Maryland Is Addressing Malpractice Premiums

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As physicians push for professional liability reform at the national level, the Maryland legislature signed off on a bill aimed at halting rising malpractice premiums.

The centerpiece of the legislation is a rate stabilization fund for medical professional liability insurance that will be funded through a tax on HMOs.

The Maryland State Medical Society (MedChi) and the Maryland Hospital Association estimate that the fund would cover about 95% of the increase in premiums for 2005. Obstetricians in Maryland are paying about $120,000-$160,000 for insurance coverage this year.

Maryland physicians have been pushing hard for reform—especially since last fall, when the state's largest malpractice carrier, Medical Mutual of Maryland, said it would raise its premium rates in 2005 an average 33%. The move follows a 28% increase a year ago.

Maryland is considered a medical liability insurance crisis state by the American College of Obstetricians and Gynecologists. And physicians of all specialties in the state are choosing to lay off staff, close practices, or move, in order to deal with the malpractice problem, according to MedChi.

The new legislation was passed in dramatic fashion during an end-of-the-year special session called by Gov. Robert Ehrlich.

But he objected to the HMO tax and said the bill didn't contain meaningful tort reform. He then vetoed the measure in January, but legislators returned to work to override the veto.

The saga is expected to continue as Gov. Ehrlich prepares to introduce other legislation with more comprehensive reforms.

The state's physician and hospital groups are applauding the new legislation as an important first step. "While we agree with the governor and others that Maryland needs more comprehensive reform, it does offer important positive elements that we cannot walk away from, given the need to assure access to health care to the citizens of Maryland," MedChi and the Maryland Hospital Association said in a joint statement. "We believe this bill will keep physicians on the job."

The groups pointed out that the measure contains a reduction in the cap on noneconomic damages in death cases, reform of how past medical expenses are calculated, and new requirements for expert witnesses.

However, the legislation fails to include needed reforms such as mandatory structured settlements of awards, an expansion of the Good Samaritan Act to include emergency department professionals, and parameters on the calculation of future economic damages, the groups said.

Although there is still more work to be done, the attention brought to medical liability reform through the special session is good news for physicians, said Willarda V. Edwards, M.D., an internist in South Baltimore and MedChi president.

The increased awareness and the better understanding of the issues that resulted from the special session will help as physicians seek increased reform this year, she said. MedChi plans to pursue limits on lawyers' fees, structured settlements that can be paid over time, reforming the calculation of economic damage payments, and enactment of a Good Samaritan law.

"This is just a little taste of what we think should be done," Dr. Edwards said.

But physicians in Maryland are still waiting to see what the current legislation will mean in terms of premiums. "It's too early to say how this is going work," said Miriam Yudkoff, M.D., an ob.gyn. in Annapolis.

And Dr. Yudkoff said she has some concerns about what the insurance reform provisions in the legislation will mean for liability carriers. If Maryland becomes an unprofitable place for insurers, it could have a significant impact on physicians' ability to obtain coverage. "We need a bill that will make Maryland a favorable state for carriers," she said.

Carol Ritter, M.D., a solo gynecologist in Towson, who gave up obstetrics last year, said she sees the legislation as a first step in reform. However, the changes prescribed by the legislation aren't enough to make her able to afford to practice obstetrics again.

The rate stabilization fund is likely to limit the 2005 average premium increase, Dr. Ritter said, but premiums will still be more than 2004 rates, which were already more than she could afford. However, Dr. Ritter said she's hopeful that it will allow some of her colleagues to stay in practice in the short term.

The legislation also won't help David Zisow, M.D., a gynecologist in Bel Air, to start practicing obstetrics again. Like Dr. Ritter, Dr. Zisow gave up obstetrics at the beginning of 2004 when the rates became too high. But even though the new legislation contains significant reforms, Dr. Zisow said he wouldn't be able to afford to buy the tail coverage that would be necessary to start practicing obstetrics again.

His insurer, Medical Mutual, allowed him to forego paying tail coverage for obstetrics because of his many years with the company. However, he would have to pay a significant amount if he were to go back into obstetrics, he said.

As it is, Dr. Zisow has already seen a major increase in his premiums for gynecology alone in 2005, and he said he isn't optimistic that the legislation will result in too much change in premiums.

"It's business as usual," he said.

This is a wake-up call to physicians to get politically active, said Mark Seigel, M.D., an ob.gyn. in Gaithersburg and the former president of MedChi. Passing meaningful changes to the system takes time, he said, and ultimately it may mean voting officials out of office who fail to take on medical liability reform. "Doctors have to do more than just go to the office and see patients," Dr. Seigel said. ■

POLICY & PRACTICE

Mental Health Spending Patterns

Spending for drugs to treat mental health and substance abuse continues to increase in the United States, but the number of ambulatory mental health visits is dropping, according to a study published in the January-February issue of Health Affairs. Samuel H. Zuvekas of the federal Agency for Health Care Research and Quality looked at health care data collected by the government on more than 156,000 people from 1996 to 2001 and found that the number of Americans receiving mental health care had increased by 5.5 million during that 5-year period. Total spending for mental health and substance abuse care increased 5% annually, with much of the increase attributable to increasing prescription drug costs. In 1996, 36% of patients in treatment for mental health or substance abuse reported ambulatory visits without prescription drug purchases, compared with 25% in 2001, according to the study.

National Suicide Prevention Hotline

The Substance Abuse and Mental Health Services Administration has launched a nationwide suicide prevention hotline, 1-800-273-TALK (8255). The service, known as the National Suicide Prevention Lifeline, is funded by a 3-year, $6.6-million grant from SAMHSA's Center for Mental Health Services and is being administered by the Mental Health Association of New York City and its partners—the National Association of State Mental Health Program Directors, Columbia University, and Rutgers University. More than 100 crisis centers in 42 states are participating in the hotline service. Callers will receive suicide prevention counseling from trained staff at the closest certified crisis center in the network. Suicide is the 11th leading cause of death among all age groups, accounting for approximately 30,000 deaths annually, according to SAMHSA.

Portable Health Plans

Patients can take health insurance coverage with them when they change or lose a job, under the regulations that implement the last piece of the Health Insurance Portability and Accountability Act of 1996. The Department of Health and Human Services said it is important that American workers, who often change jobs several times in the course of their lives, are able to respond to the modern workplace without having to fear for their health insurance. The regulations allow greater portability and availability of group health coverage during a time of job transition, set limits on preexisting condition exclusions that could be imposed, and require group health plans and insurance issuers to offer "special enrollment" to certain patients who lose eligibility for other group health coverage or health insurance or to otherwise eligible new dependents. The regulation goes into effect for plan years starting on or after July 1.

HealthSouth to Pay $325 Million

HealthSouth Corp., a large national rehabilitation services provider, has agreed to pay the federal government $325 million to settle allegations that it defrauded Medicare and other federal health care programs. Of the payment amount, $169 million goes to resolve allegations that it submitted claims for services provided to Medicare beneficiaries and members of the Defense Department's TRICARE program that were not performed by licensed physical therapists or were not performed one-on-one as indicated. An additional $89 million will be paid to resolve claims for "unallowable" items such as lavish entertainment and travel costs. The settlement "should send a strong message that the government will be persistent in pursuing those who engage in fraud," according to U.S. Attorney Johnny Sutton in San Antonio, Tex.

Reduced Benefits for Retirees

Businesses are asking retirees to pay more for their health coverage as they struggle to control rising costs, the Kaiser Family Foundation reported. In the past year, 79% of firms increased their retirees' contributions for premiums, and 85% expect to do so in the coming year. In addition, 8% of employers surveyed eliminated subsidized health benefits for future retirees in 2004. For 2005, 11% said they are likely to terminate coverage for future retirees. However, 58% of responding firms said they were likely to continue offering prescription drug benefits and accept the tax-free subsidy created by the new Medicare law. The survey included responses from 333 large private-sector firms that offer retiree health benefits.

Medicaid's Benefits to the States

An annual fiscal survey of the states failed to examine the benefit of Medicaid to their economies, according to Families USA. The report released by the National Governors Association (NGA) and the National Association of State Budget Officers indicated that state spending for Medicaid, including federal funds, has surpassed state spending on primary and secondary education. Yet, in examining state general fund expenditures, states spent more than twice as much on education than on Medicaid. "When analyzing the NGA survey's findings on Medicaid, it is important to count the economic benefit that Medicaid holds for states," said Families USA Executive Director Ron Pollack. Families USA "found that on average every $1 million invested in Medicaid by states generates nearly 34 jobs, $1.2 million in wages, and $3.3 million in business activity," he added. During fiscal 2005, Medicaid is estimated to grow as much as 12%, partly because of expiring federal fiscal relief. Long-term growth is expected to be 8%-9%, well above expected state revenue growth, the NGA's report said.

—Joyce Frieden