

THE HEALTH COURT CASE

The idea of “health courts” is being backed by the bipartisan legal reform coalition Common Good, headed up by its Chairman, Philip K. Howard. Health courts would have judges, experienced in the field of medicine, try malpractice cases without juries. The benefits of this type of system would include more consistent awards being granted to plaintiffs and the elimination of hired experts. Health courts would award compensation based on a schedule of benefits, similar to workers’ compensation. Instead of an inexperienced jury deliberating and delivering a verdict, a specialized judge will issue a written opinion about the case, establishing precedents.

Proponents of the health court system believe its establishment will be beneficial because it would reduce the rising cost of defensive medicine. Recent studies have shown more and more physicians are practicing defensive medicine, ordering expensive testing that is not entirely necessary. The testing is done for the sole benefit of covering the physician against any possible malpractice lawsuits. In a recent article published by USA Today, it was stated that in a 2005 study of 824 Pennsylvania physicians 93% admitted to using “risk aversion tactics such as over-ordering tests, abandoning high-risk procedures and avoiding the sickest of patients”. Advocates believe these costs, and others, could be contained by the use of health courts. It is strongly felt that the implementation of health courts would bring about more expedient and reliable justice and improve patient safety. Bills promoting health court pilot projects have been introduced to both houses of Congress.

Those opposing the establishment of health courts maintain that the right to trial by jury is too vital a component of the U.S. justice system to eliminate just to reform the current malpractice litigation system. Some state trial lawyer representatives have stated “negligence cases being decided by someone other than a jury raises strong constitutional questions.” Apparently, the American Bar Association (ABA) agrees. In February of this year the ABA adopted a resolution opposing the creation of special health courts.

Philip Howard believes:

“The goal is not merely to bring stability to the medical liability insurance crisis but to provide a solid legal foundation to promote better and more affordable healthcare.”