

Medical Malpractice: Damage Caps are Not the Answer

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Anyone who has listened to the political rhetoric in recent years has heard calls for "caps" on malpractice verdicts. Damage caps set an arbitrary ceiling, generally \$250,000.00, on recovery for "noneconomic damages" (also known as pain and suffering), no matter how egregious the malpractice or serious the injury. In an effort to raise alarm, proponents of caps allege that the cost of malpractice insurance is driving doctors away, that jury verdicts are responsible for the problem, and that capping damage awards is the answer. However, research by independent government and industry groups demonstrates that these claims are largely false and that damage caps have no meaningful impact on what physicians actually pay for malpractice insurance.

There is no question that there has been a sharp increase in the cost of malpractice insurance in recent years. For instance, the 3 biggest malpractice insurers in Texas increased rates by an average of 135% between 1999-2003. Yet the Texas Dept. of Ins. found no corresponding increase in either the number of malpractice claims filed or the value of those claims. Similarly, the Center for Justice & Democracy found that while premiums collected by medical malpractice insurers more than doubled from 2000-2004, the amount carriers paid out for claims "remained essentially flat." This finding is not limited to the state level. The U.S. Dept. of Justice surveyed data nationwide and concluded that jury awards have been steadily decreasing in recent years, not increasing as advocates for caps allege. Moreover, the National Center for State Courts found that the number of medical malpractice cases filed has actually dropped over the last 10 years. So, are jury verdicts the actual cause of the problem? If we look to facts, as opposed to rhetoric, the answer is clearly "NO".

What is responsible for the rapid increases in premiums? Research indicates that the primary causes are diminished investment returns and poor management decisions. Insurers take premium dollars and invest them. When investment returns are good, profits are used to offset expenses and reduce premiums. Market downturns squeeze investment revenue, forcing companies to raise rates. Additionally, many malpractice insurers engaged in price wars in the 90's, which reduced revenue and drove some carriers from the market. When investments soured, companies needed sharp increases in revenue to compensate. And with fewer competitors, they found it relatively easy to increase rates dramatically and rapidly.

Setting aside for a moment the question of cause, would caps help solve the problem? If so, we would expect to see less premium volatility in states with caps. However, that has not proven true. Insurers rapidly increased physician premiums even in states with damage caps. Malpractice carriers have even admitted that damage caps have little impact on premiums. For instance, GE Medical Protective, one of the nation's largest malpractice carriers, and Medical Protective, a leading insurer in the state of Texas, have each admitted that capping non-economic damages would only yield a loss savings of 1%. This admission is echoed in data from the Congressional Budget Office, which concluded that limiting or capping malpractice verdicts would "lower health care costs by only 0.4 percent to 0.5 percent."

The best evidence for a viable solution may come from California, one of the first states to experiment with caps. Over 15 years ago, California's insurers lobbied heavily for damage caps and promised lower premiums. But in the thirteen years following enactment of caps, doctor's saw their premiums increase by 450%. Rather than reducing premiums, the insurers were simply retaining higher profits. It

wasn't until the state began to regulate the premiums charged by insurance companies that premiums stabilized and refunds were issued to doctors.

The simple fact is that recent increases in the cost of malpractice insurance do not stem from a rush on the courts or from jury verdicts. The root cause of the problem lies in the investment strategies and poor management decisions of the insurance providers themselves. The problem will not be solved by arbitrarily limiting the rights of the innocent.