



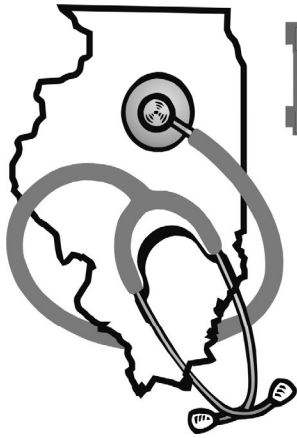
# Keeping Doctors in Illinois

MEDICAL LIABILITY REFORM PLAN

Illinois House Republican Caucus

**TOM CROSS**

House Republican Leader



# Keeping Doctors in Illinois

## MEDICAL LIABILITY REFORM PLAN

The Illinois House Republicans are supporting a bi-partisan plan to solve our state's worsening health care availability crisis. House bill 705 addresses the problem in all of its facets – from the perspective of the physician facing astronomical malpractice insurance premiums, to the rates liability insurers set, to the malpractice litigator and disposal of cases having no merit.

Many of the specific proposals were included in the House Republicans' Code Blue Medical Liability Crisis Relief Plan introduced last year including the plan's cornerstone a reasonable \$250,000 cap on non-economic damages for physicians and a \$500,000 cap on non-economic damages for hospitals.

### **Insurance Reform Provisions**

- Creates the 'Sorry Works!' Pilot Program as a way for doctors to express any grief and apologize within 72 hours to discuss the outcome of a medical procedure with patients or their family members without being penalized or having their words used against them.
- Allows a county to create a risk retention trust to provide medical malpractice insurance for physicians and hospitals.
- Makes it easier for the Department of Insurance to call a hearing to determine whether the rates set by a company are excessive or inadequate.
- Requires insurance companies to file with the Division of Insurance their rates and rate schedule every time there is a change in the company's rates.
- Increases the Division's ability to penalize medical liability insurers, and imposes a fine of \$1,000 a day for companies that maintain excessive rates.
- Requires all medical liability insurers to offer policyholders the option to pay in at least quarterly payments.
- Encourages insurers to offer premiums with deductibles.
- Encourages insurers to offer premium discounts for risk management program completion.
- Creates a web-based professional liability resource center.

- Requires submission of claims data to the Department of Insurance by all medical liability insurers and requires the clerks of the court to provide data.
- Imposes penalties on insurance companies that fail to report claims data in their possession to the Department of Insurance.
- Sets notice requirements for any rate increase hearing ordered by the Department of Insurance.
- Puts additional data reporting requirements on insurance companies to the Department of Insurance.

## **Physician Discipline Provisions**

- Extends the sunset of the Medical Practice Act from January 2007 to January 2016.
- Increases the number of medical coordinators to assist the Medical Disciplinary Board members in their investigations of physicians.
- Increase investigators from one full-time investigator per 5,000 physicians to at least one full-time investigator per 2,500 physicians, and adds additional investigators at the discretion of the Director.
- Extends the statute of limitations for the Department of Professional Regulation to investigate allegations of a pattern of practice from five to ten years.
- Requires the Department of Professional Regulation to expunge the records of discipline solely for administrative matters 3 years after final disposition or after the statute of limitations has expired, whichever is later.
- Increases the fine the Department of Professional Regulation can impose in disciplinary cases to \$10,000.
- Allows for the sharing of disciplinary information and investigative reports with law enforcement agencies.
- Grants good faith immunity to persons who report alleged violations of the Medical Practice Act to a peer review committee.
- Requires physicians to provide copies of records in responding to any mandatory report within 30 days after request by the Medical Disciplinary Board.
- Upon request by the Department of Professional Regulation, plaintiff's attorneys are required to provide copies of records related to settlement, judgment or verdict.
- Clerks of the court are required to provide the Department of Professional Regulation with information about professional liability lawsuits.

## Litigation Reform Provisions

- Removes hurdles from the Health Care Arbitration Act by eliminating the requirement that a patient reaffirm an arbitration agreement at discharge and allowing the agreement to be revoked at any time up to 30 days after execution. Lastly, an agreement is valid for 5 years instead of 2 years.
- Allows for a one time 90-day extension of the original 6-month respondent in discovery period for either withdrawal of plaintiff's counsel or if plaintiff's counsel can show good cause. The court may also grant additional reasonable extensions of this 6-month period for a failure or refusal on the part of the respondent to comply with discovery in timely manner.
- Strengthens the affidavit of merit by requiring disclosure of the consulting physician's name and address, and requiring that the consulting physician who determines that there is a "reasonable and meritorious cause" for filing be an expert in the area of medicine that is the subject of the lawsuit by meeting the revised expert witness standards.
- Informs juries of the tax consequences of awards.
- Informs juries that punitive damages may not be awarded under Illinois law.
- Clarifies the definitions of economic loss or damages, non-economic loss or damages, and compensatory or actual damages.
- Mandates fees in excess of the statutory fees of the plaintiffs' attorneys in medical liability cases be made part of the record.
- Clarifies the definition of healing art malpractice.
- Allows the use of annuities for payment of future medical expenses.
- Apparent agency: Outlines objective factors that a hospital can show to prove that no agency relationship exists and to release the hospital from a liability claim.
- Allows physicians to say "I'm sorry."
- Increases the qualifications of expert witnesses.
- Repeals periodic payment provisions.
- Preserves emergency care by extending good faith immunity to physicians, including retired physicians who provide emergency care without charging a fee.
- Preserves free medical clinic care by extending good faith immunity to physicians, including retired physicians who provide free home visits or free care in free clinics. Existing text is revised to allow for Medicaid payments to free medical clinics.
- Protects Personal Assets: Protects all health care professionals' personal assets from being seized provided a minimum of \$1,000,000 in professional liability insurance coverage is maintained.

# Fact Sheet

- Illinois has dropped ten spots to number 44 in the U.S. Chamber Institute for Legal Reform/Harris State Liability Systems Ranking Study in the last two years. Lawsuit abuse in Madison and St. Clair Counties is the primary reason for the lower ranking. Skyrocketing liability insurance rates have forced 150 physicians to leave the region.
- Illinois has three of the top twelve least fair and reasonable litigation environments. Madison County (3rd), Cook County (5th) and St. Clair (12th).
- In 2002, non-economic damages comprised 91% of the average total monetary value awarded by a jury. In 1997, it was 67%. (Cook County Jury Verdict Reporter)
- A recent survey conducted by the Chicago-based OB/GYN Crisis Coalition reveals that over the past two years, 11 percent of ob/gyns have decided to stop practicing obstetrics entirely as a result of liability concerns. That translates into a loss of some 46,000 office visits for obstetrical and gynecological services during that period, the group estimates.
- More than half of ob/gyns (56 percent) are considering stopping obstetrics entirely in the next two years as a result of medical liability concerns. Nearly one-fifth (19 percent) are extremely likely to stop practicing obstetrics.
- Almost half of ob/gyns (47 percent) have reduced their scope of services in the past two years and 72 percent of ob/gyns are likely to decrease their scope of medical services offered in the next two years.
- Ob/gyns report that overall liability insurance premiums have risen sharply – a 66% increase from 2001 to 2003. According to the survey, on average, OB/GYNs are spending \$92,567 a year for liability insurance.
- Seven in 10 ob/gyns have increased testing orders because of their concerns over potential litigation. -73 percent are ordering ultrasounds more frequently
  - 70 percent are conducting more Cesareans sections
- In the last three years, medical liability premiums for North Shore Cardiologists in Lake County, IL have increased to \$1.2 million annually from around \$225,000 (Chicago Tribune, January 25, 2005)
- By moving to Wisconsin, Indiana, Iowa or Missouri, an Illinois obstetrician can save \$75,000 to \$100,000 a year on malpractice insurance, according to the Illinois State Medical Society.
- Potentially 7,776 pregnant women in Illinois will be forced each year to find new obstetricians, according to June 2003 data from the American College of Obstetrician and Gynecologists.

- From 2001 to 2003, the number of malpractice claims in Illinois jumped 45 percent. The cost of verdicts and settlements increased 25 percent. The median payout for a malpractice claim rose from \$230,000 in 1993 to \$520,000 in 2003. The percentage of payouts greater than \$750,000 more than doubled in the same period, to 35 percent. (Chicago Tribune, Editorial, April 18, 2004)
- Insurers are fleeing. Three years ago, the Illinois State Medical Society, which provides malpractice insurance, had 16 competitors in the market. No more than four now write general medical malpractice policies here.
- The average obstetrician/gynecologist in the counties of Cook, Madison, St. Clair and Will pays \$139,696 in malpractice premiums and a neurosurgeon pays \$228,396. The comparable costs in nearby states that have damage caps: \$39,508 for obstetricians and \$46,803 for neurosurgeons in Wisconsin, \$58,020 and \$70,472 in Lake and Porter counties in Indiana, \$92,726 and \$129,519 in St. Louis and Kansas City, Mo. (Chicago Tribune, Editorial, April 18, 2004)
- Eighty percent of malpractice claims are closed out with no payment to plaintiffs--but the legal costs can be huge. (Chicago Tribune, Editorial, April 18, 2004)
- South of Springfield there are no neurosurgeons; six of 35 obstetricians have closed their practices in the Joliet area since 2002, with two leaving soon; others have either stopped delivering babies or refuse to treat women with high-risk pregnancies. The Illinois Medical Society says only 133 neurosurgeons will be practicing in Illinois by 2005; last year there were 185.
- The American Medical Association claims that medical malpractice suits add \$60 billion to \$108 billion per year to the cost of health care in the United States and reduces access to health care for millions of people.

