

NEW STUDIES SHOW: “CAPS” ON DAMAGES RUIN HEALTH CARE

It is now indisputable that “caps” on compensation in medical malpractice cases (so-called “tort reform”) harm not just injured patients and their families. They are also wrecking health care for everyone else. Three new studies by esteemed academics in the field of medical malpractice research confirm for the first time that “caps” lead to ***more medical errors, higher health care costs and no increase in patient care physicians.***¹

MORE MEDICAL ERRORS²

The authors examined five states that enacted caps during the last “hard” insurance market (2003 to 2005)³ where standard Patient Safety Indicators (PSIs)⁴ were also available for at least two years before caps passed (to allow for comparison). They then compared these data to other “control” states. They found “consistent evidence that patient safety generally falls” after caps are passed. Specifically:

- “We find a gradual rise in rates for most PSIs after [caps were passed], consistent with a gradual relaxation of care, or failure to reinforce care standards over time.”
- “The decline is widespread, and applies both to aspects of care that are relatively likely to lead to a malpractice suit (e.g., ... foreign body left in during surgery), and aspects that are unlikely to do so (e.g., ... central-line associated bloodstream infection).”
- “The broad relaxation of care suggests that med mal liability provides ‘general deterrence’ – an incentive to be careful in general – in addition to any ‘specific deterrence’ it may provide for particular actions....”
- “We find evidence that reduced risk of med mal litigation, due to state adoption of damage caps, leads to higher rates of preventable adverse patient safety events in hospitals.”

HIGHER HEALTH CARE COSTS⁵

The authors examined health care spending trends in nine states that enacted caps during the last “hard” insurance market (2002 to 2005)⁶ and compared these data to other “control” states. They found that “damage caps have no significant impact on Medicare Part A (hospital) spending, but lead to 4-5% *higher* Medicare Part B (physician) spending” [emphasis in the original]. The reasons may have to do with physicians practicing riskier medicine in “cap” states, such as performing “high-risk services or procedures,” which they avoid in states where the tort system’s “general deterrence” function (noted above) works properly. The authors note:

“Damage caps have long been seen by health policy researchers and policymakers as a way to control healthcare costs. We find, in contrast, no evidence that adoption of damage caps or other changes in med mal risk will reduce healthcare spending. Instead, we find evidence that states which adopted [caps] during the third wave of med mal reforms have *higher* post-cap Medicare Part B spending....”

“[O]ne policy conclusion is straightforward: There is no evidence that limiting med mal lawsuits will bend the healthcare cost curve, except perhaps in the wrong direction. Policymakers seeking a way to address rising healthcare spending should look elsewhere.”

NO INCREASE IN PHYSICIANS⁷

The authors examined physician supply in nine states that enacted caps during the last “hard” insurance market (2002 to 2005)⁸ and compared these data to other “control” states. They found “no evidence that cap adoption predicts an increase in total patient care physicians, in specialties that face high med mal risk (except plastic surgeons), or in rural physicians.” Specifically:

- “[W]e find no evidence that the adoption of damage caps increased physician supply in nine new-cap states, relative to twenty no-cap states.”
- “Consistent with this analysis, we also find no association between med mal claim rates and physician supply in state and county fixed effects regressions over 1995-2011.”
- “Physician supply does not seem elastic to med mal risk. Thus, the states that want to attract more physicians should look elsewhere.”

NOTES

¹ Bernard S. Black, David A. Hyman and Myungho Paik, “Do Doctors Practice Defensive Medicine, Revisited,” Northwestern University Law & Economics Research Paper No. 13-20; Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-21 (October 2014), <http://ssrn.com/abstract=2110656>; Bernard S. Black, David A. Hyman and Myungho Paik, “Does Medical Malpractice Reform Increase Physician Supply? Evidence from the Third Reform Wave,” Northwestern University Law & Economics Research Paper No. 14-11; University of Illinois Program in Law, Behavior and Social Science Research Paper No. LBSS 14-36 (July 2014), <http://ssrn.com/abstract=2470370>; Bernard S. Black and Zenon Zabinski, “The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform,” Northwestern University Law & Economics Research Paper No. 13-09 (July 2014), <http://ssrn.com/abstract=2161362>.

² Bernard S. Black and Zenon Zabinski, “The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform,” Northwestern University Law & Economics Research Paper No. 13-09 (July 2014), <http://ssrn.com/abstract=2161362>.

³ Florida, Georgia, Illinois, South Carolina and Texas. Illinois’ and Georgia’s caps were found unconstitutional in 2010, but that is the last year examined by the authors and so had no impact on their results.

⁴ PSIs are the “standard measures of often preventable adverse events, developed by the Agency for Healthcare Research and Quality (AHRQ).” They include operative and post-operative errors, infections, birth-related errors and cases at risk, like hospital-acquired pneumonia.

⁵ Bernard S. Black, David A. Hyman and Myungho Paik, “Do Doctors Practice Defensive Medicine, Revisited,” Northwestern University Law & Economics Research Paper No. 13-20; Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-21 (October 2014), <http://ssrn.com/abstract=2110656>.

⁶ Florida, Georgia, Illinois, Mississippi, Nevada, Ohio, Oklahoma, South Carolina and Texas.

⁷ Bernard S. Black, David A. Hyman and Myungho Paik, “Does Medical Malpractice Reform Increase Physician Supply? Evidence from the Third Reform Wave,” Northwestern University Law & Economics Research Paper No. 14-11; University of Illinois Program in Law, Behavior and Social Science Research Paper No. LBSS 14-36 (July 2014) <http://ssrn.com/abstract=2470370>.

⁸ Florida, Georgia, Illinois, Mississippi, Nevada, Ohio, Oklahoma, South Carolina and Texas.