New research details how the threat of medical liability litigation hovers over physicians like a cloud and imposes rising costs on the nation's health system.

More than one in three physicians, 34 percent, have had a medical liability lawsuit filed against them at some point in their careers, says one of three trend reports published by the AMA's Division of Economic and Health Policy Research. The longer physicians are in practice, the likelier it is that they will have experienced a lawsuit.

Nearly half of physicians 55 and older report having been sued, compared with just 8 percent of doctors younger than 40. Female physicians are less likely to be sued than their male counterparts, part of which is attributable to differences in age and specialty.

Yet in the vast majority of claims, the plaintiffs do not prevail, according to another of the new AMA reports that analyzes indemnity payments, expenses (defense costs) and claim disposition based on a sample of medical liability claims from PIAA that closed between 2006 and 2015.

Sixty-eight percent of closed claims were dropped, dismissed or withdrawn in 2015. Nonetheless, those claims still imposed an average of more than $30,000 in defense costs, which is 38 percent of total expenses incurred on all claims. Of the 7 percent of medical liability claims decided by a trial verdict, the vast majority—88 percent—were won by the defendants.

“Information in this new research paints a bleak picture of physicians’ experiences with medical liability claims and the associated cost burdens on the health system,” said AMA President David O. Barbe, MD, MHA. “The reports validate the fact that preserving quality and access in medicine, while reducing cost, requires fairness in the civil justice system. Every dollar spent on the broken medical liability system is a dollar that cannot be used to improve patient care.”

The AMA is pursuing legislation to strengthen the nation’s liability system at the state and federal levels, in collaboration with state medical associations and national specialty societies. The AMA
favors traditional reforms such as caps on noneconomic damages, which have proven to be successful in maintaining a stable liability climate in the states that have enacted them. Since 2000, 20 states have enacted medical liability reforms that included noneconomic-damage caps of some kind.

The AMA also calls for the implementation and evaluation of innovative reforms to see whether they can improve the nation’s medical liability climate. The AMA has called for federal funding for pilot projects to test concepts such as health courts, liability safe harbors for the practice of evidence-based medicine, early-disclosure-and-compensation models, expert witness guidelines and affidavits of merit, and has supported legislation to enact many of these models at the state level.

More of the facts you need to know to address the broken medical liability system are available in the 2018 edition of a 36-page AMA resource, “Medical Liability Reform Now!” Among other things, that resource explores the independent research estimating that defensive medicine costs the nation’s health system at least tens of billions of dollars each year.

“Even though the vast majority of claims are dropped, dismissed or withdrawn, the heavy cost associated with a litigious climate takes a significant financial toll on our health care system when the nation is working to reduce unnecessary health care costs,” Dr. Barbe said.

Ob-gyns, surgeons at highest risk

When it comes to the risk of being sued, not all specialties are equal. General surgeons and obstetrician-gynecologists are at the greatest risk of facing medical liability lawsuits. They are three-and-a-half to four times likelier to be sued than pediatricians and psychiatrists, who are at the lowest risk of being hit with a suit. About 63 percent of ob-gyns and general surgeons have ever been sued, compared with 16 percent of psychiatrists and 18 percent of pediatricians.

Thirty-two percent of internists have ever been sued, while one-third of family practice physicians have been sued. About half (52 percent) of emergency physicians have been sued, compared with 38 percent of radiologists and 36 percent of anesthesiologists. (See table two in the report for a breakdown by specialty. Table one includes a breakdown by gender.)

The third newly released report examines annual changes in medical liability insurance premiums from 2008 to 2017, drawing from data published in the Medical Liability Monitor. While the overall picture is one of increasing stability in premiums, “the prospects for the near future are less than certain.”

That is because in the last three years of the study period, there have been more premium increases than decreases. In 2017, 13.4 percent of premiums were higher than in 2016. The trend since 2010 is that 12–17 percent of premiums rose from the prior year. Moreover, the share of premiums that has decreased from one year to the next has been falling, especially since 2015.
Premiums vary widely by practice location and specialty. In some parts of New York, for example, ob-gyns faced premiums of about $215,000. That compares with premiums of about $50,000 for their fellow ob-gyns in California, a state that pioneered caps on noneconomic damages with the Medical Injury Compensation Reform Act of 1975.

More on this

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