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Lawmakers consider lawyer-friendly medical-malpractice bills

Reporting by Dan Weissner | May 26, 2011

ALBANY, N.Y., May 26 (Reuters) - New York State lawmakers are mulling a proposal that would abolish the long-held right of defendants in medical malpractice cases to informally interview the plaintiff's physician during the discovery process.

The sponsors of the bill, which could come up for a vote in both chambers of the legislature as early as next week, say it would ensure medical records that are irrelevant to a malpractice suit are kept private, and would do away with the ability of insurance companies and attorneys to intimidate physicians into testifying in court.

But opponents of the measure, including attorneys and health care industry lobbyists, say it would drive up the costs of insurance and defense of doctors sued for malpractice, and also make it much more difficult to prepare for cases.

The bill's Assembly sponsor, Queens Democrat Rory Lancman, said even if the bill passes defendants will still have access to relevant medical records, as well as the ability to depose physicians under oath.

"Their real opposition is that doctors have an objection to being held accountable," said Lancman, who is also of counsel to the Manhattan law firm Morelli & Ratner. The Senate sponsor, Syracuse Republican John DeFrancisco, is also of counsel to a personal-injury law firm.

In a 2007 case, *Arons v. Jutkowitz*, the state Court of Appeals ruled that defendants have a right to conduct informal interviews, as long as the interviews concern only information material to the malpractice case.

CONFLICT CONCERNS

The bills' sponsors, many of whom moonlight at personal-injury law firms, have been criticized by good government groups for the potential conflict of interest, but Lancman said that he and his colleagues would see no direct benefit.

The Greater New York Hospital Association (GNYHA), a lobbying group, says prohibiting informal interviews would increase the cost of malpractice insurance by 5 percent, or \$80 million per year, due to greater deposition costs and potentially higher settlements because the plaintiffs have access to a larger witness pool.

"The financial pressures on hospitals and physicians due to today's difficult economic times, years of Medicaid cuts, impending Medicare cuts and other factors make the need for relief from these extraordinarily high costs even greater," GNYHA officials wrote in a memo opposing the bill.

The New York State Bar Association opposes the measure because it would restrict access to important witnesses.



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"The interest in full and open discovery to both sides outweighs the potential risk that one side is going to abuse the discovery process," said Vincent Doyle, the president-elect of the Bar Association and a partner at Buffalo law firm Connors & Vilardo.

Doyle said that he has defended doctors in malpractice suits, and has conducted the informal interviews that would be barred under the proposal.

"The interviews are limited to those issues that are relevant," he said.

CUOMO PROPOSAL REJECTED

The proposal comes less than two months after Democratic lawmakers shot down a proposal by Gov. Andrew Cuomo, a Democrat, to place a \$250,000 cap on non-economic malpractice damages. The cap was part of a package of health care reforms proposed by the first-year governor, most of which were folded into the fiscal year 2012 state budget.

The current bill is part of a package that includes proposals to extend the statute of limitations and increase attorneys' fees in malpractice suits.