Maryland Passes Insurance Rate Stabilization Fund

BY MARY ELLEN SCHNEIDER
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As physicians push for professional liability reform at the national level, the Maryland legislature signed off on a bill aimed at halting rising malpractice premiums.

The centerpiece of the legislation is a rate stabilization fund for medical professional liability insurance that will be funded through a tax on HMOs.

The Maryland State Medical Society (MedChi) and the Maryland Hospital Association estimate that the fund would cover about 95% of the increase in premiums for 2005. Obstetricians in Maryland are paying about $120,000-$160,000 for insurance coverage this year.

Maryland physicians have been pushing hard for reform—especially since last fall, when the state's largest malpractice carrier, Medical Mutual of Maryland, said it would raise its premium rates in 2005 an average 33%. The move follows a 28% increase a year ago.

Maryland is considered a medical liability insurance crisis state by the American College of Obstetricians and Gynecologists. And physicians of all specialties in the state are choosing to lay off staff, close practices, or move, in order to deal with the malpractice problem, according to MedChi.

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The new legislation was passed in dramatic fashion during an end-of-the-year special session called by Gov. Robert Ehrlich. But he objected to the HMO tax and said the bill didn't contain meaningful tort reform. He then vetoed the measure in January, but legislators returned to work to override the veto.

The saga is expected to continue as Mr. Ehrlich prepares to introduce other legislation with more comprehensive reforms.

The state's physician and hospital groups are applauding the new legislation as an important first step. "While we agree with the governor and others that Maryland needs more comprehensive reform, it does offer important positive elements," MedChi and the Maryland Hospital Association said in a joint statement.

The groups pointed out that the measure contains a reduction in the cap on noneconomic damages in death cases, reform of how past medical expenses are calculated, and new requirements for expert witnesses. However, the legislation fails to include needed reforms such as mandatory structured settlements of awards, an expansion of the Good Samaritan Act to include emergency department professionals, and parameters on the calculation of future economic damages, the groups said.

Although there is still more work to be done, the attention brought to medical liability reform through the special session is good news for physicians, said Willarda V. Edwards, M.D., an internist in South Baltimore and MedChi president.

The increased awareness and the better understanding of the issues that resulted from the special session will help as physicians seek increased reform this year, she said. MedChi plans to pursue limits on lawyers' fees, structured settlements that can be paid over time, reforming the calculation of economic damage payments, and enactment of a Good Samaritan law.

"This is just a little taste of what we think should be done," Dr. Edwards said.

But physicians in Maryland are still waiting to see what the current legislation will mean in terms of premiums. "It's too early to say how this is going work," said Miriam Yudkoff, M.D., an ob.gyn. in Annapolis.

And Dr. Yudkoff said she has some concerns about what the insurance reform provisions in the legislation will mean for liability carriers. If Maryland becomes an unprofitable place for insurers, it could have a significant impact on physicians' ability to obtain coverage. "We need a bill that will make Maryland a favorable state for carriers," she said.

Carol Ritter, M.D., a solo gynecologist in Towson, who gave up obstetrics last year, said the legislation was a first step in reform, though not enough for her to practice obstetrics again.

The rate stabilization fund is likely to limit the 2005 average premium increase, Dr. Ritter said, but it will still be more than 2004 rates, which were already more than she could afford. However, she's hopeful it will allow some of her colleagues to stay in practice in the short term.

The legislation also won't help David Zisow, M.D., a gynecologist in Bel Air, to start practicing obstetrics again. Like Dr. Ritter, Dr. Zisow gave up obstetrics at the beginning of 2004 when the rates became too high. But even though the new legislation contains significant reforms, Dr. Zisow said he wouldn't be able to afford to buy the tail coverage that would be necessary to start practicing obstetrics again. His insurer, Medical Mutual, allowed him to forego paying tail coverage for obstetrics because of his many years with the company. However, he would have to pay a significant amount if he were to go back into obstetrics, he said.

As it is, Dr. Zisow has already seen a major increase in his premiums for gynecology alone in 2005, and he said he isn't optimistic that the legislation will result in too much change in premiums.

"It's business as usual," he said.

This is a wake-up call to physicians to get politically active, said Mark Seigel, M.D., an ob.gyn. in Gaithersburg and the former president of MedChi. Passing meaningful changes to the system takes time, he said, and ultimately it may mean voting officials out of office who fail to take on medical liability reform. ■

POLICY & PRACTICE

MedPAC: Give Doctors a 2% Hike

Medicare should increase physician payments by 2.7% in 2006 to keep pace with the cost of providing care, the Medicare Payment Advisory Commission recommended. Such an increase will help physicians continue to treat Medicare patients, John C. Nelson, M.D., president of the American Medical Association, said in a statement. "Unless Medicare payments keep up with the cost of providing care, there is a real concern that some physicians will be forced to stop taking new Medicare patients," he said. However, unless Congress fixes a flaw in Medicare's physician payment formula, doctors face a 5% cut next year and cumulative cuts of 30% through 2012. Several MedPAC commissioners supported the idea of taking outpatient or Part B drugs from the formula, although the Government Accountability Office has warned that this solution would not prevent several years of declines in physician payments.

Fatigue and Driving Don't Mix

Tired residents on the road lead to more automobile accidents, according to a Web-based survey of 2,737 residents in their first postgraduate year (N. Engl. J. Med. 2005;352:125-134). Investigators found that in any month, each extended work shift increased the risk of any motor vehicle crash by 9% and increased the risk of a crash on the way home from work by more than 16%. Those who worked five or more extended shifts in a month were also more likely to fall asleep behind the wheel. "These results have implications for medical residency programs, which routinely schedule physicians to work more than 24 consecutive hours," the researchers said. The respondents had completed more than 17,000 monthly reports that provided detailed information about work hours, work shifts of an extended duration, documented motor vehicle crashes, near-miss accidents, and incidents involving involuntary sleeping.

Compensation for Vaccine Injuries

The National Vaccine Injury Compensation Program (VICP) will now cover injuries related to the hepatitis A vaccine. Hepatitis A is the most common type of hepatitis reported in the United States, and causes an estimated 125,000 to 200,000 cases per year. The vaccine is recommended for children in certain states and high-incidence communities, in addition to people with chronic diseases or those traveling to countries where the disease is common. Most people who receive the hepatitis A vaccine don't experience serious problems. However, those who believe they've been injured by the vaccine must file a claim within 3 years of the first symptom of the vaccine injury or within 2 years of the vaccine-related death, but not more than 4 years after the start of the first symptom of the vaccine-related injury from which the death occurred. Administered by the Health Resources and Services Administration, the VICP program provides financial compensation to eligible individuals thought to be injured by vaccines.

Feds Flunk on Tobacco Regulation

Congress and the White House got failing grades on tobacco control policies in 2004, the American Lung Association said in its annual State of Tobacco Control report. The House of Representatives, for example, blocked legislation to grant the Food and Drug Administration authority to regulate tobacco products. Although President Bush signed an international treaty that sets standards to control tobacco use and addiction, he has not sent it to the Senate for ratification, the lung association said. In contrast, a number of state and local governments have stepped up efforts to enact strong tobacco control policies, such as approving laws to protect people from secondhand smoke and increase cigarette taxes, the report stated. Several states and communities, including Idaho; Rhode Island; Columbus, Ohio; and Lexington, Ky., achieved smoke-free workplaces.

Lawsuit Over Delay in Plan B

An advocacy group is suing the FDA for delaying its decision on over-the-counter status for the emergency contraceptive Plan B (levonorgestrel). "Half of the 3 million pregnancies in the U.S. are unintended each year. By denying women over-the-counter access to a safe and effective drug that would significantly reduce those numbers—including pregnancies that end in abortion—the FDA is acting unlawfully," said Nancy Northrup, president of the Center for Reproductive Rights, which filed its suit in a New York district court. The FDA had been scheduled to issue a decision in late January on a second application for OTC status for Plan B by its manufacturer, Barr Pharmaceuticals. Steven Galson, M.D., acting director of the FDA's Center for Drug Evaluation and Research, had rejected Barr's initial request for over-the-counter marketing status last spring, citing insufficient evidence regarding the effects of OTC availability of emergency contraception in younger women. The FDA should be completing its review in the near future, Barr indicated in a statement. "The company remains optimistic that the agency will approve Plan B for OTC sale."

Clinical Trial Participation

Most Americans say that clinical research studies are safe for participants, according to a new nationwide survey. But 57% said they would have greater trust in clinical research information if the results were made available on a public Web site or registry. The survey of 1,000 adults was conducted last December by the Center for Information and Study on Clinical Research Participation and Opinion Dynamics Corp. "The public clearly plays a vital role in clinical research," said Richard Greif, project director for Opinion Dynamics.

—Jennifer Silverman