

Transplant Mix-Up Enters Debate in Congress on Malpractice Bills

By SHERYL GAY STOLBERG

ASHINGTON, Feb. 25 — The death of J sica Santill n, the 17-year-old given a heart and lung transplant from a donor with an incompatible blood type, is influencing the Congressional debate on President Bush's proposal to limit damages in medical malpractice cases and may prevent the plan from passing intact, lawmakers say. Senator Bill Frist, the heart-lung transplant surgeon who is now the Senate majority leader, said in an interview today that he did not think Ms. Santill n's death should affect the proposal's chances. But another senior Republican, Senator Orrin G. Hatch of Utah, said any legislation to cap malpractice awards would have to have an exception for egregious cases.

"I question whether anything would pass that did not have some way of solving the hard cases," said Mr. Hatch, who is the chairman of the Senate Judiciary Committee and is working on a draft of a Senate bill.

Aides to a senior Republican senator said privately that the case of Ms. Santill n, who died on Saturday after doctors at Duke University Hospital performed a second heart-and-lungs transplant in an attempt to save her, will almost certainly drive the malpractice debate. One Republican health care lobbyist, who is pushing hard for malpractice changes, went even further, saying the legislation was in grave danger.

"The entire effort hit a brick wall this weekend," the lobbyist said. "This was a very heavy lift under the absolute positive best of circumstances, and the circumstances just took a turn for the worse."

With doctors around the country complaining about rising malpractice premiums, and some shutting their practices as a result, President Bush is seeking to overhaul the nation's medical liability system, including legislation that would impose, among other things, a \$250,000 cap on jury awards for noneconomic or "pain and suffering" damages. The parents of Ms. Santill n are precisely the kind of people who would be affected by such a cap, opponents of the legislation say, because their daughter did not work and thus her death caused them no economic loss.

Already, the Association of Trial Lawyers of America, which is lobbying heavily against the Bush plan, is working with Democrats in Washington to arrange for the Santill n family's lawyer to testify in Congress, where a hearing on medical malpractice is scheduled on Thursday before the House Energy and Commerce Committee. The lawyer, Kurt Dixon, sent a letter to the committee chairman today, asking to appear.

"I urge you to save a seat for J sica," Mr. Dixon wrote. "America deserves to understand how people like J sica and her family would be affected by the legislation your committee is considering."

In recent months, with Republicans in control of the White House and both houses of Congress, proponents of malpractice change thought their time had come. The issue has become a top legislative priority for Senate Republicans. Coverage in the news media has highlighted incidents like a walkout by surgeons in West Virginia, who stopped seeing patients in January to protest the cost of medical malpractice insurance in their state.

But Ms. Santill n's story, followed by millions of people around the nation, has changed the picture. Opponents of an awards cap predict her case will become a touchstone in the debate over what the president and Dr. Frist call frivolous lawsuits, much like, they say, that of a woman who was scalded by hot coffee at a McDonald's restaurant. Her \$2.7 million jury award, later reduced to \$640,000, became a rallying point for those seeking to limit punitive damages.

"How many times did we hear about the person with the McDonald's coffee having been burned?" said Senator Richard J. Durbin, a former medical malpractice lawyer who is a leading spokesman for Democrats on malpractice matters. "We were beaten over the head with it. Well, it's sad to say, but this tragedy at Duke is going to be front and center in the evidence of why we have to take medical malpractice reform very seriously."