

The Medical Malpractice Crisis: Continuing Effects

The medical malpractice crisis in the metropolitan New York region continues to take its toll on the health care system, as the rates charged to physicians by insurance carriers continue to climb and research studies demonstrate that access to needed service may be in danger. Since the publication of *Medical Malpractice Insurance: Costs and Coverage* by GNYHA in January 2005, evidence has continued to mount that the malpractice crisis must be addressed by policymakers at both the national and Federal levels to alleviate the financial burden on physicians and hospitals. Despite all the attention the issue has received, however, only the U.S. House of Representatives has taken action to help alleviate the crisis. This issue of *In-Depth* contains a new GNYHA analysis that documents the unaffordability of providing maternity services in New York City as well as other data and reports that will help inform the malpractice reform debate in New York and nationally.

Hospital Maternity Services Have Become Unaffordable

In *Medical Malpractice Insurance: Costs and Coverage* (January 2005), GNYHA reported on a survey whose findings showed that the medical malpractice costs of hospitals in the downstate New York region increased 147% between 1999 and 2004. The average annual increase was 27%. (See Figure 1.) Anecdotally, hospitals were also reporting to GNYHA that maternity services were becoming less and less affordable to provide, due to a combination of low reimbursements and high medical malpractice costs. In addition, a number of hospitals in New York State announced their intention to discontinue the provision of maternity services altogether. For instance, in December 2004, Interfaith Medical Center in Brooklyn and The Hospital in rural Sidney, New York announced that they would seek permission to discontinue providing obstetrical services. Since then, The Hospital announced that it would close altogether on August 31, 2005. In addition, prior to announcing that it would close later this year, one of the major cost-saving initiatives instituted by St. Mary's Hospital in Brooklyn was to dis-

continue delivering babies because of high malpractice costs and low reimbursements.

This pattern continues a trend that was illustrated in dramatic fashion in 2003 when two New York City birthing centers closed as a result of high malpractice insurance costs. In August 2003, the Brooklyn Birthing Center closed when its medical malpractice insurer ceased to provide malpractice insurance for midwives. In September 2003, Elizabeth Seton Birthing Center closed its Manhattan location when its carrier raised premiums by 400%.

To find out just how unaffordable the

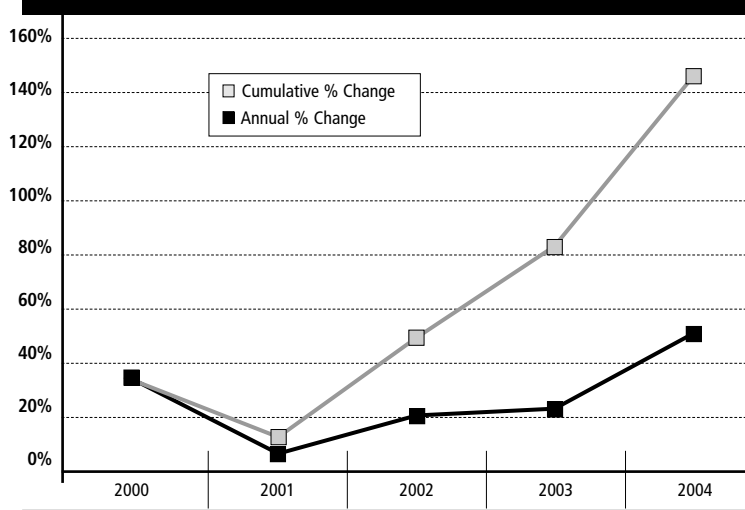
provision of maternity services had become for hospitals in New York City, GNYHA conducted an in-depth analysis of hospital cost reports to determine whether hospitals were losing money providing maternity services. Strikingly, GNYHA learned from this analysis that virtually all—86%—of hospitals in New York City that provide maternity services lost money on those services in 2003. The aggregate losses amounted to \$195 million annually. If it were not for the ability to cross-subsidize from other, better reimbursed services, hospitals would not be able to provide maternity services at all, leaving

their communities without vital services. The skyrocketing cost of medical malpractice insurance, therefore, is creating a potential access crisis, particularly in the case of obstetrics.

Other organizations have reported similar, alarming trends. For instance, the American College of Obstetricians and Gynecologists (ACOG) has reported that 7 upstate New York counties have no OB/GYNs whatsoever, 6 have only one, and 12 have two to four OB/GYNs. According to ACOG, 212 New York OB/GYNs stopped delivering babies altogether from the

continued on reverse

FIGURE 1.
ANNUAL AND CUMULATIVE PERCENT CHANGE
IN MEDICAL MALPRACTICE PREMIUMS FOR HOSPITALS IN
DOWNSTATE NEW YORK REGION



The Medical Malpractice Crisis: Continuing Effects *continued from front*

beginning of 2002 through the middle of 2003, and of those remaining in the market, 36% are over 60 years of age and are likely to retire during the next decade. A GNYHA analysis of data from the National Resident Match Program shows that fewer graduates of U.S. medical schools are choosing OB/GYN residencies. U.S. medical graduates comprised 81% of all OB/GYN residents filled through the match in 2000, but only 71% in 2005.

Physician Medical Malpractice Rates Experience Further Increase

Effective July 1, 2005, the New York State Insurance Department (SID) established a 7% across-the-board rate increase for all insurers providing physician and surgeon medical malpractice coverage in the voluntary (commercial) market. SID was granted the authority in 1986 legislation to promulgate the medical malpractice rates because of concerns that the rates charged by the insurance carriers needed to be “stabilized” and “restrained.” After performing actuarial studies and rate studies, one large commercial carrier had requested that SID allow an increase of 30%.

This is the third year in a row that SID authorized an increase of 7% or higher. This latest increase brings the cumulative rate increase over the last three years to more than 24%. As noted in Table 1, in the prior four years, the rate had not increased more than 1.8% in any one year. These increases come at a time when physician reimbursement rates are declining. Under current law, and unless

TABLE 1.
AVERAGE PHYSICIAN MEDICAL MALPRACTICE COMMERCIAL RATE INCREASES IN NEW YORK

| YEAR | INCREASE |
|-----------|----------|
| 1999–2000 | 0.0% |
| 2000–01 | 1.8% |
| 2001–02 | 0.8% |
| 2002–03 | 1.0% |
| 2003–04 | 8.5% |
| 2004–05 | 7.0% |
| 2005–06 | 7.0% |

Congress acts, average physician rates for providing care for Medicare beneficiaries will decrease 26% over the next six years, beginning in 2006.

More Providers Reliant on MMIP for Excess Coverage

The Medical Malpractice Insurance Pool (MMIP) was established to provide malpractice insurance to providers otherwise unable to obtain coverage in the commercial market. The pool is administered by the Medical Liability Mutual Insurance Company (MLMIC) but is funded by all malpractice insurers on a pro-rata basis based on their share of the medical malpractice market. The most recent figures available from MMIP, based on unaudited financial statements for the period end-

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TABLE 2.
NUMBER OF PROVIDERS INSURED THROUGH THE MMIP

| LAYER | NUMBER OF POLICIES | | | |
|---------------------|--------------------|----------|----------|----------|
| | 12/31/01 | 12/31/02 | 12/31/03 | 12/31/04 |
| Primary Layer | 87 | 819 | 845 | 880 |
| First-Layer Excess | 151 | 292 | 1,701 | 13,743 |
| Second-Layer Excess | 165 | 1,295 | 1,569 | 1,523 |

Note: Providers includes physicians, dentists, podiatrists, nurse anesthetists, nurse midwives, and professional corporations.

In 2004, there was a huge increase in the number of providers needing to avail themselves of MMIP for first-layer excess insurance, as noted in Table 2 above. According to the *Annual Report of the Superintendent of Insurance to the New York State Legislature* (2004), most of the increase in the number of insured in the pool is attributable to one commercial insurer no longer being able to provide first-layer excess coverage.

researchers examined the incidence of physicians performing a craniotomy because it is the most high-risk procedure of all neurological procedures as it involves surgery on the skull. The researchers compared these results with changes in practice between 1997 and 2000, and found that over that earlier three-year period, only 10% of the neurosurgeons who had performed a very high number of craniotomies had cut back their activity by at least 50%.

Health Affairs Study Documents Physician Practice Changes

As the medical malpractice crisis continues, researchers have begun to examine the effects on the practices of experienced physicians. A

According to the study, 21% of the neurosurgeons in Florida who had performed a very high number of craniotomies in 2000 had cut back the number of procedures they had performed in 2003 by at least 50%. The

In addition, the researchers studied travel times for patients who were in need of craniotomies. The researchers reported that travel times for the 2000–2003 period were considerably longer than the travel times in 1997–2000, and the differences were considerably larger than for other neurosurgeries, because fewer neurosurgeons were offering craniotomies in the later period. The researchers stated that this finding was “consistent with a malpractice crisis effect.” ■