

Malpractice relief

Lower premiums, tort reform add to Alaska's appeal

By Andrew Firth and Roger Holmes

It is seemingly a universal truth that wherever one practices in the United States, malpractice insurance costs too much. But in Alaska, the average medical malpractice premiums are lower than at least 35 other states, a national survey shows.

Physicians in Alaska pay much less than their colleagues in the nation's five most costly states, according to the Medical Liability Monitor Survey, 2008. Premiums paid by Alaska's internists average 24 percent of those paid by internists in the five highest states; surgeons here pay roughly 25 percent, and obstetrician/gynecologists pay about 31 percent. (The top five states vary by specialty.) Some of the difference in cost may be societal, but part of it has to do with the tort reforms that have passed, or not passed, in each state.

In Alaska, our history is similar to many states where the costs are lower. It's a state with an active medical society (the Alaska State Medical Association), an engaged membership, a broad coalition of providers and an enlightened legislative body that recognizes the connection between malpractice costs and access to care.

In 1975, Alaskan physicians suddenly were confronted with a disappearing market for medical malpractice insurance. The Legislature stepped in and created the Medical Indemnity Corporation of Alaska (MICA), a quasi-state agency funded with state money but run by a private board of directors appointed by the governor. At the same time, the Legislature modified the law governing medical malpractice claims. Among the key changes:

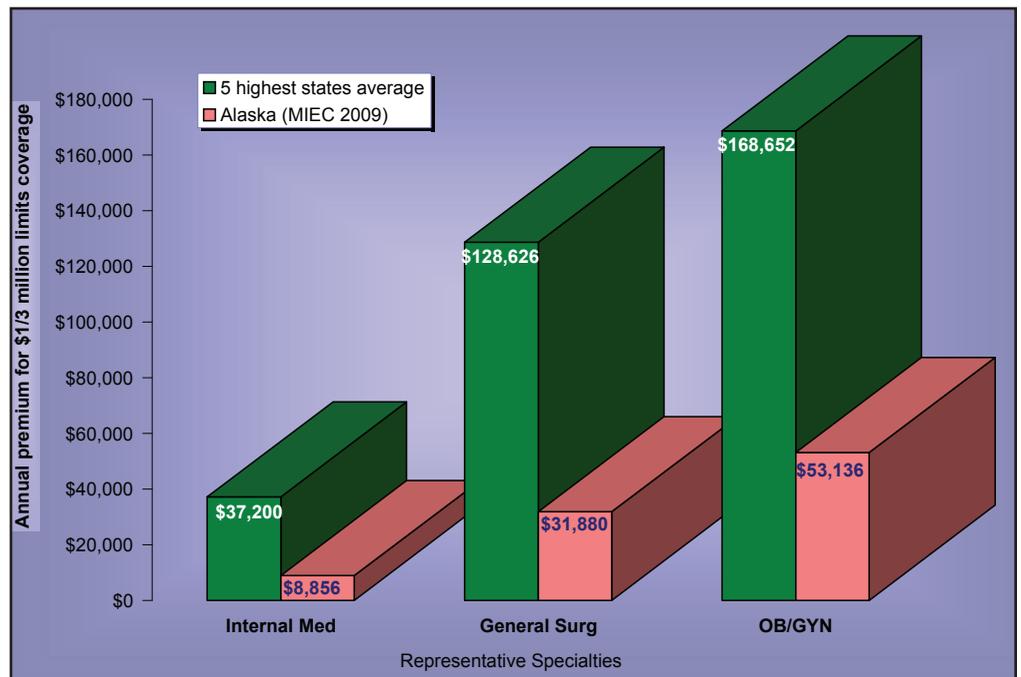
► The burden of proof was codified, making it clear that a practitioner could only be judged against those in the same field or specialty.

► *Res ipsa loquitur*, a legal doctrine that switched the burden of proof to the health-care provider in certain instances, was abolished.

- The law required that juries be told that injury alone does not raise a presumption of negligence or misconduct.
- Plaintiffs were prohibited from filing inflammatory pleadings asking for millions of dollars.
- The law of informed consent was codified.
- The law prohibited claims that a health-care provider had orally agreed to achieve a specific medical result.

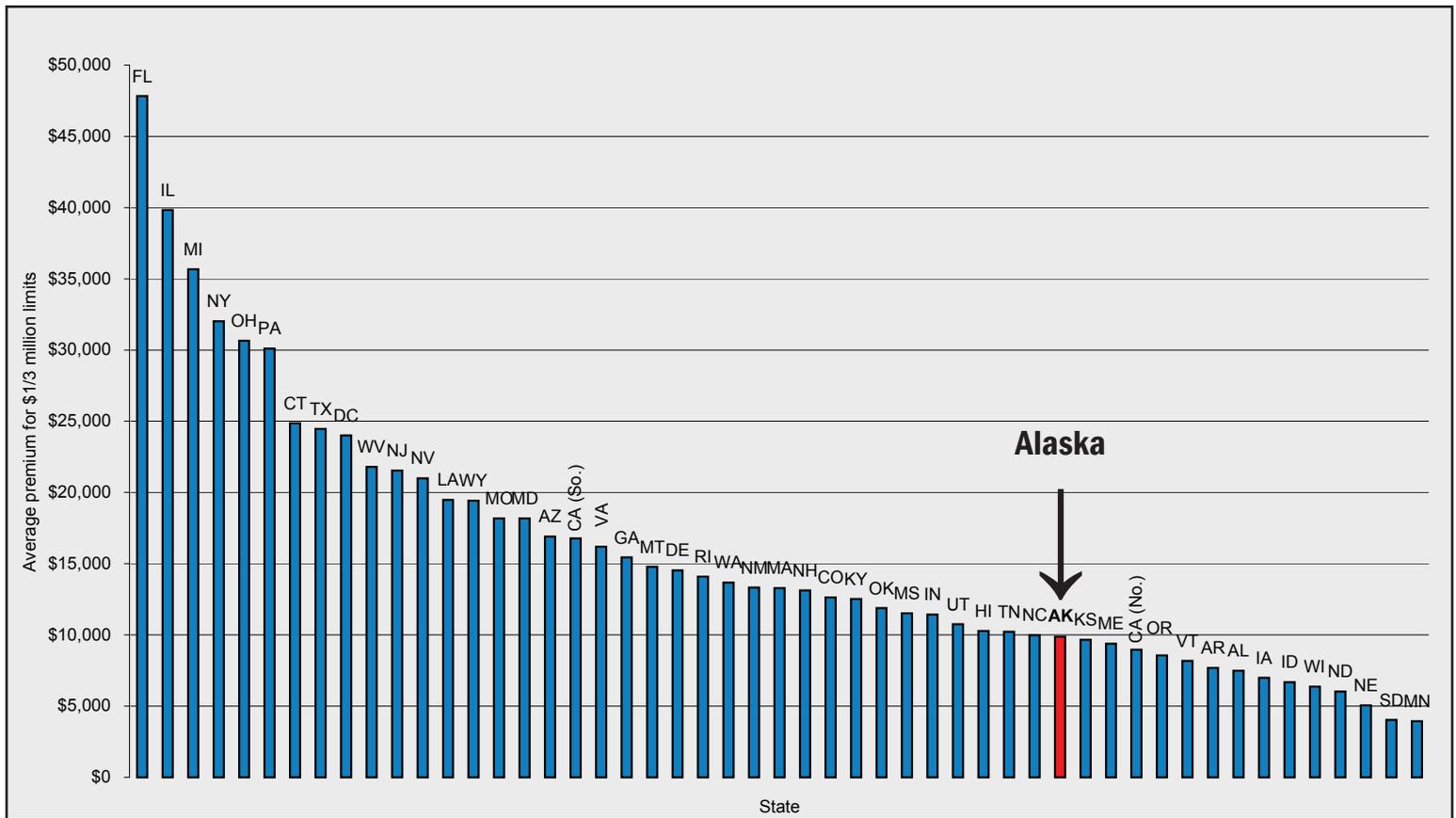
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Premium Comparison: Physician-owned MPL Insurers



Graphic by MIEC / Source: Medical Liability Monitor Survey, 2008

Malpractice Insurance Premiums: Internal Medicine



Graphic by MIEC / Source: Medical Liability Monitor Survey, 2008

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► Plaintiffs were prohibited from obtaining a recovery for sums that had been paid by collateral sources, except for a select few federal programs that must, by law, seek reimbursement.

During the 1970s and '80s physicians encountered rising and falling malpractice costs as the insurance cycle reacted to changing claim experience in Alaska and elsewhere, culminating in the departure of several medical professional liability (MPL) insurers in the late 1990s.

In the mid-1990s, the Alaska State Medical Association and several MPL insurers joined with the Alaska State Hospital and Nursing Home Association, Providence Hospital and the business community to press for additional tort reforms. The result was the 1997 Tort Reform Act.

Among its achievements was a cap on non-economic damages of \$400,000 except in cases of severe disfigurement or severe permanent impairment, in which the cap rises to \$1 million.

Punitive damages were limited, and the standards for awarding them were tightened. Prejudgment interest was tied to the federal discount rate – Alaska's current rate is 3.25 percent. Joint and several liability was abolished in favor of comparative fault, in which each party is responsible only for its percentage share of the total fault. And parties were prohibited from using experts in medical malpractice cases unless the expert is licensed, trained and experienced in the same discipline or school of practice as the physician and certified by a recognized board.

A coalition called Alaskans for Access to Health Care – comprising ASMA, Alaska Physicians & Surgeons, the hospital association and Providence – went back to the Legislature in

2005 and argued for an even lower non-economic damage cap for health-care providers. The result was a limit of \$250,000 in all cases except when damages are awarded for wrongful death or a severe permanent physical impairment that is more than 70 percent disabling. For those, the limit is \$400,000.

Since then, Alaska has enjoyed a stable malpractice climate.

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“For several medical specialties NORCAL Mutual’s rates for Rhode Island are nearly triple those for Alaska.”

Brent Samodurov

NORCAL Marketing and Communications Manager

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mate, with both of its major insurance carriers reducing rates and/or returning profits through dividend distributions.

The caps make a big difference. For example, NORCAL Mutual, which writes policies in Alaska and California, also does business in Rhode Island, which does not limit non-economic damages in malpractice cases.

“Most rates for physicians with at least three years’ practice experience (mature rates) in Rhode Island are at least double the mature rates for physicians in Alaska,” NORCAL Marketing and Communications Manager Brent Samodurov wrote in an e-mail to *Alaska Medicine*. “For several medical specialties NORCAL Mutual’s rates for Rhode Island are nearly triple those for Alaska.”

MPL carriers

There are two major MPL insurers in Alaska: MIEC and NORCAL. Both companies are owned by their policyholders (mutual insurers) and are overseen by a board of governors consisting of physicians.

MIEC came to Alaska in 1978 and is sponsored by ASMA. NORCAL became active in 1991 after it purchased MICA.

According to data published by the National Association of Insurance Commissioners, MIEC wrote 69.7 percent of all medical malpractice premiums for physicians in the state during 2008 and NORCAL wrote 23.4 percent. Ten other carriers shared the remaining 6.9 percent of the market.

Typical of these types of policyholder-owned companies, both MIEC and NORCAL have a long history of returning profits to policyholders through dividend distributions:

► NORCAL’s Alaska clients have received dividends in 12 of the past 18 years, the most recent amounting to 12 percent of each eligible policyholder’s premium as of Sept. 30, 2008, according to Samodurov. He noted: “Dividends declared are directly related to the company’s loss experience in each state.”

► MIEC has a similar record of returning profits to its Alaska members. MIEC policyholders have received dividends in 16 of the past 19 years in amounts that average 28.8 percent of basic premiums (for \$1 million/\$3 million limits) in each one of the past 19 years.

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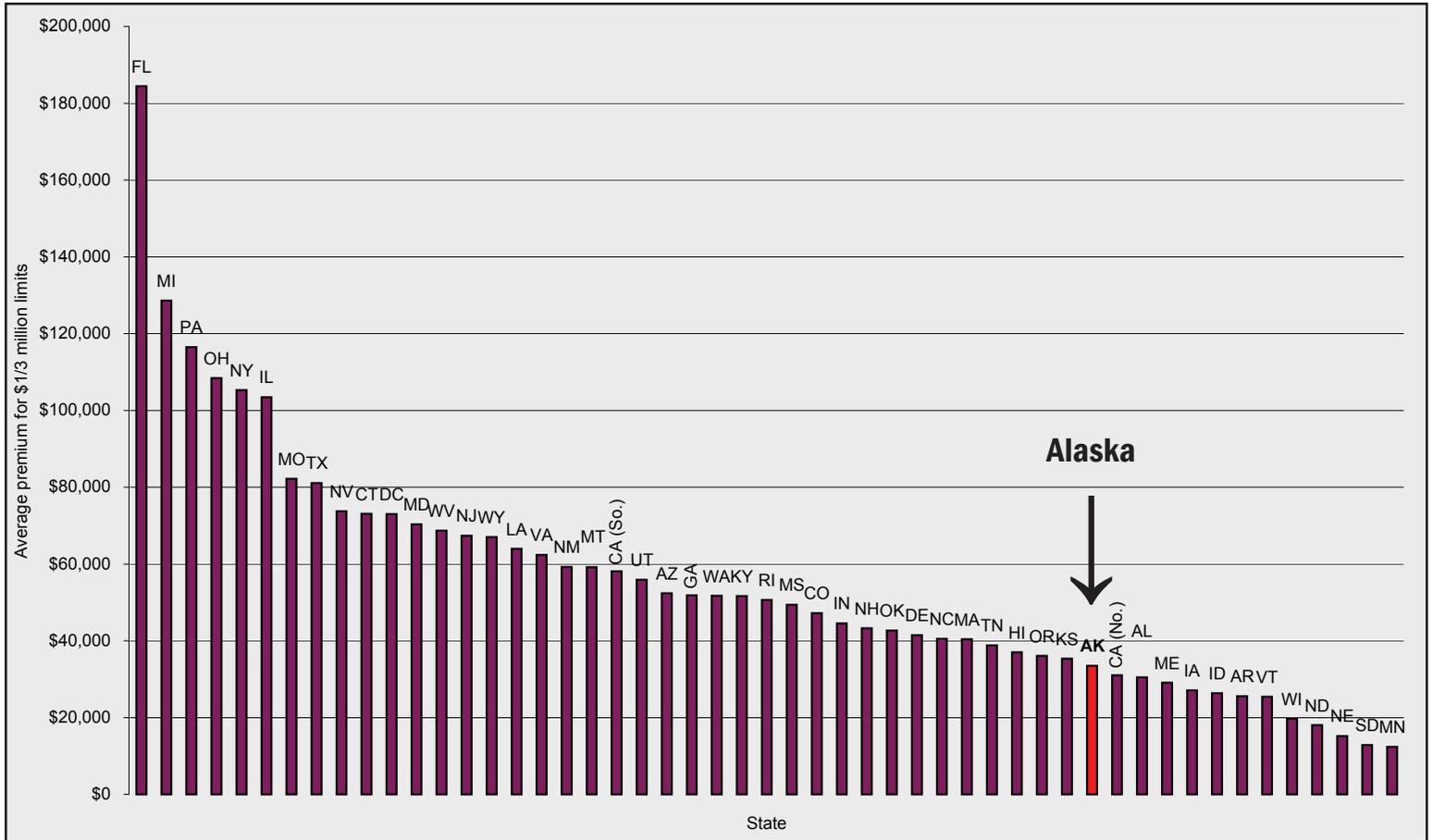
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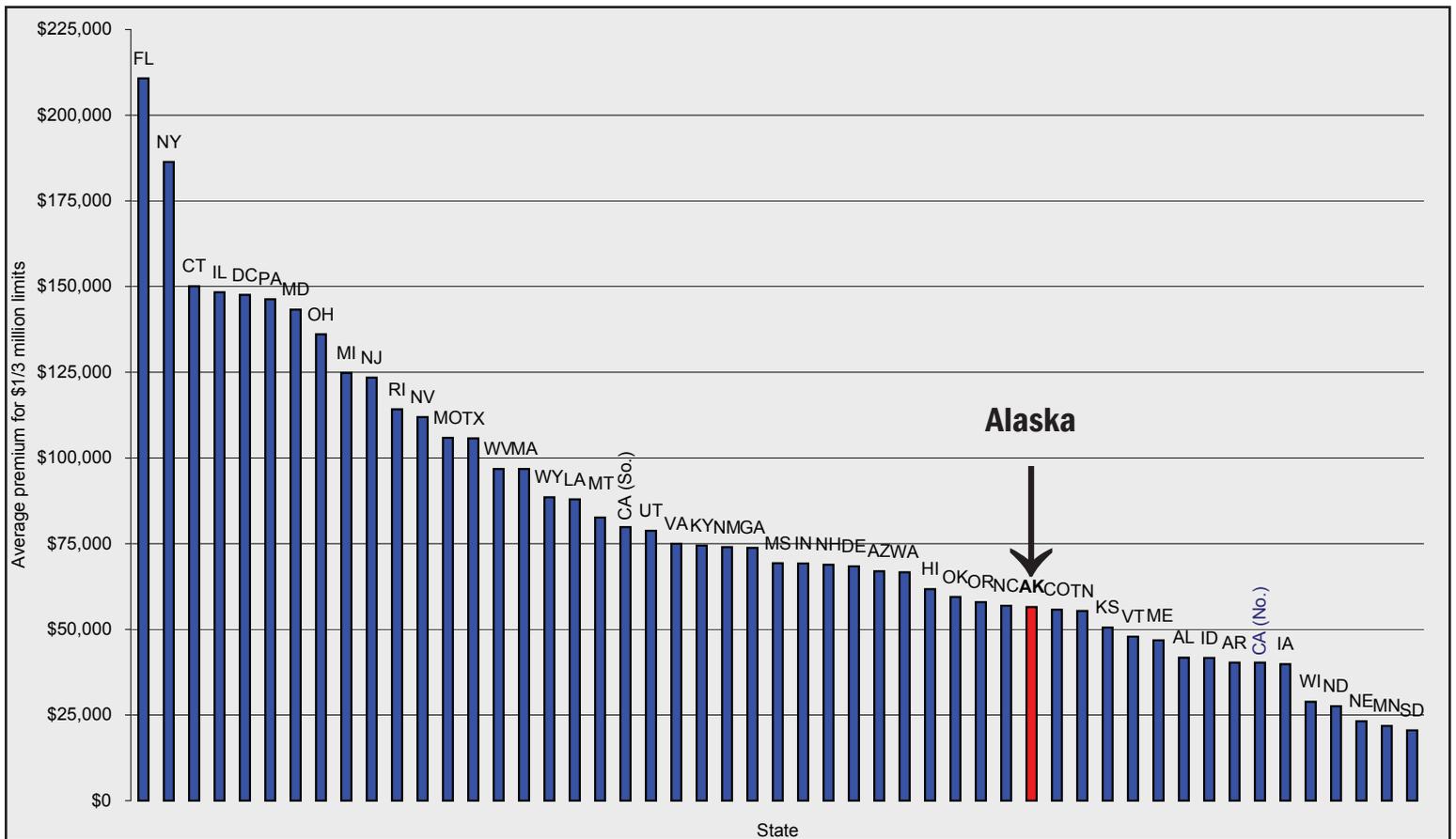


GAME READY

Malpractice Insurance Premiums: General Surgery



Malpractice Insurance Premiums: Obstetrics-Gynecology



Graphics by MIEC / Source: Medical Liability Monitor Survey, 2008