

Malpractice Situation Not Dire, Study Finds

Analysis of Texas Claims Finds 'Sea of Calm,' Overall Stability in Tort System

By *Ceci Connolly*

Washington Post Staff Writer

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In his pitch for legislation imposing a "hard cap of \$250,000" on medical malpractice awards for non-economic damages, President Bush points the finger at what he calls "a broken medical liability system." But a new analysis of malpractice claims filed over 15 years in his home state of Texas found no such crisis there.

"We find no evidence of the medical malpractice crisis that produced headlines over the last several years and led to legal reform in Texas and other states," a group of four legal scholars concluded in a report being released today.

"What we found is a sea of calm" in Texas malpractice claim cases from 1988 to 2002, said co-author David A. Hyman, a professor of law and medicine at the University of Illinois. "So, at least in Texas, the tort system can't be the cause of spikes in malpractice premiums."

Texas was identified by the American Medical Association as one of more than a dozen states suffering from a malpractice "crisis."

The new study comes as the White House is touting its plan to limit non-economic damages as a critical step in reining in health care costs. Bush, the AMA and some conservative scholars argue that an onslaught of lawsuits -- and blockbuster jury awards -- have forced malpractice premiums to historically high levels.

"What's happening all across this country is that lawyers are filing baseless suits against hospitals and doctors," Bush said in a recent speech in Illinois. "So doctors end up paying tens of thousands, or even hundreds of thousands, of dollars to settle claims, out of court, even when they know they have done nothing wrong."

"When insurance premiums rise, doctors have no choice but to pass some of the costs on to their patients," Bush said. "If you're a patient, it means you're paying a higher cost to go see your doctor."

The Texas study found little to support those assertions. By virtually any measure -- from number of claims filed to damages paid out -- the data reflect amazing stability in the tort system, according to the peer-reviewed paper that will appear in the May issue of the *Journal of Empirical Legal Studies* (www.utexas.edu/law/academics/centers/clcjm/preview). "The clear implication is that 'runaway medical malpractice litigation' makes a poor poster child for the cause of tort reform," the researchers wrote. "The malpractice litigation system has many flaws, but at least in Texas, sudden increases in claim frequencies and costs appear not to have been among them."

The team chose Texas because it is one of the few states with a publicly available, comprehensive database of legal claims filed against physicians, hospitals and other health care

providers. Texas also is the second most populous state and the third largest in health care spending.

Malpractice insurance premiums in Texas rose an average of 135 percent from 1999 to 2002, prompting the state legislature to cap non-economic damages in 2003.

Analyzing claims data from 1988 to 2002, the team found little change in the number of claims filed or the total amount paid in damages, when adjusted for population growth and inflation. The total number of claims per physician actually declined from 1995 to 2002, and 80 percent of cases were resolved without payment by the physicians or hospital.

When adjusted for Texas's economic growth, "total payouts fell by \$6 million annually," the analysis found. The \$515 million in malpractice payouts in 2002 represented 0.6 percent of health care spending in Texas that year.

"It's very hard to take the position malpractice is a major factor in the increases in the cost of health care," Hyman said. "The actual cost of malpractice payouts is really quite modest."

Texas had its share of eye-poppingly large settlements. "But, contrary to conventional wisdom, they are not increasing," the report said. Settlements of more than \$1 million have represented about 5 percent of the total number of claims, or about 53 cases each year. Legal defense costs also rose, but at a steady rate that can be easily managed by insurers, according to the report.

The study did not address whether doctors are practicing "defensive medicine" -- ordering extra tests and procedures -- to guard against future litigation.

"The fact that a lot of doctors are getting sued may be problematic, but it doesn't explain the premium increases" for malpractice or health insurance, Hyman said.

"Our point, which has been largely neglected in the furious battle over malpractice liability, is that attempts to avoid crises in malpractice insurance prices should focus on insurance, not litigation," wrote the group, which included two professors at the University of Texas Law School and William Sage, a physician and law professor at Columbia University.

Although he had not yet studied the report, Donald Palmisano, immediate past president of the AMA, said that in the 18 months since Texas enacted its caps, one major insurer reduced malpractice premiums 17 percent and new carriers have expressed interest in covering doctors in the state.

"The most important thing passed on to the patient is that physicians are available," he said.

Paul B. Ginsburg, president of the Center for Studying Health System Change, said the analysis provides fresh evidence that malpractice premiums "are not a particularly important driver" of overall health care costs.