AHA Advancing Health in America

TRENDWATCH

Medical Liability Insurance: Looming Crisis? — *June 2002, Vol. 4, No. 3*

Health care providers are becoming increasingly concerned about their ability to find affordable medical liability insurance and the effects on access to care. Since 2001, many physicians have faced premium increases in the double digits — as high as 81 percent according to some insurers.[1] High-risk specialities, like obstetrics/gynecology and neurosurgery, are most affected. Premiums for some hospitals have more than doubled.[2]

The magnitude of the premium increases varies across geographic areas due, in part, to differences in legal practices, the regulatory environment, and the number of insurers serving the market. The exit of St. Paul, one of the nation's largest medical liability insurers, is leaving an estimated 750 hospitals and 42,000 physicians scrambling to find new coverage as policies expire.

Hospitals and physicians are responding in various ways. Some hospitals are assuming more financial risk by increasing deductibles, reducing coverage, or self-insuring. Other actions are having an impact on access to care, according to press reports and a limited survey of hospital risk managers conducted by AHA/ASHRM. Some physicians are retiring or relocating to areas with lower premiums, and hospitals are reporting increased difficulty securing physician coverage. Some providers are also cutting back on high-risk services, such as delivering babies or certain types of surgery.

This edition of TrendWatch examines factors influencing the cost and availability of medical liability insurance, the implications of recent trends for patients and providers, and potential solutions to key problems through changes in tort law and other means.

Professional liability premiums are increasing sharply for physicians and hospitals...

*Chart 1: Medical Liability Insurance Rate Increases, Highest States, as Reported by Selected Insurers, 2001-2002**

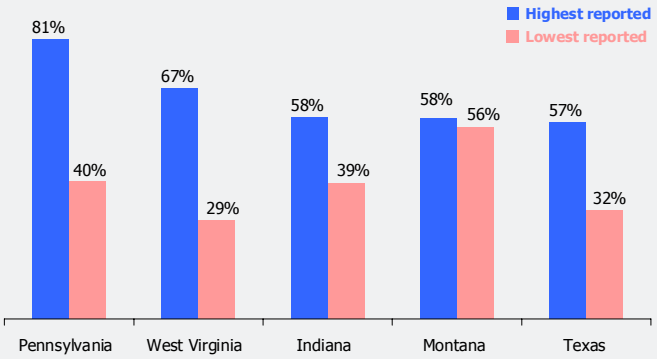
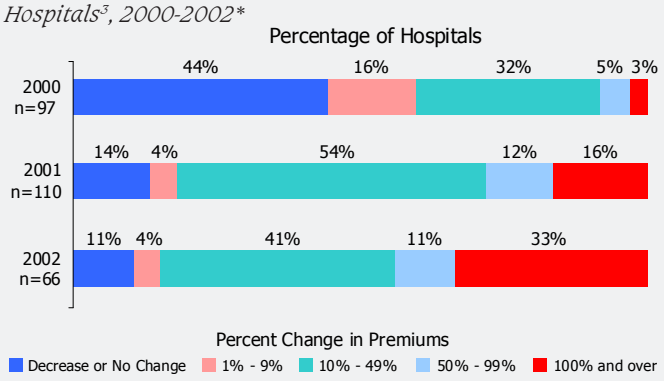


**Chart reflects rate increases for internal medicine, general surgery, and Ob/Gyn physicians.*

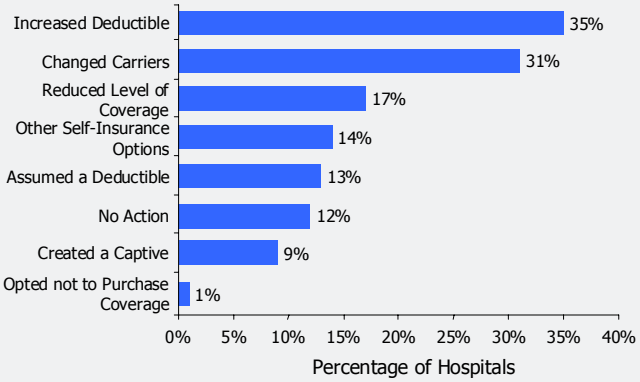
*Chart 2: Distribution of Premium Change for a Sample of Hospitals[3], 2000-2002**



**Results from an American Hospital Association/American Society for Healthcare Risk Management(AHA/ASHRM) Survey of Hospital Experience with Professional Liability Insurance. Not all respondents provided data for all years.*

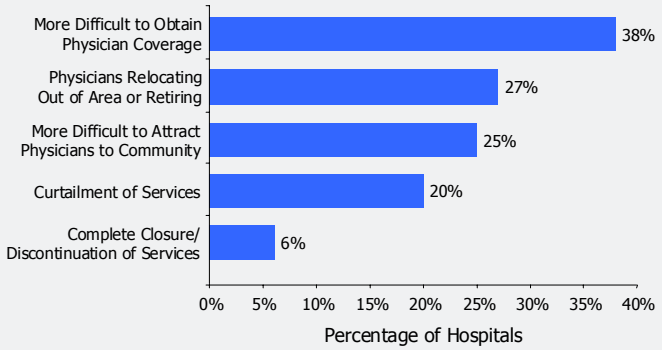
...forcing hospitals to assume more risk and affecting access to care for physician and hospital services.

*Chart 3: Percentage of Hospitals Reporting Actions Taken to Reduce Cost of Professional Liability Coverage[4], 2002**



**Results from an AHA/ASHRM Survey of Hospital Experience with Professional Liability Insurance (n=132).*

*Chart 4: Percentage of Hospitals Reporting Impacts of Current Professional Liability Market on Health Care Delivery[4], 2002**



**Results from an AHA/ASHRM Survey of Hospital Experience with Professional Liability Insurance (n=132).*

The Lewin Group

At the "Crisis" Point of the Insurance Cycle, Insurers Increase Premiums or Leave the Market

While the number of professional liability payment reports has remained fairly stable, the amount paid per claim has been increasing. From 1999 to 2000, the median jury award rose 43 percent to hit $1 million. Though sizeable jury awards tend to get media attention, the majority of claims that are paid are actually settled out of court. The median indemnity paid — an amount that reflects both jury and out of court settlements — increased by 58 percent since 1996.[1]

Meanwhile, insurers have seen their non-premium revenues decline. Investment income is an important source of revenue for medical liability insurers. During the mid-nineties, the booming stock market and relatively high interest rates provided revenue that allowed insurers to offset underwriting losses as the underlying costs increased. Now, with a depressed stock market, interest rates at their lowest point in 40 years, and rising claim dollars, many insurers have implemented sharp premium increases to counteract growing losses or have exited the business of providing medical liability insurance entirely.

The medical liability insurance market tends to run in cycles. The long time lag between when premiums are collected and when claims are paid allows new entrants to offer low rates to gain market share, drive older insurance companies out of the market, and still make above market short-term profits on invested premium dollars. As their claims portfolios mature, however, these new entrants begin to experience losses forcing them to either increase rates dramatically or face insolvency. This attracts another round of new entrants initiating another underwriting cycle.

A number of factors differentiate the current crisis from others in the past. The unprecented insurance industry losses from the September 11, 2001 terrorist attacks and declining returns on invested assets potentially affect insurer decisions to enter or exit the medical liability market. In addition, the dominant forms of medical reimbursement today — prospective payment, contracted fee schedules, and capitated rates — have limited providers' ability to absorb these sudden increases in premium costs.

While the number of medical liability reports has remained stable, the size of jury awards has escalated...

Chart 5: Number of Physician Medical Liability Payment Reports[2] (in thousands), 1996-2000

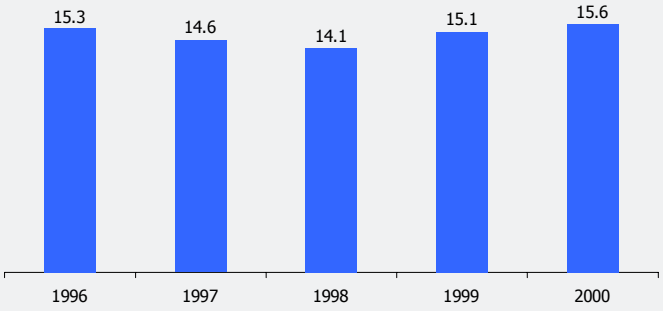
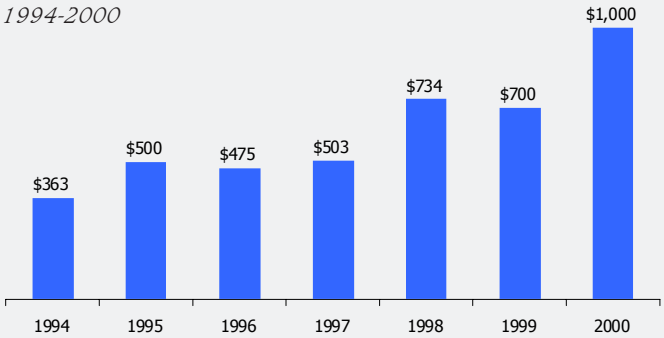


Chart 6: Median Compensatory Jury Awards (in thousands), 1994-2000



...contributing to rapid growth in the size of claims paid by insurers. As insurer expenses have risen, a declining return on invested assets has driven non-premium revenues down.

Chart 7: Median Indemnity Paid, Combined Specialties (in thousands), 1996-2000

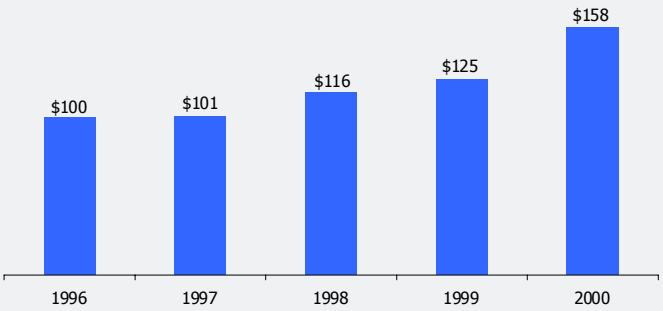
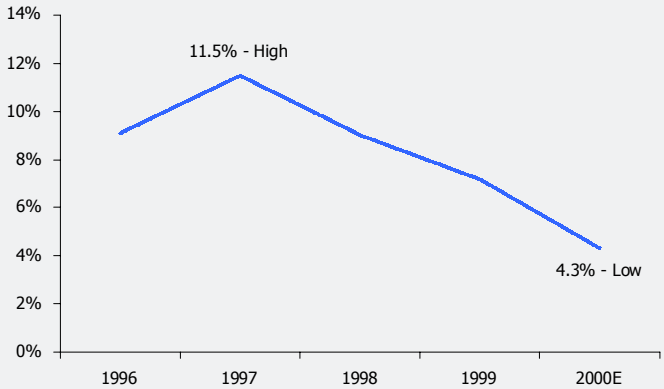


Chart 8: Average Return on Invested Assets, Property and Casualty Insurers, 1996-2000E



TRENDWATCH

Premium Levels Vary Widely Across Specialties and Geographic Areas, Which Can Affect Access to Care

Liability premiums vary widely both across specialties and across geographic areas. These differences relate to historical and expected claims experience.

Premium rates are highest for neurosurgery, cardiovascular surgery, Ob/Gyn, and other procedure-based specialties because risk of an adverse outcome is higher. These specialties are affected more by recent trends because medical liability costs comprise a larger proportion of practice expenses than for other types of physicians. Medical and diagnostic subspecialties tend to have lower premiums because the risk of an adverse outcome is significantly lower.

Factors influencing wide geographic differences in premiums include state regulations (see page 4), characteristics of physician organization, local culture and legal practices, differences in the costs of defending claims, population size, and degree of competition among insurers in the market. The exit of a large insurer, like St. Paul, from a market can push premium rates up and make coverage harder to find. In response, physicians may leave for another market and hospitals may need to alter the services they provide.

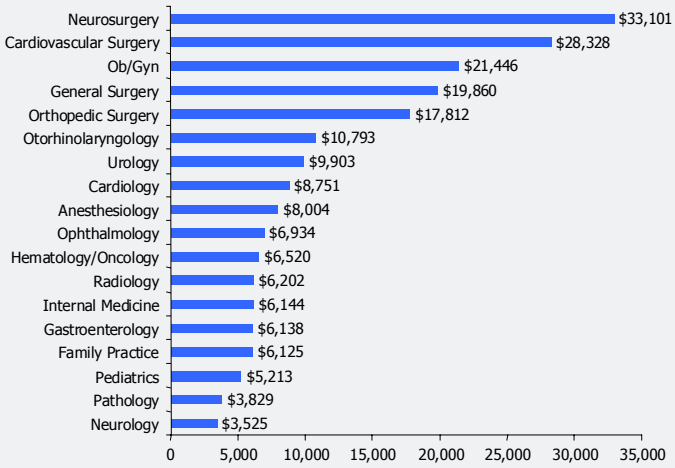
The American College of Obstetricians and Gynecologists has identified nine states — Florida, Mississippi, New Jersey, New York, Texas, Washington, Nevada, West Virginia, and Pennsylvania — where premium costs have tripled or quadrupled for some providers and coverage has become difficult to find.[1] High premiums and resulting income shortfalls have affected Ob/Gyns to the point that some have stopped delivering babies, curtailed surgical services, or shut their doors entirely.

Physicians who treat "high-risk" patients are not the only providers affected. Hospitals are affected because they sometimes absorb premium and litigation costs for certain clinical staff and/or may lose important lines of service. *The Los Angeles Times* reported on scaled-back trauma services in communities in Nevada and West Virginia as rising premiums affect the availability of neurosurgeons and trauma specialists. *The Philadelphia Inquirer* reported that Thomas Jefferson University's Methodist Hospital decided to close its labor and delivery ward, citing "…soaring malpractice insurance costs facing doctors and hospitals."

"It is widely acknowledged that Ob/Gyns along with neurosurgeons and orthopedic surgeons are sued more frequently because of their high risk clientele. Ob/Gyns are especially susceptible because of the intense emotional significance of birth." — Michelle A. Bourque, JD, Defense Lawyer, American Bar Association

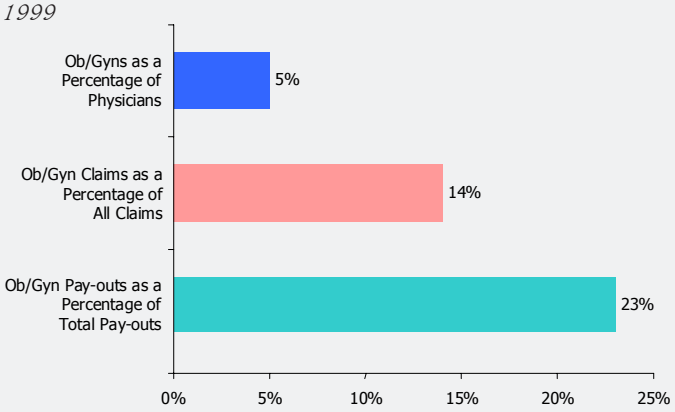
Medical liability expenses vary across specialties…

Chart 9: Median Professional Liability Premium Rates by Specialty, 2000



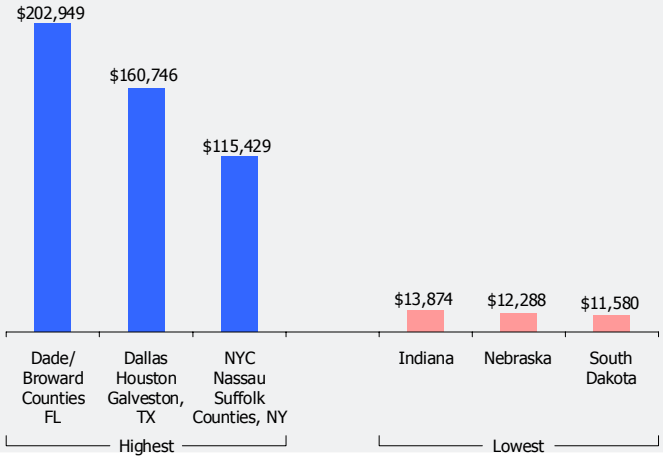
…due to differences in risk and claims experience.

Chart 10: Ob/Gyns as a Percentage of Physicians, Claims, and Pay-outs, 1999



Premiums also vary widely across cities and states.

Chart 11: Highest and Lowest Premium Rates Reported by Insurers in Specific Markets, Ob/Gyn, July 2001



Providers and Insurers Call for Medical Liability Reform As One Way to Address Increasing Premiums

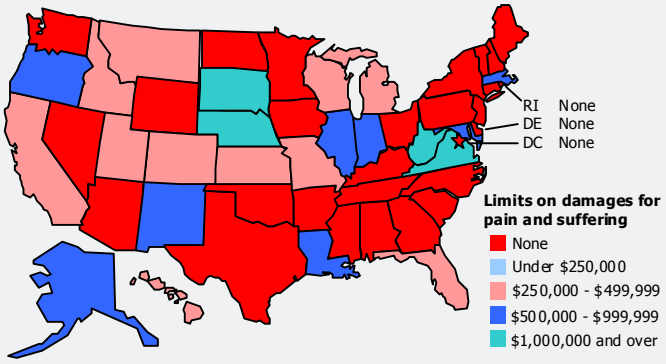
Provider and insurer groups have called for liability reform as one way to address rising costs despite opposition from consumer and attorney groups. Legislative action has mainly occurred at the state level where regulatory authority for insurance matters typically resides. Types of reform include:

- **Limits on non-economic damages**: limits amount that an injured person can receive for pain and suffering;
- **Collateral source payment rules**: allows defense to introduce evidence of payments a plaintiff may be receiving from other sources;
- **Statute of limitations**: limits time for filing claims;
- **Alternative dispute resolution**: provides mechanisms to prevent cases from ending up in court;
- **Limits on attorney contingency fees**: limits the portion of the payment or the dollar amount that an attorney can receive;
- **Penalties for frivolous suits**; and
- **Joint and several liability reform**: holds defendants liable for only their share of damages when multiple parties are involved (e.g., physician and hospital named as defendants).

In addition to supporting liability reform, providers are taking other actions to mitigate the effects of premium increases and manage risk. Providers and industry groups are developing and implementing "best practices". Some providers are choosing to self-insure or create captives in order to share risk among small groups of providers and to reduce their reliance on commercial carriers.

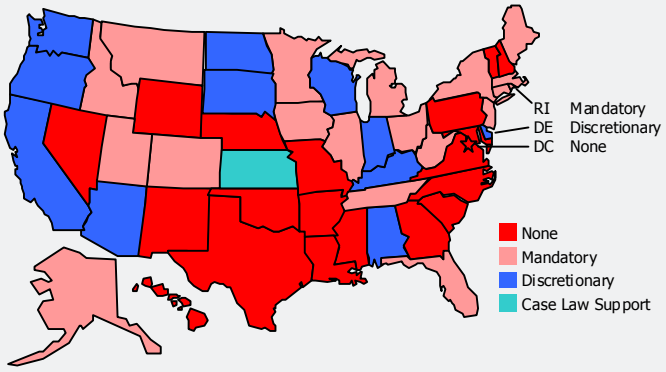
Some states have capped awards for pain and suffering...

Chart 12: Limits on Damages for Pain and Suffering,[1] 2001



...and taken measures to prevent plaintiffs from collecting from multiple sources.

Chart 13: Reform of Collateral Source Rule, 2001



The movement for tort reform is receiving more support at the federal level, in part because a number of state constitutions, like those governing Ohio and Washington, prohibit certain types of reforms, such as limits on damages.

Attempts at tort reform have been made at the federal level, as well (2000-2002).

Bill	Date Introduced	Limits on Non-economic Damages	Collateral Source Payment Offsets	Statute of Limitations	Mandatory Alternative Dispute Resolution	Limits on Attorney Contingency Fees	Penalties for Frivolous Suits	Joint and Several Liability Reform
H.R. 4600 "Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002"	April 25, 2002	✓ $250,000	✓	✓ 3 yrs after injury		✓		✓
S. 1370 "Common Sense Medical Malpractice Reform Act of 2001"	August 3, 2001	✓ $250,000	✓	✓ 2 yrs after discovery		✓		✓
H.R. 2103 "Medical Malpractice Rx Act"	June 7, 2001	✓ $500,000	✓	✓ 5 yrs after injury		✓		✓
H.R. 1639 "Common Sense Medical Malpractice Reform Act of 2001"	April 26, 2001	✓ $250,000	✓	✓ 3 yrs after injury		✓		✓
H.R. 5344 "Common Sense Medical Malpractice Reform Act of 2000"	September 28, 2000	✓ $250,000	✓	✓ 3 yrs after injury		✓		✓