Medical malpractice issue complex

BY MELISSA TAYLOR

Medical malpractice insurance is making headlines again. Doctors have walked off the job in Mississippi, Florida, West Virginia and Nevada to protest high premiums. Trauma centers are closing because doctors are walking off the job. Some women can’t find an obstetrician to deliver their babies because doctors can’t find an insurance company to cover them.

The medical malpractice insurance industry goes through a cycle of crisis every 10 years or so. In the 1970s, premiums rose so much that doctors could not afford to purchase insurance. In the 1980s, premiums rose more gradually but many insurers pulled out of the market, leading to a scarcity in insurance availability. Today, doctors are facing both drastic premium increases as well as decreased availability of insurance.

This cycle will continue until state officials address two issues. First, tort reforms enacted in the 1970s and 1980s have been unsuccessful in stabilizing the medical malpractice insurance industry. Many of the states that passed tort reforms in the 1970s still experienced a problem with insurance availability in the 1980s or are experiencing a crisis now.

Second, medical malpractice is a three-pronged problem. First, there are the medical care providers whose mistakes lead to medical malpractice claims in the first place. Second, the legal system requires a great deal of time, effort and money to determine fault, so many potential plaintiffs never file claims. Third, the medical malpractice insurance industry raises and lowers premiums, not based on a physician’s track record, but on the ups and downs of the national economy.

Medical care issues

The foundation of medical malpractice is the harm to patients caused by doctors through negligence or mistakes. If there are fewer medical errors, there should be fewer medical malpractice claims. Strengthening state licensing boards, promoting risk management and patient safety programs, and patient education are ways to address the medical incidents that lead to medical malpractice suits.

Health literacy is one innovative way to make health care information simpler and easier for patients to understand. When patients better understand their doctor’s orders, the possibility of misunderstandings and the number of claims filed are reduced.

Legal system reforms

Most analysts agree that the legal system is an inefficient method of providing compensation. It is unpredictable, costly, time-consuming and does little to prevent injuries. In addition, more than half the cost of medical malpractice cases is related to determining fault.

A number of reform proposals seek to address the economic inefficiencies of the court system. Enterprise liability is aimed at improving efficiency in the legal system. Under enterprise liability, hospitals, not doctors, can be sued, so it provides incentives for organizations to monitor and upgrade patient care. Other reforms such as medical disciplinary tribunals and alternative dispute resolution are aimed at avoiding the legal system. Medical disciplinary tribunals are an untested system of pre-hearing, formal hearing and appellate review to determine fault and settle cases. ADR methods, such as mediation and arbitration, are designed to speed resolution of complaints and to hold down liability costs by keeping disputes out of the court system.

Insurance industry problems

There are several problems with the insurance industry that also need to be addressed. When interest rates are high or the stock market is booming, insurance companies underprice premiums in order to gain market share and money to reinvest in the stock market. When interest rates decline or the stock market sours, insurers raise premiums in order to increase or maintain their profitability.

Insurance is a business based on “beating the odds.” In many lines of insurance, actuaries analyze data on past accidents to estimate premiums. In medical malpractice insurance, however, policies are not sold to a policyholder based on the risks associated with that particular policyholder. Instead, medical malpractice insurers use class ratings because data on medical incidents are not readily available.

Options for insurance reform range from simple actions such as rate regulation to nontraditional insurance schemes. Large hospitals, for instance, may choose to self-insure or create their own subsidiaries that provide insurance for those

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Michael Beschloss, called “the nation’s leading presidential historian” by Newsweek magazine, will be a featured guest speaker at this year’s Midwestern Legislative Conference Annual Meeting in Milwaukee.


He also is a trustee of the White House Historical Association, the National Archives Foundation, the Thomas Jefferson Foundation and the University of Virginia’s Miller Center of Public Affairs.

His speech is one of many interesting, informative sessions being planned for this year’s MLC Annual Meeting, which will be held Aug. 24-27. For more information on the meeting, contact Laura Kliewer in CSG’s Midwestern Office at (630) 810-0210 or lkliewer@csg.org.

CSG-WEST chooses 2003 leaders

In preparation for policy work in 2003, CSG-WEST officers recently confirmed committee and project chairs and vice chairs. Policy leaders are:

- Energy and Public Lands Committee – chair, Sen. Robert Peck (Wyo.); vice chair, Sen. Mike Dmitrich (Utah);
- Fiscal Affairs Committee – chair, Rep. Dwight Takamine (Hawaii); vice chair, Maxine Bell (Idaho);
- Future of Western Legislatures Forum – chair, Sen. Bart Davis (Idaho); vice chair, Rep. Lesil McGuire (Alaska);
- Trade and Transportation Committee – chair, Rep. Gayle Berry (Colo.); vice chair, Sen. Joe Carraro (N.M.);
- WESTRENDS Board – chair, Sen. Kate Brown (Ore.); vice chair, Mike Machado (Calif.);
- Legislative Council on River Governance (in the Northwest) – chair, Sen. Harriet Spanel (Wash.);
- Legislative Service Agency/Research Directors Committee – chair, Legislative Services Office Director Carl Bianchi (Idaho); vice chair, Legislative Administrator Dave Henderson (Ore.).

CSG-WEST officers also appointed Alaska Rep. Eric Croft to chair a special meeting of former Western Toll Fellows who will select the most innovative programs in the West. CSG-WEST and the Southern region of CSG selected Texas Sen. Jeff Wentworth to chair the Border Legislative Initiative. Diputado Ricardo Castro Lopez of Chihuahua, Mexico was selected as vice chair. Montana Sen. Bea McCarthy will serve as the CSG-WEST delegate to the National Conference of State Legislatures.

Hawaii Sen. Brian Taniguchi chairs CSG-WEST during 2003, and Idaho Senate Majority Leader Bart Davis serves as chair-elect. Oregon Senate Democratic Leader Kate Brown is the vice chair. Nevada Assembly Minority Leader Lynn Hettrick rounds out the CSG-WEST officer line-up in his capacity as immediate past chair. The Western region of CSG serves Western state legislators exclusively and is in its 56th year of service.

Medical malpractice complex

In short, medical malpractice is a complex problem that requires a comprehensive solution. Band-aid solutions, such as tort reform, have not worked in the past, and they won’t work now. State officials must address the medical, legal and insurance aspects of the problem if they hope to avert another crisis in the future.

– Melissa Taylor is the chief research analyst at The Council of State Governments.