

Malpractice Insurance: No Clear or Easy Answers By JOSEPH B. TREASTER

o control the rising costs of medical malpractice insurance, President Bush is urging Congress to impose limitations on lawsuits like those introduced in California in 1975, which insurance companies and doctors say have sharply reduced their expenses.

President Bush, the American Medical Association and the medical malpractice insurers all say that the linchpin of the California action — a limit of \$250,000 on payments for pain and suffering in malpractice lawsuits — will benefit doctors, insurers and patients across the country.

"If one of the goals of a good health care system is for it to be affordable and accessible, and if lawsuits are running up the cost of medicine and/or driving docs out of business because the practicing of medicine is too expensive, we've got to do something about it," Mr. Bush said in a speech yesterday to a national conference of the A.M.A. in Washington.

But a closer look at the California experience with medical malpractice suggests that the lessons of liability caps are not so clear for either the doctors or the patients. Since 1975, doctors in the state have had a drop in the level of their premiums. But the greatest drops in premiums and, so far, the most consistent, did not come until after California adopted price controls in 1988, throwing into question the effects of the caps alone.

Where the caps have had an effect, according to many plaintiffs' lawyers and consumer advocates, is on the chances of compensation for a whole category of malpractice victims. Consumer advocates and plaintiffs' lawyers say thousands of victims of malpractice have been unable to get lawyers to take their cases because of the limited payouts and that those who do get lawyers generally receive much less than victims in other states.

A bill that would limit payments for pain and suffering in medical malpractice cases to \$250,000 was endorsed on a voice vote by a subcommittee of the House Committee on Energy and Commerce yesterday and it is expected to be voted on by the full committee in a few days. Tom DeLay, the House majority leader, said the House might vote on the measure as early as next week. Democrats in the Senate have promised to block the bill, which they say protects insurance companies at the expense of victims.

Over the 27 years since the limit on lawsuits was established in California, the state has shifted from being one of the most expensive places for doctors to buy insurance to one of the least expensive. For example, some of the largest insurers in California estimated that calculated in current dollars, premiums have fallen about 40 percent during that time, to about \$14,000 a year.

An analysis by the Consumer Federation of America, puts the premiums even lower, although that calculation includes some doctors working as researchers and others who do not actually buy insurance.

At \$14,000, California doctors are paying roughly half the average cost of coverage in states like New York and Pennsylvania and a little more than a third the cost in West Virginia, the highest

in the country at \$39,050. Some doctors in New York pay more than \$100,000 a year for insurance, and obstetricians in South Florida pay \$200,000 a year.

But it took several years after the imposition of the caps in 1975 before doctors in California saw a benefit in the form of lower premiums. There are varying interpretations of what caused that delay.

Frank A. Sloan, an economics professor at Duke University specializing in health policy and management, said he had tracked similar lags in other states that imposed limits on awards for pain and suffering.

"If anyone thinks caps on pain and suffering are going to work miracles overnight, they're wrong," Mr. Sloan said. "Bush will probably be out of the White House before we see appreciable relief from this policy."

Jamie Court, the executive director of the Foundation for Taxpayer and Consumer Rights in Santa Monica, argued that the main reason for the decline in premium costs in California had not been the limits on lawsuits, but the law in 1988, first proposed by his group, that prohibited annual increases greater than 15 percent by insurers without a public hearing. The measure, known as Proposition 103, required insurers to rebate earlier premiums and led to a freeze on premiums for several years.

"Caps don't have any effect on premiums," Mr. Court said. "If you don't limit what the insurers can charge, they will just make more profit as the cost of claims goes down."

John Garamendi, the insurance commissioner of California, said both measures had helped keep costs down. However, there is no provision for controlling insurance rates in the Bush proposal.