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Memorandum

TO: Representative Wes Keller
FROM: Susan Haymes, Legislative Analyst
DATE: January 27, 2012
RE: Impacts of Alaska Medical Malpractice Reform
LRS Report 12.139

You asked about impacts in Alaska resulting from medical malpractice tort reform measures that were implemented in 2005. Specifically, you asked about the rates for medical malpractice insurance premiums since 2005.

Medical malpractice lawsuits are generally based on principles of tort law.¹ In order to protect themselves from potential malpractice claims, nearly all physicians and surgeons buy medical malpractice insurance. Typically, medical malpractice premium rates vary widely by medical specialty and across and within states. Premiums paid for traditionally high-risk specialties, such as obstetrics, are usually higher than premiums paid for other specialties, such as internal medicine.

The national malpractice insurance market has experienced at least three periods of rapid rate increases over the last 30 years, sparking concerns about affordability and accessibility of health care.² During the most recent period policymakers heard arguments that escalating premiums were causing physicians to leave states with the highest increases, to retire, or to reduce or eliminate high-risk services, which could eventually lead to a loss of affordable accessible healthcare. In addition, some argued that fear of malpractice litigation encouraged physicians to practice defensive medicine—for example, ordering additional tests or procedures—thus increasing total health care costs. In an effort to reduce the costs of malpractice litigation and lower premiums, many states, including Alaska, enacted a variety of measures referred to as “tort reform,” which include such measures as restricting the size of damage award payments.³

In 1997, Alaska lawmakers passed the Tort Reform Act, which, among other things, set a cap on non-economic damages of \$400,000 or the injured person’s life expectancy in years multiplied by \$8,000, whichever was greater. In cases of severe disfigurement or severe permanent impairment, lawmakers set a cap of \$1 million or the person’s life expectancy in years multiplied by \$25,000, whichever was greater. In 2005, Alaska lawmakers revisited the issue of tort reform and lowered the non-economic damage cap to an absolute maximum of \$250,000. In cases of a wrongful death or severe permanent physical impairment that is more than 70 percent disabling, the cap was set at an absolute maximum of \$400,000 (ch 40 SLA 05). Proponents of the legislation argued that high malpractice insurance premiums made it difficult to recruit doctors to Alaska and had also led some medical malpractice insurance companies to leave Alaska, thereby increasing costs for physicians, which were then passed on to consumers. While acknowledging that the legislation was not a silver bullet, the bill’s sponsor argued that it would stabilize the medical insurance market and boost efforts to attract physicians to Alaska.⁴ Nevertheless, we note that since the early 1990s, two companies, Medical Insurance Exchange of California (MIEC) and Norcal Mutual Insurance Company, have provided malpractice insurance for the majority of Alaska physicians and surgeons. For example, since 2004, the two companies have insured more than 85 percent of Alaska health care providers. Another 18-25 companies have consistently provided coverage for the remaining 15 percent. According to testimony, Northwest Physicians

¹ A tort is a wrongful act or omission by an individual that causes harm to another individual. Typically, a legal claim of medical malpractice is based on a claim that the negligence of a provider caused injury and the injured party seeks damages.

² Rapid rate increases occurred in the 1970s, 1980s and most recently beginning in the late 1990s. Between 2001 and 2002, premium rates for the specialties of general surgery, internal medicine, and obstetrics/gynecology increased by about 15 percent on average nationally, and over 100 percent for certain of these specialists in some states. U.S. General Accounting Office, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” August 2003. The report can be accessed at <http://www.gao.gov/new.items/d03836.pdf>.

³ Supporters of legislation to cap damages in malpractice cases maintain that it reduces premiums and helps ensure an adequate supply of physicians. They also claim that escalating jury awards drive malpractice premium increases and that capping damage awards for pain and suffering help to restrain the rate of increase. Opponents of these specialists in some states. U.S. General Accounting Office, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” August 2003. The report can be accessed at <http://www.gao.gov/new.items/d03836.pdf>.

⁴ Minutes from the February 8, 2005, Senate Labor and Commerce Committee and the March 8, 2005, Senate Judiciary Committee.

Mutual Insurance Company left the state in 2004. Northwest, however, insured only 0.30 percent of Alaska’s health care providers. According to the Alaska Division of Insurance’s Annual Reports for 2004-2010, the top ten companies offering malpractice insurance have remained remarkably consistent.

Recent Studies on the Impact of Tort Reform

A number of studies have been conducted over the last fifteen years to evaluate the effect of state tort reform on malpractice premium levels, claims frequency and payout, and physician supply. An analysis conducted by the Robert Wood Johnson Foundation in 2006 found that many of the studies were based on limited data and thus not reliable; however, some of the more recent studies are stronger. The Foundation reported that while most tort reforms have had little impact overall, caps on non-economic damages appear to have had a modest effect on premium growth. While caps did not appear to significantly affect premiums in the 1970s and 1980s, evidence shows that in the 2000s caps reduced the growth of premiums by six to 13 percent. The report notes that the total impact is not immediate but takes place over several years and, while the rate of growth is lower after cap adoption, premiums still rise in absolute terms. The report further indicates that although recent studies have shown mixed results, one study indicates caps on damages are associated with a modest increase in physician supply (three percent over three years), presumably by reducing claim size and premiums. The authors emphasize the effects are modest in size, and that caps can disproportionately burden the most severely injured patients.⁵

Medical Malpractice Insurance Premium Rates for Alaska

The Division of Insurance provided data on premium rates charged by the two main companies that provide coverage in Alaska.⁶ These companies—Medical Insurance Exchange of California (MIEC) and Norcal Mutual Insurance Company—insure almost 86 percent of physicians and surgeons in Alaska.⁷ Because premium rates differ for each specialty, we selected three examples to show the trend in premium rates from 2003-2012.⁸ The following graphs show the malpractice insurance premium rates for general surgeons, obstetricians-gynecologists, and family practice physicians. For each company we used mature claims-made rates—that is, the premium rate at the fifth year of the policy—for a standard policy of \$1 million of coverage per incident and \$3 million of total coverage per year.⁹ The MIEC rates for all three specialties increased each year from 2003-2005. In 2006, MIEC decreased rates for general surgery and obstetricians-gynecologists by 29 percent and 15 percent, respectively. In 2012, MIEC decreased rates further for obstetricians-gynecologists. Norcal decreased its rates in 2008, and again in 2011 for both specialties. Premiums for family practice physicians have remained relatively stable for both companies during the 2003-2012 time period. In 2009, MIEC rates saw a small decrease, as did Norcal rates in 2011. While premium rates have remained relatively stable since 2005, we caution that because numerous other factors outside of tort reform laws affect premium rates, determining the precise extent to which those laws or other factors influence premium rates is problematic

⁵ Robert Wood Johnson Foundation, “Medical Malpractice: Impact of the Crisis and Effect of State Tort Reforms,” Policy Brief No.10, May 2006. The report can be accessed at http://www.rwjf.org/pr/synthesis/reports_and_briefs/pdf/no10_policybrief.pdf.

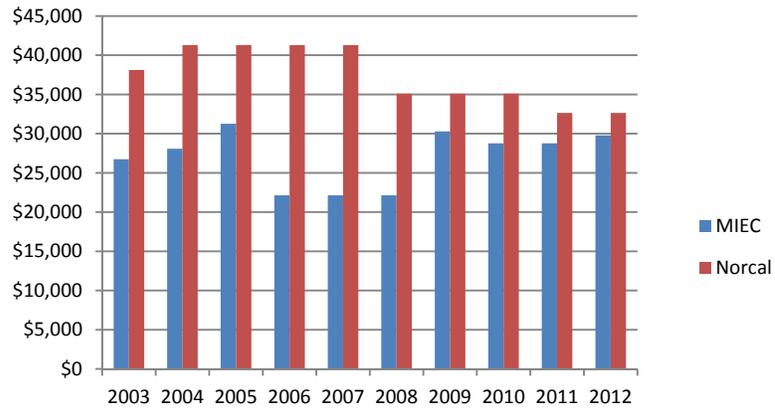
⁶ Sarah McNair-Grove, Actuary, Division of Insurance, Department of Commerce, Community and Economic Development, can be reached at 907.465.4613.

⁷ Both companies are member-owned and operated, and governed by a board of directors comprised of physicians. The MIEC is endorsed by the Alaska State Medical Association and has been insuring physicians in Alaska since 1978. Norcal is endorsed by Alaska Physicians and Surgeons, Inc., and has been operating in Alaska since 1991. The MIEC and NORCAL return any profits to policyholders through dividend distributions, which also effectively lowers premium rates.

⁸ The average cost of medical malpractice insurance varies by state and by specialty. Each individual insurer sets its own premiums for medical malpractice insurance, and these are based on incidents of litigation and other general assessments of the risk pool. This means the insurance companies within a given state look at the potential for lawsuits within that state, within that branch of medicine, and set insurance rates accordingly. Different specialties have different average costs because of varying levels of risk and the history of past litigation. For instance, obstetrics has a relatively high rate of litigation. Damages also tend to be high when an infant is harmed at birth, because that infant will have to deal with that injury for its entire lifetime. For each specialty, the more potential for things to go wrong as a result of medical negligence, the higher the average insurance rates tend to be.

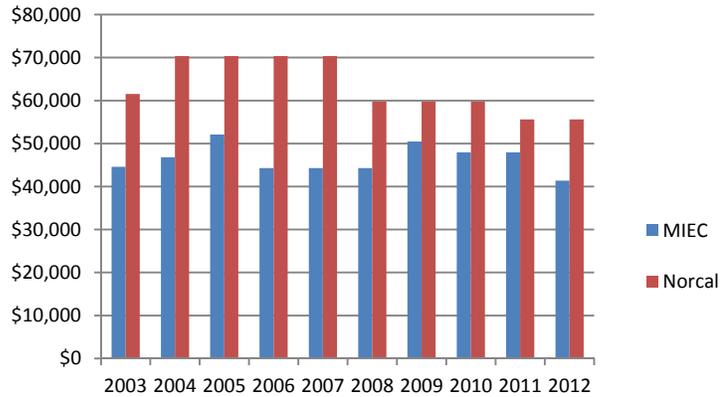
⁹ Claims-made coverage is the most common type of policy offered by medical liability insurance companies. Claims-made policies provide coverage for claims only when both the alleged incident and the resulting claim happen during the period the policy is in force. For some years, MIEC provided premium rates for a policy of \$500,000 per incident and \$1.5 million of total coverage per year. We used MIEC’s increased limit factor (ILF) to convert the \$500,000/\$1.5 million rate to a \$1 million/\$3 million rate for those years.

Annual Malpractice Insurance Premiums: General Surgery

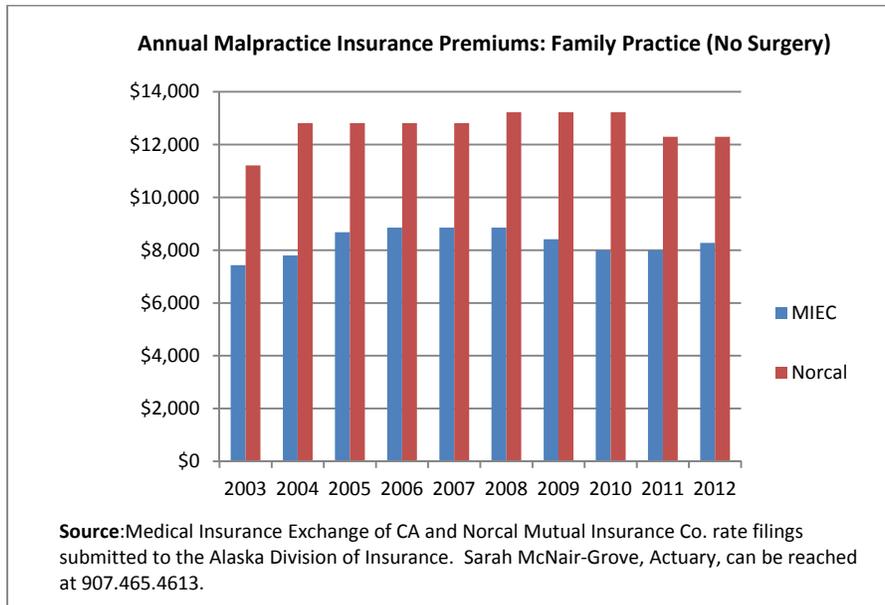


Source: Medical Insurance Exchange of CA and Norcal Mutual Insurance Co. rate filings submitted to the Alaska Division of Insurance. Sarah McNair-Grove, Actuary, can be reached at 907.465.4613.

Annual Malpractice Insurance Premiums: Obstetrics-Gynecology



Source: Medical Insurance Exchange of CA and Norcal Mutual Insurance Co. rate filings submitted to the Alaska Division of Insurance. Sarah McNair-Grove, Actuary, can be reached at 907.465.4613.



Number of Physicians in Alaska

The health care industry has created more new jobs than any other sector of Alaska’s economy during the last ten years. A recent article in *Alaska Economic Trends* attributes industry growth to Alaska’s increasing population and, in particular, the state’s aging population.¹⁰ Not surprisingly then, as shown in the graph below, the number of physicians and surgeons working in Alaska has also increased. Nevertheless, the *Trends* article notes that the shortage of physicians is a nationwide problem, and of the health care professions in Alaska, licensed physicians have the highest rate of nonresidency, which indicates many physicians work in the state on a limited basis. In 2006, the Alaskan Physician Supply Task Force prepared a report discussing a number of strategies for recruiting and retaining physicians in Alaska.¹¹ According to the report, there are many factors that influence where a physician may decide to establish a practice, such as the size of the community, employment opportunities for a spouse, schools, benefits plan, recreation/culture, income potential, the proportion of the population that is insured, and the practice environment. The report indicates that medical malpractice premium rates are also an important consideration to many physicians when evaluating the practice environment in a state.

The number of physicians working in Alaska has steadily increased since 2006. While Alaska’s cap on noneconomic damages may be viewed as a positive factor in Alaska’s practice environment, there are so many other considerations that it is difficult to determine the extent to which tort reform may have influenced physician supply. For example, a significant number of Alaskans—about 81 percent—are insured, which creates a large customer base for physicians.

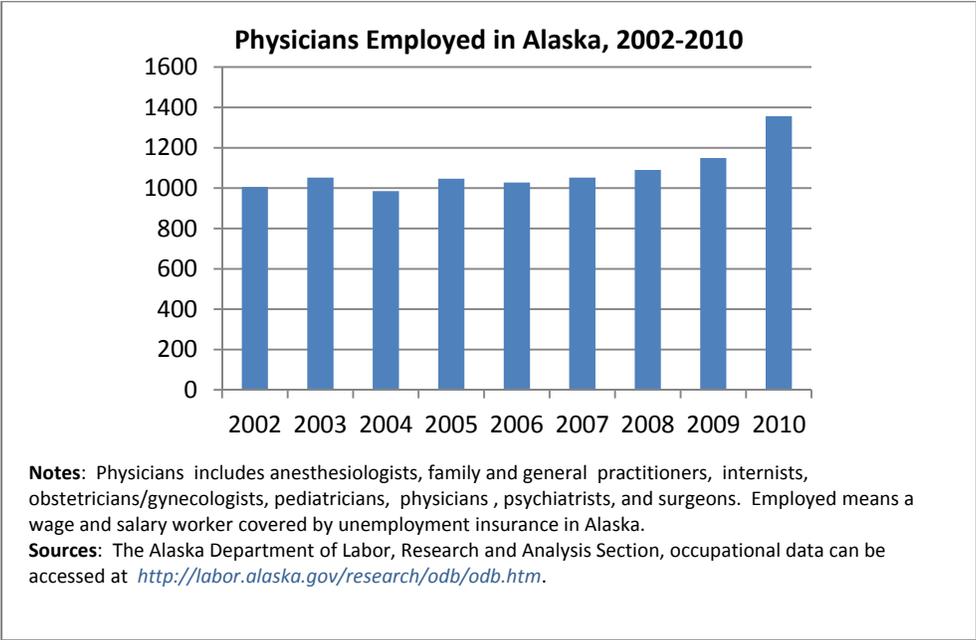
To compile the number of physicians and surgeons employed in Alaska we used the Alaska Department of Labor and Workforce Development’s (DOLWD) occupational database. The database contains occupation information for each wage and salary worker covered by unemployment insurance employed in Alaska.¹² We include the following occupations in our

¹⁰ Erik Stimpfle and Dean Rasmussen, “Alaska’s Health Care Industry,” *Alaska Economic Trends*, August 2011. The article can be accessed at <http://labor.alaska.gov/trends/aug11.pdf>.

¹¹ Alaska Physician Supply Task Force, “Securing an Adequate Number of Physicians for Alaska’s Needs,” August 2006. The report can be accessed at <http://www.alaska.edu/health/downloads/PSTFweb.pdf>.

¹² The database can be accessed at <http://labor.alaska.gov/research/odb/odb.htm>. Physicians practicing in Alaska must first obtain a license from the Alaska State Medical Board. The Board maintains a list of physicians holding licenses; however, the list does not distinguish between those physicians actually practicing in Alaska and those simply holding a license. Thus, the number of licenses issued in a given year is higher than the number of practicing physicians. For this reason, we used occupational data, which records the number of physicians employed in the state. We note that not all of the physicians employed have established a practice in Alaska. The number includes those doctors who have established a practice as well as those who may only work in in the state for a limited period of time. The number does not include physicians who are self-employed.

physician total: anesthesiologists, family and general practitioners, internists, obstetricians/gynecologists, pediatricians, physicians, psychiatrists, and surgeons.



We hope this is helpful. If you have questions or need additional information, please let us know.