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SPECIAL SECTION

HEALTHCARE

Restrict lawsuits arising from free care at hospitals

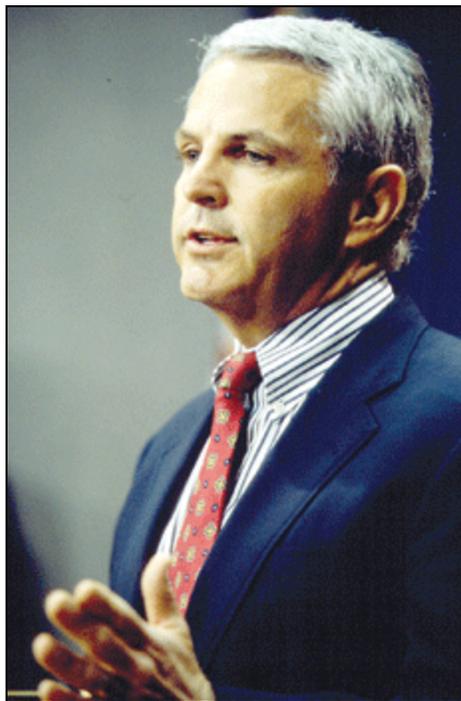
By Rep. John Shadegg (R-Ariz.)

As P.J. O'Rourke has noted, "If you think health care is expensive now, wait until you see how much it costs when it's free."

What many people don't realize is that, for all practical purposes, we already have "free" healthcare in the United States. Since 1986, the Emergency Medical Treatment and Labor Act (EMTALA) has required emergency rooms to provide care to people regardless of their ability to pay. This is decent, noble, humane — and also extremely expensive.

Though it costs an enormous amount of money to treat uninsured individuals in emergency rooms, there is no federal reimbursement for EMTALA treatment. The cost is imposed on the hospitals and doctors that provide the services. It is also imposed on all Americans in the form of higher healthcare and insurance costs. In addition, it results in dramatically longer wait times and limited access to specialists in emergency rooms.

The federal government must help doctors and hospitals respond to the financial consequences of EMTALA. Unfortunately, the federal budget is in trouble. Our deficit is over \$500 billion, and the national



FILE PHOTO

Rep. John Shadegg

debt is growing. The federal government can't afford to begin writing checks to cover EMTALA medical treatment. But we should do what we can to make treating the uninsured less burdensome for hospitals and doctors.

One of the greatest costs for healthcare providers today is liability insurance. Under current law, an individual who receives free medical care required by EMTALA can sue both the doctor and the hospital for malpractice. The lawsuit is governed by state, not federal, law, and in most states there are no limits on the amount of damages that the individual can recover. To add insult to injury, the cost of defending the lawsuit, and any settlement or damage award, falls on the doctor or hospital that provided the government-mandated free care.

The cost of lawsuits resulting from EMTALA should not be borne by doctors and hospitals that are already hemorrhaging from the cost of uninsured care and are cutting back on all care as a result.

Consider this: A pregnant woman comes into the emergency room in labor. She is uninsured and unable to afford medical treatment, including necessary prenatal care. Her baby is delivered free of charge. Her child has an injury or disability, and she sues the hospital and doctor for damages.

The doctor and the hospital should not be forced to pay to defend themselves from a lawsuit that results from "free" care that Congress mandated. Nor should they have to pay the unlimited damages the woman might receive from a jury. That is not fair to the hospital, it is not fair to the doctors, and it is not fair to all the people who spend more for their own healthcare to pay for hers.

Emergency rooms are the most expensive and least efficient venue for the delivery of healthcare in America. Rather than giving free healthcare to all Americans who shows up at emergency rooms without the ability to pay, we should provide them with refundable tax credits, as President Bush has advocated, and let them buy their own insurance. Then they could get care from a doctor or at a clinic at a fraction of the cost, freeing our catastrophically overburdened emergency rooms and doctors to provide emergency services to those who need it.

Even if we can't achieve that far-reaching reform this year, we should immediately pass a federal law governing all lawsuits arising out of EMTALA-mandated care that prescribes reasonable limits on damages in any such litigation. It is one thing to decide as a nation that no one in our society should go without some basic level of medical care, regardless of their ability to pay, as EMTALA does. It is something entirely different to provide the recipients of that care

with a right to recover unlimited damages at the sole expense of the doctors and hospitals who provide this “free” care as well.

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