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FROM THE EDITOR-IN-CHIEF

Sweeping Up Health Reform’s Piles Of Unfinished Business

By Susan Dentzer

The last several issues of Health Affairs have focused primarily on matters related to national health reform implementation. This month’s focuses instead on unfinished business that the Affordable Care Act arguably dealt with insufficiently—or simply ignored.

There’s a long list of topics that would fit this category, with medical liability at or near the top. Yet at the national level, the politics of malpractice have been brain-dead for at least a decade. Most Republicans back national tort reform legislation that would cap noneconomic damages in malpractice lawsuits, limiting payouts for pain and suffering and, indirectly, fees for trial lawyers. Most Democrats—dependent on political contributions from trial lawyers—oppose that approach.

Meanwhile, one driver of medical malpractice—avoidable medical errors and inadequate measures to ensure patient safety—gets far less attention than is warranted. And even though roughly two decades have passed since the renowned Harvard Medical Practice Study was conducted and published, it’s probably still the case that only a fraction of instances in which patients are harmed end up in litigation.

CALCULATING THE COSTS

Clearly, the existing system of medical malpractice isn’t working well for anybody, with the possible exception of those trial lawyers. The articles in this issue suggest that we could start with a common fact set, beginning with realistic estimates of the costs.

Michelle Mello and colleagues employ exhaustive methods to pinpoint costs equal to about $55 billion a year, or about 2.4 percent of current annual U.S. health spending. The largest component of those costs is the most uncertain: the amount of “defensive medicine,” including tests and procedures performed mainly out of liability concerns. Mello and colleagues peg these at about $46 billion annually.

Next, Emily Carrier and colleagues suggest that these defensive maneuvers may be motivated in part by unrealistic fears. Physicians, it turns out, are only human, and they are as likely as the rest of us to overestimate the probability of rare risks—in this case, being sued for medical malpractice.

USELESS MEDICINE?

Along the same lines, Marcus Semel and colleagues estimate that adoption of a well-known surgical safety checklist by a typical hospital would pay for itself once it prevented just five major complications a year. Robert Wachter writes about the even more problematic topic of diagnostic errors. These occur in an estimated one in ten clinical cases, and result in an unknown burden of mortality and morbidity and untold expenditures for useless medicine.

As for national tort reform, William Thomas and colleagues peg the savings from a 10 percent reduction in medical malpractice premiums at less than 1 percent of medical costs across all specialties. That may seem like chicken feed, but “even this small level of extra cost should be eliminated from the system,” they assert. Anna Mastroianni and colleagues find that there’s plenty of work to be done in improving existing state “apology” and “disclosure” laws so that they better serve everyone’s interest, from the harmed patient to the lawsuit-averse provider.

QUEST FOR CARE

A second topic not adequately addressed in health reform—but tackled by several authors in this issue—is growing nonemergency use of the nation’s emergency rooms. Stephen Pitts and colleagues analyze national surveys and conclude that only 45 percent of acute care visits nowadays are to patients’ personal physicians, while 28 percent end up in the ER. A key reason is a twist on the old Willie Sutton joke: The ER, not the doc’s office, is where the 24/7 health care is. Meanwhile, Pitts and colleagues are hopeful, if not fully persuaded, that provisions of health reform will address the problem through new models like accountable care organizations and medical homes.

Solutions are all the more urgent given that millions of newly insured Americans will soon join the queue for health care. It’s likely they’ll be unhappy if the bus is too crowded, or running late.