

Strategies & Solutions is the monthly electronic newsletter published by [Health Strategies & Solutions, Inc.](#), which provides cutting-edge strategies, innovative solutions, and practical ideas for health care professionals. We welcome your [comments and feedback](#). To subscribe or unsubscribe to this publication, click on the links at the bottom of this page.



The Medical Malpractice Crisis

Since 1999, the cost of medical malpractice coverage has increased dramatically for physicians and hospitals in many states, impacting access to care, health care costs, and physician supply. The American Medical Association (AMA) has designated states as being in a medical liability crisis, showing problem signs, or currently okay.

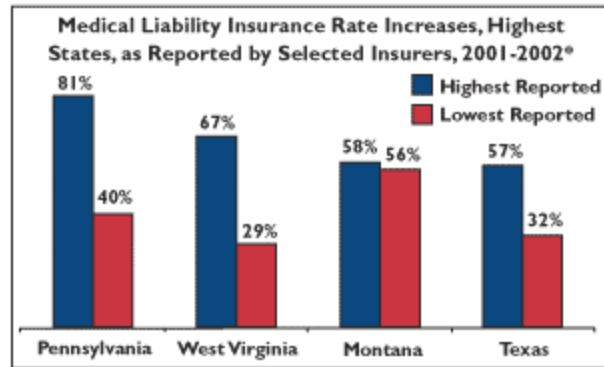


Crisis status determined by the AMA is based on a number of factors including:

1. Number of patients losing access to medical care
2. Number of physicians retiring early or moving out of state
3. Number of physicians no longer performing high-risk procedures (e.g. delivering babies, trauma care)
4. States legal and judicial climate
5. Affordability and availability of professional liability insurance

6. Trends in jury awards and settlements

States hardest hit by malpractice rate increases are Pennsylvania, West Virginia, Montana, and Texas. According to data released by the AHA, these states have seen between 29 percent and 81 percent increases in premiums between 2001 and 2002 in internal medicine, general surgery, and obstetrics/gynecology.



*Chart reflects rate increases for internal medicine, general surgery, and ob/gyn physicians.

Source: "Medical Liability Insurance: Looming Crisis?" AHA Trend Watch, June 2002.

Malpractice premium increases also vary by specialty. Premium rates are highest for neurosurgery, obstetrics/gynecology, orthopedics, cardiovascular surgery, and other specialties where the risk of an adverse event is greatest.



Click here for to view a GAO report on factors contributing to malpractice premium increases

Why the Sky Rocketing Increases?

The exact cause of large medical liability premium increases has been debated extensively without much resolution. Blame has been placed on all parties including trial lawyers, physicians, insurance carriers, and even our litigious society. According to a report by the General Accounting Office (GAO) several factors have led to increased premiums:

- Increased losses on claims
- Decreased insurance company reserve investment income
- Decreased insurers' profits
- Insurers leaving the medical malpractice market
- Expected losses in the future

- Reinsurance rate increases
- Volatile market cycles
- An insurance cycle that is difficult to predict and moderate

Many experts cite large jury awards as the primary driver of premium increases. According to Jury Verdict Research, jury awards in medical malpractice cases have increased 113 percent since 1996 with a median amount of just over \$1 million in 2002.

Effects of this Crisis

Three main areas of concern emerge from the malpractice crisis.


Click here to view a GAO article on access issues due to the medical malpractice crisis

- **Increase in defensive medicine** - In a Harris Interactive survey of 300 physicians, 79 percent said they order more tests and 41 percent prescribe more medications than they believe is medically necessary because of fear of liability. These and other acts of defensive medicine are estimated to cost between \$70 and \$126 billion per year.
- **Access to care declines in some states** - Hospitals are having difficulty securing on-call coverage and some providers are limiting performing high-risk services. According to the Texas Medical Association, in the past two years, 62 percent of Texas physicians have begun denying or referring high-risk cases and 52 percent have stopped providing certain services to their patients as a direct result of the malpractice crisis. The New Jersey Hospital Association's survey of the state's obstetricians/gynecologists indicated that 23 percent of these specialists have stopped delivering babies due to the availability and cost of insurance.
- **Decrease in the supply of physicians in states that do not cap malpractice awards** - The variance in liability premiums across geographic regions has been cited as one of many factors affecting physician decisions to relocate or seek early retirement. A study by the Agency for Healthcare Research and Quality found evidence supporting the claim


Click here to view the Agency for Healthcare Research and Quality report on physician supply differences in cap versus non-cap states

that states with caps on non-economic damages benefit from 12 percent more physicians per capita than states without caps.

	Doctors per 100,000 county residents in 1970	Doctors per 100,000 county residents in 2000	Percent increase in supply of doctors
States with caps in 2000	69	135	95.7%
States without caps in 2000	67	120	79.1%

The year 1970 was used for comparison since in that year no state had enacted legislation capping awards. The study took into account other factors affecting physician supply including percent of population age 65 or older, hospital beds per 1,000 residents, and personal income in thousands of dollars.

Strategies for Hospitals and Systems

A number of strategies have been employed by hospitals and systems to alleviate the effects of the medical malpractice crisis and maintain access to physicians. Common approaches include:

[CLICK HERE](#)

Click here to view an H&HN article titled "Homegrown: Liability Insurance"

- Employing physicians in key specialties and providing malpractice coverage as an employment benefit
- Subsidizing physicians' malpractice premiums
- Negotiating and obtaining better rates for physicians on medical staff
- Forming risk-retention groups and captive-insurance companies
- Employing hospitalists and reducing the need for certain physicians to provide inpatient coverage

While aid to physicians is often possible, hospitals must make sure to avoid violations of federal antikickback laws while subsidizing malpractice insurance. In an advisory letter on the subject, the US Department of Health and Human Services Office of the Inspector General identified six factors for avoiding such violations, which are summarized below by *Hospitals & Health Networks*.

[CLICK HERE](#)

Click here for to view an AMA report entitled *Medical Liability Reform-NOW!*

1. Arrangements provided on an interim basis to alleviate severe access or affordability

problems, though they may be extended if such conditions persist.

2. Only current active medical staff or physicians new to the community or in practice 12 months or less may be covered.
3. Criteria for receiving assistance may not be related to the volume or value of referrals.
4. Physicians receiving assistance will pay at least as much as they were previously paying for insurance.
5. Participating physicians will be required to provide service to the hospital, and give up certain litigation rights, that are equal in value to the subsidy provided by the hospital.
6. Assistance will be available regardless of where the physician practices, including at other hospitals.

Learn more about HS&S services:



Federal and State Legislation

California enacted tort reform legislation almost 30 years ago after experiencing its own statewide medical liability crisis. Titled MICRA (Medical Injury Compensation Reform Act), this legislation now serves as a successful model of tort reform at the federal level. Highlights of MICRA include a cap of \$250,000 on non-economic damages, installment payments for future damages, and mandated limits on attorney fees.

While the U.S. House of Representatives has passed bills to cap malpractice awards, legislation has continually failed in the U.S. Senate. Most recently, the AMA-supported H.R. 4280 bill passed in the House in May 2004. The Senate will once again vote on this issue in the upcoming months.

With federal legislation viability remaining a question, several states including Florida , Ohio , Oklahoma , Texas , and West Virginia enacted their own laws placing caps on non-economic damages in malpractice litigation in 2003. The effects these actions have on health care costs, access, and physician supply will be noteworthy over the next few years.

For more information on medical malpractice issues, please contact [Craig Holm](#), or [Shraddha Patel](#), or call

215-636-3500.



If you would like a free subscription to Strategies & Solutions, please [click here](#).

©2004 by [Health Strategies & Solutions, Inc.](#)

8 Penn Center

1628 John F. Kennedy Boulevard

Suite 200

Philadelphia, PA 19103

(215) 636-3500

www.hss-inc.com

Reproduction in whole or in part without written permission is prohibited.

Competitive strategies.
Innovative solutions.
That's our business.

