

# Study: caps on awards would save 7-12% on medical costs

Malpractice underwriting losses doubled from \$4.1 billion in 1991 to \$8.6 billion in 2001

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A business group's analysis of data comparing states with and without limitations on damage awards in malpractice cases found that capped damage awards could save \$54.8 billion to \$97.5 billion annually—7.2 percent to 12.7 percent of the \$764.8 billion spent on hospital and physician services each year.

The The Employment Policy Foundation's (EPF) study found that as the number of claims has increased, so too have jury awards. Between 1995 and 2001, median jury awards in medical malpractice cases doubled from \$500,000 to \$1,000,000 for the typical case with the maximum annual claim award reported nationwide increasing from \$5.3 to \$20.7 million over the same period.

Doctors, nurses and hospitals have been faced with skyrocketing premiums in response to increasing claims. The rising litigation costs are reflected in malpractice insurance underwriting losses, which doubled from \$4.1 billion in 1991 to \$8.6 billion in 2001.

Malpractice insurers paid out \$1.53 in claims settlements and claims adjustment and defense expenses for every dollar that they collected in premiums. In 2001, the gap between premiums collected and underwriting losses amounted to \$4,033 per physician, assuming that all 744,000 full-time physicians in the U.S. were covered.

## **Plaintiffs Receive Only 38%**

EPF's analysis found that the malpractice litigation system is a highly inefficient method for identifying and correcting medical errors. Plaintiffs eventually receive only 38 percent of the total dollars that flow through the malpractice litigation system. The majority—62 percent—compensates the plaintiff's lawyers and expert witnesses and the insurer's claims adjustment, cost of investigating claims and defending claims made against insured physicians and hospitals.

Since 1999, medical malpractice insurance cost increases have been most severe for physicians in the critical specialties of obstetrics (46.5 percent), surgery (58.1 percent) and internal medicine (62.3 percent). These sharp increases have caused doctors to retire or move to states—such as California—that have adopted award caps. The result is a critical shortage of doctors in parts of the country.

Furthermore, as most hospitals have seen their malpractice-related liability insurance costs double over the past three years they have eliminated trauma centers and other services that expose them to high risks of being included in malpractice lawsuits.

## **Insurers Discontinue Coverage**

Insurers, faced with mounting losses in their malpractice coverage divisions have begun to discontinue coverage in large numbers. Fifteen insurers have stopped writing policies in Mississippi, 54 of 66 companies have dropped out of the Florida market and 24 of 32 insurers in Missouri have stopped renewing coverage. The result has been curtailment of practice areas and retirement for many physicians who either cannot get insurance or cannot afford the insurance options that remain.

The study found that significant cost differences do exist between states with non-economic damage award caps and those states without limits. Between 1976 and 2000, malpractice insurance premiums nationwide increased 505 percent—equivalent to 7.8 percent annual premium growth compounded over 24 years.

InsuranceTimes

September 2, 2003

InsuranceTimes

September 2, 2003

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In California—which caps non-economic damage awards—malpractice premiums increased 167 percent—equivalent to a 4.2 percent annual growth rate. The resulting impact on premiums is very real. In 2001, the premium range for obstetricians was \$143,000 to \$203,000 per physician in Florida compared to \$23,000 to \$72,000 in California. The pattern was similar for surgeons—\$63,000 to \$159,000 in Florida compared to \$14,000 to \$42,000 in California.

Faced with the prospect of litigation, the study found many doctors and hospitals practiced “defensive” medicine. This practice artificially inflates health care expenditures with additional, medically unnecessary tests and diagnostic procedures.

## **Controlling Excesses**

EPF's analysis found that controlling excesses in the malpractice litigation system could reduce current health care costs by 5 to 9 percent without sacrificing quality of care. The dollar impact on annual medical expenditures is large—up to \$68.8 billion.

In terms of 2001 health insurance costs, the result of curbing medical malpractice excesses would be a reduction in total employer-sponsored health insurance plan costs of \$17.4 to \$30.9 billion.

The 7.2 percent to 12.7 percent cost saving would lower average employer costs by \$198 to \$353, annually, per covered employee. The employee share of costs would be reduced by \$59 to \$109 employee per year.

EPF also found that the excess costs of uncurbed medical malpractice litigation result in loss of health care coverage for 1.5 to 2.7 million employees and their families based on empirical studies that show that a 3.0 percent rise in health insurance costs results in a 1.0 percent fall in the number of employees covered by employer-sponsored plans.

The study concluded that the medical malpractice litigation system is a costly and ineffective approach that ultimately fails to protect patients. It increases costs that employers and employees pay for health insurance, reduces the number of employees and their families covered by affordable employer sponsored health plans and restricts access to health care in communities impacted by physician flight from liability risks.

The study is available at [www.epf.org](http://www.epf.org). □