

Malpractice protection headaches

Doctors hit by rising costs for liability protection are seeking relief from state legislatures.

BY ELAINE STUART

Many doctors in Mississippi no longer deliver babies, citing high malpractice insurance costs. Emergency rooms and trauma centers in Philadelphia came close to shutting down Jan. 1, staying open only because their doctors were able to extend insurance policies at the last minute. Las Vegas trauma centers nearly closed in March when several staff physicians nearly lost their malpractice coverage due to high costs.

These and similar recent news reports show a resurgence of troubles with the nation's medical malpractice insurance system. Similar crises have occurred in recent decades whenever the cost of malpractice insurance has skyrocketed. News of concerns over the cost or availability of malpractice insurance has surfaced in at least 10 states, including Arkansas, Colorado, Florida, Mississippi, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas and West Virginia.

Problems intensified when Minnesota-based St. Paul Cos., the nation's second-largest malpractice insurer, announced in December that it lost \$1 billion last year and would no longer insure 42,000 doctors nationwide. Mike Miller, senior executive in charge of malpractice coverage



Doctors are facing rising malpractice insurance rates, forcing many of them to leave the profession.

for St. Paul Cos., mentioned large awards by juries "who are not happy with their doctor and their managed care provider." In addition, the company suffered stock market losses on funds invested.

With the stock market in the doldrums, St. Paul and other insurers raised premiums in the past year. In 2001, St. Paul increased its rates an average of 25 percent in 25 states, with increases of 65 percent in Ohio and Mississippi. Carol Brierly Golin, editor of the *Medical Liability Monitor*, was quoted in *The New*

York Times saying, "The insurance companies wouldn't be in this position if they hadn't been so hungry for investment profits and had priced their products appropriately."

Meanwhile, doctors in rural areas and those who deliver babies, perform surgery or work in emergency rooms often pay the highest rates. The Mississippi State Medical Association said annual premiums for physicians who practice obstetrics range from \$40,000 to \$110,000 and rose 400 percent in 2001. The *New York Times*

reported that insurance rates increased from 10 to 40 percent in New Jersey and Connecticut and in New York, a majority of doctors were likely to face 20 percent hikes this year. Rising rates are reportedly forcing physicians to reduce the scope of their practice, relocate to states with more favorable rates or retire early. Those hit hardest also are forced to raise their own fees. However, when patients are in Medicaid or some health plans, raising fees is not an option.

The Health Care Liability Alliance, comprised of medical and insurance groups, blames an “out-of-control legal system that is severely damaging the delivery of health care and hurting patients.”

The American Medical Association in March announced a campaign to change malpractice law in about 25 states. The AMA notes that the average malpractice award is now \$3.5 million, and insurance companies have raised the liability premiums to doctors 79 percent in the last decade.

“Many practitioners ... just can’t afford the liability premiums, forcing them to

retire early, limit their practice or relocate,” AMA President Richard Corlin said. “We expect the situation to get worse unless steps are taken immediately.”

Leo Boyle, president of the Association of Trial Lawyers of America, said the legal system is not to blame and that attention should focus on the few doctors who produce large claims. Moreover, he said economic cycles in the insurance industry are to blame, not the courts or the claims system.

The association holds up as a model a 1975 California law, which limits malpractice awards for pain and suffering to \$250,000. Before the law passed, California had the nation’s highest premiums, but now they are less than in other large states. There is disagreement between groups representing doctors and insurers and those representing lawyers on caps on noneconomic damages. However, in most of the states currently experiencing problems with obtaining affordable coverage, caps are high or nonexistent.

States without caps include Arkansas, Arizona, Connecticut, Delaware,

Georgia, Iowa, Kentucky, Maine, Minnesota, Mississippi, Nevada, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont and Wyoming, according to the Health Care Liability Alliance; Physician Insurers Association of America. Caps have been found unconstitutional in Alabama, Illinois, Kansas, New Hampshire, Oregon, Texas and Washington.

In Los Angeles, which has a state cap, obstetricians and gynecologists pay between \$46,938 and \$57,740 in yearly liability premiums while in Miami, where there is no cap, rates range between \$108,043 and \$202,949 (Health Care Liability Alliance).

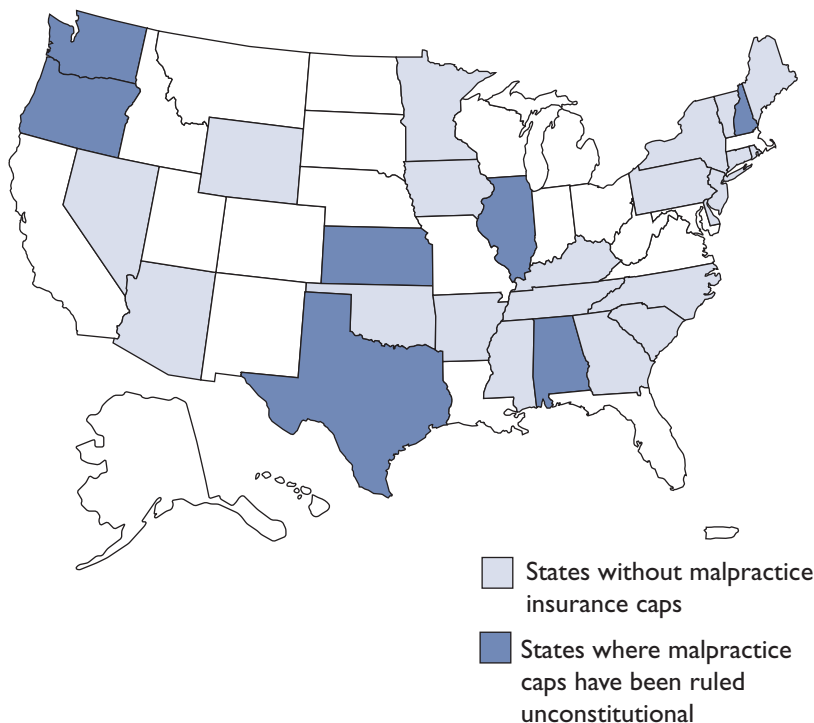
Doctors seek legal relief

About 150 to 200 doctors marched on the state capitol in Tallahassee, Fla., in February, demanding tort reforms. South Florida has been hard hit by higher premiums, which are causing doctors to limit or close practices. The Florida Medical Association supports a constitutional amendment to limit jury awards for noneconomic damages to \$250,000. It also backs SB 2366 and HB 1775 to make some changes in the litigation system. The protesting doctors were met by attorneys and family members of those injured by medical procedures who protested against changing tort rules. Matt Clark, president of the Academy of Florida Trial Lawyers, said his group would do whatever it takes to defeat limits on claims. He said, “The biggest problem affecting medical malpractice insurance is the alarming rate that medical errors are occurring.”

Doctors in Mississippi took their case to the state capitol in Jackson in January, taking out a full-page advertisement signed by 474 physicians calling the state “Litigation Central.” The ad said, “Our legal climate has a disease which no physician can cure. The cure is in the hands of the Mississippi Legislature, and we implore you to pass legislation in 2002 that will correct the imbalance in our justice system.”

The doctors want a cap on noneconomic damages and other changes in tort law. Senate Judiciary Committee Chairman

State malpractice status



Source: Health Care Liability Alliance

Bennie Turner, a trial lawyer, was quoted in *The Clarion-Ledger* saying, "If they have convincing information, it ought to be acted upon, but not just allegations and rumors and anecdotes."

Trauma care centers in Mississippi are in danger of closing because of a shortage of physicians, according to a March 18 story in *The Clarion-Ledger*. Surgeons say liability exposure is too high for trauma cases. To help keep centers open, the state Department of Health announced it would launch a Web site to track the availability of surgeons for emergency care. The state announced creation of a statewide trauma care system two years ago, but now major hospitals in the network are losing surgeons, said Dr. Hugh Gamble, a surgeon who heads the Mississippi Trauma Advisory Committee. The shortage means patients may not get care as fast as needed after they suffer major injuries or other emergency life-threatening problems.

Governors, lawmakers take action

In March, Nevada Gov. Kenny Guinn announced medical malpractice insurance changes to prevent doctors from leaving southern Nevada. He said the measures are designed to tide the state over until the 2003 legislative session can act. Guinn created the Nevada Essential Insurance Association, which was to begin writing policies by April 15 and provide Clark County doctors with affordable coverage. The governor planned to use \$250,000 in public funds to start the association, which was to be operated by a private company. Doctors had warned last fall they would have to move to other states or quit practices because of high premiums. The governor had since received letters from 5,000 residents asking him to take action to help doctors. Before St. Paul pulled out of the state, it had sought large premium increases from Clark County doctors. As their St. Paul policies expire, doctors are faced with even higher rates. According to press reports, some policies jumped from \$40,000 to \$200,000 annually. A hearing called by the governor to address the issues in March attracted hundreds of physicians.

New York Gov. George Pataki told the

Medical Society of the State of New York he supports limitations on noneconomic damages for malpractice. The group wants a \$250,000 cap on such liability awards, saying it would reduce malpractice insurance rates by 25 percent. Pataki called for ending punitive damages involving doctors, saying, "They only serve to destroy people's lives."

The Pennsylvania Legislature in March approved a malpractice insurance bill aimed at lowering doctors' premiums. The bill, signed into law, gives judges more power to lower damage awards to injured patients. "We hope this will help stem the tide of physicians retiring early or leaving or giving up high-risk procedures. So, hopefully when you pick up the phone to call, you'll be able to get somebody," said Scott Chadwick of the Pennsylvania Medical Society. However, Mark Phenicie of the Pennsylvania Trial Lawyers Association thinks the law goes too far, saying, "There are some significant restrictions here on the rights of victims."

A story in *The Philadelphia Inquirer* reported 294 medical-negligence suits were filed in Philadelphia on Feb. 12 and 13 when the House and Senate each voted on malpractice bills. This two-day total was nearly as many as were filed in the first three months of 2001, indicating a rush to the courts to beat the new law.

In West Virginia, about 1,300 of the state's 3,500 doctors were insured by St. Paul Cos. when it announced it was quitting the business. The Legislature had created a state-run plan with a bill passed Dec. 1, intended to ensure doctors could get and afford insurance. Insurance Commissioner Jane Cline, quoted in the Daily Mail, said the state had anticipated St. Paul's pullout and that motivated creation of the state plan. However, by early 2002, seven doctors dissatisfied with the Legislature's attempt to fix the malpractice-insurance problem announced they would run for the Legislature. They hope to push for more limits on lawsuits and damage awards against doctors. Doctors also are pooling campaign funds to support candidates in this year's races, according to West Virginia State Medical Association President Ahmed D. Faheem. One of the candidates, Dr. Dan Foster of Charleston, said that in addition to lawsuits, the prob-

lem is caused by "insurance companies and their profit margins" and some problem physicians.

Problems elsewhere

Brownsville doctors told Texas Attorney General John Corny in February that frivolous lawsuits are causing doctors to cut back care. Eight of 10 lawsuits against doctors result in no payments, but a poll of doctors by the Texas Medical Association shows fear of lawsuits is driving doctors out of the area. Dr. Antonio Díaz said, "Some of us that used to like to come to the hospital now want to stay as far away from it as we possibly can." Díaz observed that emergency rooms are increasingly used by patients who haven't been to a doctor in years.

The decision by the St. Paul Cos. not to write medical malpractice insurance also affected doctors in Ohio. The Cleveland area was hit hard by rising premiums of as much as 50 percent. David Miller, chief financial officer at Children's Medical Center in Dayton, questioned whether insurance companies were overreacting to cyclical events in raising prices. Miller noted that the number of malpractice cases is "about the same but the average settlement increased by about 28 percent last year ... In addition, last year's turmoil in the stock and bond markets means investment income is also down. Finally, the large losses from the Sept. 11 tragedy stung reinsurers and resulted in much higher reinsurance rates for all types of coverage."

Miller said, "The health care industry survived two similar malpractice crises in the 1970s and 1980s. In each case, stability eventually was restored as insurers came back into the market to take advantage of the attractive rates. I am convinced this crisis will pass too, but in the meantime we may have to endure some rainy weather without an umbrella."

As of March, a number of state legislatures and governors are trying to devise an umbrella big enough to cover doctors and ensure the affordability and availability of health care in their states. ★

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