MEDICAL MALPRACTICE RATES IN DECLINE

Commercial insurers in soft market, reaping record profits

The insurance lobby claims that medical malpractice litigation drives up physicians' premiums, and restricting patients' legal rights would reduce premiums. However, this argument ignores the cyclical nature of the industry, which is now in a soft market with premiums declining or stabilizing. In fact, commercial insurance industry profits for most lines, including medical malpractice, saw profits soar to all-time highs in the last three years.

Medical malpractice insurance premiums are declining

Malpractice premiums across the country are declining, showing that there is a sustained soft market. According to J. Robert Hunter, Director of Insurance for the Consumer Federation of America and co-founder of Americans for Insurance Reform, "*this drop in prices has been underway for three years as the country experiences a sustained soft market.*"[1] The decline in medical malpractice premiums is making news. For example:

- In September, an Illinois malpractice insurer announced a cut in premiums of 25 percent.[2]
- In October, the Medical Liability Monitor, an industry newsletter, reported that "in some states, we are seeing the first signs of rate decreases and competition from new entrants…"[3]
- In November, four out of five of Ohio's malpractice carriers announced decreases in premiums.[4]
- In December, Maryland and Nevada announced new cuts in premiums.[5]
- According to a January 2007 article in The Republican, the largest medical malpractice insurer in Massachusetts – Medical Professional Mutual Insurance (ProMutual) – will not increase its rates for medical malpractice in 2007.[6] The article reports that "Under ProMutual's 2007 rates, doctors in obstetrics, orthopedics and anesthesiology could see as much as 10 percent reductions in their premiums."

Commercial insurers, including medical liability insurers, are reaping huge profits

The recent report by Americans for Insurance Reform also details huge profits for commercial insurers, including medical malpractice liability insurers. According to co-founder J. Robert Hunter:

> *"It now appears clear that the industry's record profits in 2004 and 2005, and the exceptional record profit to be reported for 2006, are due in large part to the years of huge rate hikes in the earlier part of the decade, which were not caused by any*

> *accompanying increase in claims or payouts."*[7]

Recent press reports also describe insurers' massive profits. For instance, the Triangle Business Journal reported in June 2006 that North Carolina's largest malpractice insurer "saw profits climb 224 percent in fiscal 2005 – with top executives granted hefty bonuses."[8] A December 2006 article in the Pensacola News Journal reported that "[a] report last week from the [Florida] Office of Insurance Regulation said Florida's 15 largest medical malpractice insurers had 2005 profits of $803 million."[9]

These massive profits dispel the myth propagated by the American Medical Association that North Carolina and Florida are "crisis" states. In the face of record profits amounting to hundreds of millions of dollars, such allegations are simply hollow. In fact, Americans for Insurance Reform also reports that newly released data show 2006 commercial insurance industry profits set record highs for the third straight year.[10]

Lawsuits are not responsible for cyclical spikes in medical liability premiums

The cuts in physician premiums and record profits clearly show that insurers are hardly being strained by malpractice litigation. Instead, the cuts and profits provide convincing evidence that the industry is now in a soft market, which is part-and-parcel of the normal underwriting cycle.

This is confirmed by the Fall 2005 issue of Regulation, a publication of the CATO Institute, which featured an article by Dartmouth economist Katherine Baicker and Harvard economist Amitabh Chandra. Importantly, these economists found no evidence linking cyclical spikes in premiums to medical malpractice lawsuits. Rather, they found that

> "other factors (such as the underwriting cycle, competitiveness in insurance markets, or insurer losses on other investments) play a larger role in driving changes in premiums than malpractice payments."11

According to the authors, their research "[calls] into question the view that states with traditional tort reforms have lower levels of premiums."12

Similarly, Richard Brewer, the CEO of ProMutual, the largest medical liability insurer in Massachusetts, openly acknowledges that "*[t]here is a cyclical nature to this business.*"[13] According to Mr. Brewer, rate cuts have come about due to "*things like patient safety initiatives, including our own risk management programs, [which] are paying dividends*."[14] Work by a well-known insurance expert, Tom Baker, also confirms that the medical malpractice insurance industry experiences an underwriting cycle – and it is this cycle that creates spikes in premiums, not lawsuits.[15]

Revolving door for insurance regulators is failing doctors and patients

Too often, those charged with oversight of the insurance industry are beholden to the industry itself. In December, the *Kansas City Star* published research finding that:

> More than half of the 35 insurance commissioners who left their jobs in the last three years got new jobs with the insurance industry, law firms, or lobbying groups that work for it, according to an informal nationwide survey by the newspaper. One-third of the new commissioners'

replacements came from the insurance field.[16]

This "revolving door" means that regulators too often put the financial interests of insurers before the interests of patients and doctors. The fact is, the insurance industry operates with lax regulatory oversight, exemption from federal anti-trust laws, and exemption from oversight by the Federal Trade Commission. Congress should eliminate these exemptions.

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[1] Americans for Insurance Reform. "Commercial Insurance Rates Continue to Fall While insurer Profits Continue to Skyrocket to record Levels." October 25, 2006. Available at http://www.insurance-reform.org/AIRSoftMarketProfits.pdf Emphasis added.

[2] "Avreco Announces Ill. Malpractice Carrier Reduces Rates by 25 Percent." Insurance Journal. September 6, 2006.

[3] Bingham, Kevin, "2006 Rate Survey Shows Rates Leveling Off and the Early Signs of a Softening Market." Medical Liability Monitor. October 2006. p.1

[4] "Ohio Department Says Malpractice Insurance Rates Decrease for Docs." Insurance Journal. November 10, 2006.

[5] "Maryland's Biggest Malpractice Insurer to Cut Premiums 8%." Insurance Journal. December 18, 2006; "Medical Protective Decreasing Medical Malpractice Rates in Nevada." Insurance Journal. December 28, 2006.

[6] Norris, Patricia. "Freeze due on malpractice cost." The Republican. January 26, 2007.

[7] Americans for Insurance Reform. "Commercial Insurance Rates Continue to Fall While insurer Profits Continue to Skyrocket to record Levels." October 25, 2006. Available at http://www.insurance-reform.org/AIRSoftMarketProfits.pdf Emphasis added.

[8] Wagner, Michael. "Profits, executive pay up at malpractice insurer." Triangle Business Journal. June 16, 2006.

[9] St. John, Paige. "Malpractice Payouts Dropping." Pensacola News Journal. December 7, 2006.

[10] With regard to medical malpractice liability insurers, the first and third quarters of 2006 each showed a decline of one percent. Americans for Insurance Reform, "Commercial Insurance Rates Continue to Fall While insurer Profits Continue to Skyrocket to record Levels." October 25, 2006. Available at http://www.insurance-reform.org/AIRSoftMarketProfits.pdf Emphasis added.

[11] Baicker, Katherine and Chandra, Amitabh. "Defensive Medicine and Disappearing Doctors?" Regulation. Vol.28, No.3. Fall 2005. p. 28

[12] Id., p. 31

[13] Norris, Patricia, "*Freeze due on malpractice cost.*" The Republican. January 26, 2007.

[14] Id.

[15] Baker, Tom. The Medical Malpractice Myth. Chicago: University of Chicago Press, 2005. p. 45

[16] Klepper, David. "Regulators enjoy cozy relationship with insurance industry." Kansas City Star. December 12, 2006.