SB 141, the "Patient Injury Act," could harm Georgia healthcare consumers

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Introduction

Introduced in the Georgia legislature on February 8, 2013, Senate Bill 141 would create an administrative compensation system similar, but not identical, to workers compensation for the payment of medical malpractice claims. **The bill would preclude an injured patient from seeking damages in a court of law.** Any claim for medical malpractice brought by a Georgia patient could only be brought in this new administrative system. An industry reform group, Patients for Fair Compensation, filed a similar bill in the last session of the Florida legislature, but the bill died in committee. Although similar systems operate in countries with large social safety nets and universal healthcare, such as Sweden and Denmark,[i] such a system is unheard of in the United States. **Patients for Fair Compensation and its supporters seek to use Georgia as a laboratory to test this foreign system. Georgia Watch opposes SB 141, because we believe it would harm Georgia's healthcare consumers.** An administrative compensation system would deny injured patients access to courts of law, interfere with the doctor-patient relationship, and attempt to fix a non-existent problem.

Patients for Fair Compensation

Despite its name, the organization behind SB 141 is not a patient advocacy organization. Rather, it is a special interest group of healthcare industry executives seeking to change the medical malpractice liability system in order to lower their business costs. Several of its board members work for Jackson Healthcare, a medical professional staffing firm. In fact, the chairman of Patients for Fair Compensation, Richard Jackson, is not only the Chairman and Chief Executive Officer of Jackson Healthcare, but also a member of the governing board of the Georgia Department of Community Health.[ii] **Patients for Fair Compensation is seeking to find a state legislature willing to test its alternate malpractice scheme.** In short, they are looking for guinea pigs. Having been denied the opportunity in Florida, they are now looking to Georgia as a location to carry out their policy experiment.

The Patient Compensation System

The bill creates a Patient Compensation System governed by an unelected board comprised of 11 members, only two of whom must be patient advocates. Five members would be appointed by the governor, three by the lieutenant governor, and three by the speaker of the house. The board would appoint various committees, including a Medical Review Committee and a Compensation Committee. The Medical Review Committee would appoint three-member panels to determine liability and damages in cases brought before the new Patient Compensation System. The Compensation Committee—composed of a CPA and two members who are not physicians or attorneys—along with the Office of Compensation, would determine the appropriate levels of compensation for various injuries and put those amounts into a schedule which would be reviewed annually. The law is vague in that it does not mention whether pain and suffering, mental anguish, loss of consortium, or other intangible injuries would be included in the schedule; in fact it does not mention any specific types of harm. Liability would be based on a new avoidable harm standard (discussed below) and damage awards would be computed strictly in accordance with the compensation schedule.

Access to Courts

The Patient Compensation System created by SB 141 creates a multilayered bureaucracy with virtually no accountability to the people of Georgia. Yet, this administrative agency would have the extraordinary power to determine liability and damages in medical malpractice cases. **Patients harmed by a physician or other provider would be denied their Seventh Amendment right to a jury trial and could no longer seek damages in a court of law for a medical injury.** Rather, they would file an application with the new agency and if deemed reasonable by the Medical Review Committee, the claim would be assigned to a three member review panel who would determine liability according to a new avoidable harm standard and damages according to the damage schedule created by the Compensation Committee. Instead of having their claims judged by a jury of their peers, **injured patients would be at the mercy of a panel appointed by a committee appointed by a board appointed by politicians. The substantive decision of the panel could not be appealed.** Such a system would not only deny both patient and physician their constitutional rights to a jury trial and to appeal, but its multilayered appointments would leave it open to corruption, abuse, and the whims of politics. Meanwhile, victims of non-medical Torts, such as battery and ordinary negligence, would still be able to pursue their claims in a court of law. The victim of a lawnmower accident who loses a foot would have more rights than a patient who loses a whole leg due to a physician's mistake. This is simply not fair to Georgia's healthcare consumers.

Doctor-Patient Relationship

SB 141 also would interfere with the doctor-patient relationship. Doctors are faced with difficult decisions every day. Several possible treatments often are available and a doctor will make a decision based not only on accepted medical practice and experience, but also on the history and specific needs of the patient in their care. SB 141 introduces a lower standard of fault that would interfere with this patient-centered decision making process. Under this new

liability standard, an injured patient would only have to prove that a doctor in a similar situation would have acted differently and not caused harm. An applicant would not have to prove negligence. Therefore, **doctors would be forced to give greater consideration to what another doctor would do than to what is in the best interest of their patient** when making treatment decisions, thus doing a disservice to Georgia's healthcare consumers.

A Non-existent Problem

Despite claims by Patients for Fair Compensation and other groups, **medical malpractice awards actually represent a small portion of healthcare costs in the United States**. According to Americans for Insurance Reform, medical malpractice awards make up less than one percent of U.S. healthcare costs and have remained at that level for the last 18 years. Furthermore, more than 90 percent of cases are settled before going to trial and medical malpractice makes up only four percent of tort cases.[iii] The Patient Compensation System proposed by SB 141, therefore, in its attempt to lower healthcare costs, is a solution for a problem that does not even exist.

Conclusion

SB 141, the "Patient Injury Act," is a misguided attempt to "fix" a problem that does not actually exist, namely the supposedly high cost of medical malpractice claims. Despite its name, Patients for a Fair Compensation is a healthcare industry interest group seeking to test its administrative compensation system on Georgia consumers. Georgia residents, however, are not guinea pigs. The bill would deny Georgians their constitutional right to have their tort claims judged by a jury of their peers and interfere with the doctor-patient relationship by lowering the standard for proving fault. Furthermore, SB 141 would create a large bureaucracy with little accountability to the people of Georgia. Therefore, we urge Georgia consumers to contact their elected representatives and ask them to oppose this bill.

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[i] Mello, M.M., Kachalia, A., Studdert, D.M. (2011). Administrative compensation for medical injuries: Lessons from three foreign systems. *The Commonwealth Fund,* pub. 1517, issue 14. Retrieved from www.commonwealthfund.org.

[ii] http://www.patientsforfaircompensation.org/about/leadership

[iii] Americans for Insurance Reform (2012). *Costs of the current medical malpractice system are much lower than people think.* Fact Sheet. Retrieved from www.insurance-reform.org