

Colorado Steers Clear of Malpractice Crisis

BY TIMOTHY F. KIRN
Sacramento Bureau

In places like Maryland, Pennsylvania, and Florida, some physicians are reportedly giving up providing high-risk services, retiring, or packing their bags for somewhere else because of the current professional liability crisis.

Colorado, on the other hand, has no such problem. In fact, medical malpractice insurance rates in Colorado may be attracting physicians.

Why? Many say it is because Colorado has a cap of \$1 million on malpractice awards, including \$300,000 allowed for noneconomic damages such as disfigurement and physical disability.

The cap reportedly has kept rates and increases down. At a three-physician, family medicine clinic in Leadville, the three physicians pay about \$16,000 each for malpractice coverage, and including coverage for obstetric care. Last year, their rates rose 4%, and this year, their rates will increase 6.7%, said Shelly Miller, office administrator at the Leadville Medical Center.

In some other states in recent years, annual rate increases have been said to be as high as 20%-30%.

In 1988, the year Colorado enacted limits on malpractice awards, the average obstetrician, for example, paid \$61,904 in malpractice insurance premiums, according to George Dikeou, a legislative consultant in Denver for COPIC, the nonprofit, physician-run insurer that covers malpractice for about 80% of all physicians in Colorado. Adjusted for inflation, that would equal more than \$100,000 today. But last year, the average Colorado obstetrician paid \$37,206 for COPIC coverage, Mr. Dikeou said.

The cap is not a hard limit—juries can award more than a million, but then the award must be reviewed by the judge—but it has limited awards and that has contributed to the low premiums. The largest verdict ever in Colorado was for \$3.2 million, Mr. Dikeou said.

Some evidence suggests that the low rates may be attracting physicians to Colorado, or at least keeping them there.

"Living and practicing medicine is more affordable here, and malpractice rates are part of that," said Kern Low, M.D., a family physician in Pueblo. According to figures from Peregrine Management Corp., a practice consulting firm in Lakewood, 2,178 physicians relocated to Colorado last year. Of those, 50% came from the 19 states that the American Medical Association has identified as "crisis" states, where escalating premiums are threatening practices and perhaps compromising the availability of physicians. Another 40% of those physicians came from states that aren't crisis states but have been hard hit by recent premium increases.

The Colorado Medical Society and others said they have not seen a flood tide of new physicians flocking to its borders, but neither are doctors abandoning practice or fleeing.

"We've got a part of the puzzle but we aren't the golden goose," said Dean Holzkamp, a spokesperson for the medical society, who noted that in Colorado reimbursement is considered very low. "I haven't heard of any mass influx of doctors. But we aren't seeing an exodus either. We don't have any shortage of being able to deliver babies.

"We're growing, but our state is growing," he said.

Colorado is unique in that one nonprofit company insures such a large number of physicians, but a recent study showed that caps do make a difference. Conducted by Kenneth E. Thorpe, Ph.D., of Emory University, Atlanta, the study found that average premiums are 17% lower in states with caps than in states without caps.

Another recent study, from the federal Agency for Healthcare Research and Quality, found that states with limits on malpractice awards have about 12% more doctors per capita than states without limits.

"Caps are a good thing," Dr. Thorpe told this newspaper.

Plaintiffs' lawyers in Colorado do com-

plain that the cap makes it economically unfeasible for some individuals to bring legitimate suits, said Dayna Bowen Matthew, a malpractice expert at the University of Colorado at Boulder. But there is no hard evidence that this is the case.

On the other hand, what has been shown in many places is that caps do discourage frivolous lawsuits, and that saves insurance companies money. "We have done a good job here in terms of keeping doctors and limiting frivolous lawsuits," Ms. Bowen Matthew said. "It is something that other states should be aware of."

She recently relocated to Colorado with her husband, a cardiovascular surgeon; malpractice rates were one of the things that factored into the decision to choose Colorado.

Rates in Colorado have not been stagnant during the recent run-up elsewhere, as critics of the state cap—such as Sen. Diana DeGette (D-Colo.)—are quick to point out. In the last 3 years, rates have increased 13%-15% each year.

But supporters of the cap attribute those increases to two state Supreme Court decisions, rendered in 2001 and 2002, that appeared to undermine the cap. One decision said that in cases where there was disfigurement, the limit on noneconomic damages did not apply. The other held that corporations that employed a physician could also be sued.

After those rulings, COPIC saw an increase in the number of cases it had to defend that alleged disfigurement, Mr. Dikeou said. In 2003, the cases forced the legislature to sit down with cap supporters, and they forged a compromise that amended the law to overturn those decisions. The compromise was that the cap on noneconomic damages was raised from \$250,000 to the present \$300,000.

The compromise means that Colorado's double-digit increases should be over, said Alethia Morgan, M.D., president of the

Colorado Medical Society and a member of the board of directors of COPIC.

"I expect that next year we will see single-digit increases again," she said.

The cap on awards is just part of what Colorado is doing to keep rates down, said Douglas H. Kirkpatrick, M.D., vice president of the American College of Obstetricians and Gynecologists.

Dr. Kirkpatrick, who practices in Denver, noted that in 2003 the Colorado legislature passed an "I am sorry" law. The law allows physicians to work with a patient who has had a bad outcome, and even take responsibility for the situation, but prevents anything they say during that process from being allowed into court.

COPIC is being proactive as well. The company recently completed a 3-year, pilot program designed to encourage physicians to deal with patients who have had an adverse outcome before they file a suit.

The physicians who signed up for the program agreed to report to the company any adverse outcome within 24 hours of its occurrence. When a report was made, the company stepped in to work with the doctor and the patient, with an emphasis on listening to the patient, and even admitting mistakes where they were made.

The goal was to preempt the patients' concerns and anger from turning into the kind of antagonism that prompts a malpractice suit. The program even disbursed money to patients when it was needed for further medical care or because of missed work, with a limit of \$30,000.

The pilot program was so successful that it is now being adopted company wide, Mr. Dikeou said. During the 18 months the pilot program was fully in place, 592 encounters were reported. Of those, 360 cases involved discussions with the patient and nothing more. In 232 cases, some disbursement of money was made, but in every case it was much less than would have been spent even fighting a suit that was dismissed, he said.

So far, no suits have been filed.

"We're doing stuff here in Colorado that nobody else is doing right now," Mr. Dikeou said. ■

The state's \$1 million cap on malpractice awards allows \$300,000 for noneconomic damages such as disfigurement and physical disability.

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