

Lax insurance regulation is core of malpractice crisis

By Georgina Gustin and Philip Dine, Post-Dispatch, 01/01/2005

President George W. Bush's visit to Madison County this week will shine an even brighter spotlight on a pocket of the country with a reputation for attracting so-called frivolous medical malpractice suits.

But as Bush uses the "judicial hellholes" of Madison and St. Clair counties as backdrops to advance his tort reform agenda, critics of that agenda say a key element in solving the medical malpractice crisis lies to the north, with insurance regulators in Springfield.

Illinois, according to consumer groups, has the most lenient insurance regulations in the country - and that, they say, is one reason the cost of malpractice insurance for Illinois doctors has shot up. Indeed, some critics say, Illinois' system has become the model for congressional efforts to loosen regulations on the insurance industry nationwide.

"For the insurance industry, Illinois is the gold standard," said Joanne Doroshow, executive director of the Center for Justice and Democracy, a national consumer rights organization.

"The (Illinois) insurance department doesn't have the authority, in most cases, to deny an excessive rate. They don't have the legal authority," Doroshow said. That, she added, means insurance companies can charge what they want.

What they have got from some obstetrician-gynecologists in Madison and St. Clair counties is, for

example, malpractice premiums that rose to \$230,428 in 2004 from \$138,031 in 2003.

The insurance industry blames its rate hikes on what it calls a surge in medical malpractice suits and jury awards in recent years. To stay afloat, the industry has had to charge more to the doctors it insures, it says.

Dr. Harold L. Jensen, chairman of the board of ISMIE Mutual Insurance Co., of Chicago, the state's largest insurer of doctors, said state regulators here don't have the power to regulate but they do comment and advise. Regardless, he said, "Regulation does not hold down rates."

A spokeswoman for the state's Division of Insurance, part of the Illinois Department of Financial and Professional Regulation, said the notion that the state's regulation is lenient is unjustified.

"Insurers have to get approval to raise rates. That entails looking at whether the rates make sense with market analyses," said the spokeswoman, Susan Hofer. "We have an insurance code that fills volumes. The director of the insurance division has final say."

Aside from accusing Bush of exaggerating one aspect of the problem, critics of the president's approach also contend that because this issue involves local judges and juries, it is best dealt with on a state level - not by politicians in Washington

proposing one-size-fits-all federal legislation.

A laissez faire system

Proponents of tort reform, including the president, say that placing caps on jury awards for pain and suffering will stem the tide of lawsuits and reduce doctors' insurance premiums.

But critics say capping noneconomic damages in medical malpractice suits doesn't lower doctors' insurance costs. In fact, they say, Missouri's rates went up after it imposed a noneconomic cap of \$500,000 in 1986.

"The last couple years nobody's been even awarded \$500,000. The average noneconomic damage award is \$83,000," said Ashley Allen, director of Missouri Watch, a patient-advocacy group that opposes tort reform. "Decision-makers should take a look at real insurance reform; they should look at the insurance companies and their profit margins."

While blame for stratospheric insurance premiums and the resulting exodus of doctors has been pinned on trial lawyers and runaway juries, critics of tort reform say the role of insurance companies has been left out of the discussion.

"The Bush administration can say lawsuits are the problem, but the data is contradictory and without a toe-hold on reality," said Doug Heller, executive director of the Foundation for Taxpayer and Consumer Rights.

"We're not talking about insurance companies and that's a huge failure in this policy debate."

Heller points to California, where lawmakers placed caps on non-economic damages in the mid-1970s. By the late 1980s, insurance premiums had risen more than 400 percent, even with the caps. It took a statewide ballot initiative that ushered in more stringent insurance regulation to solve the problem, Heller said.

"Illinois has a laissez faire system," Heller said. "The insurance companies charge what they want and the marketplace is supposed to protect the doctors. That competition might work with a computer company or a florist, but insurance is mandatory. It should be regulated like a utility."

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Lax insurance regulation continued

State Sen. Susan Garrett, D-Lake Forest, introduced legislation in August that would require the state's insurance regulators to review rate increases and make sure they are justified.

It's up to the regulators to ensure they are taking a hard look at these rate increases," Garrett said. "When they've done that in other states, their rate increases were in line with inflation. All you have to do is look at California. Their premiums haven't gone up nearly as much as in Illinois."

Garrett's bill was rolled into a large medical malpractice bill that is still pending.

U.S. Rep. Jerry Costello, D-Ill., maintains that caps are only part of the solution. Reducing jury awards makes sense only if the insurance industry is compelled to justify to a public commission any sizable increase in premiums, he said.

"They should have an obligation to tell both the physicians and the public why they are raising the rates," Costello said, also citing California.

"I'm hoping when the president comes to Collinsville, he addresses the entire issue. I believe there is no one simple solution to this complicated matter," Costello said.

"To bring people to the table and leave the insurance industry out of it is wrong and it won't solve the problem. You bring the trial law-

yers, the doctors and the insurance industry - you bring them all to the table and they all have to give something up in order to solve the problem."

State vs. federal?

Costello and others argue that the crisis is best solved at the state level.

"Half the states have passed various medical malpractice reform laws, and the state of Illinois needs to address the issue in the state Legislature," Costello said. "I do not believe the federal government should pre-empt the laws that have been passed by half the states in the union."

Some states have adopted caps, others have taken steps to institute insurance accountability, while still others have not felt a need to act, Costello said.

Doroshow said that tort law is "all state-based law."

"What Bush and Congress are talking about is interfering with the decisions of local judges and juries, in a massive way," she said.

What's driving premium hikes, Doroshow added, is that the insurance industry makes most of its money from investments, and therefore does well during market booms and poorly when the market dips. When the market goes down, the insurance companies raise their rates to compensate.

The industry, however,

counters that most of its investments aren't in the stock market.

ISMIE, for example, says 93 percent of its investments are in bonds. "We're not wasting money," Jensen said. "We're chicken, we're afraid to get adventure-some."

Critics say, however, that's an old argument.

"It doesn't matter where you have your money," Heller said. "When things go bad you're going to lose money. Period. That argument is so unconvincing, the companies aren't even using it anymore."

