

President Uses Dubious Statistics on Costs of Malpractice Lawsuits

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Two Congressional agencies dispute findings that caps on damage awards produce big savings in medical costs.

Summary

The President holds out the prospect of major cost savings if Congress will pass a law limiting what injured patients can collect in lawsuits. He wants a cap of \$250,000 on any damages for “pain and suffering” and other non-economic damages. His administration projects savings to the entire economy of between \$60 billion and \$108 billion per year in health-care costs, including \$28 billion or more to federal taxpayers.

But both the General Accounting Office and the Congressional Budget Office criticize the 1996 study the Bush administration uses as their main support. These nonpartisan agencies suggest savings – if any – would be relatively small.

Analysis

In a speech in Little Rock, Arkansas on Jan. 26 the President said, “One of the major cost drivers in the delivery of health care are these junk and frivolous lawsuits.” He said rising malpractice insurance premiums and needless medical procedures ordered up out of fear of lawsuits cost federal taxpayers “at least” \$28 billion a year in added costs to government medical programs. Bush’s Department of Health and Human Services claims total savings – public and private – of as much as \$108 billion a year.

Those claims rest mainly on a single 1996 study by two Stanford economists who said caps on damage awards could hold down overall medical costs by 5% to 9%. They studied heart patients who were hospitalized, compared costs in states with and without limits on malpractice lawsuits, and then projected their findings to the entire health-care system.

But both the GAO and the CBO now question their sweeping conclusion. When the CBO attempted to duplicate the Stanford economists’ methods for other types of ailments they found “no evidence that restrictions on tort liability reduce medical spending.”

“In short, the evidence available to date does not make a strong case that restricting malpractice liability would have a significant effect, either positive or negative, on economic efficiency,” the CBO said.

What the President Said

In his Little Rock speech the President blamed baseless lawsuits for a big part of rising medical costs:

Bush: One of the major cost drivers in the delivery of health care are these junk and frivolous lawsuits. The risk of frivolous litigation drives doctors -- and hear me out on this -- they drive doctors to prescribe drugs and procedures that may not be necessary, just to avoid lawsuits. That's called the defensive practice of medicine.

. . . . See, lawsuits not only drive up premiums, which drives up the cost to the patient or the employer of the patient, but lawsuits cause docs to practice medicine in an expensive way in order to protect themselves in the courthouse.

The defensive practice of medicine affects the federal budget. **The direct cost of liability insurance and the indirect cost from unnecessary medical procedures raise the federal government's health care costs by at least \$28 billion a year.**

What HHS Said

The President was relying on a paper issued last year by an assistant secretary of HHS which said "The litigation and malpractice insurance problem raids the wallet of every American."

The HHS report put the cost of malpractice insurance to doctors alone at \$6.3 billion in 2002, but said much larger costs come from "defensive medicine":

HHS: Defensive medicine that is caused by unlimited and unpredictable liability awards not only increases patients' risk but it also adds costs. The leading study estimates that limiting unreasonable awards for non-economic damages could reduce health care costs by 5-9% without adversely affecting quality of care. This would save \$60-108 billion in health care costs each year. These savings would lower the cost of health insurance and permit an additional 2.4-4.3 million Americans to obtain insurance.

That "leading study" was a 1996 paper by Stanford economists Daniel P. Kessler and Mark McClellan. McClellan – who is both an economist and a physician – served more recently as President Bush's senior White House policy director for health care, and is now the head of the Food and Drug Administration.

The Kessler-McClellan study is one of the few academic studies that has ever attempted to measure the cost of "defensive medicine" attributable to lawsuits. It did so by examining the cost of treating hospitalized heart patients in states that have caps on damage awards and other restrictions on malpractice suits, and comparing them with the costs of treating similar

patients in states without such limits on lawsuits.

The Kessler-McClellan conclusion:

Kessler-McClellan: We find that malpractice reforms that directly reduce provider liability pressure lead to reductions of 5 to 9 percent in medical expenditures without substantial effects on mortality or medical complications. We conclude that liability reforms can reduce defensive medical practices.

The Kessler-McClellan study won the 1997 American Economics Association's award in health economics.

However, a fact not mentioned in the Bush HHS paper is that several other studies of defensive medicine failed to find anywhere near such large costs. A 1990 study by the Harvard University School of Public Health "did not find a strong relationship between the threat of litigation and medical costs," CBO said. And a 1999 study in the *Journal of Health Economics* found only tiny savings – less than three-tenths of one percent – when studying the cost of Caesarian sections in states with limits on lawsuits, compared to states without limits.

Finally, a 1994 study by the congressional Office of Technology Assessment found some added costs (under \$54 million total) due to defensive radiology in children with head injuries and defensive Caesarian sections in certain women with difficult pregnancies. But the OTA study concluded: "it is impossible in the final analysis to draw any conclusions about the overall extent or cost of defensive medicine."

What GAO and CBO Said

CBO and GAO both question whether the results Kessler and McClellan observed in hospitalized heart patients can be applied to patients in cancer wards, nursing homes, doctors' offices, maternity wards and elsewhere.

In 1999 a GAO study said the evidence Kessler and McClellan cited was too narrow to provide a basis for estimating overall costs of defensive medicine:

GAO: Because this study was focused on only one condition and on a hospital setting, it cannot be extrapolated to the larger practice of medicine. Given the limited evidence, reliable cost savings estimates cannot be developed.

And on Jan. 8, 2004, the Congressional Budget Office also said the Kessler-McClellan study wasn't a valid basis for projecting total costs of defensive medicine.

CBO: When CBO applied the methods used in the study of Medicare patients hospitalized for two types of heart disease to a broader set of

ailments, it found no evidence that restrictions on tort liability reduce medical spending. Moreover, using a different set of data, CBO found no statistically significant difference in per capita health care spending between states with and without limits on malpractice torts.

Worth noting: The nonpartisan CBO is now headed by Douglas Holtz-Eakin, who previously was chief economist for President Bush's Council of Economic Advisers.

Sources

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