Kill the HMO System!

Med-Malpractice Rates Are Killing Doctors

by Marcia Merry Baker

Dec. 5—In recent years, sky-high medical malpractice judgments and insurance rates have been the immediate cause for driving thousands of U.S. physicians out of practice, and forcing hospitals to shut down whole categories of service, including obstetrics, neurosurgery, and other vital functions. Many U.S. areas now lack natal units, or other community basics. Far from being an aberration of the health-care sector, this situation stems from the insertion of privateer financial and insurance entities into the medical treatment, payment, and decision-making relations, which began in 1973 with the Health Maintenance Organization Act.

Over the decades, as HMOs—Aetna, Humana, UnitedHealth Group, WellPoint, etc.—grew dominant, their standard profitizing practices of curtailing, denying, and delaying health care to their enrollees, resulted in more and more instances of harm to patients, and impossible situations for physicians, hospitals, and nursing facilities. It was estimated by a 1999 Institute of Medicine study that, at that time, between 44,000 and 98,000 people a year were dying because of HMO conditionalities.

However, the financial and political interests behind the HMOs and related branches of insurance—especially malpractice—acted to protect the HMOs from lawsuits and settlements.

Key to the protection racket at the beginning was the Federal 1974 Employee Retirement Income Security Act (ERISA), under which, it was held that HMOs were providing interstate health-care services, and so, could not be sued under state law; and also, that HMOs could not be sued under Federal law, because under ERISA, the HMOs were just "administering benefits programs," and not implementing medical treatment directly! This evil construction was upheld by the Supreme Court, in a June 21, 2004 9-to-0 decision, at which time, two Justices, Ginsberg and Breyer, appealed to Congress to rectify what they called, "an unjust and increasingly tangled ERISA regime."

Therefore, the typical recourse for an injured person under such an HMO-serving system, has been to sue the physician and/or care-institution directly, which, in turn has been augmented by phalanxes of attorneys, on the prowl to win a percentage of potential fat court settlements. The results have shown up in soaring malpractice insurance rates. But this is not the whole story. Over the same period, many insurers jacked up malpractice rates and other premiums, in response to their losses in all kinds of other speculative "investments," or just plain "corporate decisions" or mismanagement.

Insurers' Rake-Off

One outstanding example is the St. Paul Insurance Co. of Minnesota, which announced in December 2001, that it was withdrawing from the malpractice insurance business altogether, because it claimed $700 million in losses between 1997 and 2001, despite a 24% increase in premiums in 25 states. At the time, it was the second-largest U.S. medical insurer, covering 42,000 physicians, 73,000 health-care workers, and 750 hospitals nationwide. It began refusing renewals, as malpractice policies expired.

However, a year later, it was determined that St. Paul's alleged losses from its malpractice business was a coverup for such blatant mismanagement, as distributing $1.1 billion in dividends, from malpractice reserves, to stockholders, instead of holding the funds for claims. Nevada authorities investigated the company. Over 1,200 West Virginia doctors filed charges against St. Paul for scamming them by taking their premiums and cutting coverage, etc.

During the 25-year period, 1975-2001, malpractice claims, payments, and settlements rose at a gradual rate, on average, along with medical inflation; but malpractice premiums fluctuated wildly during the same period.

In many states, malpractice suits have declined, but insurers have still hiked their rates. In New York, tort filings fell by 30% from 1998 to 2008, from a total of 81,952 cases, down to 57,023. But malpractice insurance costs are soaring.

The net result has been disastrous. Doctors and treatment facilities have been slammed from "both sides"—the HMO contract pressures and strictures,

and the unaffordability, or even unavailability of malpractice insurance. For example, whereas in Florida in the mid-1990s, there were more than 40 malpractice insurance carriers, by 2003, this dwindled to six private companies. In Pennsylvania, nine companies used to write such insurance, but by 2003, there were only two.

During the early George W. Bush Administration, the crisis point was reached where physicians in certain states faced malpractice insurance rates which had risen 70% during only a few years, and some faced premiums over 100% of the doctor's annual income!

The rate of erosion of medical services escalated. In 2001, the American Hospital Association reported that malpractice rate hikes forced 20% of U.S. hospitals to scale back certain services. Nursing homes were likewise hit hard.

In 2003, doctors in several states held demonstrations to bring the crisis home to the public. In January, in West Virginia, two dozen general, orthopedic, and heart surgeons at four West Virginia hopsitals started a 30-day leave of absence, hoping to locate workable insurance. The same year, several Philadelphia hospitals narrowly averted a job action over premium increases. Governor-elect Ed Rendell came into office urging the legislature to do something to at least get premiums reduced for the riskiest fields, such as obstetrics and neurosurgery. At that time, 250 physicians in five Pennsylvania counties were either leaving the state, limiting their practice, or retiring, due to malpractice premium hikes; and 23 hospitals in the state faced a crisis of how to keep open their trauma centers, given that their physicians could either not find insurance, or faced personal premiums as high as $150,000 a year.

Today, it is impossible in northeastern Philadelphia for a woman to have a baby in a hospital. There are similar voids in cities and counties cross country.

In New York state, hospitals incur nearly $1.6 billion a year in direct medical malpractice expenses, which amounts to 8% of their operating costs, other than personnel costs. This estimate is from the Greater New York Hospital Association's testimony on Dec. 1, 2009 to the state Senate. At the same hearing, it was reported that annual malpractice insurance is expected to exceed $71 million next year for Columbia University Medical Center and New York Presbyterian Hospital. Some obstetricians in New York are paying $200,000 annually for malpractice coverage.

Talking the Talk, Protecting HMOs

Presidents Bush, and now, Obama, have talked the talk about the problem of unpayable malpractice insurance, denouncing "frivolous" lawsuits as the problem, but all the while they have done everything to protect the HMO system, even to the point now, of proposing Hitlerian cuts as Obamacare "reform." The Bush Administration line was for "tort reform" as the solution.

This past Summer, President Obama was booed during his speech to the American Medical Association convention, when he said he did not favor capping malpractice settlements; since then he speaks of "finding ways" to curb claims, supposedly to bring down the cost of malpractice insurance. But above all, don't touch HMOs.

On Dec. 3 Lyndon LaRouche addressed what must be done, as a "lesson."

"Obama is destroying the United States with his current policies. He didn't start this thing, but he's continuing it. We have to reverse those trends. We have to eliminate, entirely, his health-care policy: Obama's.

"What we do instead, is we go to a lesson, a health-care lesson. The health-care lesson is, that under Nixon, we destroyed our health-care system. We introduced the HMO system. Private insurance companies got control over medical care. Then later, we had a new thing which occurred in the courts: malpractice insurance cases. Tremendous fees, grants for malpractice injuries, by the courts, by the court system. The result was, the insurance, which had to paid by medical institutions, and by physicians for the practice of medicine, drove them essentially out of the business, and drove up the cost of medical care. You look at it from, say, the drug policies, for example: what it costs to get a certain prescription drug in the United States, as opposed to Canada or places in Europe. Why? It's a swindle of what? Of the insurance companies. Shall we say, AIG? We bailed it out, and the bailout is now part of it.

"Then we get the bright idea on top of that with Obama, *to cut the right to medical care*. We've got *to kill you* in order to save money to balance the budget. I would say, cancel the HMOs; go back to Hill-Burton, cancel the HMO system. . . ."

Linda Everett contributed to this article.

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