Caps on Malpractice

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Medical malpractice caps as defined by the Medical Malpractice Attorney Source, "are the statutory limits placed on the amount of money a victim of medical malpractice can recover through a legal case. Medical malpractice caps also limit the fees that an attorney can charge for representing the victim of medical malpractice. These medical caps often apply irrespective of whether the recovery was determined by arbitration, settlement, or judgment." (2010, Medical Malpractice Attorney Source)

Medical malpractice caps are not at all a new topic for "health-care reform". In fact, for several years it has been a topic that has gained increasingly more political focus. Many states have had medical caps instituted for several years. Of those that have, the general consensus is that they are not working to curb spending. In a recent study that shares its opinion on the mater, the Congressional Budget Office (CBO) estimated that there is opportunity to save about one-half of 1 percent or about $41 billion over a decade (Elmendorf, 2009). It has been believed for a long time that our nation's high cost in health care had a strong correlation to the malpractice premiums paid by our physicians. President Obama has gained the ear of the American Medical Association (AMA) recently when he promised to work with doctors to limit their vulnerability to malpractice lawsuits. Through tort reform, we hope to see these promises delivered on.

There is currently a bill being sponsored by U.S. Representative, Brian Baird of Washington's 3rd congressional district that addresses medical malpractice reform. The bill is H.R. 3459. It was introduced on July 31, 2009 and assigned to two committees for further consideration. This is the last action reported on the bill. The House Energy and Commerce and

House Judiciary committees will act now as “mini Congresses” and make their own report as being either in favor or not. In essence, the fate of the bill will be decided on by these two committees. If approved by the committees, it will move forward first to the House and finally the Senate to be considered by their full bodies. If a vote is passed by both House and Senate, the bill would then move forward for signature by the President to enact into law.

The same bill sponsored by Baird has also been introduced as H.R. 2657 and 3378 in 2005 and have both died not progressing further than the committees initially assigned to.

The bill in its current form seeks to achieve these primary objectives:

- Set a cap on non-economic damages not to exceed $250,000 total from all providers. This amount will be adjusted for inflation from 1975 as proposed by the bill to be updated to 2005.
- Establish and enforce sanctions for meritless actions and pleadings.
- Seek to hold medical practices accountable to the State Medical Boards that will govern adherence to common standards proposed.
- Create an interstate reporting and physician tracking database for reporting patient complaints.

Since H.R. 3459 has been in consideration since long before the promise delivered by President Obama to the AMA, it is not yet in the shape that it will be once the President devotes his attention to the mater. The bill in current form will undoubtedly face opposition and have to be reworked. It is evident that such a reform is needed as the President received a standing ovation in response to his promise to the AMA. He did not specify what forms of reform he is in favor of, but he did wisely reject the notion of placing caps on awards for malpractice. (2009, New York Times) The current bill that is being

reviewed contradicts the President's view on this idea in that it seeks to set a national cap on non-economic medical malpractice.

Since May of 2009, there have been "several players (along with groups representing insurers, drug and device makers, hospitals and unionized workers) who jointly pledged to slow the rise of health costs". (2009 , Wall Street Journal) Their pledge seeks to accomplish the following:

- Implementing proposals in all sectors of the health care system, focusing on administrative simplification, standardization, and transparency that supports effective markets;
- Reducing over-use and under-use of health care by aligning quality and efficiency incentives among providers across the continuum of care so that physicians, hospitals, and other health care providers are encouraged and enabled to work together towards the highest standards of quality and efficiency;
- Encouraging coordinated care, both in the public and private sectors, and adherence to evidence-based best practices and therapies that reduce hospitalization, manage chronic disease more efficiently and effectively, and implement proven clinical prevention strategies; and,
- Reducing the cost of doing business by addressing cost drivers in each sector and through common sense improvements in care delivery models, health information technology, workforce deployment and development, and regulatory reforms. (2009 , Letter to President Obama)

So hopefully, synergies can be created to join the influential lobby groups in the health care sector with the political leaders to create a policy to reform medical malpractice. Discussions on the topic are only just beginning and there is a lot of ground to be traveled before anything materializes or takes shape. It is clear that all interested parties from every side of the debate are willing to make concessions and come together to reform on this one issue within the larger topic of "health-care reform".

References

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