

Most Doctors Face a Malpractice Claim by Age 65

There's little evidence that proves tort reform measures are lowering health care costs.

BY FRANCES CORREA

FROM THE NEW ENGLAND JOURNAL OF MEDICINE

Although physicians in high-risk specialties face a near certainty of a malpractice claim at some point in their careers, only a small minority will end up making an indemnity payment to a patient.

The probability of a physicians' facing a malpractice claim increases with length of time in practice, based on data from 1991 through 2005 from a large national malpractice carrier that insures more than 40,000 physicians in all 50

states and the District of Columbia.

Among physicians in high-risk specialties such as neurosurgery, general surgery, and obstetrics/gynecology, an estimated 88% were projected to face their first claim by age 45 and an estimated 99% by age 65.

In low-risk specialties such as family medicine, pediatrics, and psychiatry, 36% of physicians were projected to face their first claim by age 45 years and 75% by age 65 years, Dr. Anupam Jena of Harvard Medical School and his colleagues wrote.

In contrast, the projected rates of indemnity claims paid to plaintiffs were

lower. By age 45, 33% of physicians in high-risk specialties were projected to have had a claim paid, rising to 71% by age 65 years. For physicians in low-risk specialties, 5% were projected to have had a claim paid by age 45 years, rising to 19% by age 65 years (N. Engl. J. Med. 2011;365:629-36).

"If you've hit 65 and you haven't had a claim, that's rare; that's almost impossible in our data," Dr. Jena said in an interview, adding that high-risk specialties often come with higher salaries, which could be what balances out the risk factor for those physicians.

Overall, 7.4% of physicians were sued for malpractice in each year of the study, with 1.6% having an indemnity payment made each year. Dr. Jena and colleagues also found that specialties in which physicians were more likely to face a malpractice claim were not the ones in which indemnity payments were most prevalent.

For example, 19.1% of neurosurgeons faced a claim each year, according to the analysis, compared with 3.1% of pediatricians. However, the average indemnity payment for neurosurgeons was \$344,811, lower than the average of \$520,924 for pediatricians.

Although few claims resulted in payment, researchers said they were surprised by how many physicians face malpractice claims every year.

"A lot of those claims do not resolve in a payment to the patient, but they still involve significant monetary costs to both the physician and the insurer," Dr. Jena said. The physicians have "loss of productivity because they're not able to see patients as they defend cases ... and then there are all sorts of nonmonetary costs that we simply cannot measure," Dr. Jena said in an interview.

VITALS

Major Finding: Among the 7.4% of physicians who face medical malpractice claims every year, only 1.6% result in compensation paid to the plaintiff.

Data Source: An analysis of the malpractice claims of 40,916 physicians from 25 different specialties, from 1991 to 2005.

Disclosures: The study received funding from the National Institute on Aging and the RAND Institute for Civil Justice; one coauthor received grant support from the RAND Institute for Civil Justice.

Among all specialties, neurosurgery had the yearly highest risk of being sued (19.1%), followed by thoracic-cardiovascular surgery (18.9%), and general surgery (15.3%).

Specialties with the lowest yearly risk of facing being sued included psychiatry (2.6%), pediatrics (3.1%), and family medicine (5.2%).

The average payment for all specialties was \$273,887.

Some lawmakers and health care organizations have advocated for national medical malpractice reform, or tort reform, as a means of lowering health care costs; California and Texas already have \$250,000 caps on noneconomic damages.

However, there's little evidence that proves these measures are lowering health care costs. Even without tort reform, Dr. Jena said that he believes the best solution is one that roots out frivolous claims.

"There are some claims which have merit and should be fully investigated and should be brought before a jury or settled, and there are also claims that don't have that same merit. And those are the claims that we really should try to identify and limit early."

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Liability Caps: The Texas Experience

While the results of this study may not be surprising, Texas has found one solution to the issue. Since Texas instituted a \$250,000 cap on noneconomic damages in 2003, nuisance suits have been significantly reduced. The wasteful process of a medical liability trial has also been reduced, as true cases of malpractice are typically resolved through a settlement. Legitimate cases of malpractice can still be awarded the compensation they deserve: In addition to the \$250,000 maximum payment for pain and suffering (per physician, hospital, and/or third party, equaling up to \$750,000), patients can also be compensated for past and future medical expenses. Trial lawyers seeking a large payoff can no longer afford to litigate cases with few damages, so nuisance cases are

reduced to complaints before the Texas Medical Board.



Texas hospitals can now redirect liability funds to improving care, like funding electronic health records. Physicians can invest in their practices, and provide more charity care as well. The change has also brought thousands of doctors to Texas and improved access to quality care. As family practitioners face high overhead costs and low reimbursement rates, just saving on medical liability has allowed some doctors to continue their work where otherwise they may not have been able to.

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VIEW ON THE NEWS

Study Says More Patients Delaying Care in Bad Economy

BY FRANCES CORREA

FROM THE DELOITTE CENTER FOR HEALTH SOLUTIONS 2011 SURVEY OF HEALTH CARE CONSUMERS

The high costs of health care in the current uncertain economic environment are leading more consumers to delay medical care. That's according to the Deloitte Center for Health Solutions' 2011 Survey of Health Care Consumers, which included 15,000 health care consumers from 12 countries.

Among American respondents, 25% said they have skipped seeing a doctor when they were sick or injured. Among that 25%, 49% said they skipped going to a doctor because of costs. That's compared with 39% in Belgium, 35% in China, 34% in Mexico, 5% in Canada, and 7% in the United Kingdom and Luxembourg.

An additional 63% of Americans said their monthly health care costs make it harder for them to fund their housing, groceries, fuel, and education. Executive director Paul H. Keckley, Ph.D., said this year's results indicate a global concern.

VITALS

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Data Source: Deloitte Center for Health Solutions 2011 Survey of Health Care Consumers.

Disclosures: Researchers had no relevant financial disclosures.

"Regardless of the type of health care system – government-run or private – consumers around the world are feeling the pinch," Dr. Keckley said in a statement.

While Americans might be skipping doctor's visits, it's not because they don't need care. In times of economic downturn and high unemployment, the need for psychiatric care is highest, according to Dr. Lee H. Beecher, a psychiatrist who practices in St. Louis Park, Minn.

He added that high premium rates for private insur-

ance plans and low reimbursement rates for Medicare and Medicaid payments are decreasing patient access to care. Without a fix to the reimbursement systems and higher pay for outpatient services, Dr. Beecher said, more psychiatrists will be forced to work within a hospital system or the public sector. This, he said, will mean a more assembly-line approach to care, and less time to dedicate to patients.

"You might be able to see a psychiatrist every 3 to 6 months ... you don't have a doctor-patient relationship with the psychiatrist as a patient in these public programs," Dr. Beecher said in an interview.

As of January 2013, physicians will face a 30% cut in reimbursement rates under Medicare. In addition, the bill to raise the national debt ceiling included a committee tasked with assessing additional cuts down the line. Unless Congress takes action, physicians face an additional 2% cut by January 2014 and possible further cuts by the committee.

Deloitte has been measuring consumer trends in the health care system since 2008. ■