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HEADLINE: Tort system not to blame for med-mal premiums: study

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BODY:

Medical malpractice insurance rates in Texas jumped an average of 135 percent from 1999 to 2003, but university researchers say that the level of malpractice claims and payouts in constant dollars remained stable for years.

In a report called "Stability, Not Crisis," the researchers say they have examined the outcomes of medical malpractice claims in Texas for 15 years, from 1988-2002. The study, they say, is unique and comprehensive.

"Recent spikes in medical malpractice premiums in Texas were not caused by rising payouts on claims or jury verdicts," according to the report issued on Thursday by researchers from the University of Illinois, the University of Texas, and Columbia University in New York.

The report says only two states in the nation maintain publicly available databases on medical malpractice claims, Florida and Texas.

The Texas database could be used as representative for the nation, said Professor David A. Hyman of the University of Illinois College of Law, because Texas is the second largest state by population and third largest by medical spending.

Also, Texas includes a mixture of urban and rural and it has a high rate of uninsured patients, Hyman said.

The researchers analyzed closed claims against insurance companies, claims that were resolved, Hyman said.

They said they found that from 1988 to 2002, if one adjusts for inflation by using constant 1988 dollars:

- Mean and median payouts per large, paid claim (over \$ 25,000) were stable. Such payouts declined if adjusted for medical care cost inflation.

- The number of small paid claims, less than \$ 25,000 in constant 1988 dollars, declined sharply.

- Roughly 5 percent of paid claims involved payments over \$ 1 million, with little annual variation.

- In 2000-2002, there was an average of 4.6 paid claims per 100 practicing Texas physicians per year, down from 6.4 paid claims per 100 practicing physicians per year in 1990-1992.

- Median, annual jury verdicts in med-mal cases where plaintiffs received payments more than \$ 1 (262 cases) from 1988 to 2002 ranged from \$ 180,312 in 1989 to \$ 1,209,401 in 1992.

- But in 1988, the median jury verdict was under \$ 500,000, and in 2002, it was again under \$ 500,000 -- in constant 1988 dollars.

- The mean payout in 2002 was about \$ 528,000, and the median was about \$ 200,000 in 2002 dollars.

One interesting finding that could show doctors are under pressure is that total claims against practicing physicians averaged 25 per 100 physicians annually in 2000-2002.

This is one claim a year for every four doctors.

"I agree, that's a very high number," Hyman said. He pointed out that 80 percent of those claims were closed without any payment.

Claims do not necessarily mean lawsuits, said Hyman who is both a law professor and an MD.

A "claim" in the study means, Hyman said:

- A doctor notified his insurance company based on an adverse event he might have some liability; or
- A health care provider of some sort gets a request for medical records from a lawyer and notifies its insurance company; or
- An insurance company is notified of a lawsuit against a health care provider, its policy holder.

Although the study compares rising insurance rates to relatively stable payouts in malpractice claims, it is not clear how the study calculated rising insurance rates. The claim payouts are adjusted for inflation, but insurance rates may show the effects of inflation.

But Hyman said, "Inflation was small during the time period in question (1999-2002), so the adjustment would make only a small difference." The study's conclusion, Hyman said, is that "premiums are not a very good guide as to what's going on on the tort system. We had huge spikes in premiums for insurance coverage but no changes in the tort system.

"Although politicians and health care providers tend to focus on premiums ..., you have to diagnose properly to get the right solution. If you think the problem is the tort system is going crazy, your reforms are not going to do anything for you, and they might have some adverse effects you haven't anticipated."

The cause of the rise in insurance premiums, Hyman said, could be matters within the insurance industry. The study suggests insurance rates soared "when the stock market was falling and interest rates were low."

Asked who financed this study, Hyman said, "It was financed by the University of Texas and the University of Illinois ... using internal funding from the schools." He said it had "no outside funding" from representatives of plaintiffs or defendants.

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