

PRESIDENT'S PAGE

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As this issue of *TRIAL* went to press, the House and Senate leadership were attempting to reconcile competing versions of the historic health care reform bill. While restrictions on patient rights are not a part of either version, each addresses medical liability indirectly.

The Senate bill would authorize, without funding, state pilot projects that offer an alternative to traditional tort remedies in court for medical liability claims, such as an administrative claims process. But it also provides that an injured patient would have the right to opt out of any such process at any time to pursue his or her case in court.

The House version would authorize the secretary of health and human services to make an incentive payment to any state that enacts a certificate-of-merit requirement or an early-offer program. But it explicitly prohibits caps on damages or limits on attorney fees.

Whatever version of the two emerges from conference, we can claim victory for the American people. Despite a relentless effort by tort “reform” proponents to enact caps on damages, mandate health courts, limit attorney fees, abolish joint and several liability, and otherwise limit access to justice, in the end none of these restrictive measures were included in either bill.

A reform debate primer

During the nine months of debate on these bills, we learned several lessons.

Lesson one: Attacks on the civil justice system will never end. It is extra-ordinary how much time and energy was focused on taking away the rights of injured patients during a debate that was supposed to be about providing quality affordable health care and insurance coverage for all Americans. Although limiting patients’ legal rights would do virtually nothing to reduce health care costs, and certainly wouldn’t provide coverage for the uninsured, tort “reform” remained front and center throughout the debate in both chambers.

One scene stands out as showing the extent to which enemies of civil justice will go in

their effort to raise the bar for injured plaintiffs. During consideration of a motion that would have added medical liability restrictions to the House version, Rep. Bruce Braley (D-Iowa), a former AAJ board member, took the floor to oppose the motion. The chamber's usual decorum devolved into chaos as a contingent of representatives shouted, "Trial lawyer! You're a trial lawyer!" After order was restored, Braley argued passionately against the motion, which was defeated.

On the first day of debate in the Senate, Sen. John McCain (R-Ariz.) began the attack on the tort system and the work we do as trial lawyers by offering an amendment that would have placed restrictions on attorney fees in medical liability cases. This amendment also was defeated.

Lesson two: Take no vote for granted. Throughout the debate—from President Obama's address to a joint session of Congress, through committee hearings, and ultimately during floor debates in both chambers—we had to repeatedly educate lawmakers about research showing that limiting the rights of patients injured through no fault of their own would not advance the overarching goal of reducing health care costs and covering the uninsured. Linda Lipsen, AAJ's executive vice president of public affairs, and her team of professionals in AAJ's Public Affairs Department, worked day and night reminding lawmakers of these facts and communicating AAJ's message until the final vote was taken.

Lesson three: A strong offense is the best defense. Our success is also due in large part to the "98,000 Reasons" campaign executed by AAJ's Communications Department staff. One of its most exciting elements was the purchase of all billboard and ad space at Union Station in Washington, D.C., through which thousands of House and Senate staffers and members traverse daily on their way to and from Capitol Hill.

The billboards and ads, which were up from December 1 through New Year's Day, reminded commuters that some 98,000 Americans are killed annually by preventable medical errors. This generated significant press coverage about the human toll of medical negligence and its effect on American families. Ray DeLorenzi, AAJ's communications director, and his team of professionals deserve special recognition for conceptualizing and implementing this effective campaign.

There is no constituency of people who have or will become victims of medical negligence. They have no representatives in Congress to look out for their interests. But they do have a voice—ours. We can all be proud of the work we did speaking on behalf of in-

jured patients and ensuring their access to justice in the years to come.