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The Discriminatory Impact of “Tort Reform” on Emergency Room Patients

Restrictions on patients’ legal rights, such as caps on damages, have a disproportionate impact on racial and ethnic minorities, who are more likely to receive negligent emergency room care and therefore seek compensation and justice through the courts.

In general, racial and ethnic minorities are more likely than non-Hispanic white Americans to receive lower quality or negligent care.

- A Harvard study found that, “there were significant differences between hospitals that serve a predominantly minority population and other hospitals. That is, blacks were more likely to be hospitalized at institutions with more AE’s [adverse events] and higher rates of negligence.”¹
- In 2002, the National Academy of Sciences Institute of Medicine (IOM) published a landmark study, entitled *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. Dr. Brian Smedley, director and co-editor of the report, said, “The health care playing field is not level ... for minorities, many populations of color who, on average, receive a lower quality and intensity of health care.”²

Racial and ethnic minorities are uninsured more often than non-Hispanic whites,³ a status that can result in more frequent ER visits and negligent care.

- The hospital location with the *highest proportion of negligent adverse events* (52.6 percent) *is the emergency department*, where people without health insurance may go for primary care.⁴
- Uninsured persons with traumatic injuries are less likely than those with insurance to be admitted to the hospital, receive fewer services if they are and are more likely to die.⁵

NOTES

¹ Harvard Medical Practice Study, *Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York* (1990).

² Testimony of Dr. Brian Smedley during hearing with U.S. Representative Eddie Bernice Johnson (D-TX) and the Asian-Pacific-American and Hispanic Caucuses on Health Disparities, April 12, 2002.

³ Families USA Foundation, *Going Without Health Insurance: Nearly One in Three Non-Elderly Americans* (March 2003); Center for Disease Control, *Health, United States, 2002*; U.S. Census Bureau, *Health Insurance Coverage* (September 2000); Agency for Healthcare Research and Quality, “Hispanics and Black Americans Still More Likely than Whites To Be Uninsured,” August 2, 2000; Henry J. Kaiser Family Foundation and UCLA Center for Health Policy Research, *Racial and Ethnic Disparities in Access to Health Insurance and Health Care* (April 2000).

⁴ Kohn, Corrigan and Donaldson, Eds., *To Err Is Human; Building a Safer Health System*, Institute of Medicine, National Academy Press: Washington, D.C. (1999), p. 30.

⁵ Institute of Medicine, *Care Without Coverage: Too Little, Too Late*, National Academy Press: Wash. D.C. (2002) p. 12.