

Begin seeing your opportunities ▶



from THE WALL STREET JOURNAL.

THE WALL STREET JOURNAL

WSJ.com

SEPTEMBER 11, 2009, 11:31 AM ET

For Clues on Obama's Med-Mal Proposal, We Look to the States



On Thursday, we [posted](#) a more-or-less open thread on the proposal made by President Obama Wednesday night to move medical-malpractice cases out of the court system and before expert panels and arbitrators.

At the time, we didn't have much to say about it (hence the open thread). But WSJ reporters Nathan Koppel and Barbara Martinez spent much of Thursday examining what such a system might look like. They looked to the states, writing: "Programs under way in several states could provide a template for President Barack Obama's pledge to address medical-malpractice abuses."

One, adopted by hospitals in Michigan, Minnesota, Kentucky and elsewhere, encourages doctors to disclose errors early and apologize, when appropriate. This approach is designed to address hospitals' reluctance to disclose medical mistakes for fear of being sued. It encourages hospitals and patients to enter mediation, in lieu of court cases, to resolve disputes.

Another initiative, adopted by lawmakers in Florida, Georgia and Illinois, requires plaintiffs' lawyers to have their cases vetted by physicians before filing them. This is designed to weed out frivolous suits while giving the truly harmed an avenue to the courts.

The move to an early error-disclosure system in 2002 has paid dividends at the University of Michigan Health System, said Richard Boothman, the hospital's chief risk officer. Prior to 2002, the culture was to fight every case, he said. "Nobody said, 'what should we have learned from this?'"

In the second initiative, plaintiffs lawyers in participating states must retain medical experts who have practiced in the same specialty area as the physicians accused of malpractice. These experts must file declarations, often called certificates of merit, that the injured parties have a reasonable basis to file suit.

The certificates can cost \$5,000 or more each to produce because of the expense of hiring experts, say plaintiffs' lawyers, who complain that the added burden can prevent some injured people from filing suit. It is also unfair, one lawyer complains, to require experts to weigh in on a case, before plaintiffs have even had a chance to gather all the evidence.

Still, some plaintiffs' and defense lawyers say certificates of merit can weed out more marginal claims. "A certificate is a useful tool for any lawyer who would stupidly undertake to prosecute a medical malpractice case without having it reviewed by a competent doctor in the field," says Chicago plaintiffs' lawyer [Steven Levin](#).

Copyright 2008 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our [Subscriber Agreement](#) and by copyright law.

For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit

www.djreprints.com