

COMMENTARY

Letting caregivers say they are sorry

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One of the first lessons parents teach their children is to say "I'm sorry" when their actions cause hurt or an unintended consequence. I certainly teach my children to acknowledge their mistakes, not run from them.

Yet, for decades, lawyers and insurers have advised health-care professionals to "deny and defend" when an adverse situation arises, believing that apologies or expressions of empathy to patients and their relatives would lead to lawsuits, settlements, and ruined careers.

Pennsylvania lawmakers now have the opportunity to put an end to this defensive posture and strengthen the relationships between health-care professionals, patients, and families. They can pass legislation permitting medical professionals to acknowledge, express empathy for, and take ownership of unforeseen outcomes without the risk of litigation based on the apology.

This proposed legislation does not relieve doctors, hospitals, or nursing homes of liability, and it does not prevent patients and families from filing lawsuits. It simply permits health-care professionals to communicate openly and honestly with patients and their families without fear that their statements will be used against them in court.

Senate Bill 208, introduced last month by Sen. Pat Vance (R., Cumberland), has 30 cosponsors from both parties. It would cost taxpayers nothing, and it would reduce the number of medical-malpractice lawsuits, which could lead to lower health-care costs.

Numerous studies have shown that anger - not greed - is the driving force behind most medical-malpractice suits. Patients and families are justifiably frustrated when something goes wrong and a health-care provider fails to discuss it with them honestly. In one study, more than a third of those who filed suit said they would not have done so if they had been given an explanation and an apology.

Thirty-five states - including neighboring Ohio, Delaware and Maryland - have passed similar apology legislation and created disclosure programs for doctors, hospitals, and

nursing homes to acknowledge regret about outcomes. Not only have claims gone down, but customer-service ratings have skyrocketed.

At the University of Michigan Health System, one of the first to experiment with disclosure policies, existing claims and lawsuits dropped from 262 in 2001 to 83 in 2007. Costs for legal defense and claims have been cut by two-thirds, and the time spent resolving cases has been halved.

The Michigan system's chief risk officer, Richard C. Boothman, told the New York Times last year, "Improving patient safety and patient communication is more likely to cure the malpractice crisis than defensiveness and denial."

At the University of Illinois Medical Center, malpractice filings have dropped by half since its disclosure program started a little more than two years ago. And, in the 37 cases in which the hospital acknowledged a preventable error and apologized, only one patient has filed suit.

In states with apology legislation, medical mistakes have become teaching opportunities, not potential coverups.

We hope that Pennsylvania's trial lawyers will join their colleagues in other states who have backed apology legislation. They have acknowledged that, as advocates for those who have been harmed, their core responsibility is to seek redress in four ways: getting answers, ensuring accountability, finding fixes, and achieving swift justice.

Apology legislation accomplishes all four. It allows medical professionals to talk to patients about what went wrong and why. In those cases in which a lawsuit was filed anyway, settlements were often agreed upon in months rather than years. And families and health-care professionals say they are able to heal sooner and move on with their lives.

Pennsylvania lawmakers should move swiftly to pass this commonsense, cost-saving measure that mirrors the simple lessons we teach our kids.