

West Virginia Executive: Health Care

Medical Liability Reform: Improved Access to Healthcare Services

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In 2003, West Virginia physicians and their patients were in trouble. Doctors were leaving the state. Older, experienced physicians were retiring sooner. Many younger recruits and graduating medical students did not consider West Virginia a satisfactory place to set up a clinical practice.

The reason? A double- to triple-digit rise in professional liability insurance premiums or, simply, non-renewal of insurance policies. It was becoming increasingly difficult for doctors to find liability coverage. Major insurance carriers no longer wanted to insure physicians – especially those in *high-risk* specialties such as obstetrics, surgery, and emergency medicine. One study found that 34 West Virginia hospitals had lost an average of five percent of their medical staff.

With doctors worrying about the availability and affordability of insurance coverage, and in some instances leaving the state, the ability of West Virginians to access quality healthcare was being compromised. Obviously, something had to be done; and it was. Concerned West Virginians went to work to try to solve the problem using a variety of approaches. In one effort, through a strong grassroots campaign led by the West Virginia Hospital Association (WVHA) and other groups, West Virginia became a national leader in medical liability reform with passage of House Bill 2122 during the 2003 legislative session.

House Bill 2122 has been called the most comprehensive liability reform bill enacted by any state in the past 30 years. The cornerstone of the legislation is a series of fundamental changes to West Virginia's tort laws. This legislation allows West Virginia to enjoy a comprehensive set of revised medical liability statutes and standards which will help ensure access to patient care, provide a fair and prompt means of resolving medical liability claims, and provide a physician practice environment comparable to, if not greater than, that in other states.

The bill is built on three primary platforms: structural reforms in the tort system; formation and funding of a physician's mutual insurance company, to be established July 1, 2004; and near-term medical liability insurance rate relief for physicians. It contains additional elements designed to improve the quality of healthcare in West Virginia.

House Bill 2122 brings balance, predictability, stability and fairness to West Virginia's medical liability system, allowing the state to recruit and retain physicians – a fact confirmed by a recent study conducted by the Department of Health and Human Services' Agency for

Healthcare Research and Quality. The study showed that states with limits on non-economic damages in medical lawsuits have nearly 12 percent more physicians per capita than states without such caps. The legislation includes a \$250,000 cap on non-economic damages; with specified exceptions for certain prescribed situations it may be increased to \$500,000. There is also a separate limit for trauma services and it covers economic and non-economic damages.

"The study confirms and quantifies the association between reasonable limits in medical lawsuits and the supply of physicians available to treat patients who need them," Secretary of the U.S. Department of Health and Human Services Tommy Thompson said.

Led by the WVHA, concerned groups came together to form the West Virginia CARE Coalition in support of doctors, hospitals, healthcare providers, and all West Virginians. The goal of the Coalition was to urge the governor and state legislature to address medical liability reform, the lack of which was decreasing access to healthcare, driving doctors out of West Virginia and increasing healthcare costs. The CARE Coalition included, among others, the West Virginia State Medical Association, The West Virginia Health Care Association, The West Virginia Roundtable, and the West Virginia Business and Industry Council.

"The CARE Coalition," says Tony J. Gregory, WVHA's Director of Communications and Legislative Affairs, "worked to put the interests of patients first and focused on assuring access to healthcare through an extensive grassroots advocacy campaign."

Gregory, who was highly active with the CARE Coalition, adds, "We worked to highlight the gaps in the medical liability system and to encourage every West Virginian to work together to ensure access to healthcare by supporting reform legislation."

In West Virginia, the benefits have already begun to show. Doctors who came to White Coat Day at the Legislature in 2004, a year after the bill was passed, proved they understood the importance of protecting the malpractice reforms that lawmakers won last year. According to a 2004 article in *The Charleston Daily Mail*, doctors are "patting lawmakers on the back" for their efforts in passing House Bill 2122.

"What I'm hearing physicians say to legislators is, 'Thank you,'" said Senator Evan Jenkins, D-Cabell, Executive Director of the West Virginia Medical Association. "The medical community is already feeling the positive effects of the medical malpractice legislation. Recruitment is up; access to care is improving."

"Overall the climate has improved," said Wheeling Hospital CEO and Chairman of the WVHA Board of Trustees Dr. Donald Hofreuter. In a March 2004 *Charleston Daily Mail* article, Hofreuter said: "At least we're getting physicians to come to the area to look at our facility, whereas before we were sort of on a list that's 'not the place to go.'"

Before House Bill 2122 was passed, for example, Reynolds Memorial Hospital saw several physicians leave or take early retirement. The hospital, which had served the small Marshall County community for over a century, was suddenly found bereft of its gastroenterologist and cardiologists, causing the 100-bed facility to scramble for replacements.

Jay Prager, COO of Reynolds Memorial, said hospital officials searched for a cardiologist for nearly nine months. They contacted medical residency programs both in and out of state, networked, and then contracted with several contingency firms before retaining the recruiting services of *Merritt, Hawkins & Associates. After House Bill 2122 was enacted, the recruitment firm located and placed a cardiologist interested in moving to West Virginia because of the state's private practice opportunities and recent advances in medical liability reform.

The changes, which became effective in July 2003, include non-economic damage caps between \$250,000 and \$500,000, depending upon the injury. Since then, Wheeling Hospital has recruited four family physicians and one ear, nose and throat specialist, Hofreuter told the paper. One neurosurgeon, Dr. Ronald Hargraves, has come to the area, as well, where he will perform brain and spine surgery at both Ohio Valley Medical and Wheeling Hospital. According to a recent *Daily Mail* article written by Therese Smith, Wheeling had previously gone two years without a neurosurgeon after physicians there discontinued their surgical practices. Martinsburg's City Hospital recruiter, Carl Joseph, says the facility has had nearly one physician interview per week compared to three-a-quarter in 2003. The newspaper reported City Hospital Chief Medical Officer Dr. Donald Jansen's enthusiastic comment: "It's improved dramatically. We find that when physicians are calling we're able to say 'Now we have tort reform.' That really now looks more favorable."

"In the 1980's, physician recruiting was pretty easy," says Bob Gray, FACHE, Vice President of Business Development at Thomas Memorial Hospital in South Charleston. "Then, physicians began to leave because of the worsening medical malpractice climate. When legislation passed (House Bill 2122), word spread quickly. We were getting queries asking 'what have you done with the med mal situation in your state?' We recruited two physicians from California and one from Georgia 60 days after the legislation had passed."

Said Gray, "House Bill 2122 was physician-friendly malpractice reform. The result was fewer doctors leaving the state and doctors seeking to establish practice in West Virginia. The door had opened again. Now states such as Pennsylvania and Florida are experiencing a medical malpractice crisis and are losing doctors."

The year 2003 was a busy one for medical liability reform. The American Tort Reform Association (ATRA) recently reported it to be the most successful year for enactment of state

civil justice reform legislation since 1995. At mid-year, 20 states already had enacted laws; 19 laws were enacted by the conclusion of 1995.

"Policymakers across America were emboldened this year," said ATRA President Sherman Joyce at the end of last year. "The need to enact reforms has overcome the political muscle of the personal injury bar."

The 20 states that enacted civil justice reforms include: Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, Minnesota, Mississippi, Montana, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. Some states called special sessions in order to advance reforms. West Virginia, however, enacted by far the most comprehensive reform legislation to date, taking a 30-year leap forward in medical liability reform. Not since California passed its *Medical Injury Compensation Reform Act of 1975*, which was a model for House Bill 2122, has any state established itself as a leader in this area. With the passage of House Bill 2122, West Virginia set the gold standard for medical liability reform.

Passage of *The Patient Injury Compensation Fund (PICF)* in the 2004 session is directly linked to the passage of House Bill 2122. The legislation is necessary to safeguard the caps on trauma care and the elimination of joint liability. Both of those provisions were put into place last year and are either directly or indirectly contingent upon the implementation of the PICF. Funding of the PICF is provided through redirection of the premium tax payment of the Physicians Mutual Company that was also established in 2003.

The most serious challenge we face today is to prevent these potent liability reforms from being overturned by the West Virginia State Supreme Court. A petition protesting the reforms was filed in June 2003, and a second challenge was brought to the West Virginia Court of Appeals late last summer. Fortunately, neither was successful, but other challenges await the outcome of the November elections. A change in the composition of the Supreme Court may be the only thing that will preserve the provisions.

Both challenges underline a comment I made during an interview with the *Bluefield Daily Telegraph* early last spring shortly after the governor signed the bill. "It's critical," I stressed to the *Telegraph* reporter, "for the public to know that West Virginia must sustain what's been passed."

Since passage of the liability reform legislation in 2003, preserving this hard-won legislation has become an Association priority. It has implications for the economy of the state, access to medical care, and to the health of our population. This is so vital that it requires the community's most vigilant protection.

**Merritt, Hawkins & Associates is a preferred partner with West Virginia Health Services (www.wvhsi.com), a subsidiary of the WVHA.*

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