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This past December, the Senate voted down an amendment to the health care reform bill that would have limited the fees that plaintiffs' attorneys could collect in medical malpractice lawsuits.

In the measure proposed by Sen. John Ensign (R-Nev), attorney fees would have been limited to one-third of the first \$150,000 recovered in any medical malpractice case. If the damage award exceeded \$150,000, then the attorneys' could receive an additional one-fourth of any amount over \$150,000. For example, if the total damage award was \$300,000, then the attorneys would be entitled to a total of \$87,500 for their fees. The amendment did not impose the same limitations on fees collected by defense attorneys.

Sen. Ensign argued that this amendment was necessary to decrease medical malpractice insurance premiums and improve patient access to health care providers. However, had this measure past, it would have done nothing more than limit the legal rights of victims of medical malpractice.

#### The Importance of Contingency Fees

In a contingency fee arrangement, the attorney agrees to cover litigation costs up-front in exchange for a portion of any damage award the plaintiff ultimately recovers. This amount usually is one-third, but depends on the fee arrangement negotiated by the attorney and client.

It is impossible to overstate the importance of contingency fee arrangements in personal injury cases, particularly in medical malpractice suits. These fee arrangements allow those who otherwise would not be able to afford legal representation to still receive their day in court. Rather than making access to high quality legal representation contingent upon the plaintiff's ability to pay, attorneys can select cases based on the merit.

Contingency fee arrangements also allow attorneys to take on costly and risky medical malpractice actions. It costs a lot of money and takes a lot of time to challenge big insurance companies and health care providers. Without the possibility of receiving a fair share of the damage award, many attorneys only could afford to take on the most lucrative of medical malpractice cases – which would limit the access of victims with less serious injuries to the legal system. This would not mean that people with smaller cases were suffering less or that their cases did not have merit; it would just mean that they would have difficulty finding qualified legal representation.

**Conclusion**

Contingency fee arrangements are designed to give those who otherwise would not have access to the legal system a chance to pursue their legal rights. An injured person's ability to pay should never limit their ability to bring a claim against the person responsible for their harm. The Senate's decision not to pass the limit on attorney fee's in the health care bill was the right one to make, but this is not likely to be the last attack on the rights of injured people.

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