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Behind Those Medical Malpractice Rates

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Speaking before hundreds of doctors and medical workers in a St. Louis suburb last month, President Bush called attention to a neurosurgeon on stage with him in the small auditorium. The doctor, the president said, was paying $265,000 a year in premiums for insurance against malpractice claims.

Such high prices, "don't start in an examining room or an operating room," the president declared. "They start in a courtroom."

Indeed, at many recent appearances, Mr. Bush has complained about the "skyrocketing" costs of "junk lawsuits" against doctors and hospitals.

But for all the worry over higher medical expenses, legal costs do not seem to be at the root of the recent increase in malpractice insurance premiums. Government and industry data show only a modest rise in malpractice claims over the last decade. And last year, the trend in payments for malpractice claims against doctors and other medical professionals turned sharply downward, falling 8.9 percent, to a nationwide total of $4.6 billion, according to data compiled by the Health and Human Services Department.

"There is an underlying cost push," said J. Robert Hunter, the director of insurance for the Consumer Federation of America, who is a former insurance regulator in Texas. "But there has not been an explosion of big jury verdicts or settlements. It's a constant drip, drip every year."

Lawsuits against doctors are just one of several factors that have driven up the cost of malpractice insurance, specialists say. Lately, the more important factors appear to be the declining investment earnings of insurance companies and the changing nature of competition in the industry.

The recent spike in premiums - which is now showing signs of steadying - says more about the insurance business than it does about the judicial system.

"You get these jolts in insurance prices periodically, and they attract a lot of attention," said Frank A. Sloan, a Duke University economist who has been following medical malpractice trends for nearly 20 years. "They're a result of a confluence of many things."

Data compiled by both the federal government and by insurance organizations show costs for the insurance companies climbing steadily over the last decade at an average annual rate of about 3 percent, after adjusting for inflation. Over most of that period, premiums for doctors rose modestly and sometimes even dropped as the insurance companies battled for market share in a scramble to collect more money to invest in strong bond and stock markets. But when the markets turned sour and the reserves of insurers shriveled, companies began to double and triple the costs for doctors.

"The insurers were catching up, getting to where they should have been," said Larry Smarr, the president of the Physician Insurers Association of America, a trade group of companies that provide more than 60 percent of the nation's medical malpractice insurance.

While acknowledging the impact of industry forces and practices on prices, Mr. Smarr and many others in the insurance industry still regard lawsuits as their biggest problem. Claims of medical malpractice are typically complex and are rarely paid without a lawsuit or the threat of a lawsuit. If the insurance companies could find a way to limit payments for lawsuits, they say, they could significantly reduce their costs.

President Bush, supported by the insurance industry and the American Medical Association, is proposing a remedy: a national limit on what juries can award in medical malpractice cases. Such a limit, or cap, has often been cited by the president as an important part of what has been called tort reform - limiting what Mr. Bush calls costly and frivolous lawsuits.

The Bush administration is pushing for a $250,000 limit on jury awards to victims of medical mistakes and their families for pain and suffering. No limit would be placed on the more quantifiable payments for economic losses, including medical expenses and lost wages.

Introduction of legislation calling for such national medical malpractice limits - traditionally left to individual states - is at least a month away. Still, the administration has been bolstered by stronger Republican majorities in the House and Senate and by last week's signing into law of a measure that would move many class-action lawsuits to federal court, sharply limiting their potential spread.

Senate Majority Leader Bill Frist of Tennessee, who is a doctor, calls malpractice award limits "a majority priority." The House has passed similar proposals seven times in the last 10 years, most recently in 2003.

While this Congress might be the best opportunity yet for supporters of jury award limits, there will certainly be a fierce battle from Democrats, consumer groups and plaintiffs' lawyers.

Consumer advocates say such limits would mean that some of the most seriously hurt patients would not receive fair compensation. Also, they say, in the death of an infant, an elderly person or a homemaker, there would be little compensation because of the prevailing view that there could be no economic loss because no income was being earned.

Trial lawyers and consumer groups have been parading heart-wrenching victims of doctors' mistakes to make their argument. Among them, the American Trial Lawyers Association says, is Alice Lloyd of North Carolina. Doctors failed to treat her blood infection for so long that finally they had to amputate both legs above her knees, her left arm and all the fingers from her right hand. She still has her right thumb.

As the two sides dig in for a fight in Congress, 27 states have already adopted award limits, with caps ranging from $250,000 to $1 million. In some states, insurers have agreed to reduce, at least temporarily, premiums in exchange for limits on awards.

Insurers say that caps not only promise lower costs, but greater predictability on potential payouts. "It takes an unknown entity, which is the pain and suffering component, and makes it quantifiable and estimate-able," said Mr. Smarr of the Physician Insurers Association of America.

Insurers acknowledge that they consider several factors besides claims costs in setting prices for doctors. In the 1990's, even as their costs were rising, malpractice insurers held firm on prices, even lowering them in some years to hold or win a share of the market.

"You always try to say you're not chasing market share," said Donald J. Zuk, the chief executive of Scipie, a medical malpractice insurer that does business in about 30 states. "On the other hand, you have to have a certain market share, you have to show a certain amount of growth, or you don't survive."

But by the late 1990's, some insurers discovered that they had dropped prices well below the cost of paying claims. Several went out of business. One of the biggest insurers, the St. Paul Companies, now Travelers St.

Paul Companies, stopped offering medical malpractice coverage.

The surviving companies "had to raise prices or go out of business," Mr. Smarr said.

In 2000, about the same time that under-pricing and other market conditions began to push up prices in medical malpractice, the much larger world of commercial insurance was also going through a cycle of higher prices. The Sept. 11 terrorist attacks cost insurers $40 billion and accelerated the upward pressure of the latest premium cycle.

Martin D. Weiss, the chairman of Weiss Ratings Inc., an independent financial rating agency, said the cyclical nature of the insurance business and a drop in insurers' investment earnings when markets fell had been among the strongest forces behind the rise in medical malpractice premiums.

Over the last year, insurance analysts say, prices for most lines of commercial insurance appear to have peaked and have begun to decline. While prices for medical malpractice coverage are not yet falling, they rose less steeply in 2004.

Costs for most doctors last year rose between 6.9 percent and 24.9 percent compared with increases of between 10 percent and 49 percent in 2003, according to The Medical Liability Monitor, a newsletter published in Chicago.

The most expensive place in the country is South Florida, where some obstetricians and general surgeons paid nearly $280,000 for coverage last year, according to The Monitor. Obstetricians in Illinois paid as much as $230,428, The Monitor said, while in Nebraska, the least expensive place in the country for malpractice insurance, obstetricians paid $16,194. Florida adopted a cap on awards of $500,000 to $1 million in 2003. Illinois has no cap and Nebraska has a cap of $500,000.

The recent jump in premiums shows little correlation to the rise in claims. According to the National Practitioner Data Bank of the Health and Human Services Department, the total paid out by insurance companies for claims against doctors and other medical professionals rose 3.1 percent annually, on average, between 1993 and 2003 and then declined last year.

The average payment in 2003 for malpractice, the data bank said, was $268,605, up from $197, 753 in 1993, after adjusting for inflation. In 2004, the average payment fell to $262,486 and the number of payments made for medical malpractice cases dropped to 17,696 from 18,996 the year before.

What may muddy the public picture is that while claims are rising at a measured pace, there have been more headline-grabbing big awards. Data compiled by the Physician Insurers Association of America show a distinct rise in payments of more than $1 million to victims of medical mistakes. In 1993, the organization said, 2.9 percent of the payments made by its companies exceeded $1 million. A decade later, 8.5 percent of the payments were for more than $1 million.

Many insurers regard the $250,000 limit in California as a model for Mr. Bush. They see it as largely responsible for California's shift from being one of the most expensive places for medical malpractice insurance to one of the least expensive. Consumer advocates, however, say the main reason costs for doctors have fallen in California has been a 1988 law that prohibits insurers from raising rates more than 15 percent a year without a public hearing.

And some researchers are skeptical that caps ultimately reduce costs for doctors. Mr. Weiss of Weiss Ratings and researchers at Dartmouth College, who separately studied data on premiums and payouts for medical mistakes in the 1990's and early 2000's, said they were unable to find a meaningful link between claims payments by insurers and the prices they charged doctors.

"We didn't see it," said Amitabh Chandra, an assistant professor of economics at Dartmouth. "Surprisingly, there appears to be a fairly weak relationship."

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