to make sure the human face of those around America—who are affected directly and

indirectly by the liability crisis that exists in medicine today—to make sure their voice is heard, their face is seen, that in this institution, as we talk about solutions, we look around the country and say: What have others done?

Well, that is what we are getting ready to do next week. We have looked around the country and seen who has been successful. And we are going to adopt a model that exists in Texas. It is not one that tightens as much as California. California, usually not necessarily the one that looks at Washington and says: Limit something for us—California woke up and said: There may not be a liabilities crisis in America, but there is a liability crisis in California, and we are going to put caps in, we are going to bring some sanity to the system, we are going to bring in the parameters that drive price's down and encourage doctors to practice here in, yes, obstetrics, in neurology, in neurosurgery, and thoracic surgery.

California thrives today. What was California's comment about what we might do in Washington? It was: My gosh, don't make us raise our caps to what you are going to establish in all the States. We are below that today. I never thought I would say: California does something right. Let's mirror it. But that day has come in the Senate but at a time where some still suggest there is not a crisis.

What do we want to do? Replicate what, in fact, States have replicated to address the high cost of health care, the lack of access, the flight of doctors, the need for specialists. We want to adopt that nationally. It is as simple as that.

Next week, people will come to the floor of the Senate and they will, in an incredible way, suggest there is not a crisis in America. I want those in the Chamber today to remember next week not just the doctors who say there is a crisis, and it is real, but to remember the patients out there who are directly affected by our inability to solve this problem. They are the ones for which the safety net is supposed to be there to protect them. But the safety net only works if the infrastructure is there. This is not about cost by itself today. This is about access. And when access goes away, our ability to address it with a safety net is gone.

I urge my colleagues to stay engaged. I look forward to next week's debate.

I thank the Presiding Officer for the time, and I yield back.

The PRESIDING OFFICER (Mr. BURR). The time of the majority has expired.

The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak for up to 20 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEDICAL LIABILITY REFORM

Mr. CORNYN. Mr. President, I come to the floor to add a few words to the

eloquent words spoken by the Senator from North Carolina about a national crisis in access to good quality health care.

Some have said we do not so much have a health care system in America today as a sick care system. We know there is a lot we can do to change that and improve that. But we, at bottom, need to make sure everyone in this country has access to good quality health care.

One of the ways we do that is by making it less onerous for health care providers—doctors and hospital workers—to practice their chosen profession. But right now—because of soaring costs of medical liability insurance, because of our unpredictable, some might say, litigation lottery system in this country—we need to come up with some practical ways to solve that problem, to help bring down those costs, to make it possible for doctors and health care providers to practice their profession. In the end, that is the only way we are going to be able to follow through on this promise of universal access to good quality health care in this country.

Now, we, fortunately—as Louis Brandeis described the States, he called them laboratories of democracy. And we know, as Americans, not all good ideas come from Washington, DC. Indeed, an awful lot of bad ideas come out of Washington, DC. What we need to do is to look for good models and good examples of success stories and to try to emulate those on a national basis.

Now, three times in the 108th Congress we brought to the floor legislation designed to modestly limit runaway damages—not for economic damages; that is, lost wages, medical bills, and the like—but, rather, to provide some reasonable caps on what are called noneconomic damages, things such as pain and suffering, punitive damage awards, and the like.

Three times we brought proposals to this floor to provide modest caps, to try to emulate the success stories in States across this Nation, to try to lower health care costs and increase access to health care, but we were denied an opportunity to have an up-or-down vote on those reforms.

We brought forward a bill limited to obstetricians and gynecologists because of the lack of doctors to deliver babies for pregnant women. We were told no. We then brought forward a bill limited to emergency room physicians, again, to try to deal with the crisis and the lack of access to well-trained emergency room physicians. Again, we were told no by the other side of the aisle.

But I have learned one thing in the short time I have been in the U.S. Congress; and that is, perseverance pays off. So if at first you do not succeed, try, try again, because, hopefully—hopefully—circumstances will have changed, people will reconsider. Hopefully, constituents, whom Members of the Senate represent, are talking to