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NEW GAO STUDY FINDS NO SUPPORT FOR CAPS ON DAMAGES; FINDINGS ON “LOSSES” CHALLENGED BY CONSUMER GROUPS

A new study released by the congressional General Accounting Office, entitled *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*, finds absolutely no support for capping damages as a solution to bring down insurance rates for doctors. The report finds that “[m]ultiple factors have contributed to the recent increases in medical malpractice premium rates,” most of which have nothing to do with the legal system. These factors include: lower investment income, lack of competition in the insurance market, and rapidly rising reinsurance rates, beginning in 2001 (for reasons that include the impact of September 11 on the insurance market). In fact, of the seven states examined by GAO, the one with the smallest increases in rates is Minnesota, which does not have a cap on damages.

Moreover, to the extent the GAO report finds that insurer losses also contribute to rate hikes, actuary and spokesperson for Americans for Insurance Reform, J. Robert Hunter, finds that that methodology used by GAO to reach this finding was seriously flawed. According to Hunter, former Federal Insurance Administrator and Texas Insurance Commissioner, had the correct methodology been used, GAO would have reached the opposite conclusion: that losses have not risen but have, in fact, been stable. (See, AIR study, *Stable Losses/Unstable Rates*, <http://www.insurance-reform.org/StableLosses.pdf>.)

According to Hunter, GAO uses a completely wrong standard to make its inflation adjustments to losses. GAO adjusts data for inflation by using general Consumer Price Index (CPI) information, instead of the health component of the CPI which is the best indicator because it accurately reflects growth in medical costs. The CPI growth from 1975 to 2001 was 229%. But for the health component of CPI, growth was 480%. From 1990 to 2001, the CPI rose 36%, while the CPI-health component rose 68%.

GAO also shows growth in losses for doctors without taking into account the increasing number of doctors. This is a serious error, considering the fact that the number of doctors more than doubled from 1975 to 2001. Any evaluation of loss trends over time must remove the effect of the ever increasing number of doctors. Paid losses and premiums should be calculated on a per doctor basis, but GAO inexplicably fails to do this.

To show the serious nature of this error, GAO finds that from 1990 to 2001, paid losses by insurers grew from roughly \$3.1 billion to roughly \$5.2 billion, in 2001 CPI-adjusted dollars.

Had the health component of the CPI been used instead, paid losses would have grown from \$3.8 billion to \$5.2 billion. Had the growth in the number of doctors been reflected, per doctor paid losses would have grown only from \$6,636 in 1990 to \$6,933 in 2001, essentially flat for the last decade.

Moreover, according to GAO, incurred losses grew from about \$4.1 billion in 1990 to \$6.6 billion in 2001, when evaluated in 2001 dollars (CPI). But had the CPI-health component been used, incurred losses would have grown from \$5.1 billion to \$6.6 billion. On a per doctor basis, incurred losses between 1990 to 2001 would have dropped slightly, from \$8,906 to \$8,800 (also essentially flat.)

Another serious problem is that GAO does not display the data used to reach its results, but only shows its results. Congress should ask for GAO's work sheets so AIR could make the necessary adjustments.

What's more, GAO's only recommendation from this study is that we need more data. According to GAO, the analysis contained in the report "does not provide answers to ... important questions about the market for medical malpractice insurance, including an explanation of the causes of rising losses over time. The data currently collected do not permit many of the analyses that would provide answers to these questions." Moreover, according to GAO, "it is not possible to quantify the impact of a cap on noneconomic damages on insurers' losses. Similarly, it is not possible to show exactly how much a cap would affect claim frequency or claims-handling costs."

In sum, the GAO report finds a multitude of factors that contribute to "the movement of the medical malpractice insurance market" and that "[c]ycles in the medical malpractice market tend to be more extreme than in other insurance markets because of the longer period of time to resolve claims, and factors such as changes in investment income and reduced competition can exacerbate the fluctuations." But the bottom line, says GAO, is that there is insufficient data to draw any conclusion about the impact of insurer losses on this most recent liability insurance crisis.

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Americans for Insurance Reform is a coalition of over 100 consumer groups from around the country that is attempting to strengthen state oversight of insurance industry practices.

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