Can medical malpractice reform really hold down health care spending?

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Maxwell Mehlman, professor of law and medicine, says there's no evidence that reducing a victim's compensation will save money.

In light of a bill in Congress that would limit malpractice awards to $250,000 for pain and suffering, Mehlman is speaking out against the argument that medical malpractice reform keeps health care spending costs down. He points out that, although studies show that caps on malpractice payments do reduce insurance premiums for doctors and hospitals, and several studies show that they reduce overall health care spending in the short term, one of those studies found that this reduction in spending was associated with a decline in the overall health of the population, and estimated that in the long run, the additional spending on health care necessary to treat these sicker people would eat up any savings from the caps.

Mehlman also points out that the malpractice system is not the main reason health care costs have risen. “It turns out that the direct costs of the malpractice system appear to account for only a tiny percentage of the total costs of health care, less than one percent,” says Mehlman, adding that “those who favor caps on damages and other changes in malpractice laws point to indirect costs, in particular, defensive medicine, as the main way that the malpractice system is driving up health care costs, but these indirect costs have proven much harder to calculate.” In fact, researchers at the Harvard School of Public Health published a study last fall in which they estimated that the money spent on defensive medicine added only about another two percent to health

care spending. Moreover, the researchers pointed out, this figure doesn't take into account any improvement in patient outcomes attributable to defensive medicine. In other words, doctors may order extra tests in order to reduce the chances that they will be successfully sued for malpractice, but some of these tests may actually help patients and lower their health care costs in the long run.

Mehlman notes that limiting malpractice compensation "rests on the assumption that the current system overcompensates malpractice victims, when in fact it undercompensates them, since most of them are not aware that they have suffered a malpractice injury and never assert a claim, those that do receive payment don't receive enough to cover their actual losses, and the more severely a person is injured, the less adequate the compensation that they receive."

"From time to time," Mehlman observes, "malpractice premiums for doctors shoot up dramatically, most recently in the early part of the past decade, and as a result, some doctors are reported to stop practicing or to stop practicing certain higher-risk specialties such as obstetrics. But it is now generally agreed that these premium spikes are caused by the marketing and investment practices of malpractice insurers rather than by any sudden uptick in malpractice claims or payments." He says, "It is true that the number of claims and the size of payouts have been increasing over time, but they have done so at a fairly steady pace. Malpractice payments have increased by only about enough to allow people to pay the increased costs of the medical care they need to treat the malpractice injuries they have suffered."

"There is no question that doctors would be happier if the malpractice system was less of a burden, and there may be better ways of compensating the victims of medical errors that should not have occurred. But what we know about the malpractice system does not tell us that reducing victims' compensation will save money," Mehlman

concludes.

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