

# Opinion

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## Medical malpractice cap wouldn't improve care



### Your Turn

David P. Lind  
 Guest columnist

Two Iowa study bills, HSB596 and SSB3085, attempt to remove language in the current law that would prohibit juries from awarding non-economic damages beyond \$250,000 when egregious medical errors occur.

The current law caps damages at \$250,000 “unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.” The language in quotation marks would be removed under these bills.

This means juries and judges would no longer decide the quality of life and survivor damages on a case-by-case basis — no matter how devastating the injury or horrific the conduct that caused it. Damages in *all* instances would be capped at \$250,000. This change is being pushed by a host of medical provid-

ers, hospitals and their malpractice insurers.

Injured patients and their lawyers argue against capping non-economic damages, primarily because patients won't be adequately protected against grossly negligent providers. Doctors and hospitals counter that malpractice claims frivolously clog the court system and eventually drive up health care costs for everyone.

In fact, only about 2% of all patients who have valid complaints of negligence actually bring claims, and only a fraction of these cases result in payment.

But will capping all non-economic damages provide the necessary incentives for providers to alter their practices to curtail avoidable medical errors? This should be the most critical question regarding tort reform being debated in Iowa. Unfortunately, the Iowa bills fail to address this issue. National research shows that similar tort laws implemented in other states do not result in fewer injuries and death.

In 2017, we randomly surveyed Iowans and found that nearly 1 in 5 Iowa adults experienced medical errors in the previous five years, either to themselves



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or someone close to them. Medical errors are more common than the public is led to believe, as medical providers rarely publicly report these problems.

Rather than tort reform, we should be focusing on reducing medical errors — the root cause of malpractice issues. By attacking this root cause, medical mistakes and their negative side effects will diminish, as will malpractice cases. This more logical approach will benefit patients, providers and greatly reduce overall costs.

The proposed changes to Iowa law do nothing to address the actual problem. They take away the ability of juries and judges to fairly compensate an egreg-

iously injured patient. Medical errors are, unfortunately, a fact of life. But studies have shown that most are avoidable. I am not saying errors are intentional. Often, broken organizational cultures inadequately address patient-safety protocols and burned-out physicians and nurses who are required to “produce” at unsustainable levels.

Any meaningful reform must begin at the health care organization level, ensuring that a healthy work environment exists for safe care and best practices. Placing strict caps on damages provides no consequential incentives for health care organizations to establish genuine protocols to ensure a culture of safety and better care.

To be clear, I do not represent trial lawyers. Accordingly, it may appear that I don't have a dog in this fight — but in truth, we all do — and we deserve better.

I urge you to contact your elected state representatives to oppose these two bills.

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