

Conn. PLUS seeks answers to 'out of whack' med mal system

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HARTFORD — Connecticut is in the midst of a medical malpractice crisis. Representatives from the legal and insurance industries agreed on this late last month at a Professional Liability Underwriting Society educational session.

Barbara Sinclair, assistant vice president with Chubb Specialty Insurance of Simsbury, said she thinks inflation is partially responsible for the crisis, but then she pointed the finger back at herself and the insurance industry. She said the cost to defend awards is going up while insurance companies are under-pricing in the premium area.

"I don't think any of us are free from some sort of culpability in that area," she said. "Because of the cyclical effect of insurance and the soft market of the 1990s, we've all participated in reducing those premiums."

Sinclair said problems have stemmed from the fact that companies are fighting for the banner accounts and prices keep dropping.

"We squeeze so tightly that there's nothing left," she said.

Insurance Company View

Denise A. Funk, executive vice president and CEO of Glastonbury-based Connecticut Medical Insurance Co., said she attributes the crisis to how large the losses and loss expenses have gotten over the past 10 years.

According to a study by the CMIC, from 1992 to 2002 total losses increased from \$93 million to \$223 million. She said the number has more than doubled because plaintiffs are seeking larger amounts in damages. In 1992, she pointed out, one case in Connecticut for \$1 million or more was paid, and in 2002, 19 cases of \$1 million or more were paid. Funk pointed her finger at a different group.

"If I had to pin the blame on another person other than myself I would say it was the actuaries who underestimated or did not detect early on the kinds of loss severity trends we have," she said.

Joyce A. Lagnese, principal of the Hartford law firm Danaher, Tedford, Lagnese & Neal, agreed with Funk's notion that claimants are looking for too much money these days. She said people have a multi-million dollar mentality, and they think that if something goes wrong, it's somebody's fault and someone must pay.

'Blame Game'

"We are a compensation-minded society," she said, and this has led to what she called "the blame game," where plaintiffs are suing multi-defendants.

"Plaintiffs' lawyers love this, because it has increased the values of cases," she said, "but what happened to individual responsibility?"

Lagnese then pointed to cases where plaintiffs have sued doctors for not properly diagnosing patients who failed to make follow-up appointments.

"It used to be that if you didn't go back to the doctor for the follow up it was your fault," she said, "but now if you don't go back it's the doctor's fault for not pestering you to come back?"

Sinclair agreed that people seem to be abusing the system.

"There's been a significant change in the character of allegations," she said. "Before it was negligence, and now it's intentional misconduct. The allegations are much more egregious than we've seen in the past."

James D. Bartolini, a partner with the Hartford-based law firm of RisCassi and Davis, has been representing plaintiffs in medical malpractice cases for most of his career. He said he thinks cases have gotten so expensive because they take so long.

"Cases get strung out for years," he said. "There has to be some mechanism in place that forces judgment."

When solutions were discussed the topic most debated was whether a cap on awards was the answer. In March, the House of Representatives approved a medical malpractice liability reform bill that would limit non-economic damages in malpractice to \$250,000, but at press time, the item was still being discussed in a working committee.

Bartolini spoke about how insufficient \$250,000 is in paying for the pain and suffering some of his clients have gone through, and that placing a limit on how much a person can collect does not provide for extreme cases.

"Essentially what they're looking to do is eliminate civil lawsuits and give power back to the powerful," he said, alluding to the hospitals, doctors and drug manufacturers who would benefit from a cap on awards.

Catholic Church

He then compared the medical malpractice crisis to the crisis in the Catholic Church.

"It took lawsuits for years and years to try to uncover and get these people to fess up and admit what was going on," he said. "And what did we see when it started to come to light? We started to see that there were cover-ups and protections going on all the way up the chain of command and unfortunately without civil lawsuits the same thing is going to happen in the field of medical malpractice."

Lagnese disagreed.

"The suggestions on the table are not about eliminating lawsuits," she said. "They're about an attempt to bring some balance to a system that is out of whack."

Funk said a cap is the best way to combat astronomical costs, but conceded that \$250,000 might not be enough.

"Maybe it's \$300,000 or \$500,000, but we just really need some kind of predictability in these losses in order to price the product to give ourselves financial stability and to give the physicians some predictability of what their costs will be," she said.

Lagnese shared anecdotes of doctors sitting in her office crying, and argued that physicians are no longer the powerful entity that Bartolini referred to in his argument against a cap. She then blamed the "de-idolization of physicians" on the healthcare system, and suggested fixing the healthcare system could bring an end to the crisis.

Income Decline

"The drastic decline of income on a per patient basis has led to an increase in the number of patients one needs to see in order to pay the rent," she said. "Remember that [doctors] come out of medical school with a \$150,000 debt, and as residents they only make about \$30,000 a year. To cover this gap, the only thing to do is push people through the system. If you see 30 patients in a day instead of 15 you're increasing the likelihood that something's going to be missed."

Funk said one of the tort reforms that CMIC is promoting is a screening mechanism so physicians are not sued without cause.

"We're paying approximately \$2 million per year in defense costs for cases that should have never been brought," she said.

Sinclair said one solution to the crisis is for the hospitals to form captive insurance companies, but this is too much of a long-term commitment for a lot of the organizations.

No matter what, she said, the crisis will not end without collaboration.

"A lot of heads have to come together to work through this," she said. "Finger pointing one industry I don't think is the answer." □