MedicalXpress

Medical malpractice reform does little to contain health care costs

January 28 2015, by Phil Ciciora

Two papers co-authored by a University of Illinois expert in the regulation and financing of health care conclude that tort reform has had relatively little impact on the U.S. health care system.

Tort reform advocates have hailed caps on noneconomic damages as a silver bullet for controlling health care costs – as a way to reduce defensive medicine and attract more physicians to a state, particularly those practicing in high-risk specialties. But according to David Hyman, the H. Ross and Helen Workman Chair in Law and professor of medicine at Illinois, there's scant evidence to support any of those claims.

"The best evidence is that caps would have, at most, a tiny impact. We find some evidence that caps might actually increase health care costs," Hyman said. "It's very hard to see how damage caps bend the cost curve down or materially increase the number of practicing physicians in a state."

According to Hyman, the direct costs of medical malpractice liability are "pretty modest" relative to total health care spending in the U.S.

"Tort reform may be a good idea or a bad idea, but ultimately it's a very small idea," he said. "It's not going to have as big of an impact as many proponents claimed it would."

One paper examined the third wave of malpractice reforms, which

consisted of studying the nine states – including Illinois, Florida and Texas – that enacted tort reform from 2002-05. Thirty-one states covering about 70 percent of the U.S. population have already adopted damage caps, according to the paper.

"We compared what was happening in health care spending in those states before and after tort reform with what was happening in the control states, which were the states that had never enacted tort reform and states that had enacted tort reform during one of the earlier waves," Hyman said. "Some early studies found evidence that enacting tort reform made a big difference in health care spending. Subsequent studies found more modest effects. Other studies found no effect."

Hyman and his co-authors found enacting a damage cap had no effect on hospital spending, but, somewhat surprisingly, caused an increase in spending on physician services.

"It turns out that eliminating liability didn't lower spending – it actually resulted in a slight uptick in spending," he said. "So the argument, 'Just pass tort reform and you'll save lots of money,' was not borne out in our study. The bottom line is you're not going to save a lot of money with tort reform, and there's some evidence that you might actually increase spending."

The second paper considered another common claim about medical malpractice reform: States that enact tort reform will become a "magnet" for physicians, especially those who practice in a high-risk specialty.

"There is a certain plausibility to that argument," Hyman said. "People decide where to live and work based on many factors. If tort reform means that a practicing physician's malpractice premiums are lower, then it might factor into whether they move to your state. Or it may make some physicians in that state defer retirement. It might also affect

physicians deciding where to do a residency, and deciding where to set up practice after they finish their residency."

But outside of a slight increase in the number of plastic surgeons, Hyman and his co-authors found no evidence that adopting a cap on damages from medical malpractice increases the total number of physicians or the number of high-risk physicians.

"The economics of attracting and keeping high-risk specialists and those practicing in rural areas are challenging, and so the question is what tools do you have to do that, so they provide needed services," he said. "Tort reform proponents argue quite vehemently that enacting a strong cap on noneconomic damages is a good way to get physicians to move to your state. But what we found contradicts that."

The impact of tort reform on physician supply is really an argument about access to health care services, Hyman said.

"The idea is, if there are more physicians practicing in the state, citizens of the state will have an easier time getting health care, and caps are one of the levers that policymakers have to try to increase access for patients," he said.

But policymakers have other "levers" at their disposal.

"Paying physicians more when they treat Medicaid beneficiaries is a clear and direct way of encouraging physicians to move to your state and practice in settings where access to medical services is a problem," Hyman said.

If the impact of tort reform on health care cost and physician supply is so small, then what's next?

"We continue to have these problems with the health care delivery system – quality problems, access problems, cost problems," Hyman said. "The bigger question is, if tort reform isn't the solution, what is?"

More information: "Do Doctors Practice Defensive Medicine, Revisited" Northwestern Law & Econ Research Paper No. 13-20, Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-21. papers.ssrn.com/sol3/papers.cf … ?abstract_id=2110656

Does Tort Reform Affect Physician Supply? Evidence from Texas Northwestern Law & Econ Research Paper 12-11 Illinois Program in Law, Behavior and Social Science Paper No. LBSS12-12 U of Texas Law, Law and Econ Research Paper No. 225. papers.ssrn.com/sol3/papers.cf … ?abstract_id=2047433

Provided by University of Illinois at Urbana-Champaign