

# Professional Liability Reform

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National Rural Health Association

Large jury awards, large settlements, and other financial losses to medical insurance companies are triggering rapid increases in the costs of liability insurance premiums. More than half of all jury awards are more than \$1 million dollars, and the average has increased to 3.5 million. As insurance becomes unaffordable or unavailable for rural providers, doctors are being forced to leave their practices and drop vital services. In rural and underserved communities, where access to quality care is already in jeopardy, rising liability costs are creating a crisis situation. Among the hardest hit states include Texas, Florida, West Virginia, Mississippi, Pennsylvania, Washington, Georgia, New Jersey, New York, Ohio, Oregon and Nevada.

Over the last four years, malpractice insurance rates for ob/gyns have jumped as much as 150 percent, prompting record numbers of obstetricians – about 1 in 11 nationwide – to scale back their services to only gynecology. This situation is seriously threatening women's access to care. Not only are seasoned physicians quitting OB practice, but obstetrics is having a very difficult time recruiting new doctors. Many rural communities no longer offer OB services.

Across the nation, health care providers are facing staggering increases in medical liability insurance premiums – if they can find coverage at all. NRHA recognizes that part of this insurance problem is the fact that the insurance industry has suffered major losses over the last few years, including problems in the reinsurance market, decreased yields on investment portfolios and the lingering effects of the September 11th attacks. However, health care providers across the board and around the country are facing double-digit hikes in malpractice premiums. In 2001, physicians in eight states saw two or more medical liability insurers raise rates by 30% or more and a dozen states saw rate increases of 25% or more. A doctor in rural Mississippi can expect to pay \$70,000 in malpractice premiums while the average yearly physician salary is only \$72,000.

Because of tort reforms passed nearly three decades ago in California, the Medical Injury Compensation Reform Act (MICRA), California health care providers and patients have been spared the medical liability crisis other states are facing. Most states are currently debating laws based on MICRA.

## NRHA Policy Brief

MICRA eliminates high-dollar malpractice awards by placing a \$250,000 cap on non-economic, or 'pain and suffering' awards and limiting attorneys' contingency fees. It also places time limits on filing claim, and it requires that patients be compensated for medical bills, lost wages, future earnings and rehabilitation. The measure has withstood legal challenges. Because of MICRA, California now has some of the lowest malpractice premiums in the United States.

Comprehensive professional liability reform is necessary to address the current health care liability crisis on a national level. This is essential for rural and underserved communities that already bear the burden of poor access to health care. Rising liability insurance premiums are creating access problems in rural communities.

### **Policy recommendations:**

- National adoption of proven minimum standards to make the medical liability system equitable, predictable, and timely.
- Secure the ability of injured patients to obtain timely, unlimited compensation for their "economic losses," including the loss of ability to provide unpaid services like care for children or parents.
- Ensure that recoveries for non-economic damages do not exceed a reasonable amount.
- Reserve punitive damages for cases where they are justified, and limit punitive damages to reasonable amounts.
- Provide for payments of judgments over time rather than in a single lump sum, to ensure that appropriate payments are there when patients need them and that defendants pay judgments in proportion to their fault.
- Ensure that old cases cannot be brought to trial years after an event discovery.
- Require that juries be informed if a plaintiff has other sources of reimbursement for an injury.
- Encourage the collection of patient safety and quality measurements to facilitate benchmarking and meaningful peer review. Provide legal safe guards to limit discoverability of internal and external data collection.
- Reforms to the medical liability system should result in lower, affordable premiums for patients.

*Questions in regard to this policy brief should be directed to the NRHA Government Affairs Office at 703/519-7910*

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**National Rural Health Association**  
One West Armour Blvd., Suite 203  
Kansas City, MO 64111-2087  
[www.NRHArural.org](http://www.NRHArural.org)