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MEDICAL MALPRACTICE

Case Study on Florida



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Preface

December 31, 1986

Representative John Edward Porter and Senator John Heinz, Chairman, Senate Special Committee on Aging, asked GAO to identify the actions taken by the states to address medical malpractice insurance problems and to determine changes in insurance costs, the number of claims filed, and the average amount paid per claim. These case studies discuss the situation in each state.

This study on Florida focuses on the views of various interest groups on perceived problems, actions taken by the state to deal with the problems, the results of these actions, and the need for federal involvement. A summary of the findings for all six case studies can be found in our overall report, Medical Malpractice: Six State Case Studies Show Claims and Insurance Costs Still Rise Despite Reforms (GAO/HRD-87-21, December 31, 1986).



Richard L. Fogel
Assistant Comptroller General
for Human Resources Programs

Overview

Florida's medical malpractice insurance crisis in the mid-1970's was one of availability, largely due to the withdrawal or threatened withdrawal of several of the larger medical malpractice insurers in the state. By the mid-1980's, the problem had shifted to one of affordability.

The Florida legislature responded with legislation in 1974, 1975, 1976, 1985, and 1986. None of the interest groups we surveyed believed that the tort reforms enacted in the mid-1970's have had a major effect on the cost of insurance, the frequency of claims, and size of awards/settlements. Our data show that the cost of insurance increased greatly between 1980 and 1986 and the frequency and size of claims also increased between 1980 and 1984 but somewhat less significantly.

Regarding the 1985 legislation, representatives of several interest groups believe certain aspects of the act, such as increased emphasis on risk management and disciplinary measures against physicians with malpractice histories, will have some benefit. Risk management programs are generally intended to reduce the incidence of malpractice claims by eliminating problems that result in those claims. A majority of the groups we surveyed expressed support for several provisions of the 1986 act, such as a cap on awards for pain and suffering and the elimination of joint and several liability for the noneconomic portion of damages.

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Florida: Premiums Continue to Rise Sharply but Recent State Reforms May Help

Background

Population, Physician, and Hospital Characteristics

Over 84 percent of Florida's 11 million people live in urban areas. Florida is the sixth most populous state.¹ Florida had 26,566 physicians as of December 31, 1985,² and 219 nonfederal community hospitals with 50,105 available beds in 1984.³ A total of 20,002 physicians were providing patient care—16,857 were office-based and 3,145 were hospital-based. Table 1 shows the distribution of patient care physicians among 13 selected specialties.

Table 1: Number of Nonfederal Patient Care Physicians in Florida in Selected Specialties as of December 31, 1985

	Office-based practice	Hospital-based practice		Total
		Residents	Full-time Physician Staff	
General practice	2,630	215	164	3,009
Internal medicine	2,425	369	127	2,921
Pediatrics	965	204	77	1,246
Psychiatry	687	79	158	924
Pathology	374	70	83	527
Radiology	356	1	40	397
Ophthalmology	715	48	11	774
General surgery	1,220	219	77	1,516
Anesthesiology	837	125	43	1,005
Plastic surgery	240	16	7	263
Orthopedic surgery	728	70	23	821
Obstetrics/gynecology	1,172	136	46	1,354
Neurosurgery	143	29	7	179

Of Florida's community hospitals, 88 were nongovernment not-for-profit hospitals; 50 were state and local government hospitals; and 81 were investor-owned (for-profit) hospitals. Forty-seven percent of the state's hospital beds were located in nongovernment, not-for-profit hospitals; 21 percent in state and local government hospitals; and 31 percent in investor-owned hospitals. The most prevalent hospital size was 100 to 199 beds. However, the 62 hospitals of this size accounted for only 18

¹Population and ranking are as of July 1, 1984 (preliminary), and the urban/rural mix is as of April 1980 from the *Statistical Abstract of the United States 1986*, 106th Edition, pp. 10 and 12.

²Physician Characteristics and Distribution in the U.S., 1986 Edition, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association (forthcoming).

³Hospital Statistics, 1985 Edition, American Hospital Association, p. 60.

percent of the hospital beds. Florida has 19 hospitals with 500 beds or more each, which accounted for 26 percent of the hospital beds in the state. The occupancy rate of the state's community hospitals averaged 67 percent in 1984.

Regulation of Insurance Rates and Description of Medical Malpractice Insurers

According to the 1986 act, insurers must file a rate change either 60 days before or no later than 30 days after, the effective date. Filings made at least 60 days before the effective date are considered "file and use" filings, and the rate is deemed approved if no notice is issued by the Department of Insurance within 60 days of the filing. Filings made within 30 days after the effective date are considered "use and file" filings, and the insurer making such a filing may be subject to returning a portion of the rates to policyholders if the Department of Insurance finds the rate to be excessive. That department reviews rate filings to determine if the rate is excessive, inadequate, or unfairly discriminatory.

All companies providing professional liability insurance in Florida are required to report all medical malpractice claims closed in the state to the Insurance Department. These reports are required to include such information as the date the incident occurred, the date the claim was reported to the insurer or self-insurer, the date and amount of judgment or settlement, and the loss adjustment expense paid to defense counsel and all other allocated loss adjustment expense paid.

In 1984, the St. Paul Fire & Marine Insurance Company (St. Paul Company) was the leading insurer of physicians in Florida's medical malpractice insurance market, followed by the CIGNA Group, Physicians Protective Trust Fund, and the Florida Physicians Insurance Company. These companies, excluding CIGNA which did not participate in our study, insured at least two-thirds of the physicians.

The Florida Hospital Trust Fund was the leading hospital insurer in 1984, followed by the CIGNA Group, the Parthenon Insurance Company, and the St. Paul Company. All of these companies, with the exception of CIGNA, provided data on hospital malpractice insurance for our study.

Florida's leading physician insurer divides the state's insurance market into two rating territories—Dade and Broward Counties (Miami and vicinity) and the remainder of the state. The leading hospital insurer in the state divides the market into three territories—Miami and vicinity (Dade and Broward counties); the Palm Beach, Tampa-St. Petersburg,

Jacksonville, and Orlando metropolitan areas; and the remainder of the state. Rates were higher in the Miami area for both physicians and hospitals than in the rest of the state for the companies providing data to us.

Medical Malpractice Situation in the Mid- 1970's

In the mid-1970's the major malpractice insurance problem was one of availability. Between 1970 and 1975 more than 20 medical malpractice insurers had canceled coverage of Florida physicians and withdrawn from the market. The primary reason cited for this action was the rising size of medical malpractice awards and settlements. According to a Florida Medical Association study, the average paid claim increased from \$8,000 to \$19,500 between 1973 and 1974. These rising costs were attributed to the courts' expansion of pro-plaintiff doctrines (such as informed consent, collateral source rule, and locality rule).

Companies remaining in the market responded to the situation by instituting dramatic rate increases. For example, the Argonaut Insurance Company, which at that time insured nearly half of Florida's physicians under a contract with the Florida Medical Association, attempted to cut losses by raising rates 96 percent in January 1975. In April of the same year, Argonaut requested another 95-percent rate increase and threatened to withdraw from the market if this increase was not granted. Despite a court order requiring Argonaut to honor its 1975 contract with the Medical Association, Argonaut later stopped writing new policies and withdrew from the Florida market. Argonaut's withdrawal further added to the professional liability problems in the state.

Response to Problems

Medical Malpractice Legislation of 1974/1975/ 1976⁴

In 1974, the Florida legislature enacted a requirement that insurers providing liability insurance to physicians, surgeons, and osteopaths report medical malpractice claims to the Department of Insurance. Further, according to the Florida Medical Association, the withdrawal of Argonaut from the market, the rate increases, and the willingness of physicians to leave their Florida practices or go uninsured prompted the state legislature to pass the 1975 Medical Malpractice Reform Act and,

⁴Much of the information in this section was derived from the Florida Medical Association Medical Malpractice Policy Guidebook, 1985, pp. 100-124, which provides a comprehensive collection of knowledge on the medical malpractice insurance crisis.

shortly afterwards, an omnibus malpractice bill (1976 act). Key points of the 1975 act include

- provisions to encourage the establishment of self-insurance pools;
- establishment of the Patient's Compensation Fund, intended to limit the liability of participants to \$100,000 by paying the full excess over \$100,000 of any judgment or settlement against a member;
- requirements for risk management programs at all health care facilities;
- provisions for increased disciplinary measures against physicians with medical malpractice histories by increasing the powers of the Board of Medical Examiners;
- establishment of medical malpractice mediation panels in order to expedite prescreening of malpractice claims (declared unconstitutional in 1980);
- provisions regarding attorney's fees intended to reduce the number of frivolous claims by awarding attorney's fees to the prevailing party;
- provisions setting the statute of limitations at 2 years from the date of discovery; and
- requirement for informed consent.

Some of the above provisions are discussed in more detail below.

Self-Insurance Pools

In an attempt to ease the insurance availability problems, the 1975 act sought to encourage greater use of self-insurance pools through several major reforms. The most important was to ease or eliminate the restrictions previously placed on the formation of such pools. This quickly led to the Florida Medical Association's organization of the Professional Liability Insurance Trust in 1975. The Trust was later dissolved and reformed as the Florida Physicians Insurance Reciprocal. The reciprocal has recently become a stock company, now known as the Florida Physicians Insurance Company.

The second major reform aimed at resolving availability problems was the creation of the Joint Underwriters Association, to create an assigned risk pool which would guarantee liability insurance for all health care providers. All firms and self-insurers licensed to write medical malpractice insurance in Florida were required to join the Association. The Association, in turn, was required to provide malpractice insurance to all health care providers regardless of assigned risk or whether the provider had previously been denied coverage. The Association was a non-profit organization that was to set its rates just high enough to cover expenses, losses for the year, and a margin for contingencies. Although

intended to be a temporary solution to a temporary problem, it was granted an extension in 1978 and in 1981 was given permanent status.

Patient's Compensation Fund

A third attempt by the legislature to deal with the availability problem was the establishment of the Florida Patient's Compensation Fund. The Fund was to provide a means of limiting the liability of participating health care providers by paying amounts over \$100,000 for any award or settlement against a member. Participants were required to show financial responsibility for the first \$100,000 (through an insurer or self-insurance plan) and to deposit an annual fee into the Fund. Initially, the participants' fees were low—\$1,000 for the first year and \$500 per year thereafter for physicians and \$300 per bed annually for hospitals. The Fund was considered an attractive option because it provided liability coverage at minimal cost.

According to officials of Florida's Hospital Association and Defense Lawyers Association, the Fund ran smoothly for the first few years of operation—as fees were collected and claims against members were few. However, the fee system was not actuarially sound, and within a few years of the Fund's establishment, substantial losses began to accumulate. To cover such losses, physician members could only be assessed up to 100 percent of their initial premium, but hospitals and other members faced unlimited assessments.

In 1982, the Fund assessed its members for deficits relating to the 1978 and 1979 fiscal years totaling \$17,046,190. Of this amount, \$12,855,500 was assessed against Florida hospitals, even though the Fund's records showed that almost \$10 million of the nearly \$13 million assessed against hospitals was attributable to claims against physician members.

According to a report from the Florida Insurance Commissioner, hospitals dropped out of the Fund due to the potential for large assessments. Their departure left the Fund with no means of paying large claims. By 1983 the Fund was effectively bankrupt.

Other factors played a major role in the Fund's failure. In order to protect it from financial problems, a limit of \$100,000 was placed on the amount the Fund could pay in any one year to any one claimant. However, this limit proved to be unenforceable in the face of very large jury awards, according to the insurance commissioner report, and the limit was eventually deleted due to constitutional constraints, according to a report by the Medical Malpractice Advisory Council.

Another factor contributing to the Fund's downfall was the statutory cap placed on the amount of premiums it could collect per year. This cap was initially set at \$15 million, which hindered the Fund's ability to collect premiums sufficient to cover claims. According to Florida Insurance Department officials, the cap was later increased to \$25 million and subsequently deleted shortly before the Fund became bankrupt.

Reporting of Claims

A 1974 act, as amended in 1985, requires that all Florida professional liability insurers report to the State Insurance Department any claim or action for damages for personal injuries claimed to have been caused by error, omission, negligence, or lack of consent if the claim resulted in: (1) a final judgment (in any amount), (2) a settlement (in any amount), or (3) a final disposition not resulting in payment. Major components of the reports include the claim report date; date of occurrence; date and amount of judgment or settlement; in case of settlement, the amount of injured's medical expenses, wage losses, and other expenses; expenses paid to defense counsel and other expenses; and a description of the procedure causing the injury.

Mediation Panels

The purpose of mediation panels was to expedite the prescreening of malpractice claims in hopes of discouraging nonmeritorious claims and encouraging equitable settlements of meritorious claims. Panels were formed for each suit filed and were composed of a licensed physician, an attorney, and a circuit judge, who serves as the judicial referee. The panels were required to submit a written finding as to whether the defendant had been "actionably negligent." Plaintiffs were required to submit their claim to mediation before they could file suit in circuit court.

Five years after its enactment, following numerous challenges, the mediation panel provision was declared unconstitutional by the Florida Supreme Court. The president of the Florida Defense Lawyers Association did not believe the panels had any substantial impact because plaintiffs' lawyers tended to pursue the case to court despite an unfavorable panel decision. The executive director of the Academy of Florida Trial Lawyers concurred, stating:

"... most lawyers on the plaintiff's side felt the panel was greatly weighed in favor of the health care provider by the existence of a health care provider on the panel. Therefore, very few claims simply were dismissed after an adverse finding by the

panel. The existence of these panels simply constituted the requirement of two trials.”

Attorney's Fees

In response to the court decision ending the period of mandatory mediation, the Florida legislature passed the “spurious claims statute,” intended to reduce the incidence of frivolous malpractice claims by awarding attorney’s fees to the prevailing party.

Statute of Limitations

In 1971 the Florida legislature passed a law setting the statute of limitations for malpractice tort actions at 2 years from discovery. In 1974 the 2-year limit was expanded to include those malpractice actions founded in contract as well as in tort. The 1975 act further expanded on the statute, stating:

“An action for medical malpractice shall be commenced within two years from the time the incident occurred giving rise to the action, or within two years from the time the incident is discovered, or should have been discovered with the exercise of due diligence, provided, however, that in no event shall the action be commenced later than four years from the date of the incident or occurrence out of which the cause of action accrued. . . . In those actions covered by this paragraph where it can be shown that fraud, concealment, or intentional mis-representation of fact prevented the discovery of the injury within the four-year period, the period of limitations is extended forward two years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed seven years from the date the incident giving rise to the injury occurred.”

Requirement for Informed Consent

According to common law no doctor may treat a patient (other than in an emergency) without the patient’s informed consent. The 1975 act codified and specified the requirements for informed consent in Florida. According to the statute, no action can be taken in court against a health care provider on the basis of lack of informed consent when (1) the health care provider’s action met the accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and (2) under the circumstances and based on the information provided by the health care provider, a reasonable individual would understand the procedure and its alternatives recognized by other health care providers in the same or similar community who perform the same or similar treatment or procedures; or (3) under all surrounding circumstances, the patient would reasonably have undergone the treatment had he been advised by the health care provider in accordance with (1) and (2) above.

The 1976 act instituted additional reforms, including:

- Standards of recovery, whereby the plaintiff has the burden of proving that the defendant violated the accepted standard of care practiced by similar health care providers in the same or similar community.
- Limits to the doctrine of res ipsa loquitur to "instrument-in-the-body" cases (the courts, however, have not been so restrictive). This doctrine means there is a presumption of negligence unless proven otherwise.
- Remittur and additur, allowing the courts to modify a jury award if it appears to be excessive or inadequate in light of the evidence.
- Deletion of the collateral source rule, requiring that awards be reduced by the amount of compensation given to the plaintiff from collateral sources.
- Provision allowing periodic payment of any award over \$200,000 (increased to \$250,000 by the 1986 act).
- Deletion of the ad damnum clause, which permits plaintiffs to specify the amount of damages claimed.
- Requirement that the award be itemized according to medical expenses, lost earnings, and noneconomic damages.

The 1985 Medical Malpractice Act

In 1985, the severity of the problems in Florida prompted the state legislature to enact the Comprehensive Medical Malpractice Reform Act. The legislature's primary concerns in enacting this legislation were the rising insurance premiums for physicians (which they believed were leading to higher health care costs), the costly burden of defensive medicine, the decreasing quality of health care, and the threat to the continuing availability of health care in Florida as physicians were choosing to retire early or practice elsewhere due to the rising cost of malpractice insurance. The 1985 act modified some of the reforms established in the 1975 act and set forth some new reforms. Its major provisions include:

- Attorney's contingency fee limitations based on the amount of time the attorney spends on a case—15 percent of recovery if the case is settled before arbitration is initiated or a suit is filed; 20 percent if the claim is resolved after initiating arbitration but prior to suit; 25 percent if claim is settled within 90 days of suit being filed; 30 percent if settled more than 90 days after suit is filed and prior to or during the mandatory settlement conference or where all defendants admit liability and request trial on issue of damages; 35 percent if settled prior to completion of swearing of the jury; 40 percent if claim is settled or judgment satisfied prior to filing of notice of appeal; 45 percent if recovery after notice of appeal or postjudgment relief or action on judgment. For

amounts of recovery over \$2 million, a contingency fee of 15 percent is considered reasonable.

- Provision for arbitration requiring the defendant's insurer to investigate the claim during a 90-day "cooling-off" period. At the end of the 90-day period, the insurer must (1) reject the claim, (2) make a settlement offer, or (3) offer an admission of liability and agree to arbitration on issue of damages. If the plaintiff accepts the offer to admit liability, the parties have 30 days to settle the amount of damages. If no agreement is reached after 30 days, the amount of damages is determined by binding arbitration.
- The court, at the request of either party, may require the submission of a claim to nonbinding arbitration. Arbitration panels consist of a plaintiff attorney, a defense attorney, and a third attorney, who does not work extensively with medical malpractice. The decision of the panel is nonbinding and if rejected cannot be disclosed during the trial.
- Requirement that the plaintiff attorney submit a certificate of counsel that a good-faith investigation has been made and a written opinion of an expert has been received that there appears to be evidence of medical negligence. If the certificate is not made in good faith and there is no justifiable issue against the health care provider, the court shall award attorney's fees and costs against the claimant's counsel and submit the matter to the Florida bar for disciplinary review. The plaintiff must pay the defendant attorney's fees and costs when the award is 25 percent less than the defendant's settlement offer, which was rejected, and the defendant must pay such costs for the plaintiff when the award is 25 percent greater than the plaintiff's settlement offer, which was rejected.
- Requirement that physicians show financial responsibility up to specified amounts as a condition of licensure and hospital staff privileges. Physicians must have coverage of \$250,000/\$750,000 as a condition of hospital staff privileges and \$100,000/\$300,000 as a condition of licensure without hospital staff privileges.
- Expansion of the claim-reporting requirement to include all professional liability insurers, including self-insurers and Joint Underwriting Associations.
- Expert witnesses must have been practicing or teaching in the specialty or related field of medicine within the 5-year period before the incident giving rise to the claim.
- Changes were also made to the existing provisions for the standard of care, structured settlements, joint and several liability, and the doctrine of informed consent.

One aspect of the 1985 act is its focus on increased disciplinary measures against physicians with malpractice histories. Provisions dealing with this issue include:

- Increased immunity for medical staff and members of peer review boards who participate in disciplinary actions against physicians with malpractice histories.
- Strengthened hospital board disciplinary powers.
- Increased requirements for hospital risk management, including the establishment of a certification program for risk managers.
- Required governing boards of licensed facilities to investigate a staff member involved in one or more settlements exceeding \$10,000.
- Defined "repeated malpractice" as three or more claims within the previous 5 years resulting in total payments over \$10,000. Also required the Department of Insurance to report such incidents to the Department of Professional Review's Board of Medical Examiners, who must investigate the occurrences and determine whether further action is warranted.

The Insurance Department is also mandated by the act to conduct a risk management study and report to the state legislature on risk management as well as itemized verdicts, structured judgments, mandatory insurance, and appropriate levels of insurance coverage.

The Tort Reform and Insurance Act of 1986

The Florida legislature passed the Tort Reform and Insurance Act of 1986 in an attempt to ensure a wide availability of liability insurance at reasonable rates, a stabilized market for liability insurers, and reasonable awards or settlements for injured persons, and to encourage the early settlement of claims before trial. The act's two major elements were tort reforms and insurance reforms. The major tort reforms include:

- A \$450,000 cap on noneconomic damages.
- Elimination of joint and several liability for noneconomic portion of damages. Regarding economic damages, joint and several liability is eliminated for defendants who are less at fault than the claimant.
- Provision for periodic payments of future economic losses that exceed \$250,000.
- Provision for a reduction of the judgment according to amounts received from collateral sources.
- Provisions regarding the pleading and awarding of punitive damages that require the plaintiff to show evidence in court that the defendant's

conduct may warrant punitive damages, and limiting the amount of punitive damages to three times the amount of compensatory damages unless greater amounts are approved by the presiding judge.

The insurance reform established by the bill involves freezing insurance rates until October 1, 1986, after which rates will be rolled back 40 percent through the end of the year. However, the goal of the reform is to further roll back rates to the level that existed January 1, 1984, unless the insurance companies can provide proof to the Florida insurance commissioner that their rates should be otherwise. The commissioner will have the authority to limit premiums to levels that will allow companies a 3-percent underwriting loss.

The 1986 act also alters the mandatory insurance requirement set forth in the 1985 act. The 1986 act allows physicians to remain uninsured but subjects them to disciplinary action by the Board of Medical Examiners if they are found unable to pay the lesser of a judgment against a claim or the minimum amount of insurance required by law. In October 1986, a Florida circuit court upheld all provisions of the act except the premium rollback applicable to policies written before July 1, 1986, the law's effective date. This decision has been appealed to the Florida Court of Appeals.

Effect of Florida Tort Reforms

None of the interest groups we surveyed (physicians, hospital association, trial lawyers, defense lawyers, malpractice insurers, and state insurance department) believed the tort reforms or actions taken by the state have had any major effect.⁵ Several officials did not expect the 1985 act to have any major impact. However, officials of Florida's Medical Association, Hospital Association, and Hospital Trust Fund, as well as the State's Academy of Trial Lawyers and Defense Lawyers Association, believed certain aspects of the act, particularly the increased risk management and disciplinary actions, would provide some limited benefit. A cap on awards for pain and suffering and the elimination of joint and several liability, which were included in the 1986 act, were supported by a majority of the groups visited.

⁵Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for Florida are shown on appendix II of this report.

Key Indicators of the Situation Since 1980

During the 1980's, Florida's medical malpractice insurance costs have increased greatly. The physicians insured in the primary rating territory by the St. Paul Company experienced increases in malpractice insurance premiums ranging from 129 percent for ophthalmology surgery to 395 percent for obstetrics/gynecology during the period 1980 to 1986. Similarly, the cost of insurance with Florida's leading hospital insurer increased 146 percent during the same period.

Further, the frequency and severity of claims have also increased during the 1980's. For example, the frequency of claims against hospitals and physicians increased moderately at about 14 and 25 percent, respectively, from 1980 to 1984. The average paid claim paid against physicians increased nearly 75 percent between 1980 and 1984, according to the Insurance Department's closed claim system. In addition, the cost to investigate and defend claims against physicians increased 57 percent during that period.

Physicians

Cost of Malpractice Insurance

As of January 1, 1986, there was a wide variation in malpractice insurance rates among different physician specialties in Florida. For example, as shown in table 2, the St. Paul Company's annual premiums for \$1 million/\$1 million claims-made coverage for a general practitioner (no surgery) in Dade and Broward Counties was \$10,521, versus \$113,010 for a neurosurgeon. Rates for the remainder of the state were 33 percent lower than those in Dade and Broward Counties.

All of the selected specialties in Florida experienced significant increases in malpractice rates since 1980. The greatest rate increases were experienced by the higher risk specialties, such as obstetrics/gynecology and neurosurgery. For example, obstetricians/gynecologists in Dade and Broward Counties experienced a 456-percent increase between 1980 and 1986. The lowest increase, 129 percent, was experienced by ophthalmologists in the remainder of the state. Table 2 also shows the rate increases from 1980 to 1986.

**Florida: Premiums Continue to Rise Sharply
but Recent State Reforms May Help**

**Table 2: Cost of Insurance^a for Selected
Specialties, 1980 and 1986**

Specialty	Territory	1980	1986	Percent Increase
General practice (no surgery)	1	\$2,633	\$10,521	300
	2	1,975	7,017	255
Internal medicine (no surgery)	1	2,633	10,521	300
	2	1,975	7,017	255
Pediatrics (no surgery)	1	2,633	10,521	300
	2	1,975	7,017	255
Psychiatry	1	2,633	10,521	300
	2	1,975	7,017	255
Pathology	1	2,633	10,521	300
	2	1,975	7,017	255
General practice (minor surgery)	1	4,655	15,665	237
	2	3,491	10,448	199
Internal medicine (minor surgery)	1	4,655	15,665	237
	2	3,491	10,448	199
Pediatrics (minor surgery)	1	4,655	15,665	237
	2	3,491	10,448	199
Radiology	1	4,655	15,665	237
	2	3,491	10,448	199
Ophthalmology/surgery	1	8,076	20,809	158
	2	6,059	13,879	129
Anesthesiology	1	13,389	47,739	257
	2	10,043	31,837	217
Plastic surgery	1	13,389	53,672	301
	2	10,043	35,794	256
General surgery	1	13,389	53,672	301
	2	10,043	35,794	256
Orthopedic surgery	1	21,355	71,474	235
	2	16,021	47,667	198
Obstetrics/gynecology	1	16,045	89,274	456
	2	12,036	59,537	395
Neurosurgery	1	21,355	113,010	429
	2	16,021	75,367	370

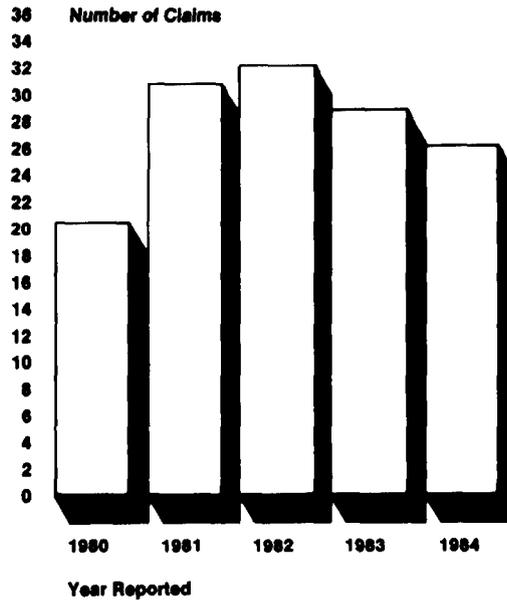
Legend: Territory 1 - Dade and Broward Counties
Territory 2 - Remainder of state (primary rating territory)

^aRates shown are those of the St. Paul Company for a \$1 million/\$1 million claims-made policy as of March 1, 1980, and January 1, 1986. A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

Frequency of Claims

The combined claims experience from the St. Paul Company, the Physicians Protective Trust Fund and the Florida Physicians Insurance Reciprocal, indicated that the frequency of claims reported increased 25 percent from 1980 to 1984. As shown in figure 1, the frequency of claims reported per 100 physicians increased from 20.8 claims in 1980 to 26.1 in 1984.

Figure 1: Frequency of Claims per 100
Physicians, 1980-84



There were wide variations in the frequency of claims reported (per 100 physicians) among the selected specialties. From 1980 to 1984 the frequency of claims for radiology increased nearly 137 percent, while neurosurgery experienced an 84-percent increase, as shown in table 3. Four of the specialties surveyed—plastic surgery, obstetrics/gynecology, psychiatry, and anesthesiology—experienced a decrease in the frequency of claims from 1980 to 1984. It should be noted that several of the specialties surveyed increased during the 1981-83 time frame, then decreased in 1984.

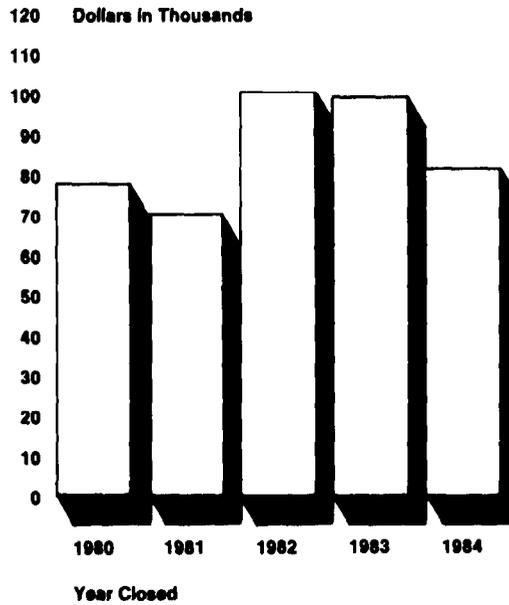
**Table 3: Frequency of Claims per 100
Physicians for Selected Specialties,
1980-84**

Specialty	1980	1981	1982	1983	1984	Percent Increase (1980-84)
General practice	10.4	13.3	14.0	14.4	12.2	17
Internal medicine	12.9	18.2	21.6	23.1	23.7	84
Pediatrics	15.2	20.3	25.1	21.5	19.3	27
General surgery	27.6	32.2	35.6	29.4	34.1	24
Neurosurgery	48.2	56.3	61.8	87.6	88.6	84
Ophthalmology/surgery	19.3	19.5	25.1	27.8	31.4	63
Orthopedic surgery	36.8	50.4	56.1	46.5	39.1	6
Plastic surgery	48.6	51.6	60.4	42.1	47.2	(3)
Obstetrics/gynecology	51.6	53.5	52.9	51.3	44.0	(15)
Radiology	12.5	13.6	22.6	23.2	29.6	137
Psychiatry	10.5	13.2	17.7	9.8	10.0	(5)
Anesthesiology	24.4	28.0	30.4	28.4	23.3	(5)
Pathology	7.2	10.4	10.8	13.8	11.0	53

Size of Awards/Settlements

The average paid claim for physicians increased only slightly from 1980 to 1984. However, as shown in figure 2, for the combined data from the three major physician insurers in the state, there were fluctuations in the average paid claim during this time period. The average paid claim was highest in 1982, but decreased slightly in 1983 and more significantly in 1984.

Figure 2: Average Paid Claim for
Physicians, 1980-84



As shown in table 4, no clear trend is evident in the average paid claims for the selected specialties. Because the number of physicians in any one specialty is relatively small, the base for spreading total claims paid is small. As a result, a few large claims paid in a given year for a given specialty could have a significant effect on the average paid claim for that specialty that year.

**Table 4: Average Paid Claim for
Selected Specialties, 1980 and 1984**

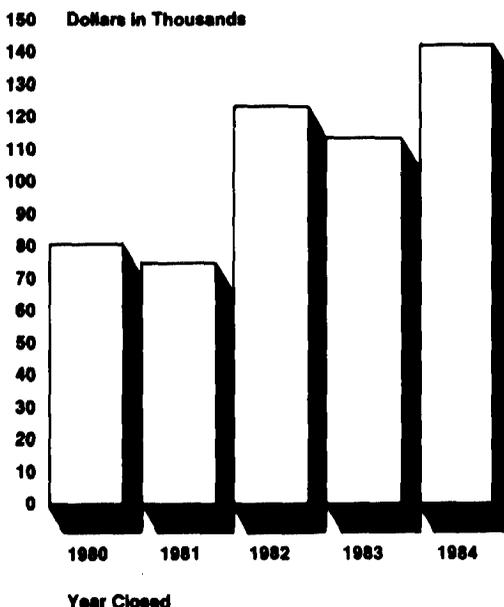
	1980	1984
All physicians	\$79,982	\$81,546
Specialty		
General practice	172,426	101,576
Internal medicine	31,806	149,797
Pediatrics	22,500	223,897
General surgery	57,525	63,309
Neurosurgery	3,000	98,250
Ophthalmology/surgery	10,000	66,627
Orthopedic surgery	77,945	80,403
Plastic surgery	36,667	36,417
Obstetrics/gynecology	65,081	86,465
Radiology	10,500	42,600
Psychiatry	0	25,000
Anesthesiology	91,520	74,924
Pathology	1,000	88,126

**State Insurance Department
Data on Florida Claim
Trends**

We obtained data from the Insurance Department on claims against physicians in Florida. The computerized system reports all claims closed against physicians insured in the state, including those paid by the Patient's Compensation Fund. Data are collected on the amount of indemnity paid in a given year and the number of claims closed with indemnity, with no expense, and with costs only to investigate and defend the claim.

As shown in figure 3, the average paid claim for physicians in Florida increased from \$80,556 in 1980 to \$140,594 in 1984—an increase of 75 percent.

Figure 3: Average Paid Claim for All
Florida Physicians, 1980-84



Cost to Investigate and Defend
Claims

According to claims data from Florida's three leading physician insurers, the average cost to investigate and defend against claims closed against physicians increased from \$5,047 in 1980 to \$7,918 in 1984—a 57-percent increase.

In 1980, 54 percent of the physician malpractice claims closed by Florida's three leading insurers were closed with no expense to the companies. By 1984 it had decreased to 46 percent, while the percentage of claims closed with indemnity increased from 10 percent to 17 percent. The percentage of claims closed with costs only to investigate and defend the claim remained constant at 37 percent in both 1980 and 1984.

Hospitals

Cost of Malpractice Insurance

As shown in table 5, the total estimated malpractice insurance costs for hospitals in Florida⁶ increased from \$39.5 million in 1983 to \$64.5 million in 1985, an increase of 63 percent.

Table 5: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85

Dollars in millions					
Expenditure	1983	1984	1985	1983-85 increase ^a	
				Amount	Percent
Total	\$39.5	\$48.1	\$64.5	\$25.0	63
Contributions to self-insurance trust funds	17.7	19.9	30.7	\$13.0	73
Premiums for purchased insurance	21.0	24.4	30.0	\$9.0	43
Uninsured losses	0.9	3.8 ^b	3.8	\$2.9	322

^aSampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

^bEstimate subject to a large sampling error and should be used with caution.

Note: Detail may not add to total due to independent estimation.

As shown in table 6, in 1985, 58 percent of the hospitals had insurance costs between \$100,000 and \$500,000, but 12 percent had annual insurance costs of \$1 million or more. No Florida hospitals had insurance costs of less than \$10,000 in 1983 or 1985.

⁶See GAO/HRD-87-21, p. 11, for methodology for obtaining and analyzing hospital cost data. See appendix III of this report for information on the number of Florida hospitals in the universe, our sample, and the survey response. Unless otherwise indicated, the estimates presented in this study are also included with sampling errors in tables IV.1 through IV.5.

**Florida: Premiums Continue to Rise Sharply
but Recent State Reforms May Help**

Table 6: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985

Annual costs	1983			1985		
	Number	Percent	Cum. percent	Number	Percent	Cum. percent
Less than \$10,000	0	0.0	0.0	0	0.0	0.0
\$10,000 to \$24,999	8	5.7	5.7	2 ^b	1.5 ^b	1.5 ^b
\$25,000 to \$49,999	8	5.7	11.4	9	6.8	8.3
\$50,000 to \$99,999	18	13.5	24.9	5	4.0	12.3
\$100,000 to \$249,999	51	38.4	63.3	40	29.7	42.0
\$250,000 to \$499,999	33	25.0	88.3	39	28.6	70.6
\$500,000 to \$999,999	8	6.2	94.5	24	17.3	87.9
\$1 million or more	7	5.6	100.1 ^a	16	12.1	100.0
Total	133^a	100.1^a		135^a	100.0	

^aDetail does not add to adjusted universe or 100 percent due to independent rounding.

^bEstimates subject to a relatively large sampling error and should be used with caution.

Note: The total number of hospitals each year is based on the number of responding hospitals that provided the relevant data for that year.

As shown in table 7, the estimated average malpractice insurance cost per inpatient day increased by 99 percent from 1983 to 1985, while the annual per-bed cost increased by 93 percent.

Table 7: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed,^a 1983-85

	1983	1984	1985	1983-85 increase ^b	
				Amount	Percent
Average malpractice cost per inpatient day	\$4.72	\$6.88	\$9.39	\$4.67	99
Average annual malpractice cost per bed	\$1,523	\$2,276	\$2,939	\$1,416	93

^aTo determine the average annual malpractice cost per bed, we computed the daily occupied bed rate (the total number of inpatient days divided by 365) and increased that number by one bed for every 2,000 outpatient visits (emergency room visits were counted as outpatient visits). This number was divided into the hospital's total annual malpractice insurance cost.

^bSampling errors for the amount and percent of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

As shown in table 8, 83 percent of the Florida hospitals had experienced increases in inpatient day malpractice insurance costs of 10 to 199 percent from 1983 to 1985. Twelve percent of the hospitals had increases of 200 percent or more.

Table 8: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985

Percentage change	Hospitals		
	Number	Percent	Cum. percent
Increases of less than 10 or all decreases	7	5.3	5.3
+10 to 49	28	20.9	26.2
+50 to 99	36	27.6	53.8
+100 to 199	45	34.0	87.8
+200 to 299	7	5.2	93.0
+300 or more	9	7.0	100.0
Total	132	100.0	

Note: The total number of hospitals is based on the number of responding hospitals that provided data for both 1983 and 1985 so that the percent change could be calculated.

Malpractice Insurance Rates for Hospitals

The Florida Hospital Trust Fund, Florida's largest hospital insurer, increased its annual per bed rate 146 percent from 1980 to 1986. The rate for a \$100,000/\$1,000,000 occurrence policy⁷ for all hospitals in the state was \$500 per bed in 1980. By 1986, the primary coverage being offered was a \$250,000/\$1,000,000 claims made policy,⁸ which cost \$1,229 per bed for hospitals in Territory 3—the area that accounts for a majority of the Fund's hospital beds insured in Florida. The rate in Dade and Broward Counties was \$1,708 for the same coverage. Table 9 shows the rates between 1980 and 1986.

⁷Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed.

⁸A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

**Florida: Premiums Continue to Rise Sharply
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**Table 9: Rates^a per Occupied Bed for
Primary Coverage, 1980-86**

Year	Territory	Rate^a
1980	Entire state	\$500
1981	Entire state	390
1982	Entire state	390
1983	Entire state	560
1984	Entire state	910
1985	Territory 1 ^b	1,372
	Territory 2	1,113
	Territory 3	832
1986	Territory 1	1,708
	Territory 2	1,586
	Territory 3	1,229

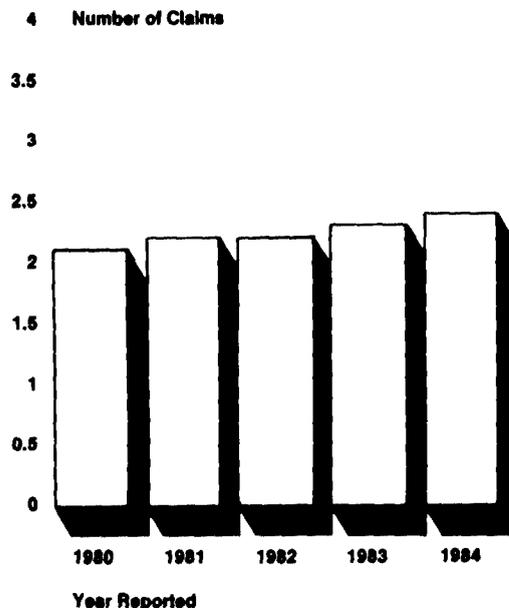
^aRates shown are those of the Florida Hospital Trust Fund for an occurrence policy with coverage limits of \$100,000/\$1 million (1980-82) and \$250,000/\$1 million (1983-84). In 1985 and 1986 the rates are for a claims-made policy with coverage limits of \$250,000/\$1,000,000.

^bTerritory 1 = Dade and Broward Counties
Territory 2 = Palm Beach, Hillsborough, Pinellas, Orange, Duval
Territory 3 = Remainder of state

Frequency of Claims

The combined data of two of Florida's larger hospital insurers—the St. Paul Company and Parthenon Insurance Company—shown in figure 4, indicates that the average frequency of claims per 100 occupied hospital beds increased from 2.1 in 1980 to 2.4 in 1984—14 percent.

Figure 4: Frequency of Claims per 100 Occupied Hospital Beds, 1980-84



Size of Awards/Settlements

Two of Florida's larger hospital insurers—Florida Hospital Trust Fund and Parthenon Insurance Company—were not able to provide claims data on a year-closed basis. Therefore, the average paid claim was not computed for hospitals using data obtained from the insurance companies.

Major Medical Malpractice Problems—Current and Future

Three or more of the groups we surveyed⁹ have or expect to have problems with certain aspects of malpractice issues. These include

- availability of medical malpractice liability insurance,
- cost of medical malpractice liability insurance,
- number of medical malpractice claims filed and injuries for which claims were not filed,
- size of awards/settlements for medical malpractice claims,
- length of time to resolve medical malpractice claims,
- equity of awards/settlements for medical malpractice claims,
- legal expenses/attorney's fees for medical malpractice claims, and

⁹Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for Florida are presented in appendix II of this report.

- individual physician actions to reduce or prevent medical malpractice claims.
-

Availability of Malpractice Insurance

The physician group, the Florida Hospital Association, the Florida Defense Lawyers Association, and the Insurance Department believed the availability of excess liability insurance would become a major problem for physicians in the next 5 years.

The availability of coverage for future claims ("tail coverage") for physicians was also expected to be a major problem in the next 5 years by the physicians group, the Florida Hospital Association, and the Florida Defense Lawyers Association. The availability of tail coverage for hospitals was expected to become a future major problem by the Florida Hospital Association, the Florida Defense Lawyers Association, and the Insurance Department. According to an Insurance Department official, tail coverage is available only by staying with the original insurer. If the insured changes his/her insurer for any reason, whether switching companies or previously self-insured, or if the original insurer becomes insolvent, tail coverage is unobtainable.

The Florida Hospital Association, the malpractice insurers, and the state Insurance Department also believed that the ability of insurers to find sources of reinsurance will become a major problem in the next 5 years. According to a Physicians Protective Trust Fund official, they can now only obtain reinsurance coverage of \$2 million where they used to obtain \$5 million coverage. An official from the Florida Hospital Association added that "the entire reinsurance market is tight in all states for all lines."

According to a Physicians Protective Trust Fund official, the Fund's ability to provide adequate coverage has become very limited due to many reinsurers pulling out of the market or refusing to reinsure the larger amounts. Another official at the Insurance Department commented that trust funds are having difficulty acquiring reinsurance due to rising costs and decreasing quality of available reinsurers, which is forcing them to raise rates for their members. While reinsurance from the older, well-established firms is becoming unaffordable, the only affordable reinsurance is from newer firms with questionable stability, and some of the primary insurers are choosing to go without reinsurance rather than risk their resources on such unstable companies. The Florida Hospital Trust Fund and Florida Hospital Association officials asserted that availability of reinsurance is a problem to the extent that, in some

cases, the costs are so unreasonable that such insurance is considered unavailable.

Cost of Malpractice Insurance

The cost of insurance for physicians in Florida has increased significantly since 1980. Further, three or more groups identified major current and future problems regarding the cost of basic liability coverage for physicians in Florida. The physician group, the Florida Hospital Association, and the Florida Defense Lawyers Association agreed that there is currently and will continue to be a major problem with the cost of basic liability coverage for physicians. A Florida Hospital Association official commented that there are not enough insureds to fund the number of claims filed and the amounts of those claims, and that a broader base for insurance is needed in Florida.

The cost of excess liability coverage for physicians was considered to be a current and future major problem by the physician group, the Florida Hospital Association, and the Florida Defense Lawyers Association. This was also expected to be a major future problem by the state Insurance Department.

The cost of tail coverage for physicians was believed to be a major problem that will continue during the next 5 years by the physician group, the Florida Hospital Association, and the Florida Defense Lawyers Association. The Academy of Florida Trial Lawyers and the Insurance Department also agreed that this would become a major problem in the next 5 years.

Several of the officials contacted stated that obstetrics has been one of the specialties hardest hit by the rising cost of insurance. According to the Florida Medical Association, many obstetricians/gynecologists have dropped their obstetrics practice due to the high premiums charged for this specialty. In addition, a Florida Physicians Insurance Company official advised us that Flagler Hospital in St. John's County closed its obstetrics ward in July 1986, leaving the county without obstetrics service.

The cost of excess liability coverage for hospitals was expected to become a major problem in the near future by the Florida Hospital Association, the Florida Defense Lawyers Association, and the Insurance Department.

In addition, the physician group, the Florida Hospital Association, the Florida Defense Lawyers Association, and the Academy of Florida Trial Lawyers agreed that the cost of patient's compensation fund participation was currently a major problem for hospitals. The Academy of Florida Trial Lawyers pointed out that the structure of the Fund "required hospitals to pay an inordinate share of the cost of liability, while not requiring physicians to pay a reasonable share."

The Florida Hospital Association, the Academy of Florida Trial Lawyers, and the state Insurance Department believed the cost of reinsurance for insurers is currently a major problem. These groups, as well as the Florida Defense Lawyers Association and the malpractice insurers, believed this will also be a major problem in the next 5 years. An official of the Physicians Protective Trust Fund stated that the increases in the cost of reinsurance have been a major contributor to the increasing premiums being charged its physicians.

According to a Florida Hospital Trust Fund official, when the Fund established its excess trust fund in April 1985, only 3 of the 17 reinsurers contacted responded with rate quotes for reinsuring \$5 million of the \$10 million coverage offered by the fund. The official added that the trust fund has absorbed the entire \$10 million as reinsurance has become too expensive, and member hospitals may be assessed as necessary to cover very large payouts. Similarly, according to a Parthenon official, that company's reinsurance costs doubled from 1984 to 1985, requiring it to charge higher premiums.

**Number of Malpractice
Claims Filed**

From 1980 to 1984, the frequency of claims against physicians rose from 20.8 to 26.1 per 100 physicians, while the frequency of claims against hospitals rose from 2.1 to 2.4 per 100 occupied beds. However, the only major problem identified by three or more of the groups we surveyed concerning the number of malpractice claims filed regarded the large number of medical events that could result in malpractice claims. Specifically, the Florida Hospital Association, the Academy of Florida Trial Lawyers, and the Insurance Department considered this to be a current and future major problem. However, an Academy of Florida Trial Lawyers official did not believe there was a major problem with the number of claims being filed in Florida. He commented:

"In February, 1983, Florida Insurance Commissioner Bill Gunter reported that while the number of claims has risen dramatically over the period 1975 to 1981, the

number of claims with indemnities paid had only risen 12 percent. When one considers that the population of Florida physicians had risen far in excess of that percentage, the rise in the number of claims became much less serious a problem."

Size of Awards and Settlements for Malpractice Claims

As shown in figure 3, the average paid claim for Florida physicians increased significantly between 1980 and 1984. Further, major concerns identified by three of the groups we surveyed in Florida included

- malpractice awards/settlements are excessive in relation to economic costs arising from the injuries,
- amounts paid for pain and suffering are excessive, and
- there are too many malpractice awards/settlements over \$1 million.

The physician group, the Florida Hospital Association, and the Florida Defense Lawyers Association believed all of the above concerns are currently major problems in Florida that will continue in the next 5 years.

An official of the Physicians Protective Trust Fund commented:

"Florida awards/settlements in medical malpractice cases have always been among the highest in the nation. Liberal courts allow testimony on life expectancy, work expectancy, cost of care to border on the absurd. Amounts for pain and suffering average 53 percent of each award or settlement in Florida. The national average is 17 percent. While there were few cases in excess of \$1 million in the 1970s, Florida is number 3 in total number of cases in excess of \$1 million and number one on a per capita basis. Offsets for collateral sources have solved the problems of the mid-70s in the duplicate payment area."

A Florida Medical Association official agreed that awards/settlements are and have been excessive in Florida, especially for pain and suffering, and that "multi-million dollar awards can be traced in almost every case to a sympathetic jury that overcompensated the injured victim in the area of general damages."

Length of Time to Resolve Malpractice Claims

The long time to resolve claims was considered to be a current and future major problem by the physician group, the Florida Hospital Association, and the Academy of Florida Trial Lawyers. The Florida Defense Lawyers Association believed this will become a major problem in the near future. A Florida Medical Association official believed that much needs to be done to "encourage the early resolution of a claim," because the "longer a claim remains open, the more expensive it becomes from

an indemnity standpoint as well as the claim adjustment costs, i.e. investigation, defense attorney, etc.”

An Academy of Florida Trial Lawyers official commented that Florida’s 1985 Medical Malpractice Act “makes great efforts to find ways to encourage the parties to come together early in the history of the claim and seek a resolution of that claim before it becomes an expensive lawsuit.”

**Equity of Awards and
Settlements for Malpractice
Claims**

Major current concerns identified by three of the groups surveyed regarding the equity of awards and settlements included

- malpractice awards/settlements for injuries of similar severity are dissimilar,
- outcome of malpractice claims is unpredictable, and
- some injured persons with meritorious claims receive payments far in excess of economic losses sustained while others receive payments far less than economic losses sustained.

The physician group and the Florida Hospital Association believed these three concerns are major current and future problems in Florida, while the Florida Defense Lawyers Association viewed them only as current problems.

A Physicians Protective Trust Fund official stated that inequities in the resolution process allow small to medium-sized cases to be overcompensated and large cases to be undercompensated. However, the Academy of Florida Trial Lawyers believed there are not, and will not be in the future, any major problems with the equity of awards because, in resolving disputes, juries reflect upon the uniqueness of each case. They pointed out that similar injuries may have significantly different effects on different people as people are “dissimilar in their earnings, in their physiology and in the effect that such injuries will have upon them.” For example, a broken leg would be more devastating to a football player’s career than to a lawyer’s.

**Legal Expenses and
Attorney’s Fees for
Malpractice Claims**

Major current or future problems identified by three or more groups in Florida regarding legal expenses and attorney’s fees were

- legal costs associated with defending claims are too expensive;
- plaintiff's legal costs associated with pursuing a claim are too expensive;
- legal expenses and attorney fees, as a percentage of awards/settlements, are too high; and
- high legal costs associated with defending claims encourage insurance carriers and/or health care providers to offer to settle claims with little or no merit before trial.

The Florida Hospital Association, the physician group, and the Academy of Florida Trial Lawyers perceived major current and future problems regarding expensive defense and plaintiff costs and excessive legal expenses and attorney's fees. The Florida Defense Lawyers Association perceived these problems to be only of current major concern.

The Florida Hospital Association and the physician group believed a current and future major problem is the high legal costs associated with defending claims encourages insurance carriers and/or health care providers to offer to settle claims with little or no merit before trial. The Florida Defense Lawyers Association viewed this as a current major problem only. The Academy of Florida Trial Lawyers disagreed, however, believing that settlements are often delayed because the health care provider often refuses to admit liability in cases involving obvious negligence and settle the case out of court. As one official of this organization stated, "the expenses incurred during litigation by the refusal of the health care provider to admit liability and arrive at a reasonable settlement are often times high." However, he stated that the 1985 Medical Malpractice Act does contain a provision which penalizes either party for not accepting a reasonable settlement, and the Florida Supreme Court has the power to regulate attorneys' fees that appear to be unreasonable or excessive.

**Individual Physician
Actions to Reduce or
Prevent Medical
Malpractice Claims**

The physician group, the Florida Hospital Association, the Florida Defense Lawyers Association, and the Academy of Florida Trial Lawyers believed a major current and future concern is that physicians have strong incentives to perform medically unnecessary tests or treatments (i.e., defensive medicine) to reduce their risk of liability. All of the malpractice insurers agreed that this would become a major problem in the next 5 years.

The Florida Hospital Association, the Florida Defense Lawyers Association, and the Academy of Florida Trial Lawyers believed that the lack of

effort by physicians to improve their physician-patient relationships to reduce or prevent malpractice claims is a future major problem.

An Academy of Florida Trial Lawyers representative perceived no improvement in physician-patient relationships to reduce or prevent medical malpractice claims. He commented:

"The patient is not informed of the dangers of the treatment, the patient is not kept apprised of what is happening with their condition, or the patient simply cannot get any response from the doctor when things begin to go wrong. It is not so much the desire to sue as the need to understand what is happening that causes most patients to arrive in a lawyer's office."

Regarding the use of defensive medicine, the official also stated:

"The practice of defensive medicine, as defined by the medical society, constitutes bad, even criminally negligent medicine. A test that does not stem from medical necessity is an invasion of the patient's body, thus constituting a tort, and it is a fraud, because it is not necessary and therefore the patient is charged for a treatment that is not desired."

Solutions to Malpractice Problems

State action to expand the use of pretrial screening panels to address current or future malpractice problems was the most widely supported action among the six groups we surveyed in Florida. More specifically, the physician group, the Florida Hospital Association, the Florida Defense Lawyers Association, and the state Insurance Department strongly supported the implementation of pretrial screening panels in Florida. A Physicians Protective Trust Fund official commented that

"Florida used them (pretrial screening panels) from 1975 to 1980 before being found unconstitutional. Our tort system cannot supply a jury that is truly comprised of the defendant's peers. Screening panels will help insure that only cases with merit reach a jury."

Modification of the traditional fault-based litigation system for resolving claims was strongly supported by the physician group, the Florida Hospital Association, and the state Insurance Department. The Florida Hospital Association believed the current tort system is expensive and lengthy, and it does not "put very much of [the] premium dollar into [the] injured patient's pocket." A Physicians Protective Trust Fund official stated that such modification should be undertaken only "if it can be conclusively shown that the overall claims payout will be substantially reduced."

The Florida Defense Lawyers Association, the Academy of Trial Lawyers, and the Insurance Department strongly supported state actions to implement:

- the use of risk management programs,
- the strengthening of licensing and relicensing for physicians, and
- the strengthening of licensing and relicensing for hospitals.

The Florida Defense Lawyers Association also believed these actions should be taken at the federal level. However, a Physicians Protective Trust Fund official commented that Florida does mandate the use of risk management programs, and since each state has its own unique problems, each state should be free to approach the issues as needed.

Role of the Federal Government

There was no widespread support among the six interest groups for federal involvement in the state's malpractice situation. Several officials noted that the problems should be dealt with at a state level. The Academy of Florida Trial Lawyers believed that "models or centralized guidance will reduce the incentive to address the hard questions and diagnose the real problems."

Medical Malpractice Insurers Requested to Provide Statistical Data for Florida

	Provided Data for		Did not provide requested data
	Physicians	Hospitals	
The CIGNA Group			X
Florida Hospital Trust Fund		X ^a	
Parthenon Insurance Company		X	
Florida Physicians Insurance Company	X		
Physicians Protective Trust Fund	X		
St. Paul Fire and Marine Insurance Company	X	X	

^aData not included in our data base due to several missing data elements.

Organizations Receiving GAO Questionnaire for Florida

Completing questionnaire	Not completing questionnaire
Physician group:	
Florida Medical Association	Florida Neurological Society
Florida Region, American College of Physicians	Florida Society of Plastic and Reconstructive Surgeons
Florida Chapter, American Academy of Pediatrics and Florida Pediatric Society	Florida Obstetric and Gynecologic Society
Florida Chapter, American College of Surgeons	Florida Radiological Society
Florida Society of Ophthalmology	Council of Florida District Branches of the American Psychiatric Association
Florida Orthopedic Society	
Florida Society of Anesthesiologists	
Florida Society of Pathologists	
Palm Beach County Medical Society	
Hospital association:	
Florida Hospital Association, Inc.	
Defense lawyers:	
Florida Defense Lawyers Association	
Trial lawyers:	
The Academy of Florida Trial Lawyers	
Malpractice insurers:	
Physicians Protective Trust Fund	St. Paul Fire and Marine Insurance Company
Florida Hospital Trust Fund	The CIGNA Group
Florida Physicians Insurance Company	
Parthenon Insurance Company	
Insurance department:	
State of Florida, Department of Insurance and Treasurer	

Number of Florida Hospitals in the Universe, GAO Sample, and Survey Response

Number of hospitals		Hospitals completing questionnaire	
Universe ^a	Sample	Number	Percent
217	102	69	68

^a1983 data.

Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985

Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure

Dollars in millions

Expenditure	1983		1984		1985	
	Amount	Sampling error ^a	Amount	Sampling error ^a	Amount	Sampling error ^a
Total costs	\$39.5	\$4.5	\$48.1	\$6.8	\$64.5	\$6.5
Contributions to self-insurance trust funds	17.7	4.5	19.9	5.5	30.7	7.1
Premiums for purchased insurance	21.0	2.4	24.4	2.5	30.0	3.7
Uninsured losses	.9	.4	3.8 ^b	4.0	3.8	2.7

^aSampling errors are stated at the 95-percent confidence level.

^bEstimates subject to a large sampling error and should be used with caution.

Note: Detail may not add to total due to independent estimation. The adjusted universe of hospitals to which the estimated amounts relate was 132 in 1983 and 136 in 1984 and 1985. The adjusted universe is that portion of the total universe based on the sample.

Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals

Figures in percents

Annual cost	1983		1985	
	Hospitals	Sampling error ^a	Hospitals	Sampling error ^a
Less than \$10,000	0	0	0	0
\$10,000 to \$24,999	5.7	4.3	1.5 ^b	1.8
\$25,000 to \$49,999	5.7	4.3	6.8	4.4
\$50,000 to \$99,999	13.5	7.0	4.0	3.8
\$100,000 to \$249,999	38.4	8.0	29.7	8.0
\$250,000 to \$499,999	25.0	6.3	28.6	7.2
\$500,000 to \$999,999	6.2	2.2	17.3	6.0
\$1 million or more	5.6	2.3	12.1	3.1

^aSampling errors are stated at the 95-percent confidence level.

^bEstimate subject to a relatively large sampling error and should be used with caution.

Note: The adjusted universe of hospitals was 132 in 1983 and 136 in 1985.

**Appendix IV
Estimated Hospital Data and Related
Sampling Errors for Policy Years 1983, 1984,
and 1985**

Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors

1983		1984		1985	
Cost per day	Sampling error ^a	Cost per day	Sampling error ^a	Cost per day	Sampling error ^a
\$4.72	\$.47	\$6.88	\$1.88	\$9.39	\$.86

^aSampling errors are stated at the 95-percent confidence level.

Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors

1983		1984		1985	
Cost per bed	Sampling error ^a	Cost per bed	Sampling error ^a	Cost per bed	Sampling error ^a
\$1,523	\$177	\$2,276	\$729	\$2,939	\$314

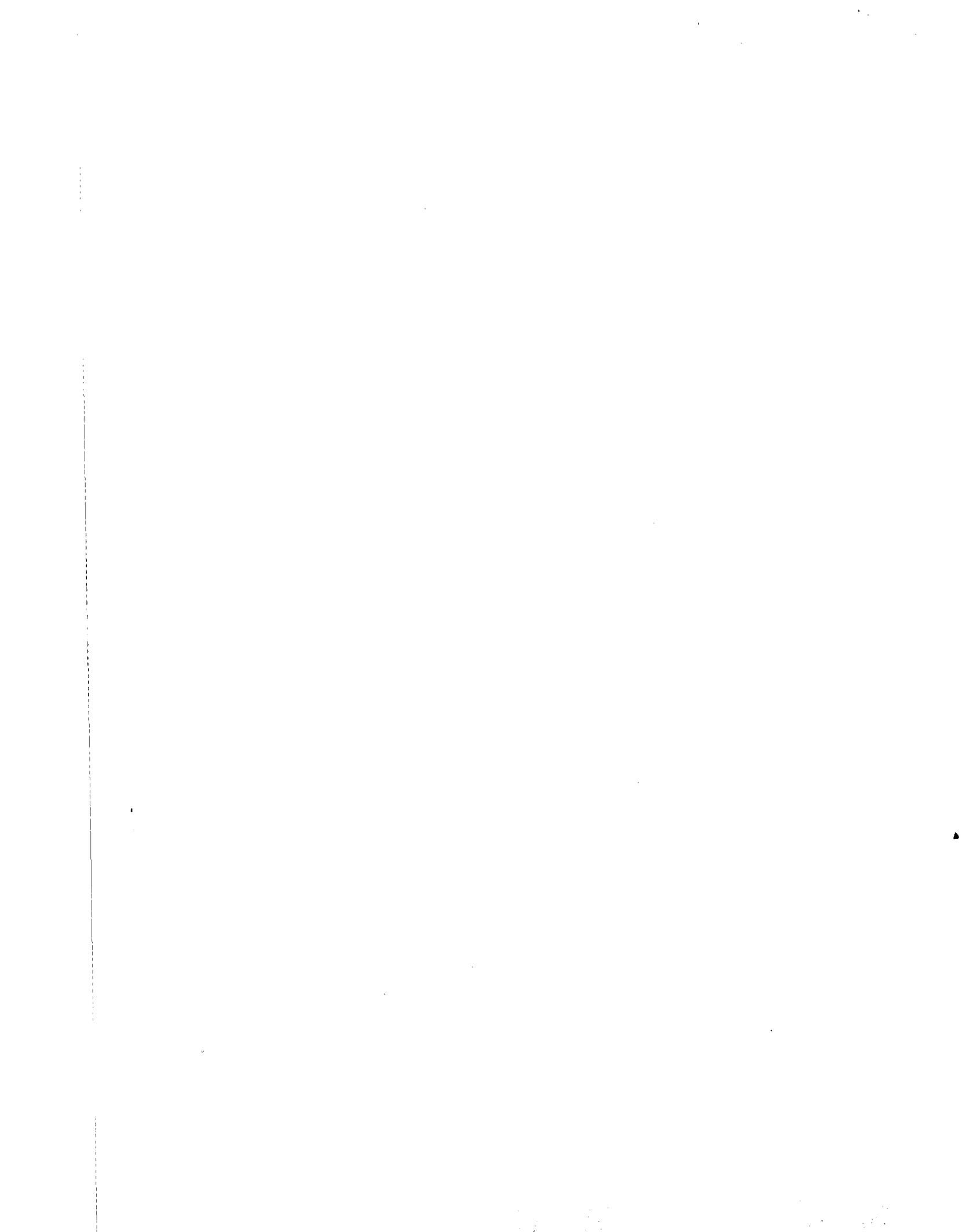
^aSampling errors are stated at the 95-percent confidence level.

Table IV.5: Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985 and Related Sampling Errors

Figures in percents		
Changes	Hospitals	Sampling error ^a
Increases of less than 10% or decreases	5.3	2.9
Increases of 10% to 49%	20.9	7.6
Increases of 50% to 99%	27.6	8.0
Increases 100% to 199%	34.0	8.8
Increases 200% to 299%	5.2	3.6
Increases of 300% or more	7.0	4.8

^aSampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 132.



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