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NEW HHS REPORT SHOWS PROBLEMS IN HEALTH CARE SYSTEM ARE WORSENING AS MEDICAL LITIGATION CRISIS DEEPENS

The Department of Health and Human Services today released a report showing that problems associated with medical litigation have significantly worsened in the past year. In many states, the spiraling cost of insurance for health care providers is impairing patients' access to care, as well as the cost and quality of health care.

HHS originally published a report on the problem last July, with two supplements also released last year. Today's report says that "the crisis has only worsened, in both scope and intensity," since the earlier reports.

"More doctors, hospitals and nursing homes in more states are facing increasing difficulty in obtaining insurance against lawsuits, and as a result more patients in more states are facing greater difficulty in obtaining access to doctors," the report concludes.

Trauma centers across many states have had to close down, and many obstetricians and surgeons have closed their practices, or moved to states with affordable malpractice insurance premiums, says the report, "Addressing the New Health Care Crisis." The report finds dramatically better situations in states that have enacted reforms in their legal systems. However, it says, the crisis is having repercussions throughout the nation's health care system.

One-third of hospitals saw an increase of 100 percent or more in liability insurance premiums in 2002, according to a study cited by the report. And over one-fourth of hospitals reported either a curtailment or complete discontinuation of a service as a result of growing liability premium expenses.

The report also contains numerous documented accounts of physicians who have had to close their practices and services that have been shut down because of the crisis.

"This is a problem for every American, and a danger to the quality of our health care system," HHS Secretary Tommy G. Thompson said. "Some Americans are already finding it increasingly difficult to find a doctor when they need one because their doctors cannot afford malpractice insurance, driven up by excessive litigation costs. It is important to fix this broken litigation system now, and continue to make meaningful quality improvements in our health care system to reduce medical errors."

HHS identifies states that have faced "crisis" situations due to problems stemming from medical litigation. These are states in which there are significant reports of impediments to access to care, extreme increases in premium costs and/or significantly reduced availability of insurance.

In 2001, the highest premiums charged to specialists in states without meaningful non-economic caps had increased by 39 percent. Since that time, using the same measure, premiums in these states have gone up an additional 51 percent. Thus, on this basis, specialty premiums have almost doubled in two years.

The main factor causing the crisis is the rise in mega-awards and settlements, particularly for non-economic damages. New data in today's report shows that the number of payments of \$1 million or more reported to the National Practitioners Data Bank (NPDB) has grown rapidly in the past seven years, not only in crisis states such as New Jersey, Pennsylvania and Ohio, but nationwide. Between 1991 and 2002, the number of payments each year of \$1 million or more that were reported to the NPDB increased from 298 to 806.

The report cites a letter from the National Association of Insurance Commissioners (NAIC) confirming that high litigation costs, including mega-awards, are the root causes of the crisis. State insurance commissioners generally have regulatory authority over the rates charged by insurers, and can take action if unreasonable rates are being charged. The NAIC letter says the state regulators have found the rapidly increasing premiums are caused by high litigation costs.

At the same time, the report cites evidence that reasonable limits on non-economic damages, such as California has had in effect for 25 years, can reduce health care costs by 5 to 9 percent without increasing mortality or medical complications. With national health care expenditures now estimated to be at \$1.4 trillion, if this reform were adopted nationally, it would save \$70-126 billion in health care costs this year, the report says.

President Bush has proposed a framework for improving the medical litigation system. It includes allowing unlimited compensation for "economic losses," while placing reasonable limits on non-economic damages, as has been enacted in many states, and payment of judgments over time. In addition, HHS is devoting new efforts to improving quality of care and reducing medical errors. The President's framework also calls for confidentiality provisions that would encourage communication among health care professionals to identify weaknesses and improve health care quality and patient safety.

The new report can be found on the Web at <http://aspe.hhs.gov/daltcp/reports/medliab.pdf> (PDF version) and <http://aspe.hhs.gov/daltcp/reports/medliab.htm> (HTML version).

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