Medical Liability Bill Divides House Committee

BY ALICIA AULT

FROM A HEARING OF THE HEALTH SUBCOMMITTEE OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

WASHINGTON – Republicans and Democrats found little consensus on reforming the medical malpractice system during a House hearing on legislation to institute a federal torts policy.

The Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2011 (H.R. 5) was introduced in January by Rep. Phil Gingrey (R-Ga.), who is a physician. It has 122 cosponsors so far, as well as the backing of most major medical professional societies.

But at the hearing, Democrats said they could not support the bill for a number of reasons. "This is a bill we've heard before, a bill on which we've disagreed before," said Rep. Lois Capps (D-Calif.). She said that Democrats support the Republicans' goal of overhauling the malpractice system, but that "it is also clear that differences in our [approaches] remain."

Rep. Frank Pallone (D-N.J.), the subcommittee's ranking minority member, said, "I can't support and never have supported H.R. 5." He agreed that the malpractice issue needed attention, but said he objected to the bill's extension to cover drug and device companies, and also to the bill's cap on noneconomic damages. Rep. Pallone said it would be more important to control malpractice premiums directly.

Democrats also said the bill would preempt the states' ability to make policy and regulate the insurance business. Rep. Henry Waxman (D-Calif.) released an April 4 letter from the National Conference of State Legislatures that was sent to the subcommittee expressing its opposition to H.R. 5. It is the NCSL malpractice policy that federalism "contemplates diversity among the states in establishing rules," said the letter. "The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 5 and other related measures would undermine that diversity and disregard factors unique to each particular state."

Republicans, however, said that H.R. 5 is modeled on what they deemed successful state models in California and Texas. "I do not believe we need to study this anymore," said Rep. Michael Burgess (R-Tex.). "In Texas, we know what works," he said, citing gains in the number of new physicians practicing in the state and reductions in malpractice litigation since a reform model was put into place in 2003.

Dr. Troy Tippett, a Florida neurosurgeon who spoke on behalf of the Health Coalition on Liability and Access, said that the group "believes there can be no real health care reform without meaningful medical liability reform."

H.R. 5 would limit lawsuits to within 3 years after an injury, cap noneconomic damages at $250,000, limit attorneys' fees, and eliminate the concept of joint and several liability, which means that the plaintiff could not sue all the potential parties responsible for the injury. The bill would extend the protections to drug and device manufacturers, nursing homes, and other health care providers.

Rep. Waxman and several other Democrats said that the insurance industry was to blame for much of the malpractice climate.

Dr. Allen Kachalia, a hospitalist at Brigham and Women's Hospital in Boston, said that he agreed that the system was rife with problems, especially on the insurance side. Dr. Kachalia, who also has a law degree and studies medicolegal issues, said that recent studies show that almost 60% of malpractice claims contain an error, but that the claims are not properly adjudicated about 25% of the time.

"This means that in about a quarter of the claims in which there is an error, patients may not be receiving payment, and in a quarter of the claims in which there is no error, patients may still receive payment," Dr. Kachalia testified. "This type of inaccuracy can undermine both patient and physician faith in the malpractice system."

He also said that a majority of premium dollars are spent on overhead, whereas only about 46 cents per dollar are paid out to injured patients.

The data are mixed on damage caps, he testified. They may lower the size of claims paid and may translate into lower premiums paid by physicians, but they may not lower the number of claims filed. Caps may also lead to less defensive medicine, "but their effect on the overall quality of care is unknown," said Dr. Kachalia.

The House Judiciary Committee has passed a version of H.R. 5, and the full Energy and Commerce Committee was due to consider the legislation in mid-May. A Senate companion bill (S. 218) has only two cosponsors and is awaiting consideration by the Senate Judiciary Committee. ■

Less-Frequent Call Is More Important Than Higher Pay

BY ALICIA AULT

Physicians are more concerned about the burden of taking call than about how much they get paid for providing coverage at hospital emergency departments, according to a survey by the American Medical Group Association and a consulting firm.

About 50 medical groups participated, primarily from independently owned, large, multispecialty groups. Dr. Donald W. Fisher, president and CEO of the AMGA, said that most of the data on physicians' opinions on call coverage have been anecdotal. The AMGA survey, conducted with ECG Management Consultants, quantifies better what is actually happening, he said.

ECG senior manager Sean T. Hartzell said in a statement that "the survey confirmed what we are seeing in the market, which is that the lifestyle intrusion of call is being tolerated less and less by physicians, and they are seeking ways to decrease their call coverage burden."

According to the survey, when physicians were asked to choose between reduced call burden or payment, 58% of those surveyed said it was more important to reduce call burden. More than half the respondents said their call burden was high.

The survey also asked physicians for some potential solutions to reducing call burden.

Respondents said that the advent of hospitalists – which they regarded as favorable – was a potentially important way to reduce call burden. The majority of respondents said that use of nocturnists would be helpful. And 70% said that offering preferred scheduling on the day after call would be a good way to address call burden.

According to the AMGA, its members deliver health care to 110 million patients in 49 states. ■