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Cap on damages from malpractice suits is a necessity

Texans will vote Sept. 13 whether to impose on themselves and their children a $250,000 cap on how much money a jury can award for noneconomic damages — such as pain and suffering and disfigurement — for personal injuries negligently inflicted by a doctor. In cases where more than one hospital, nursing home or other medical institution is involved, the injured individual could collect up to $500,000 in noneconomic damages. But no claimant can collect more than $750,000 in noneconomic damages, regardless of how many doctors and institutions are involved.

The proposed constitutional amendment, Proposition 12 on the ballot, would not limit compensation for any actual, measurable damages, such as lost wages, medical bills, disability and so forth. But it is intended to eliminate the guesswork that can lead a jury to award millions of dollars in damages to an injured plaintiff, even if the actual loss was not so great.

On balance, we support the proposed constitutional amendment in hopes that it will work as advertised — reduce medical malpractice insurance premiums that have gotten so high that they have limited the willingness of some doctors to practice in certain areas of the state or certain types of high-risk medicine. We also support it in expectation that the State Board of Medical Examiners will make use of new legislation to crack down on bad doctors.

But our support is not unreserved, for this amendment has negatives that voters should keep in mind.

One is that the insurance industry is not promising any medical malpractice insurance rate cuts, even if the constitutional amendment passes. But based on the experience of other states, the Texas Medical Association has argued long and hard for the $250,000 cap. If the cap is approved but insurance premiums fail to drop, we think the medical association will owe Texans an explanation — one that doesn't blame victims of medical malpractice who seek compensation.

While the problems with medical malpractice insurance are real and serious, the constitutional amendment also would permit the Legislature to extend the cap on noneconomic damages to any other kind of personal injury lawsuit. Business interests, including manufacturers of defective products, polluters and others, will soon press the Legislature for caps.

An argument against the cap is that it is arbitrary. Yes it is, but so is any jury's attempt to award noneconomic damages.

Not surprisingly, trial lawyers who represent injured individuals are opposed to this proposed constitutional amendment. But they are joined by others who cannot be dismissed as ambulance chasers, such as former Texas Supreme Court Justices Deborah Hankinson and James Baker, both Republicans.

A principal argument against the cap is that it is arbitrary. Yes it is, but so is any jury's attempt to award noneconomic damages, because juries have no guidelines to follow much beyond their personal sense of outrage or sympathy. A case with the same facts may win different awards for noneconomic damages from a jury in Brownsville than one in Round Rock.

Trial lawyers argue that the appeals courts trim unusually high noneconomic damages, but that process, too, can be arbitrary.

Finally, we repeat our earlier criticism of lawmakers for scheduling this election on Sept. 13, an entirely nontraditional, fall Saturday with no other election on schedule. Supporters say they couldn't wait until the November election because of the urgency of the situation. We don't believe it. Gov. Rick Perry made this an emergency legislative item in January, but the bill didn't reach his desk until June 4.

There's no emergency, only an expectation that by holding it on Sept. 13, there will be a lower turnout of people who might oppose it.

As we said, this amendment is a close call. We think the medical care situation is serious enough to tip our support toward the amendment. But voters should understand that it is their rights they are being asked to limit.