

Doctors, Businesses Push for More Medical-Malpractice Reform

Written by Joel Knutsen

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Although the Illinois legislature earlier this year passed wide-ranging reforms meant to lower medical-malpractice-insurance rates, representatives of the business community and doctors are advocating for further changes.

“The recent reforms are a great start, but we need to continue to pursue and encourage the Illinois state legislature for more reform if we expect to get medical insurance premiums down,” said Bill Leaver, CEO of Trinity Health System, at a recent forum in the Quad Cities.

One of the key new reforms passed in August was a cap on noneconomic damages people can win in malpractice lawsuits against doctors and hospitals. Noneconomic damages are awards for things such as pain and suffering. Doctors’ liability was capped at \$500,000, and hospitals’ liability was capped at \$1 million.

Expert-witness guidelines in the reform package included an affidavit of merit, requiring that the plaintiff have a signature by a health professional who the plaintiff’s attorney reasonably believes meets the requirements for an expert witness in a medical-malpractice case.

Representatives of the U.S. Chamber Institute for Legal Reform, the Illinois Chamber of Commerce, the Illinois Civil Justice League, and the Rock Island County Medical Society met at the Quad City Botanical Center two weeks ago to discuss further medical-malpractice reform in Illinois, which they see as key to reducing the number of “frivolous” lawsuits in the state.

The officials said that the Illinois court system is the reason medical-malpractice-insurance rates are so high in the state. They said that several Illinois counties – particularly Madison and St. Clair counties near St. Louis, and Cook County – are home to too many lawsuits, whether the plaintiff lives in the county or not.

The American Tort Reform Association recently named Madison and St. Clair counties as the nation’s number-one and number-two “judicial hellholes” for allowing lawsuits from around the nation or the region to be filed there.

Doug Whitley, president of the Illinois Chamber of Commerce, said that Madison County has become a magnet for cases filed by people who aren’t residents and who weren’t injured there.

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Whitley said that Madison County has become an excellent destination for “venue shoppers” -- plaintiffs who “shop” their litigation to jurisdictions that have historically produced large awards in medical-malpractice lawsuits, regardless of where the alleged injury actually occurred.

In an effort to stop venue shopping, Whitley said, business and medical leaders would like to see the Illinois legislature enact some sort of venue reform. This would mean the plaintiff would only be able to file a lawsuit in the county where the plaintiff resides or in the county where a substantial event that caused the injury occurred.

According to Whitley, this would lower the number of cases filed in counties (such as St. Clair and Madison) that are infamous for awarding large judgments. As a result, insurance companies would end up paying a smaller number of settlements, which would save them money and lead to lower rates.

Officials added that many insurance companies have left the Illinois because of the risk of continually having to pay large settlements, which leads to less competition, which leads to higher rates.

Charles Bruhn, CEO of Genesis Illini Medical Center, said that because of the high cost of medical insurance, Illinois is losing doctors throughout the state.

Bruhn said he has seen 19 practicing physicians from his facility leave Illinois over the past few years because they can no longer afford the insurance. “Some are choosing to practice in other states, others are taking teaching positions, and some are retiring early,” Bruhn said. “And that’s not a good thing from an economic standpoint, and more importantly for people to get ... access to health care.”

Leaver argued that insurers should be given an active role in writing reform legislation. “I think it’s also important that we get more insurance companies writing malpractice-insurance reforms like venue reform and the clarification of joint and several liability [an obligation for which multiple individuals are liable for payment] because they affect how insurance companies quote their rates, and we’re not going to see premiums go down until they do,” he said.

But ISMIE Mutual, the largest medical-malpractice-insurance company in the state (covering more than half the state’s doctors), is the “officially endorsed professional liability carrier of Illinois State Medical Society members.” What Leaver is essentially asking for is that doctors be allowed to write the medical-malpractice tort law.

ISMIE claims that medical-malpractice lawsuits and judgments are responsible for the higher insurance premiums in Illinois. But groups representing lawyers argue there is no concrete evidence of this, noting that ISMIE has not made available meaningful statewide data on lawsuits or judgments to bolster its case; the organization has released information selectively, focusing on large metropolitan areas.

Attorneys say that the problem is twofold: barely regulated malpractice-insurance rates, and a lax discipline system that lets bad doctors continue to practice medicine. (See “Doctor Dash,” *Ri*

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According to data collected by the nonpartisan *National Center for the State Courts*, from 1992 to 2002 the number of medical-malpractice lawsuits actually decreased nationwide. Attempts to limit jury awards only serve to protect negligent doctors under the claim that runaway juries are driving up insurance premiums, lawyers say.

Bruhn said that Illinois needs to become more competitive with other states in its insurance market. For example, he said, right now a general surgeon in Illinois that's paying in excess of \$100,000 a year for malpractice insurance could go to Iowa and get the same coverage in the same position for 50 percent less.

"Looking at those types of figures, it isn't going to take a Ph.D. in mathematics to figure out what the implications will be," Bruhn said. "Now that Illinois has caps on noneconomic damages, it should give insurance companies looking to locate in Illinois some level of predictability so that they can calculate their risk, and subsequently stabilize [the insurance market] and lower the premiums to their insured physicians."

However, lawyers say evidence continues to show that caps on medical-malpractice lawsuits do not result in lower insurance premiums.

According to a 2003 Weiss Ratings report that examined the impact of noneconomic-damage caps in states between 1991 and 2002, the median annual malpractice premium in states with caps went up 48.2 percent, whereas in states *without* caps the median premium only increased by 35.9 percent. The report (available online at <http://www.weissratings.com/malpractice.asp>) summarized: "Doctors in states with caps actually suffered a significantly larger increase in insurance costs than doctors in states without caps."

Nevertheless, Bruhn said if the insurance market can become stable, it would help the state retain its current physicians and make Illinois look more favorable to any companies and physicians looking to branch out or relocate to another state.

"Illinois' recently enacted medical-liability reforms are a step in the right direction," said Lisa Rickard, president of the U.S. Chamber Institute for Legal Reform. "In order to protect jobs and the Illinois economy, the governor and the state legislature need to finish the job and pass more lawsuit reform."