

Medical liability reform is necessary to support patient access to health care and to help reduce health care costs.

Cost of Medical Liability Coverage

The total cost (primary premiums, Mcare assessment, and excess premiums) of medical liability insurance coverage for Pennsylvania's hospitals has stabilized since 2007, but remains nearly two times higher than in 2000.¹

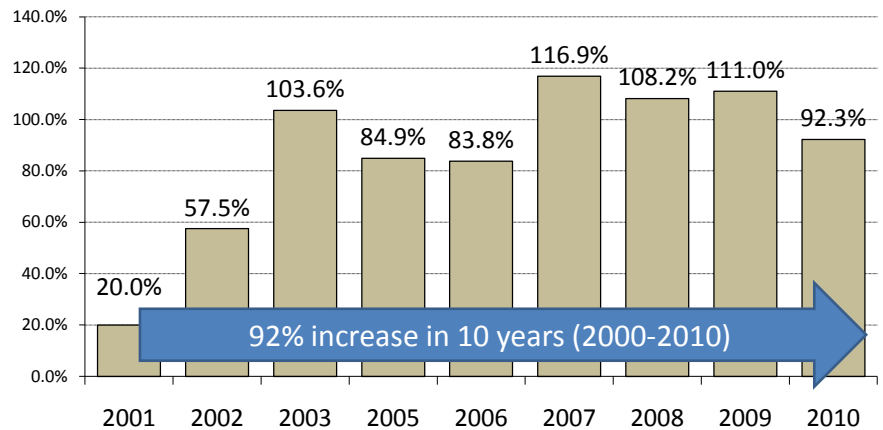
Access to Health Care

- Recruitment of new physicians is increasingly more challenging.
- Physicians completing their medical residencies are more likely to choose permanent practice sites outside of Pennsylvania. The most affected services are obstetrics/gynecology, orthopedics, neurology, neurosurgery, and general surgery.
- Hospitals continue to add medical staff to their liability policy. Nine out of ten hospitals cover a portion of their medical staff under their policy.
- Pennsylvania has one of the highest medical liability costs per physician—\$5,533, second only to Florida at \$5,540. (See map)

Liability Insurance Marketplace

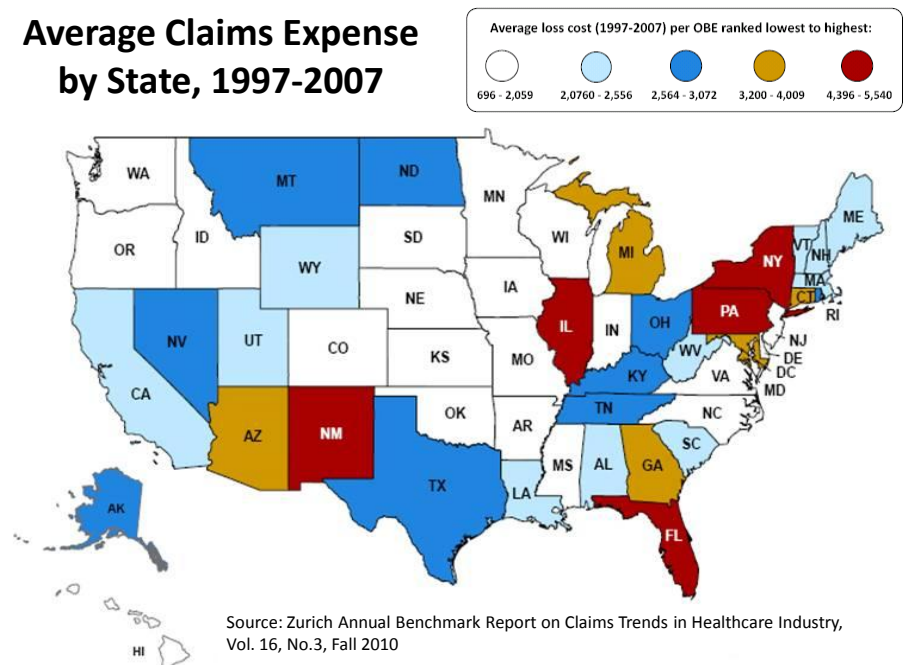
- Almost all hospitals (90 percent) rely on self-insurance for primary medical liability coverage.
- The Pennsylvania Supreme Court reports that there has been a 43.9 percent decline in filed medical liability claims since the enactment of HAP-supported reforms during 2002.
- Mcare Fund paid claims peaked in 2003 at nearly \$379 million and have declined to \$146 million during 2010.

Percent Change in Total Medical Liability Premiums Compared to 2000



Source: HAP Statewide membership survey on Medical Liability

Average Claims Expense by State, 1997-2007



Strong Public Support for Medical Liability Reform

The Congressional Budget Office estimates that the direct costs that providers will incur in 2009 for medical liability coverage will total approximately \$35 billion. They estimate that liability reforms could lower premiums for medical liability insurance by 10 percent.² According to a national poll, 62 percent of respondents said that they want Congress to support national comprehensive medical liability reform legislation. Seventy percent support a law that ensures full payment for lost wages and medical expenses, but puts reasonable limits on non-economic damage awards.³



State Budget Pressures Impact Mcare Fund; Results in Legal Challenges

Funds from the Health Care Provider Retention Account (HCPRA) that were not used to fully fund the Mcare abatement program, and the Mcare Fund were used to help balance the fiscal year 2009-2010 state budget.

- Transferred \$708 million from the HCPRA to the General Fund.
- Redirected cigarette tax revenues (\$170 million/year) from the HCPRA to the General Fund.
- Redirected Auto CAT Fund surcharge (\$44 million/year) from the Mcare Fund to the General Fund.
- Transferred \$100 million from the Mcare Fund to the General Fund.

These actions leave insufficient funds to address the retirement of the Mcare Fund at this time. In 2008-09, HAP and the Pennsylvania Medical Society initiated several legal actions regarding the Mcare Fund that if successful, would help provide funds to retire the Mcare Fund and lower medical liability costs. The state courts have thus far ruled in favor of litigation brought by HAP and the Pennsylvania Medical Society. These legal actions are pending before the Pennsylvania Supreme Court.

What More Needs to be Done?

To ensure a more “physician-friendly” Pennsylvania, the state needs to:

- Retire the Mcare Fund and its unfunded liability.
- Pass joint and several liability reform—Adhere to the basic premise that liability equal fault and a defendant should only pay their fair share in a lawsuit.
- Pass Certificate of Merit—Require plaintiff in filing a medical liability action to produce the medical expert report in support of the certificate of merit at the time of the filing of the complaint.
- Pass Apology Rule—Permit medical professionals to express empathy for and take ownership of an unforeseen outcome without the risk of retaliatory litigation based solely on statements made at the time of an apology.
- Implement alternative dispute resolution systems.
- Establish limits on non-economic damages.

¹ HAP Statewide Medical Liability Survey, October 2010

² Congressional Budget Office, Washington, DC, October 9, 2009

³ Health Coalition on Liability and Access, Washington, DC, October 2009