Push Continues for Medical Liability Reform

BY MARY ELLEN SCHNEIDER

The issue of medical liability reform is back in the headlines since President Obama said he would consider some type of reform to curb frivolous lawsuits. But physicians say there are plenty of political obstacles to making meaningful changes to the tort system.

One of the major hurdles, according to Texas Medical Association President Susan Rudd Bailey, will be getting a bill passed by the Democratic-controlled Senate. Democrats have historically opposed capping noneconomic damages, otherwise known as pain and suffering awards, which have been at the heart of the tort reforms passed in Texas and California.

"This is no slam dunk," said Dr. Bailey, an allergist in Fort Worth.

The Texas Medical Association is one of more than 100 state and national medical organizations that have endorsed new federal legislation aimed at reducing medical liability lawsuits. The Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act, H.R. 5, is modeled after California's Medical Injury Compensation Reform Act (MICRA), which has been in place for about 30 years. The new federal legislation would place a $250,000 cap on noneconomic damages and would require that medical liability suits be filed within 3 years of the injury in most cases.

The cap on noneconomic damages is the cornerstone of the Texas medical liability reform law enacted in 2003. The cap, Dr. Bailey said, has helped reduce premiums and improve access for patients. For example, 90% of the state's physicians have seen their malpractice insurance rates cut by 30% or more, according to the Texas Medical Association.

In 2001– before the legislation was enacted – the number of newly licensed physicians in Texas was at a decade-long low of 2,088. By 2008, that number had risen to 3,621. And since enactment, the number of physicians practicing in previously scarce specialties including obstetrics, orthopedic surgy, neurosurgery, emergency medicine, and cardiovascular surgery has increased, according to figures from the Texas Medical Association.

Dr. Alex Valadka, a neurosurgeon at the Seton Brain and Spine Institute in Austin, said the 2003 tort law has dramatically improved the practice climate in the state. Anecdotally, Dr. Valadka said he's getting fewer calls from other physicians seeking consultations on complicated cases because there are more neurosurgeons to take on the work. Dr. Valadka said he hopes that similar reforms can be passed at the federal level, but said he's doubtful that President Obama's vision for tort reform will look like the Texas statute.

So far, the President has been light on specifics. In 2009, as Congress was considering the Affordable Care Act, the President told the American Medical Association that he did not favor capping noneconomic damages because it can be unfair to patients.

The AMA has been pushing to get medical liability reform back at the top of the congressional agenda after it was left out of the ACA.

Dr. Ardis Dee Hoven, AMA chairwoman, recently testified before the House Judiciary Committee about the pressure physicians face from malpractice suits.

An AMA survey found 61% of physicians aged 55 and older had been sued at least once in their careers, with an average of 1.6 claims per doctor. But certain specialties, like obstetrics-gynecology and surgery, had much higher rates.

Many of the lawsuits are without merit, Dr. Hoven testified to the committee. The AMA survey found that 65% of claims were dropped, dismissed, or withdrawn. But it still cost about $20,000 per claim to defend the suits that were ultimately dropped, according to the report.

The American College of Physicians, which also supports the HEALTH Act, is calling on Congress to consider other reforms to reduce defensive medicine, such as health courts. The ACP is asking Congress to pass legislation that would allow for pilot testing of health courts on a national scale. ■

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Arthritis Takes Toll on Hispanics

At least one in five Hispanic Americans experiences severe joint pain and limitations resulting from arthritis, according to data from the Centers for Disease Control and Prevention. For the first time, the CDC analyzed the prevalence of arthritis among seven Hispanic subgroups in the United States: Puerto Ricans, Mexicans, Mexican Americans, South and Central Americans, Dominicans, and Cubans. Overall, about 3.1 million Hispanics have been diagnosed with arthritis, and at least 20% of those in each subgroup said they experienced severe joint pain and activity and work limitations. Puerto Ricans had the highest diagnosed prevalence (22%), whereas Cubans had the lowest (12%). "These findings suggest a critical need to expand the reach of effective strategies aimed at arthritis prevention and management, particularly among underserved populations," Dr. John H. Klippel, president and CEO of the Arthritis Foundation, said in a statement.

Arthritis Tweets From the NIH

The National Institute of Arthritis and Musculoskeletal and Skin Diseases is now on Twitter (@NIH_NIAMS). Officials at NIAMS are posting weekly, with links to new publications, research advances, and other content on the institute's Web site. Twitter "will allow us to spread the word quickly when we have new information to share with our partners and the public," Dr. Stephen Katz, NIAMS director, said in a statement.

Bill to Prevent Drug Shortages

Federal legislation aims to prevent shortages of critical prescription drugs by giving more information to the Food and Drug Administration. The bill would require drug manufacturers to notify the FDA early of any problems that could lead to a shortage of medications. Those factors might include changes to raw material supplies, adjustments to manufacturing capabilities, and business changes such as mergers. "Physicians, pharmacists, and patients are currently among the last to know when an essential drug will no longer be available – that's not right," Sen. Amy Klobuchar (D-Minn.), one of the sponsors of the bill, said in a statement. The "Preserving Access to Life-Saving Medications Act" (S. 296) also directs the FDA to notify the public of shortages and what the agency is doing to address them.

Salary Gender Gap Identified

Newly trained female physicians made nearly $17,000 less than did men in 2008, but it's not clear why, according to a study in Health Affairs. The gap in pay has been growing steadily since 1999, the study showed. Income inequity persisted even after the researchers accounted for gender differences in such factors as medical specialty, hours worked, and practice type. "It's not surprising to say that women physicians make less than male physicians, because women traditionally choose lower-paying jobs in primary care fields or they choose to work fewer hours," lead author Anthony LoSasso, Ph.D., professor at the University of Illinois at Chicago, said in a statement. However, it is surprising that the gap persists after other factors are accounted for, he added. Women may be paid less because they're trading salary for greater flexibility and family-friendly benefits, such as not being on call after certain hours, the researcher said.

AMA: Insurers Lack Competition

Almost all commercial health insurance markets in the United States are dominated by just one or two health insurers, potentially causing higher premiums for patients and unfavorable contract terms for physicians, according to a study from the American Medical Association. The AMA found that 99% of health insurance markets are "highly concentrated," as defined by federal government guidelines on business mergers. In nearly half of metropolitan areas, one insurer had a market share of 50% or more, the report said. Meanwhile, the AMA report found that physicians are the least-concentrated segment of the health care sector, with 78% of office-based physicians working in practices with nine physicians or fewer. Most of these physicians are either in solo practices or in practices with two to four physicians, the report said.

FDA Accelerates Device Reviews

The FDA has proposed an accelerated review program for what it terms "breakthrough medical devices" as part of a broader effort to encourage cutting-edge technologies among device manufacturers. The FDA could conduct reviews within 150 days – about half the time it now takes – on devices that are submitted under the new Innovation Pathway. However, enrollment in the program won't change the standards the agency currently uses to evaluate medical devices, the FDA said. A brain-controlled, upper-extremity prosthesis will serve as the first submission to the Innovation Pathway program, the agency said. However, the FDA also is asking for public comment on the program and plans to hold a hearing this month before finalizing the rules.

–Mary Ellen Schneider