



JOINT ECONOMIC COMMITTEE

JIM SAXTON, CHAIRMAN

RESEARCH REPORT #109-11
June 2005



Medical Liability Reform:

Highlights of Testimony by Dr. Mark McClellan to the JEC

As President Bush and many in the Congress and across the country have recognized, our current malpractice liability system does not serve the needs of patients and is in need of reform. It is not simply an issue of lowering insurance premiums for physicians. It is particularly about patient safety and quality of care, as well as reducing unnecessary health care spending.

ON THE FAULTS OF THE CURRENT SYSTEM

The current judicial process for addressing malpractice needs to be reformed not simply to save money, but also because individuals who have just cause to make a claim are not receiving the help they need and deserve....

The Physicians Insurance Association of America reports that, on average, it takes more than 5 years for an insurer to pay a malpractice claim after the date of the incident... When an injured patient does finally successfully settle or win a case, lawyers typically take anywhere from 30 - 40 percent of those funds as compensation. In short, many of those who are injured due to negligent care are simply not receiving justice because the system does not work for them.

On the other side of the coin, the current system does not do much in terms of screening out cases with no medical merit, or in differentiating between adverse events

due to negligence and unavoidable adverse events....

The [Institute of Medicine] emphasized that fear of lawsuits deters doctors and hospitals from making reports [of medical errors], even when they are not negligent, because in many states such reports can be used against them in court... Most medical errors today are not the result of bad doctors or nurses, but rather the result of complex or difficult systems in which they work. You would think that we would do everything in our power to encourage the kind of self-analysis and systems evaluation necessary to identifying and addressing systemic errors. Instead, our current tort system sets up roadblocks that discourage this very important activity.

ON THE COSTS OF MEDICAL LIABILITY

Amounts paid on malpractice claims, either in settlement or because of a jury award, have been growing substantially in the past few years. The Physician Insurers Association of America (PIAA) reports that the median jury award in medical liability cases nearly doubled from 1997 to 2003, increasing from \$157,000 to \$300,000. The PIAA's as yet unpublished report on 2004 indicates that the median jury award during that year was \$439,400; a one-year increase of more than 46 percent. It is notable that PIAA found a 2004 mean payment on a jury verdict of \$606,907....

My own research concluded a reduction in defensive medicine could lower overall hospital expenditures by between five and nine percent. During FY 2004, the Medicare program spent more than \$133 billion on hospital fee-for-service. That would mean potential annual savings of between \$6.65 and \$11.97 billion dollars, just for that program, not to mention the private sector....

Those kinds of savings, if realized, could have a significant impact on the fiscal health of the Medicare and Medicaid programs. Furthermore, as stated above, these savings would come without any drop in the quality of care and outcomes experienced by patients....

CBO has not made estimates of savings from reductions in defensive medicine. They have, however, concluded that reduced premiums would save the Federal government billions of dollars.... What we both end up saying – along with numerous other researchers – is that reforms will lead to billions of dollars in savings each year.

ON ACCESS TO HEALTH CARE

Rapidly rising premium rates can have a real impact on patient access to care.... Just to illustrate, a 2004 survey of Ob/Gyns in Illinois found that in the previous two years, 11 percent had stopped practicing obstetrics as a result of medical liability concerns. Based on how many office visits physicians report in an average month (N=250), that means 46,250 office visits for Ob/Gyn services were lost across the state during those two years.

ON THE DOCTOR-PATIENT RELATIONSHIP

More generally, the legalistic atmosphere in which physicians practice warps the physician-patient relationship.... High-quality medicine requires effective communication with patients.... If, because of liability concerns, physicians are unable to discuss the inherent ambiguities and complexities of medical practice, and the variety of potential outcomes to a given procedure or service, in a manner to which the patient can personally relate, then the patient's ability to make informed decisions is compromised. Our current system, because it recasts this relationship in legalistic terms does not promote mutually beneficial exchanges of information.

ON PHYSICIAN PRODUCTIVITY

Every time our malpractice system ties up a physician in judicial or administrative matters, then their clinical skills are temporarily removed from the productive pool. Even small drops in the average amount of time spent on malpractice claims will have the beneficial result of making physicians more productive in terms of patient care, which is ultimately where we want them to spend their time.

CONCLUSION

Mr. Chairman, the current medical liability system simply does not address the needs of patients, and it's costing those patients, the Federal government, and other payers billions of dollars every year because it adds to costs and encourages care that does not improve health. More importantly, our liability system reduces access and reduces quality of care.

Dr. Mark McClellan, Administrator of the Centers for Medicare & Medicaid, testified before the Joint Economic Committee on April 28, 2005. For the full version of his testimony, as well as additional JEC resources on medical liability reform, contact the JEC at (202) 226-3234 or visit the website www.house.gov/jec.