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Study Says Malpractice Payouts Aren't Rising

By [JENNY ANDERSON](#)

Published: July 7, 2005

When Mike Kreidler was an optometrist in Olympia, Wash., he railed against trial lawyers. He believed that aggressive trial lawyers were the reason he faced rising insurance premiums.

Dr. Kreidler, now in his second term as Washington State's insurance commissioner, has changed his mind. He has decided that the problem is not the lawyers - although they have contributed - but also the insurance companies.

"I came full circle," he said. "I started out with a strong bias against trial lawyers and lawsuits, and now I see the trade-off and I have both sides, the trial lawyers and the insurance companies, mad at me."

The high price of medical malpractice insurance is a notoriously nebulous and highly politicized subject. Insurers and doctors contend that the insurance is more expensive because of a surge in jury awards and settlements. Consumer advocates and their political allies assert that insurers have raised rates because they can, arguing that insurers' claims have slowed significantly while premiums have shot up.

A study to be released today by the Center for Justice and Democracy, a consumer advocacy group in New York,

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may add fuel to that debate. The study, compiled from regulatory filings by insurers to state regulators, finds that net claims for medical malpractice paid by 15 leading insurance companies have remained flat over the last five years, while net premiums have surged 120 percent.

From 2000 to 2004, the increase in premiums collected by the leading 15 medical malpractice insurance companies was 21 times the increase in the claims they paid, according to the study. (The net totals in the study are calculated after accounting for reinsurance.)

Of the 15 companies examined, 9 are mutual insurers owned by their policyholders, 3 have publicly traded stock but are part of larger conglomerates and 3 are publicly traded and focus primarily on medical malpractice. The stock prices of those three companies have each risen more than 100 percent since May 2002. (The Standard & Poor's 500-stock index has risen about 10 percent over the same period.)

"In recent years, medical malpractice hasn't been unprofitable but it's been phenomenally profitable," said Jay Angoff, the former state insurance commissioner of Missouri and a consultant on the study.

Insurance industry officials not only disagree with Mr. Angoff and the study, they discredit the methodology. They say that it is unfair to compare the premiums that insurance companies charge with claims paid, because it often takes 8 to 10 years for the claims to materialize, so companies have to set aside extra reserves.

"It's a meaningless comparison that no respectable actuary would consider," said Lawrence Smarr, president of the Physicians Insurers Association of America, the trade group representing physician-owned insurance companies.

Industry officials instead look at incurred losses, which include what insurance companies pay in claims as well as what they set aside for reserves to pay for future claims. The study, for its part, emphasizes that incurred losses are not payments the insurer has made but rather are estimates of claims.

The reason malpractice insurance premiums are on the rise, Mr. Smarr says, is claim costs have risen as juries

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have awarded higher awards to plaintiffs, and insurance companies have used those claims as the justification for settling more cases .

"The real problem is claim severity," he said. "It means that juries are awarding higher amounts and jury verdicts drive the potential cost of the claim so that makes settlements rise. We know that that average cost is rising at about 6 percent per year."

According to the association's data, collected on a voluntary basis by its membership, 70 percent of malpractice cases closed in 2003 were dismissed, 24 percent were settled, 5 percent were tried and found in favor of the defendant and 0.8 percent were settled in favor of the plaintiff.

But it is that 0.8 percent that drives the costs, according to advocates for a national limit on what juries can award in medical malpractice cases. The uncertainty and the emotional circumstances of claims drives more settlements, regardless of the merit of the cases.

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"We have a proven record of the fact that the premiums will come down when you get strong liability reform - that's why we're pushing caps on noneconomic damages," said Edward Hill, the president of the American Medical Association.

Insurance companies set rates, collect premiums and then estimate how much they will need to pay in claims. While they wait to pay those claims, they invest the money. A variety of reasons, including poor investment performance and rising reinsurance costs have contributed to rising costs.

Insurers look at incurred losses, which include money set aside for future reserves, as well as ratios that include the administrative and legal cost of underwriting new business. The most commonly cited profitability measure is the ratio of all the costs of doing business - underwriting, legal and administrative - to the premiums earned.

Mr. Angoff contests the use of the combined ratio, which is based on "overwhelming estimates." He also examined the incurred-loss ratio for the leading 15 insurers and found that it fell by almost 25 percent from 2000 to 2004 to 51.4 percent, meaning that the companies took in almost twice as much in premiums during that time as they paid out in claims.

"The argument that they have to raise rates because their incurred losses are going up, I don't buy it, because

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incurred losses are estimates and the estimate of future losses can only rationally be built on their paid losses," Mr. Angoff said.

The numbers in the study, said the Connecticut attorney general, Richard Blumenthal, "cast a completely different picture than the public or many public officials have assumed."

"They have the potential to alter the debate fundamentally from seeming to cast the rapacious personal injury lawyers as the complete culprits and the insurers as innocent bystanders with doctors as victims to the insurers as equally responsible, if not more so," Mr. Blumenthal said.

Dr. Kreidler of Washington State is also not convinced that runaway juries are the sole cause for large rate increases. "Focusing exclusively on capping noneconomic damages will have a marginal effect on premiums and it will not have a pronounced dramatic impact," he said. "I think we should be doing something to make the tort system cheaper and making medicine safer."

Some insurance executives agree. "Malpractice insurance has changed how medicine is practiced," said William R. Berkley, chairman and chief executive of the W. R. Berkley Corporation, which underwrites particularly risky malpractice areas. "Part of it is good for patients; doctors are more careful. The problem is the cost."

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