United States General Accounting Office

GAO

Report to Congressional Requesters

December 1986

MEDICAL MALPRACTICE

Case Study on North Carolina

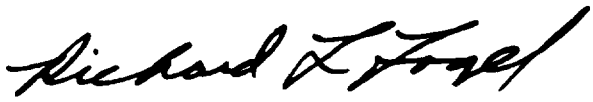
HRD-87-21S-6

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 North Carolina 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 Program

Overview

The medical malpractice insurance situation is worsening for health care providers in North Carolina. Since 1980, medical malpractice insurance premiums in the state have increased significantly for both physicians and hospitals. High-risk physicians, such as neurosurgeons and obstetricians, are paying the highest premiums and have experienced the largest premium increases. Also, the frequency of claims and the average paid claim increased between 1981 and 1984 for physicians and between 1980 and 1984 for hospitals, with the greatest increases being in the average paid claim.

In the mid-1970's, major malpractice insurers either withdrew or threatened to withdraw from the malpractice insurance market. This concern stimulated the creation of two insurers—a medical-society-linked, physician-owned company and a hospital association trust fund. The creation of these insurers and the return of the major insurer to the state alleviated concerns regarding the availability of insurance. The state also modified several aspects of its tort laws governing medical malpractice cases. However, the interest groups we surveyed did not believe that these reforms have had a major effect on any aspect of the medical malpractice situation.

Several interest groups identified major current medical malpractice problems regarding the increasing size of malpractice awards/settlements, the equity of awards/settlements for malpractice claims, and legal expenses for malpractice claims. The groups expect these problems to continue and anticipate that the cost of malpractice insurance and the number of claims filed would become major problems in the future. To address malpractice problems, four of the six interest groups we contacted strongly supported use of risk management programs designed to reduce the incidence of malpractice claims by eliminating problems that result in those claims.

The groups surveyed primarily supported state rather than federal actions to address malpractice problems.

Contents

Figures

North Carolina: Insurance Situation Worsening for Physicians and Hospitals

Background

Population, Physician, and Hospital Characteristics

North Carolina is the 10th most populous state. Its 6.2 million people are about evenly split between urban and rural areas.[1] North Carolina had 11,347 physicians as of December 31, 1985,[2] and 130 nonfederal community hospitals with a total of 23,504 beds in 1984.[3] A total of 9,201 physicians were providing patient care—7,116 were office-based and 2,085 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 North Carolina in Selected Specialties as of December 31, 1985

		Hospital-based practice		
	Office-based practice	Residents	Full-time physician staff	Total
General practice	1,326	197	52	**1,575**
Internal medicine	1,060	372	45	**1,477**
Pediatrics	502	157	21	**680**
Psychiatry	341	130	72	**543**
Pathology	170	66	25	**261**
Radiology	165	1	21	**187**
Ophthalmology	260	27	4	**291**
General surgery	540	145	19	**704**
Anesthesiology	228	61	20	**309**
Plastic surgery	69	10	2	**81**
Orthopedic surgery	294	94	8	**396**
Obstetrics/gynecology	571	88	12	**671**
Neurosurgery	70	24	3	**97**

Of the community hospitals, 76 had from 50 to 199 beds and accounted for over one-third of the beds in the state. Twenty-three percent of the state's community hospital beds were in the eight hospitals with 500 or more beds each. About 80 percent of the community hospital beds in the state were nongovernment, not-for-profit; about 13 percent were in state and local government hospitals; and 7 percent were in investor-owned

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

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

[3]Hospital Statistics, 1985 Edition, American Hospital Association, p. 108.

(for-profit) hospitals. The occupancy rate of the state's community hospitals was 69 percent in 1984.

Regulation of Insurance Rates and Description of Medical Malpractice Insurers

North Carolina is a "file and use" state. Medical malpractice insurers are required to file their rates with the state's insurance department before they become effective, according to a North Carolina Department of Insurance official. However, the rates may be used without the department's prior approval. The rates may be disapproved if they violate the state's statutory requirements that the rates be adequate, not excessive, or not unfairly discriminatory. Before 1977, when North Carolina passed its "file and use" regulation, the state's Department of Insurance approved all medical malpractice rate increases before rates could be used, according to a North Carolina Department of Insurance official.

In 1985, the two major insurers of physicians in the state were the Medical Mutual Insurance Company of North Carolina (Medical Mutual), a physician-owned and directed company that insures most of the state's physicians, and the St. Paul Fire and Marine Insurance Company (St. Paul Company). According to a North Carolina Medical Society official, 98 percent of the physicians practicing in the state are insured by these two companies.

According to a North Carolina Hospital Association Trust Fund official, the two major insurers of North Carolina hospitals in 1985 were the St. Paul Company and the North Carolina Hospital Association Trust Fund, a not-for-profit trust fund established by the North Carolina Hospital Association for its tax-exempt and governmental members. On June 30, 1985, the St. Paul Company insured 55 hospitals in the state with a total of 7,016 beds, and on January 1, 1985, the North Carolina Hospital Association Trust Fund insured 66 hospitals with a total of 10,704 beds. Together, the two insurers accounted for about 90 percent of the hospital market, according to a North Carolina Hospital Association Trust Fund official.

In 1984 the predominately written malpractice coverage limits for North Carolina physicians were $1 million/$1 million. For hospital malpractice policies, the predominately written coverage limits were $300,000/$900,000 for one insurer and $1.5 million/$3 million for the other.

The major malpractice insurers do not vary rates for physicians and hospitals insured based on their geographical location within the state.

Medical Malpractice Situation in the Mid-1970's

During 1974 and 1975, the St. Paul Company, the state's major malpractice insurer, threatened to withdraw from the state unless the commissioner of insurance approved its requested rate increases. In addition, during the summer of 1975, Employers Mutual of Wausau discontinued writing medical malpractice insurance for North Carolina hospitals, according to a North Carolina Hospital Association Trust Fund official.

The commissioner of insurance approved the rate increases but refused to approve the St. Paul Company's proposal for pricing "tail" coverage for claims-made policies.[4] Dissatisfied with the commissioner's decision, the company ceased offering new malpractice policies in the state for 1 month (October 1975) until a compromise was reached with the commissioner.

Response to Problems

In response to the above situation, the medical society established Medical Mutual, which began writing malpractice policies in October 1975. The state hospital association established the North Carolina Hospital Association Trust Fund, which began operations in the same month. With the establishment of these insurers, and the St. Paul Company's subsequent resumption of business in the state, the potential unavailability of malpractice insurance was avoided.

To address present and future problems regarding the availability of medical malpractice insurance at reasonable rates, in 1975 the state legislature created the Health Care Liability Reinsurance Exchange. Under the Exchange, all companies that offered general liability insurance in the state were required to offer malpractice insurance policies. The Exchange was to reinsure high-risk policies, with losses in the high-risk pool to be allocated among the member companies in proportion to their share of the state's total liability insurance market. However, the Exchange was ruled unconstitutional in November 1975 and never became operational, according to North Carolina Department of Insurance officials.

In 1975, the North Carolina legislature also created a commission to study all aspects of professional liability insurance, including various tort reforms. The commission concluded that (1) the possibility that malpractice insurance would be unavailable continued to exist and (2) the

[4]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. Insurance to cover claims filed after a claims-made policy has expired is known as "tail" coverage.

higher cost of insurance was forcing many physicians to curtail their practices in high-risk specialties. As a result, the commission recommended several tort law changes governing medical malpractice cases.

In 1976, the state legislature enacted several tort law revisions governing medical malpractice actions. These changes included:

- Shortening the statute of limitations for filing medical malpractice claims. The maximum time for filing a lawsuit for injuries that were not initially discovered or reasonably discoverable was reduced from 10 years to 4 years from the time of the injury. In these cases, the person has 1 year from the date of discovery in which to file a lawsuit; however, the statute of limitations cannot be less than 3 years nor more than 4 years from the date of the injury. The exception is for an injury resulting from a foreign object left in the body, in which case the person has 1 year from the date it is discovered or reasonably should have been discovered to file a lawsuit, but the person may not bring an action more than 10 years from the date of the injury. The change also reduced the statute of limitations applicable to minors injured at birth by medical malpractice from 3 years to 1 year after age 18 for known injuries and from 10 years to 1 year after age 18 for undiscovered injuries.
- Codifying the standard of care used in medical malpractice cases to be the prevailing level of care practiced in the provider's community at the time of the accident.
- Establishing a new standard for obtaining a patient's consent for treatment. This standard requires providers, in obtaining consent, to (1) act in accordance with the standards of similar providers in the same or similar communities and (2) provide information needed for a reasonable person to generally understand the treatment and the risks involved. The statute also requires that a provider's guarantee of treatment results must be in writing before a patient can sue on the grounds that treatment did not produce those results.
- Eliminating the ad damnum clause in all professional malpractice actions claiming damages over $10,000. (The ad damnum clause specifies the amount of damages claimed.)
- Revising the "good samaritan" law to provide protection to any person giving first aid or emergency health care treatment to an unconscious, ill, or injured person.
- Creating a Health Care Excess Liability Fund to provide participants with excess liability coverage. The fund never became operational because a need for it never developed after Medical Mutual was established, according to a Medical Mutual official.

In 1976 the North Carolina legislature also enacted legislation requiring all insurance companies writing professional liability insurance in the state to annually report claims data to the commissioner of insurance. The legislature enacted legislation, effective October 1, 1984, permitting the court to award reasonable attorney's fees to the prevailing party in the case of frivolous lawsuits. In 1985, the legislature created a commission to make a thorough and comprehensive study of medical malpractice liability problems and ways to better address problems. The commission is required to make its report, including recommended legislation, to the 1987 session of the North Carolina General Assembly.

Effect of North Carolina Tort Reforms

None of the interest groups we surveyed believed the tort reforms enacted by the state had any major effect.

Key Indicators of the Situation Since 1980

During the period 1980 to 1986, malpractice insurance rates increased from 173 to 547 percent for the specialties selected for our review insured by the state's largest insurer. Rates for the state's largest hospital malpractice insurer were the same in 1980 and 1985, but increased significantly in 1986. Between 1981 and 1984, the frequency of claims filed against physicians increased 19 percent, and the average paid claim increased 72 percent. The frequency of claims filed against hospitals increased from 1.5 per 100 occupied beds in 1980 to 1.9 in 1984, and the average paid claim increased from $7,098 in 1980 to $20,091 in 1984. Moreover, malpractice insurers' average costs to investigate and defend physician claims doubled between 1981 and 1984.

Physicians

Cost of Malpractice Insurance

As of January 1, 1986, there was a wide variation in malpractice insurance rates among different physician specialties in North Carolina. For example, as shown in table 2, Medical Mutual's annual premium for coverage of $1 million/$1 million ranged from $1,891 for the specialties of general practice (no surgery), internal medicine (no surgery), and pediatrics (no surgery) to $18,595 for neurosurgery.

As also shown in table 2, the rate of increase in malpractice premiums has not been uniform among physician specialties. High-risk specialties,

such as neurosurgery and obstetrics/ gynecology, have experienced the highest percentage increases. From 1980 to 1986, increases ranged from 173 percent for radiology and ophthalmology/surgery to 547 percent for obstetrics/gynecology. The median increase was 276 percent.

Table 2: Cost of Insurance[a] for Selected Specialties, 1980 and 1986

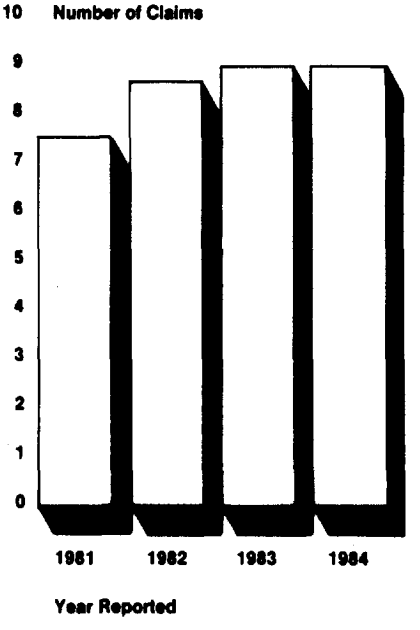
Specialty	1980	1986	Percent increase 1980-86
General practice (no surgery)	486	1,891	289
Internal medicine (no surgery)	486	1,891	289
Pediatrics (no surgery)	486	1,891	289
Pathology	486	1,891	289
Psychiatry	486	1,891	289
General practice (minor surgery)	813	2,760	239
Internal medicine (minor surgery)	813	2,760	239
Pediatrics (minor surgery)	813	2,760	239
Radiology	1,329	3,630	173
Ophthalmology/surgery	1,329	3,630	173
General surgery	2,189	8,896	306
Anesthesiology	2,189	7,924	262
Plastic surgery	2,613	8,896	240
Obstetrics/ gynecology	2,613	16,904	547
Orthopedic surgery	3,459	11,812	241
Neurosurgery	3,459	18,595	438

[a]Rates shown are those of Medical Mutual Insurance Company of North Carolina for a $1 million/$1 million claims-made policy as of January 1 each year.

Frequency of Claims

The combined claims experience for North Carolina's two leading insurers of physicians, Medical Mutual and the St. Paul Company, indicated that the frequency of claims filed per 100 physicians insured rose by 19 percent from 1981 to 1984. As shown in figure 1, the frequency of claims filed for these companies was 7.5 per 100 physicians in 1981 and 8.9 per 100 physicians in 1984.

Figure 1: Frequency of Claims per 100 Physicians, 1981-84



As shown in table 3, there were wide variations in the frequency of claims filed per 100 physicians for selected specialties.

Table 3: Frequency of Claims per 100 Physicians for Selected Specialties, 1981-84

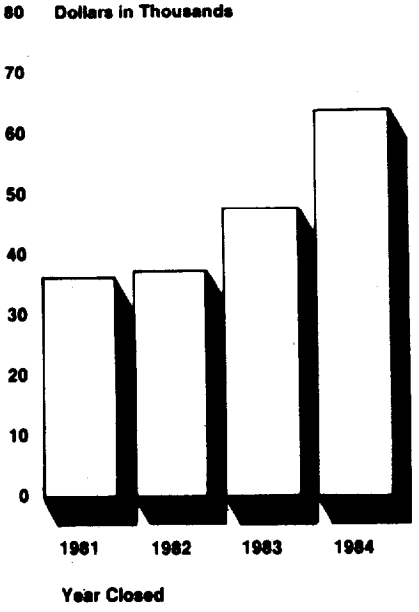
Specialty	1981	1982	1983	1984
General practice	3.7	3.5	5.8	9.0
Internal medicine	2.6	3.1	5.5	7.9
Pediatrics	1.6	2.7	3.3	6.3
General surgery	10.5	14.6	19.4	20.7
Neurosurgery	12.8	21.3	22.5	24.5
Ophthalmology/surgery	5.0	2.4	7.0	7.8
Orthopedic surgery	9.4	10.3	17.7	20.8
Plastic surgery	13.0	12.0	19.7	24.9
Obstetrics/gynecology	10.8	11.1	19.0	29.3
Radiology	.9	2.7	3.5	5.7
Psychiatry	2.3	1.3	6.4	6.6
Anesthesiology	8.6	13.2	13.9	17.9
Pathology	1.3	1.0	2.6	7.0

Size of Awards/Settlements

The combined claims experience of the two leading insurers of North Carolina physicians shown in figure 2 indicated that the average paid

claim increased from $36,064 in 1981 to $62,043 in 1984—an increase of 72 percent.

Figure 2: Average Paid Claim for Physicians, 1981-84



As shown in table 4, no clear trend is evident in the average paid claim 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.

Table 4: Average Paid Claim for Selected Specialties, 1981 and 1984

	1981	1984
All Physicians	$36,064	$62,043
Specialty		
General practice	12,000	28,934
Internal medicine	1,000	31,250
Pediatrics	0	78,000
Pathology	0	0
Radiology	4,000	27,557
Psychiatry	85,000	0
Ophthalmology/surgery	198,602	1,667
General surgery	61,500	52,444
Anesthesiology	2,000	145,500
Plastic surgery	37,500	5,167
Obstetrics/gynecology	22,438	97,483
Neurosurgery	0	20,000
Orthopedic surgery	14,423	24,971

Cost to Investigate and Defend Claims

Based on the combined claims experience of the state's leading insurers of physicians, from 1981 to 1984 the average cost to investigate and defend claims closed against North Carolina physicians more than doubled—from $2,216 to $4,722 per claim.

In 1984, 61 percent of the malpractice claims closed by the state's two leading insurers of physicians were closed with no expense to the company. Eighteen percent of the claims were closed with an indemnity payment, while 21 percent were closed with costs only to investigate and defend against the claim.

Hospitals

Cost of Malpractice Insurance

As shown in table 5, total estimated malpractice insurance costs for hospitals in North Carolina[5] increased from $4.7 million in 1983 to $9.6 million in 1985—104 percent.

[5]See GAO/HRD-87-21, p. 11, for methodology for obtaining and analyzing hospital cost data. See Appendix III for information on the number of North Carolina hospitals in the universe, GAO's 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

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	**$4.7**	**$5.7**	**$9.6**	**$4.9**	**104**
Contributions to self-insurance trust funds	1.4	1.5	1.8	.4	29
Premiums for purchased insurance	3.2	4.1	6.3	3.1	97
Uninsured losses	.1	.1[b]	1.5	1.4	1,400

[a]Sampling 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.

[b]Estimate subject to a relatively large sampling error and should be used with caution.

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

As shown in table 6, on an individual hospital basis, annual malpractice insurance costs in 1983 were less than $50,000 for 73 percent of the state's hospitals. By 1985, the percentage of hospitals with annual malpractice insurance costs of less than $50,000 decreased to 56 percent. Twenty-seven percent had costs of $100,000 or more in 1985.

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

	1983			1985		
Annual costs	**Number**	**Percent**	**Cum. percent**	**Number**	**Percent**	**Cum. percent**
Less than $10,000	26	32.9	32.9	20	24.9	24.9
$10,000 to $24,999	10	12.1	45.0	15	19.0	43.9
$25,000 to $49,999	22	27.8	72.8	10	12.4	56.3
$50,000 to $99,999	11	14.4	87.2	14	17.2	73.5
$100,000 to $249,999	8	9.9	97.1	13	15.6	89.1
$250,000 to $499,999	0	0.0	97.1	5	6.6	95.7
$500,000 to $999,999	2	2.9	100.0	1	1.4	97.1
$1 million or more	0	0.0	•	2	3.0	100.1[a]
Total	**79[a]**	**100.0**		**80[a]**	**100.1[a]**	

[a]Detail does not add to adjusted universe or 100 percent due to independent rounding.

Note: The total number of hospitals each year is based on the number for 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 138 percent from 1983 to 1985, while the annual cost per bed increased by 141 percent.

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

	1983	1984	1985	Increase[b] Amount	Increase[b] Percent
Average malpractice cost per inpatient day	$.94	$1.32	$2.24	$1.30	138
Average annual malpractice cost per bed	$315	$441	$758	$443	141

[a]To 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.

[b]Sampling 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.

Our estimates indicate that the changes in inpatient day insurance costs varied widely among the hospitals in the state. From 1983 to 1985, 43 percent of the hospitals had increases in inpatient day malpractice insurance costs of 10 to 99 percent, while another 13 percent had increases of 200 percent or more, as shown in table 8.

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

	Hospitals		
Percentage change	Number	Percent	Cum. percent
Increases of less than 10 or all decreases	11	13.5	13.5
+10 to 49	15	18.8	32.3
+50 to 99	19	24.6	56.9
+100 to 199	24	30.6	87.5
+200 to 299	6	7.5	95.0
+300 or more	4	5.0	100.0
Total	**79**	**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

From 1980 to 1985, the annual per-bed malpractice insurance rates of the North Carolina Hospital Association Trust Fund for $1.5 million/$3 million claims-made coverage[6] fluctuated between $125 and $150. In 1986, however, the rate increased to $415 per bed—an increase of 177 percent.

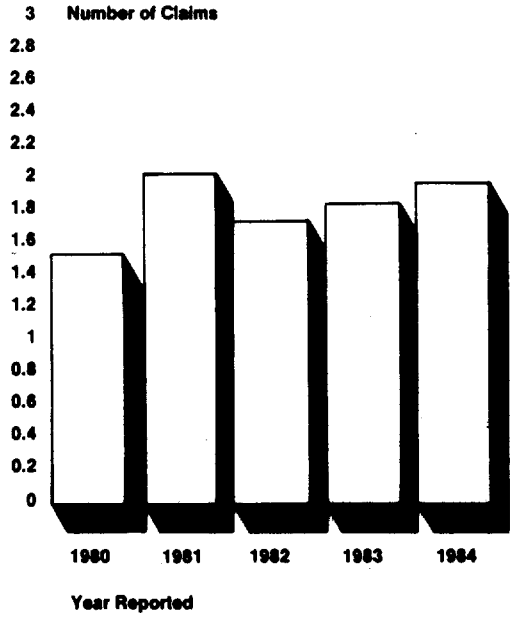
[6]A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

The St. Paul Company's rates for hospital malpractice insurance increased from $107 per occupied bed in 1980 to $385 per occupied bed in 1986 for $300,000/$900,000 claims-made coverage.

Frequency of Claims

The combined claims experience of the North Carolina Hospital Association Trust Fund and the St. Paul Company, shown in figure 3, indicated that the frequency of malpractice claims against hospitals in the state increased from 1.5 per 100 occupied beds in 1980 to 1.9 in 1984.

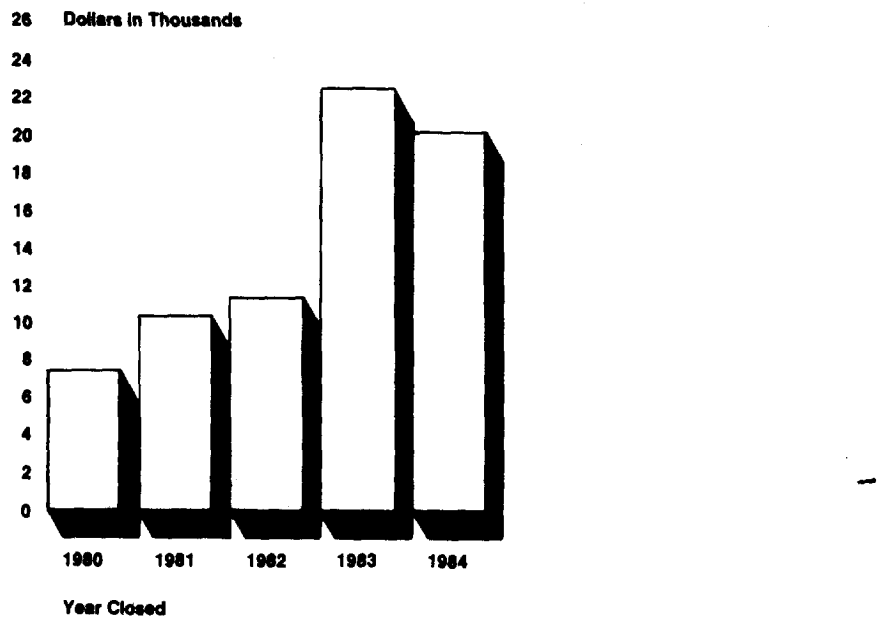
Figure 3: Frequency of Claims per 100 Occupied Hospital Beds, 1980-84



Size of Awards/Settlements

The combined claims experience of the two leading insurers of hospitals in North Carolina, shown in figure 4, indicates that the average paid claim against hospitals increased from $7,098 in 1980 to $20,091 in 1984.

Figure 4: Average Paid Claim for Hospitals, 1980-84



Cost to Investigate and Defend Claims

From 1980 to 1984, the average cost to investigate and defend claims against North Carolina hospitals almost doubled—from $3,083 per claim in 1980 to $5,704 per claim in 1984.

In 1984, 38 percent of the hospital malpractice claims closed by the state's two leading insurers were closed with no expense to the company, and 38 percent were closed with an indemnity payment. The remaining 24 percent were closed with costs only to investigate and defend the claim.

Major Malpractice Problems—Current and Future

Three or more of the six interest groups[7] we surveyed in North Carolina identified the following as major malpractice problems, either currently (1985) or in the next 5 years:

- Cost of insurance.
- Size of awards/settlements.
- Number of frivolous claims filed.

[7]The 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 North Carolina are presented in appendix II of this report.

- Equity of awards/settlements.
- Legal expenses/attorney's fees associated with claims.

Cost of Malpractice Insurance

Regarding the cost of malpractice insurance, three or more of the interest groups identified each of the following as a future problem in the state:

- High cost of basic liability coverage for physicians.
- High cost of basic, excess, and "tail" liability coverage[8] for hospitals.
- High cost of reinsurance.

A North Carolina Medical Society official commented that several recent million-dollar awards, such as a $4.5 million jury verdict against two pediatricians for administering a DPT vaccine to a child who later suffered brain damage, will affect future premium rates.

The North Carolina Hospital Association attributed the significant increases during the current year in the cost of all coverages for physicians and excess liability coverage for hospitals primarily to excessive jury verdicts. The Hospital Association also commented that, while basic liability coverage for hospitals is available, its cost is expected to increase.

A North Carolina Hospital Association Trust Fund official stated that the market for reinsurance has tightened greatly. Where it is available, he stated, its cost is excessive. He said the reinsurer required the company to significantly increase rates from 1985 to 1986 as a condition for continued coverage. He said he believes European reinsurers will eventually pull out of the American market unless major tort reforms correct the problem of "exorbitant malpractice suits."

An official of Medical Mutual Insurance Company of North Carolina told us that the U.S. reinsurance market for malpractice insurance has virtually dried up—so much so that much of the company's business practices are dictated or influenced by its reinsurer, Lloyds of London. He stated that Lloyds closely scrutinizes the company's practices and has required it to increase rates, especially for the high-risk specialties. He added that Medical Mutual's costs for reinsurance have doubled over the past 2 years.

[8]See footnote 4 on page 8.

Size of Awards and Settlements for Malpractice Claims

Regarding the size of malpractice awards and settlements for claims, three or more of the interest groups identified the following as a current and/or future problem in the state:

- Excessive size of awards and settlements in relation to the economic costs arising from the injury (current and future problem).
- Excessive amounts paid for pain and suffering (current and future problem).
- Number of awards and settlements over $1 million (current and future problem).

A North Carolina Hospital Association Trust Fund official commented:

"The size and frequency of large jury verdicts are increasing. This forces larger settlements for claims not going to trial. North Carolina hospitals experienced about 5 verdicts ranging from $2 million to $6.5 million within past 18 months. We anticipate the problem becoming more acute."

An official of Medical Mutual stated that North Carolina lagged about 5 years behind the rest of the nation in medical malpractice trends, but the state has rapidly caught up. The largest malpractice award was $200,000 in North Carolina 4 years ago; however, in March 1985 there was a malpractice award of $6.5 million. He said he fears this may set a benchmark for future cases. He attributed the higher size of awards and settlements to an increasing public awareness of the benefits of pursuing a claim, more aggressive plaintiff attorneys, and higher public expectations of medical care.

A North Carolina Medical Society official said that the increasing size of malpractice claims has the medical community really scared. He said that the average size of a claim severity has doubled over the last two years.

The North Carolina Plastic Surgery Society stated:

"(1) The jury system seems to show a desire for punitive [action] and retribution above and beyond the degree of injury—'let's get the rich doctor.' (2) Settlements are seemingly based on the degree of malpractice coverage rather than the actual needs of the claimant. (3) The contingency fee gives the attorney the incentive to seek a settlement obviously as high as possible."

Number of Malpractice Claims Filed

A large number of frivolous malpractice claims filed was identified by three or more of the interest groups as a future problem in the state.

The North Carolina Hospital Association Trust Fund commented that frivolous claims have increased significantly in the last several years. The Fund commented that patients are more inclined to file claims for minor injuries, real or perceived, and more claims are filed for injuries not caused by either the physician or hospital personnel but because of bad or unexpected results.

A Medical Mutual official said that frivolous claims have increased largely due to the publicity of large awards and increased public awareness.

The North Carolina Plastic Surgery Society commented that contingency fee arrangements—with lawyers getting one-third of the settlement—the number of practicing attorneys, and the amount of coverage carried by physicians and hospitals contribute to the desire of lawyers to pursue malpractice claims.

Equity of Awards and Settlements for Malpractice Claims

Regarding the equity of malpractice awards/settlements, three or more of the interest groups identified each of the following as a current or future problem in the state:

- Dissimilar awards/settlements for injuries of similar severity (current and future problem).
- Unpredictable outcome of malpractice claims (current and future problem).
- Payments that are far more or far less than economic losses sustained by the injured patient (future problem).

As an example of inequity, an official of the North Carolina Medical Society cited a recent $4.5 million jury award to the family of a brain-damaged child despite no evidence of any medical malpractice by the physician. He stated that the judge overturned the verdict as unconscionably high and not consistent with the facts.

The North Carolina Hospital Association Trust Fund commented:

"Often awards have little relationship to the seriousness of the injury. There is no way to predict how a jury will rule on a particular set of facts.

"Often awards bear no relationship to economic losses. Generally, awards range from adequate to excessive, with a few being inadequate.

"Today, juries often make awards regardless of the 'fault' of anyone - out of sympathy for an injured person. More and more the public attitude is that insurance will compensate the injured party and the defendant will not sustain any loss."

According to the North Carolina Hospital Association, "Too often, juries appear to award on [the] basis of emotion as opposed to facts and/or realistic evaluation of case circumstances."

Legal Expenses and Attorney's Fees for Malpractice Claims

Regarding legal expenses and attorney's fees associated with malpractice claims, three or more of the interest groups identified each of the following as a current and/or future problem in the state:

- Legal expenses and attorney's fees represent an excessive percentage of the awards and/or settlements (current and future problem).
- Excessive legal costs to defend claims (current and future problem).
- Excessive legal costs for a plaintiff to pursue claims (current and future problem).

According to a North Carolina Bar Association official, medical malpractice defense attorney's fees are usually about $100 per hour plus expenses, while plaintiff attorney's fees, which are paid on a contingency basis, generally are about one-third of the award plus expenses if the case goes to trial, or about 25 percent of a settlement, plus expenses. He attributed excessive plaintiff attorney's fees to the contingency fee arrangement, which he believes encourages frivolous claims, but discourages small but meritorious claims requiring high up-front filing costs.

The North Carolina Academy of Trial Lawyers commented that the front-end legal costs of discovery and bringing experts into a medical malpractice trial are very high.

A North Carolina Medical Society official commented that the plaintiff's attorney may receive more of the award or settlement than the injured party in some medical malpractice cases. He believes this is unfair.

The North Carolina Chapter of the American College of Radiology commented that contingency fee arrangements are a double-edged sword; if the contingency fee is too low, many minor but meritorious claims go uncompensated; however, if it is too high (which they believe it is now), not enough of the award/settlement goes to the plaintiff.

Solutions to Malpractice Problems

State action to expand the use of risk management programs was strongly supported by the physician group, the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, and the North Carolina Hospital Association. The Hospital Association commented, however, that such programs should be initiated and coordinated by the provider and/or insurer, rather than the government.

No other solutions to malpractice problems were strongly supported by three or more of the six interest groups surveyed.

Role of the Federal Government

No specific federal role in resolving medical malpractice problems was strongly supported by three or more of the six North Carolina interest groups. Federal action to establish a national policy regarding compensation for medically induced injuries was supported, however, by the physician group and the North Carolina Department of Insurance. Regarding such a policy, the North Carolina Plastic Surgery Society commented: "This is the best proposal under consideration—especially since many patients cross state line to receive medical care." The North Carolina Chapter of the American College of Physicians added that, once a national policy is established, adopting it should still be at the state's discretion.

The North Carolina Department of Insurance strongly supported federal action to

- establish a mechanism to provide technical assistance, such as a model legislation and guidance, to states and/or organizations;
- establish a mechanism to provide financial incentives and/or penalties to encourage states to take certain actions; and
- mandate a uniform system for resolving medical malpractice claims.

A North Carolina Medical Society official stated that he believes the best role for the federal government is to encourage state reforms through incentives. An official of the North Carolina Bar Association also stated that no federal involvement was necessary at this time, unless perhaps to provide incentives to states to take actions.

An official of the North Carolina Academy of Trial Lawyers said that he preferred state rather than federal changes to address problems. However, he added that the federal government should help the states gain access to more insurance company data.

Medical Malpractice Insurers Requested to Provide Statistical Data for North Carolina

	Provided data for	
	Physicians	Hospitals
Medical Mutual Insurance Company of North Carolina	X	
North Carolina Hospital Association Trust Fund		X
St. Paul Fire and Marine Insurance Company	X	X

Organizations Receiving GAO Questionnaire for North Carolina

Completing questionnaire	Not completing questionnaire
Physician group:	
North Carolina Medical Society	North Carolina Society of Anesthesiology
North Carolina Society of Pathologists	North Carolina Society of Orthopedics
North Carolina Neuropsychiatric Association	
North Carolina Chapter of the American College of Radiology	
North Carolina Obstetrical and Gynecological Society	
North Carolina Plastic Surgery Society	
North Carolina Society of Ophthalmology	
North Carolina Neurological Society	
North Carolina Chapter of the American College of Surgeons	
North Carolina Pediatrics Society	
North Carolina Chapter of the American College of Physicians	
North Carolina Academy of Family Physicians	
Hospital associaion:	
North Carolina Hospital Association	
Bar associaton:	
North Carolina Bar Association	
Trial lawyers:	
North Carolina Academy of Trial Lawyers	
Malpractice insurers:	
Medical Mutual Insurance Company of North Carolina	St. Paul Fire and Marine Insurance Company
North Carolina Hospital Association Trust Fund	
Insurance department:	
North Carolina Department of Insurance	

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

Number of hospitals		Hospitals completing questionnaire	
Universe[a]	Sample	Number	Percent
131	77	52	68

[a]1983 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

	1983		1984		1985	
Expenditure	Amount	Sampling error[a]	Amount	Sampling error[a]	Amount	Sampling error[a]
Total costs	**4.7**	**$.8**	**$5.7**	**$1.0**	**$9.6**	**$2.1**
Contributions to self-insurance trust funds	1.4	.5	1.5	.6	1.8	.6
Premiums for purchased insurance	3.2	2.4	4.1	.9	6.3	1.6
Uninsured losses	.1	.08	.1[b]	.1	1.5	1.4

[a]Sampling errors are stated at the 95-percent confidence level.

[b]Estimate 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 were 79 in 1983 and 1984 and 81 in 1985. The adjusted universe is that portion of the total universe based on the sample response rate for which we can estimate data.

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

Figures in percents

	1983		1985	
Annual cost	Hospitals	Sampling error[a]	Hospitals	Sampling error[a]
Less than $10,000	32.9	8.2	24.9	7.7
$10,000 to $24,999	12.1	5.8	19.0	7.5
$25,000 to $49,999	27.8	8.1	12.4	5.8
$50,000 to $99,999	14.4	3.3	17.2	6.8
$100,000 to $249,999	9.9	5.3	15.6	3.4
$250,000 to $499,999	0	0	6.6	4.9
$500,000 to $999,999	2.9	1.3	1.4	1.0
$1 million or more	0	0	3.0	1.6

[a]Sampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 79 in 1983 and 81 in 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]
$.94	$.20	$1.32	$.37	$2.24	$.60

[a]Sampling 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]
$315	$78	$441	$145	$758	$232

[a]Sampling 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	13.5	5.8
Increases of 10% to 49%	18.8	6.4
Increases of 50% to 99%	24.6	8.0
Increases of 100% to 199%	30.6	8.3
Increases of 200% to 299%	7.5	4.4
Increases of 300% or more	5.0	2.8

[a]Sampling errors are stated at the 95-percent confidence level.
Note: The adjusted universe of hospitals was 79.

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are $2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use $300

Address Correction Requested

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100