A new report finds that the malpractice litigation environment is becoming more physician-friendly. But some fear the tide will turn.

The total number and the total value of malpractice payments made on behalf of doctors are both at record lows, according to a new report.

But some critics say the report’s findings fail to represent the bigger picture. And, even if the findings are accurate, others predict that the downward trend won’t last much longer.

The report, conducted by nonprofit advocacy group Public Citizen, found that the number of medical payments made on behalf of physicians in 2011, (slightly fewer than 10,000), and the inflation-adjusted value of such payments in 2011, ($3.2 billion), were at their lowest levels since 1991.

It also found that the average size of medical malpractice payments (about $327,000) declined from previous years, and that liability insurance premiums paid by doctors and hospitals fell to their lowest levels in two decades in 2010.

But the report’s critics contend that the data Public Citizen relied upon to reach its findings do not represent the full picture.

That’s because the findings are based on the National Practitioner Data Bank (NPDB), which tracks malpractice payments on behalf of doctors. But critics say many payments made on behalf of physicians never make it into the data bank, according to Medscape Medical News.

For instance, if a physician and hospital are both sued for malpractice but the physician is dropped as a defendant before the case settles or the payment is awarded, the hospital is solely responsible for the payment. Hospital payments, however, are not required to be reported to the NPDB, according to Medscape.

It makes sense then that the numbers reflected in the NPDB are steadily declining, simply because more and more physicians are becoming employed by hospitals — not because physicians are encountering less malpractice litigation.

Physicians can expect to hear more debates about malpractice litigation numbers as healthcare reform evolves and millions of Americans (an estimated 32 million to be exact) gain insurance as a result of the individual mandate, the Medicaid expansion, and other related elements of the health law.

Come 2014 when physicians and hospitals begin experiencing this influx of new patients, malpractice litigation rates will likely increase as well. More patients will naturally lead to more claims.

In addition, New York-based attorney James A. Morris told Insurance & Financial Advisor, that many doctors and hospitals are “ill-prepared” for the influx of new patients. And, he added, they will employ a variety of time-saving techniques to accommodate these patients. That, he said, will lead to harmful medical mistakes and errors, and therefore, more malpractice lawsuits.

Finally, new models of care brought about by healthcare reform that reward physicians based on reducing healthcare costs, such as accountable care organizations, could also lead to more claims against physicians, and perhaps, more successful claims against them. For instance, physicians will
not be able to practice as “defensively” or cover as many bases as they have in the past, which could make it easier for plaintiffs to make a successful claim against them.

On the other hand, physicians participating in these new models of care will also be rewarded for improving care quality, so that could balance out the pressure to cut costs. Time will tell.

*Do you fear that more physicians will experience medical malpractice lawsuits as a result of healthcare reform? Why or why not?*

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