

Top Ten Most Frequently Asked Questions About the Medical Liability Crisis

What is the consumer impact of the current medical liability problem?

The medical liability crisis is already hurting Floridians by increasing healthcare costs and decreasing the number of doctors and hospitals providing specialized care. The costs of runaway litigation are paid by all Americans through higher premiums for health insurance, higher out-of-pocket payments when receiving care and higher taxes, according to a July 2002 report from the U.S. Department of Health and Human Services. Meanwhile, medical liability losses paid by insurers in Florida rose over 150 percent between 1991 and 2000, including a 28 percent increase from 1999 to 2000, according to a November 2002 report by Milliman USA. These rising liability losses have prompted premium increases that make liability insurance unaffordable and in some specialties unavailable, except through the state-run JUA. The specialties most at risk are emergency room care, obstetrics, radiology and diagnostics (especially mammogram readings), orthopedics (notably back surgery) and surgery (especially neurosurgery and vascular surgery). There are some counties in Florida with no pediatric neurosurgeons, and six Florida hospitals have announced they will close their obstetrics units by the end of 2002 because of the liability issue. The scarcity of doctors available for emergency room coverage further strains Florida's overcrowded hospital emergency rooms.

Why is the situation worse in Florida than other parts of the country?

The crisis is less acute in states that have reformed their litigation systems. States with limits of \$250,000 or \$350,000 on non-economic damages have average premium increases of 12 to 15 percent compared to 44 percent in states without caps on non-economic damages, according to the HHS report. Florida was named one of 12 "crisis" states by the American Medical Association, but three other states—Nevada, Pennsylvania and Mississippi—have experienced closings of facilities such as trauma centers, obstetrics units and paramedic units.

Is the medical liability industry charging unreasonable rates?

Medical liability insurers say premiums are tied to jury awards and the Florida Academic Task Force agreed, reporting that increased loss payments result in increased costs. During 2001, medical liability insurers nationally paid out \$1.40 for every dollar they received in premiums. Florida's medical liability insurance market is in collapse, shrinking from more than 40 companies in 1998 to less than 10 today. Some of the nation's largest writers of medical liability insurance have left the state, and Florida's largest medical liability insurer has put significant restrictions on writing new business, saying it has reached capacity limits.

Isn't this another cycle of insurance premium spikes exaggerated by the under-performing stock market?

Some say this is the third downward cycle in Florida, but we contend that it is the same crisis that has existed since 1975. That was the first time that liability insurance affordability and availability became an issue. Legislators responded with changes to Florida's liability system, a Patients Compensation Fund (PCF) and JUA were created, and physician/hospital-owned insurance organizations were formed. These changes made the symptoms temporarily subside. However, one of the liability reforms was held unconstitutional and the PCF went out of business. When the symptoms reappeared in 1983, they lasted for five years before being relieved by a combination of reforms and the ability of doctors and hospitals to absorb the increased costs. Once again the liability reforms were deemed unconstitutional and the symptoms are back. While the under-performing stock market has impacted all business, Florida law prohibits medical liability companies from investing more than 15 percent of their assets in the stock market.

What's the impact of liability premium increases on doctors and hospitals?

The insurance crisis couldn't have come at a worse time for doctors and hospitals. Skyrocketing insurance premiums are coming due at the same time that providers face revenue cuts from the federal and state governments and the private sector. Their ability to absorb the premium increases is nearly as limited as the ability to pass it on to patients. Meanwhile, hospitals face other rising costs related to disaster preparedness, prescription drugs, ever-advancing technology and labor. Hospitals are also grappling with severe workforce shortages, a mandate to provide care to a growing uninsured population and a barrage of regulatory, administrative and paperwork burdens.

What's the solution?

We believe that lawyers, insurance companies and the medical community all have to share the responsibility of fair reform, and we look to our legislators for leadership in building that consensus. The goal of reform should be threefold: establish clearly defined parameters of litigation and compensation, require and enforce actuarially sound rates for a stable insurance market and improve patient safety. The specifics of such reform are set out in the proposed legislative plan of the Coalition to Heal Healthcare in Florida.

Will liability reform make a difference and, if so, how?

The success of states that have adopted reform shows that liability premiums can be reduced. The money spent on liability premiums and the litigation that inflates those premiums increases healthcare costs. But excessive litigation also imposes indirect costs. In order to protect themselves against lawsuits, many providers order costly extra tests and treatments and refer patients unnecessarily to specialists. The HHS study estimates that limiting unreasonable awards for non-economic damages could reduce healthcare costs by 5 to 9 percent without adversely affecting quality of care. This would save \$60 billion to \$108 billion in healthcare costs nationally each year.

Is liability reform fair to those who've suffered from malpractice?

The current system is failing all of us. While it rewards some injured parties with economic damages and large non-economic damage awards, it takes an average of at least four years to do so. Additionally, the court system is very random in determining who receives damage awards and who doesn't, and injured patients receive only 49 cents of every premium dollar—lawyers consume most of the remaining amount. A reformed system can fairly compensate injured parties more quickly, while curbing runaway litigation that increases the cost of healthcare and decreases the number of doctors and hospitals providing specialized care.

Won't liability reform eliminate a tool designed to punish and deter medical errors?

The current system punishes everyone with increased healthcare costs and a decreased number of doctors and hospitals providing certain specialties. At the same time, it is unlikely it does much to deter medical errors. The Florida Academic Task Force, staffed by law professors, studied the issue and found that even though a small percentage of physicians were responsible for 42.2 percent of the total claims, the facts did not support an assumption of incompetence. Multiple claims could occur because a physician is practicing in a high-risk specialty or a high-risk part of the state. In addition, some physicians are more willing than others to treat high-risk patients.

Patient safety is the highest priority for doctors and hospitals, and various regulatory agencies are responsible for monitoring and improving patient care. These organizations include the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the state Agency for Health Care Administration (AHCA) and federal monitoring of Medicare providers through the Center for Medicare Services (CMS). With that said, accountability of the medical community is an important aspect of reform, and medical professionals support a variety of quality improvement initiatives. Two prominent recommendations of the Coalition to Heal Healthcare in Florida include a heightened role for the Florida Boards of Medicine and Osteopathic Medicine in physician discipline and medical errors and the creation of a near-miss reporting system modeled on one developed by NASA for the Federal Aviation Administration.

What can be done?

Write or call your legislator and urge them to help heal healthcare in Florida. Our excessive system needs a legislative fix now to avoid the kinds of healthcare facility closings and broad threats to patient care that have occurred in other states like Nevada, Pennsylvania and Mississippi.