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Feds: Medical-Liability Caps Would Have Little Effect on Health-Care Costs

WASHINGTON 01/14/2004 (BestWire)-A new federal analysis of the costs associated with medical-malpractice liability has found that limiting jury awards would have a negligible effect on the overall cost of health care, undermining a key argument of doctors and insurers who seek to enact those limits at the state and federal levels.

The Congressional Budget Office, in an eight-page brief titled "Limiting Tort Liability for Medical Malpractice," says that malpractice costs make up only a tiny portion of the nation's health-care spending. The American Medical Association and various insurance industry groups have been lobbying vigorously for caps on pain-and-suffering awards in jury trials, saying that runaway judgments are contributing to out-of-control malpractice premiums and, as a result, higher health-care costs.

But while the CBO found that such caps might have an effect on premiums, they could only have a minuscule effect on overall health-care costs.

"Evidence from the states indicates that premiums for malpractice insurance are lower when tort liability is restricted than they would be otherwise," the CBO researchers wrote in the report, released the week of Jan. 5. "But even large savings in premiums can have only a small direct impact on health care spending--private or governmental--because malpractice costs account for less than 2% of that spending."

The CBO also looked at other possible effects of limiting medical liability, such as reducing doctors' reliance on "defensive medicine," the practice of

ordering more tests or procedures than might otherwise be necessary out of fear of being sued. Reining in malpractice awards, the argument goes, would remove the incentive to "overtreat" patients, thereby helping to reduce the overall amount of health care. But the CBO found "weak or inconclusive" evidence to support that, as well.

In looking at the goals of enforcing liability for medical malpractice, the researchers weighed economic efficiency, which they defined as "providing the maximum possible net benefits to society," and equity, "distributing the benefits and costs fairly." The equity-related argument, the CBO says, is that anyone harmed by a medical professional's actions deserves to be compensated by the person who hurt them. The efficiency argument, meanwhile, holds that liability gives health-care providers an incentive to avoid malpractice injuries in the first place.

In the real world, however, liability's effect on efficiency depends on two things, the researchers wrote: the standards used to tell actual medical negligence from appropriate care, and whether malpractice awards accurately reflect that. If malpractice is judged wrongly, or even defined in an unclear way, doctors will feel pressure to order more tests and procedures as a way to show that they weren't negligent. But if malpractice is defined clearly but too broadly, or if awards are out of line with the actual damages inflicted, doctors might again resort to defensive medicine, drop risky procedures or retire. That argument lies at the core of the American Medical Association's case in favor of caps on noneconomic, pain-and-suffering awards.

But, the researchers also wrote, if doctors aren't exposed to the full costs of negligent behavior--if their insurance isolates them from the consequences, or if their malpractice goes unnoticed or isn't paid for--then the pendulum swings the other way, with doctors facing too little of an incentive to avoid risky medical practices.

"For all of those reasons," the researchers wrote, "it is not clear whether trying to control malpractice by means of liability improves economic efficiency, or reduces it."

"In short, the evidence available to date does not make a strong case that

restricting malpractice liability would have a significant effect, either positive or negative, on economic efficiency," the CBO researchers concluded.

The CBO brief comes amid a raging debate over how best to control the soaring cost of medical-malpractice insurance. Insurers and the AMA have been pushing for caps on pain-and-suffering awards both in Congress and at the state level, with mixed success. Though backed by President Bush, a medical-liability reform bill was stalled in Congress at the end of 2003.

But four states--Arkansas, Florida, Ohio and Texas--enacted laws limiting noneconomic damages.

According to data from the U.S. Department of Health and Human Services, 22 other states now have laws that place some form of limits on jury awards in malpractice cases, bringing the total to 26: Alaska, California, Colorado, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Virginia, West Virginia and Wisconsin. Indiana, Louisiana and Virginia limit total damages only, while Colorado sets separate limits on economic and noneconomic damages. New Mexico limits the total amount of damages that may be awarded in a case, discounting amounts awarded for punitive damages and medical expenses.

A recent study by Stamford, Conn.-based consulting firm Tillinghast-Towers Perrin found that tort costs in the United States rose to \$233 billion in 2002, about \$25 billion of which were directly attributable to medical-malpractice cases (BestWire, Dec. 9, 2003).