The Scope Of The Twin Problems In The United States

Health care in the United States has long faced two separate but related crises: (1) high rates of medical error and (2) major dissatisfaction with the malpractice liability system.

A landmark 1999 study by the Institute of Medicine found that an estimated 44,000 to 98,000 people died in one year due to avoidable errors in inpatient hospital treatment. And more than two decades ago, Howard H. Hiatt, a public health expert at Harvard University, wrote that an “atmosphere of crisis has enveloped our system of medical-malpractice litigation and liability insurance.”

What is the reality? Is the primary problem that U.S. health care is riddled with costly errors that kill or harm patients—or that doctors, hospitals, and other providers are subjected to too many lawsuits and hefty malpractice insurance premiums, and drive up health costs through so-called defensive medicine? Or is it a mix of both?

Calculating Costs

In recent years, a series of studies have added some clarity to the issues surrounding medical malpractice, giving policy makers better insights into policy choices. The studies undermined several myths. For instance, many experts believed that the number of people filing malpractice claims was out of control, but a study showed that only 1.53 percent of patients who were harmed by medical treatment filed malpractice claims.

Another widely held but erroneous belief was that the medical malpractice system accounted for a large chunk of U.S. health care costs, but a new comprehensive study put the cost at 2.4 percent of health care spending.

Still, that’s a lot of money—an estimated $54.4 billion each year spent in medical liability costs. As President Barack Obama and several members of Congress correctly noted, much of that cost is rooted in defensive medicine, in which doctors overprescribe tests and treatments in part to reduce their liability risk.

Studies have also documented a wide disparity in the liability insurance rates that providers pay. A 2003 study of seven states by the Government Accountability Office found one large insurer’s 2002 premium rate for general surgeons in Dade County, Florida, was $174,300 a year, or more than 17 times the $10,140 premium rate for general surgeons in Minnesota.

Limiting Damages: Some states have enacted “tort reform” legislation that imposes caps on so-called noneconomic damages that can be paid out in malpractice lawsuits. These are damages for pain and suffering that patients and their families undergo, or for wrongful death, separate and apart from “economic” damages that may be paid for lost wages or the cost of additional medical care. Some of these states have apparently been successful in slowing the growth of malpractice insurance premiums, which has led to calls to enact similar reform at the national level.
One possible benefit of reforming the system is that it could reduce the considerable psychological cost to providers who worry about the possibility of devastating malpractice lawsuits. But perceptions are not the same as reality: Studies have found that physicians’ fears about malpractice risk are both pervasive and overstated. Experts believe that physicians’ concerns reflect a tendency to overestimate the possibility of horrible outcomes.

A portion of the problem may be addressed with the federal health reform. With more people gaining health insurance coverage, fewer people may need to file suit in order to pay medical expenses. And in states that have adopted so-called collateral-source offsets, costs covered by health insurance cannot be recovered by malpractice plaintiffs, so wider health coverage should reduce indemnity payments.

**POLICY RECOMMENDATIONS**

- Efforts should continue at all levels of government to **spur the movement to improve patient safety**.

- The executive branch and Congress should **create a blue-ribbon panel on the use of defensive medicine** among physicians, and come up with a series of recommendations for providers to follow in various disciplines.

- Congress should **fund an extensive surveillance of health care reform’s impact**, if any, on medical malpractice liability to see if the law has helped to reduce costs.

**RESOURCES**

