

Sens. Rodham Clinton, Obama Propose National Medical Error Disclosure Program

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Sens. Hillary Rodham Clinton (D-N.Y.) and Barack Obama (D-Ill.) on Wednesday introduced a bill (S 1784) that would provide liability protections for physicians who disclose medical errors and offer to enter compensation negotiations with affected patients out of court, [CQ HealthBeat](#) reports (*CQ HealthBeat*, 9/28). The bill would establish the National Medical Error Disclosure and Compensation program, which [HHS](#) would administer (Rodham Clinton [release](#), 9/28). Under the program, health care providers would report patient injuries to a designated officer who would determine whether those injuries resulted from a medical error. In the event that a medical error occurred, providers would explain the incident to patients, offer an apology and enter into compensation negotiations. The apologies would remain confidential, and patients could not use them as an admission of guilt in legal proceedings (*CQ HealthBeat*, 9/28). The program is modeled after similar smaller programs, such as a University of Michigan Hospital System program (*CongressDaily*, 9/28). The UMHS program has reduced the number of pending lawsuits against the hospital by half and has decreased the average defense litigation cost by \$30,000, Obama said, adding, "We want to build on the results of the local level and make it national" (*CQ HealthBeat*, 9/28). Richard Boothman, chief risk officer at UMHS, said, "The approach has contributed to sharp reduction in claims, sharp reduction in transaction costs, sharp reduction in insurance costs and sharp reduction in the time it takes to address patients complaints" (*CongressDaily*, 9/28).

No Damage Cap

The legislation would not cap damages in medical malpractice lawsuits, a provision included in a House bill ([HR 5](#)) that passed in July but has stalled in the Senate (*CQ HealthBeat*, 9/28). The [American Medical Association](#) supports the House bill, which would cap noneconomic damages in malpractice lawsuits at \$250,000 (*CongressDaily*, 9/28). According to a Rodham Clinton release, [Consumers Union](#), the [Joint Commission on Accreditation of Healthcare Organizations](#), the [Sorry Works! Coalition](#), the [Medical Society of the State of New York](#) and PULSE support the Rodham Clinton-Obama legislation (Clinton release, 9/28). [American College of Obstetricians and Gynecologists](#) also released a letter that endorsed the bill, but the letter said that the group also would continue to support caps on damages in malpractice lawsuits (*CongressDaily*, 9/28). Obama said that he hopes the liability protections included in the legislation will lead to bipartisan support in the Senate.

Comments

Rodham Clinton said that the bill seeks to reduce the number of malpractice lawsuits and help physicians avoid repeat medical errors. She added that many providers do not report medical errors under the current system because of concerns about malpractice lawsuits (*CQ HealthBeat*, 9/28). Rodham Clinton said in a release, "Patients and physicians are paying the price for a health care system that discourages the kind of communication needed to find and correct the conditions that lead to medical errors" (Rodham Clinton release, 9/28). Obama said, "Instead of keeping patients in the dark, ... we should encourage honesty and accountability," adding, "When patients hear the truth, they sue less. The reward is the settlement, and health care professionals can learn from their mistakes" (*CQ HealthBeat*, 9/28).

Courtesy of the Kaiser Daily Health Policy Report