Doctors Still Face Harsh Medical Liability Realities
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When looking at the medical liability landscape, doctors will see some recent victories fending off tort reform challenges.

California's $250,000 noneconomic damages cap -- long considered the gold standard among state tort reforms -- was upheld by an appellate court in September 2011. West Virginia's cap of the same amount was declared constitutional by the state's high court in June 2011.

Such reforms enacted or upheld in these and other states are credited with positive results. Doctors who otherwise would have fled to a better liability climate have stayed put. Liability premiums in tort reform states are typically lowered or at least stabilized.

But those strides must be viewed alongside setbacks. In 2010, the Georgia Supreme Court found that state's $350,000 cap unconstitutional, and the Illinois Supreme Court did the same with the Illinois cap of $500,000. Legal challenges are being waged in Missouri, Indiana and elsewhere.

Two recent reports from the American Medical Association provide an even broader reality check on the scale of the challenge that physicians still face.

The first study, issued in November 2011, found that the average expense to defend against a medical liability claim in 2010 was $47,158. That's a 63% increase from 2001. Average expense payments have increased by 43% since 2005. About two in three claims against doctors were dropped, dismissed or withdrawn without payment in 2010, but expenses handling even those dead-end claims average $26,851.

Payments on claims have remained stable, but a small fraction account for a disproportionate share of those payments. Payouts of at least $1 million accounted for 34% of total payments -- a figure the report said underscores the need for caps on noneconomic damages to contain health care costs and premiums.

The second report, released in December 2011, analyzed premium information from 2004 to 2011 collected by the *Medical Liability Monitor*. Even with improvements in the market, the report shows that many states still have unacceptably high premiums. For example, premiums for obstetrician-gynecologists in some areas of New York hit $206,913 in 2011, a 41% increase from 2004.

Overall stability of premiums, viewed as a generally positive sign, also was reflected in the data. On a national scale, 55% of premiums held steady in 2011, while 15% increased and 30% decreased. The trend of stable rates has held for six straight years.

However, the *Monitor* survey shows that, despite an overall stable market, premiums vary widely depending on where a physician practices, with general surgeons paying as much as $191,000 in South Florida or as little as $11,000 in Minnesota. Avoiding an increase is relatively slim comfort when it also means being stuck with a six-figure premium from practicing in a liability hot spot.

The toll that medical liability takes on doctors is more than financial. Consider one recent finding: Surgeons who were sued had a 7% higher rate of burnout and a 10% higher rate of experiencing symptoms of depression than those not sued during the two years examined, said a study in the November 2011 *Journal of the American College of Surgeons*.

The AMA has long fought for tort reforms and continues to pursue solutions to an out-of-whack medical liability environment. The Association is seeking reforms at the federal and state levels, and it supports testing new approaches, such as health courts. Meanwhile, the Litigation Center of the American Medical Association and the State Medical Societies is helping to defend challenges to state caps.

Indeed, it is the states where reforms have been made. Yet the prospect of delivering care under a sound medical liability system should not end at the state line. The two AMA reports and *Monitor* data present a view of the system as it must be seen and addressed, as a matter of national health policy and tort reform.