

Medical malpractice in Hawaii

Hawaii ranks 14th highest in medical malpractice payouts

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HONOLULU -- Although medical malpractice claims, premiums and awards have declined in recent years, Hawaii remains 14th in the nation in the average malpractice award, paying far more than states like California and Texas, which have capped how much a patient can sue a doctor for medical errors.

California was bested only by Michigan as the state with the lowest average malpractice payment of the cases where a doctor's work state was listed, according to a Stephens Media analysis of 452,052 cases compiled by the U.S. Department of Health and Human Services between 1990 and 2007.

The records, from the National Practitioner Data Bank Public Use Data File, are current through Sept. 30 and are considered the most authoritative source of information about "adverse incidents," such as malpractice, complaints and license revocations, in health care. But some proponents of medical malpractice insurance reform, such as Hawaii Insurance Commissioner J.P. Schmidt, question their accuracy.

Medical malpractice insurers in California paid an average \$110,781 per claim, compared to \$235,233 in Hawaii. The highest in the nation is the District of Columbia, where insurers paid an average \$338,127.

"The trial attorneys have a valid concern about appropriate compensation for victims," Schmidt said. "It's just that throwing a big ball of money with no standards or limits at them is not a good solution."

The amount insurers must pay out in awards directly affects the premiums they charge doctors. Doctors name high medical malpractice premiums as one reason they decide not to practice in Hawaii, and even why some specialists are leaving.

This concerns Dennis Elwell, a Ka'u retiree, who says his local hospital is down to one doctor and a practitioner, where once there were three doctors. He wants lawmakers to put caps on awards, such as proposed in HB 1992, a bill currently making its way through the Legislature.

The bill limits noneconomic damages -- such as emotional distress, mental anguish, disfigurement and loss of companionship -- to \$250,000, unless a judge determines the case is "catastrophic," raising the limit to \$3 million. The state currently has a \$375,000 limit on pain and suffering, another type of noneconomic damage. Economic damages, such as medical expenses and lost wages, are not capped.

The bill would go into effect upon enactment and automatically expire in five years, unless it is renewed. That, said bill sponsor and Health Committee Chairman Josh Green, D-North Kona, Keauhou, Kailua-Kona, would allow the Legislature to let it lapse if it didn't stabilize insurance premiums.

"The perception from much of the public is that the Legislature cares more about lawyers, and protecting their fat fees, than about the quality of health care for their constituents," Elwell said in testimony to the House Health committee. "We need protecting from bad doctors, but many malpractice awards are outrageous, and taxpayers ultimately foot the bill."

But an analysis of state data shows that the number of doctors is increasing in Hawaii, both overall and as a ratio to population. Statewide, doctors rose to 3,917 last year, or just over three doctors for every thousand people, according to the Hawaii Department of Commerce and Consumer Affairs. Physicians on the neighbor islands continue to lag far behind, however, with 382 doctors practicing on the Big Island, just over two per thousand people.

"They shouldn't get the people all afraid that there's not going to be any more doctors," said Bob Toyofuku, an attorney representing Consumer Lawyers of Hawaii. "Maybe some doctors are leaving. But others are coming in."



Nor does the data kept by Schmidt's office show proof of the "escalating" malpractice premiums doctors fear. Premiums collected statewide have declined from a high of \$27.1 million in 2003 to \$20.4 million in 2006, the most current year available. Claims peaked in 2005 to \$30.2 million but dropped the following year to \$14.1 million, according to the insurance commissioner's annual report.

Schmidt says it's not whether premiums and claims are going up or down, but their sheer volatility that's the problem. Doctors don't like the uncertainty, he said, and prefer practicing in a more stable insurance climate.

Paula Arcena, executive director of the Hawaii Medical Association, echoes that sentiment. She said doctors do have a perception of an unregulated market, and that frightens them.

"It's still an issue to overcome," Arcena said. "We do know anecdotally that there's a shortage of specialists in particular."

Arcena said the University of Hawaii Medical School is conducting an "inventory" of physicians, their specialties and where they practice. So much of that kind of information remains unknown, she said.

Toyofuku remains convinced that capping malpractice awards won't be enough to lure doctors to rural areas. Living in the country versus the city remains a lifestyle choice, he said.

"They keep saying if you cap damages, doctors will move to rural areas," Toyofuku said. "There are so many factors why physicians would move to Hilo, Waimea, Kona, but they're not easily going to move there, and not because damages are capped."

Green, the only physician in the Legislature, wants to help fellow doctors, but he's philosophical about the bill's chances.

"Since malpractice claims and payments seem to be stable or even slightly declining over the past few years, the best way to help doctors stay in practice right now might be to raise insurance reimbursements and at the same time invest in targeted malpractice insurance subsidies," Green said. "I believe this will make a real difference in helping doctors stay in practice across the state, particularly in rural areas."

Average medical-malpractice payments from 1990-2007 by state

DC \$338,127
CT \$319,604
IL \$310,646
MA \$285,791
AL \$258,535
NJ \$257,523
NY \$257,272
DE \$256,660
GA \$256,165
WI \$248,354
RI \$244,147
NC \$242,349
NV \$235,736
HI \$235,233
ME \$226,428
AK \$224,260
NH \$223,425

PA \$223,152
MD \$220,912
OK \$213,830
AZ \$212,795
OH \$211,794
FL \$208,791
MO \$203,302
WV \$200,199
MN \$198,869
MS \$195,483
TN \$194,694
VA \$193,345
SD \$191,795
AR \$187,494
OR \$184,636
ND \$178,536
ID \$178,505
WY \$175,539
SC \$174,619
TX \$173,351
CO \$170,223
MT \$169,799
WA \$169,497
IA \$169,166
KY \$168,642
IN \$165,923
NM \$139,157
LA \$136,376
KS \$135,577
UT \$127,836
NE \$127,387
VT \$123,657
CA \$110,781
MI \$95,634