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Lawsuits didn't rise;
costs did, study says;
'Blockbuster' verdicts didn't grow, it argues

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BODY:

Rising medical malpractice premiums in Texas aren't the result of more lawsuits or bigger jury verdicts against doctors, as the insurance industry has long contended, according to a study by professors at the University of Texas and two other universities.

The study, which will be released today, examined 15 years of data from the Texas Department of Insurance and found that, adjusted for inflation, population and other factors, claim rates and jury verdicts have been stable since 1988.

"People say the problem is blockbuster verdicts, but our study shows that verdicts of more than \$1 million are consistently about 5 percent of the claims. . . . Super big verdicts aren't becoming more common," said David Hyman, a professor of law and medicine at the University of Illinois and a study co-author. The others are UT finance professor Bernard Black, UT law professor Charles Silver and Columbia Law School professor William Sage.

The study comes nearly two years after the Legislature -- driven by warnings that skyrocketing insurance premiums were forcing doctors to leave the state or leave medicine -- agreed to a statewide vote on Proposition 12, which capped noneconomic damages such as pain and suffering at \$250,000 in medical malpractice lawsuits.

President Bush is now pushing for a national cap for "pain and suffering" awards in medical malpractice cases.

Voters approved Proposition 12 in 2003, and several malpractice carriers have lowered premiums since then. The Texas Medical Liability Trust, the state's largest insurer of physicians, has reduced its malpractice premiums 17 percent since 2003. The Doctors' Company, another major carrier, just announced reductions of 9 percent to 14 percent, according to the Texas Department of Insurance.

The study's authors say that after examining 66,500 medical malpractice claim reports made to the Insurance Department from 1988 to 2002, they found no evidence to support the huge insurance premium rate hikes in Texas.

"This evidence strongly suggests that no crisis involving malpractice claims outcomes occurred," the study said.

John Opelt, the executive director of the Texas Alliance for Patient Access, reviewed the study and disagreed with its conclusions. The alliance is a coalition of doctors, hospitals and nursing homes that includes the Texas Medical Liability Trust.

"They cooked the data so much that they cooked the truth, and it's distasteful," Opelt said.

Among the study's key conclusions:

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* The number of paid claims greater than \$25,000 remained constant during the study period, while those less than \$25,000 declined sharply.

* The total payout to patients, which was about \$515 million in 2002, was roughly constant.

* The number of claims against doctors that insurance companies paid decreased from 6.4 per 100 physicians in 1990-92 to 4.6 per 100 in 2000-02.

* Insurance companies' legal bills to defend against malpractice claims rose 4.4 percent per year, which added an average of 1 percent to their total cost each year for claims above \$25,000.

"Claims are flat, some types are declining, payments are flat, jury verdicts are flat, and the only thing that's changing is defense costs," Hyman said.

Opelt says the study did not account for the cost of defending lawsuits where no claim was paid.

He said that the study also claimed it avoided duplicating reports but that duplication is impossible to avoid because the forms sent to the Department of Insurance don't include who the defendant was.

Texas Insurance Commissioner Jose Montemayor also took issue with the study's conclusions. The number of insurance companies writing malpractice policies in Texas shrunk from 17 to four before Proposition 12 passed but has since grown to 11, he said.

He added that the National Association of Insurance Commissioners and the federal government's Government Accountability Office have found that a marked increase in claim activity was the driving factor in increases in medical malpractice premiums nationally.

"We have seen a return to stability and a marked decrease in the amount of litigation that takes place at the courthouse," Montemayor said.

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