Medical Xpress

'Catastrophic' malpractice payouts add little to health care's rising costs

April 30 2013

Efforts to lower health care costs in the United States have focused at times on demands to reform the medical malpractice system, with some researchers asserting that large, headline-grabbing and "frivolous" payouts are among the heaviest drains on health care resources. But a new review of malpractice claims by Johns Hopkins researchers suggests such assertions are wrong.

In their review of malpractice payouts over $1 million, the researchers say those payments added up to roughly $1.4 billion a year, making up far less than 1 percent of national medical expenditures in the United States.

"The notion that frivolous claims are routinely resulting in $100 million payouts is not true," says study leader Marty Makary, M.D., M.P.H., an associate professor of surgery and health policy at the Johns Hopkins University School of Medicine. "The real problem is that far too many tests and procedures are being performed in the name of defensive medicine, as physicians fear they could be sued if they don't order them. That costs upwards of $60 billion a year. It is not the payouts that are bankrupting the system—it's the fear of them."

Called catastrophic claims, payouts over $1 million are more likely to occur when a patient who is killed or injured is under the age of 1; develops quadriplegia, brain damage or the need for lifelong care as a result of the malpractice; or when the claim results from a problem related to anesthesia, the researchers found in a study published online in

the *Journal for Healthcare Quality*.

Makary and his colleagues reviewed nationwide medical malpractice claims using the National Practitioner Data Bank, an electronic repository of all malpractice settlements or judgments since 1986. They looked at data from 2004 to 2010, choosing a 2004 start date because that is when data regarding the age and gender of patients and severity of injury became available for the first time. The information includes only payments made on behalf of individual providers, not hospitals or other corporations, meaning the number of payouts may be underestimated by 20 percent, Makary says.

Over that period, 77,621 claims were paid, and catastrophic claims made up 7.9 percent (6,130 payouts). The seven-year nationwide total of catastrophic payouts was $9.8 billion, representing 36.2 percent of the $27 billion worth of total claims paid over that time period.

The most common allegations associated with a catastrophic payout were diagnosis-related (34.2 percent), obstetrics-related (21.8 percent) and surgery-related (17.8 percent) events. Errors in diagnosis showed twice the odds of a catastrophic payout compared with equipment- or product-related errors and were associated with a roughly $83,000 larger payment.

The age of the physician was unrelated to the likelihood of a claim, suggesting inexperience is not necessarily a factor. But 37 percent of catastrophic payouts involved a physician with a previous claim in the database. The largest payout in the study was $31 million.

Makary says the data suggest that the focus of legal reform efforts should be on doctor protections aimed at reducing defensive medicine rather than the creation of malpractice caps.

He says his findings argue for more research to determine what interventions might prevent the type of errors that result in catastrophic payouts, with the overall goal of improving patient safety and reducing costs at the same time.

But real cost reductions, he says, will come from reducing the overuse of diagnostic tests and procedures.

Provided by Johns Hopkins University School of Medicine