

# CONDITION CRITICAL



## New York's medical liability crisis

New York's medical liability system is in crisis as a result of costly lawsuits and correspondingly unaffordable liability insurance rates. Opponents of medical liability lawsuit reform, most notably the personal injury trial lawyer lobby, try to downplay the impact of New York's lawsuit climate on medical liability costs. The facts, however, speak for themselves.

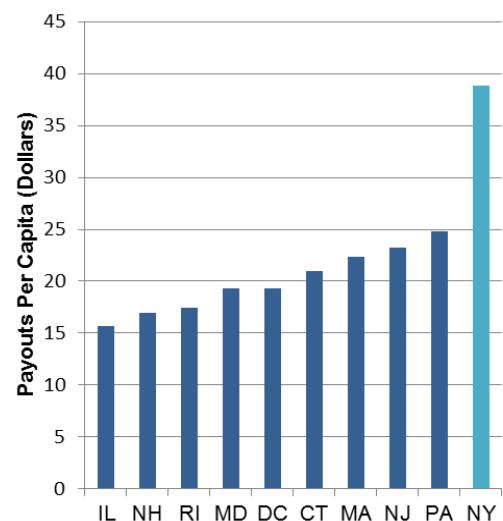
### New York leads the nation in medical liability insurance payouts

New York's per capita medical liability payouts are the highest in the nation - more than three times the national average, and almost double that of the next highest state. Our state now accounts for 20 percent of all payouts in the entire nation.<sup>1</sup>

### High payouts result in high premiums

According to the most recent data, New York's medical liability insurance premiums are among the highest in the nation.<sup>2</sup> Currently, no state in the nation has higher premiums for OB-GYNs; only two states have higher rates for internal medicine;<sup>3</sup> and only one state has higher rates for general surgery.<sup>4</sup> Medical liability premiums now exceed \$330,000 annually for some doctors, a figure that would be higher if not for the fact New York taxpayers pay more than \$100 million annually to subsidize medical liability insurance premiums.<sup>5</sup>

U.S. Medical Liability Payouts 2013



<sup>1</sup> Diederich Healthcare, 2014 Medical Malpractice Claims Payout Analysis. Data sourced from the National Practitioner Claims Data Bank.

<sup>2</sup> Excellus Blue Cross Blue Shield, Facts About New York State Medical Malpractice Coverage Premiums: 2013-14 Standard Medical Malpractice Premium Rates.

<sup>3</sup> Only Florida's Miami and Dade counties and Illinois' Cook, Madison, and St. Clair counties have rates higher than New York's highest rate.

<sup>4</sup> Only Florida's Miami and Dade counties have rates higher than New York's highest rate.

<sup>5</sup> In March 2014 the NYS Budget appropriated \$127.4 million to the NYS Excess Medical Malpractice Pool for the 2014-2015 year.

## The cost of medical liability claims and premiums has increased dramatically

According to the leading medical liability insurer in New York, the average cost of indemnity and defense payments on behalf of physicians rose from \$370,000 in 2001 to \$523,000 in 2013. Between 2003 and 2008, medical liability premiums soared by 55-80%.<sup>6</sup>

## High premiums are not due to insurance company profits

Premiums for licensed medical liability insurers in New York are strictly regulated by the New York State Department of Financial Services (DFS). Insurers must file detailed financial data with the DFS, which then sets premiums. Under this system, medical liability insurers cannot charge rates which generate huge profits at the expense of policyholders. Medical liability insurers in NYS have struggled to maintain solvency over time. Two insurers remain technically insolvent, while the state's leading insurer only recently surpassed risk-based capital standards typically used by insurance regulators to gauge financial strength. Medical liability insurers in other states maintain much higher risk-based capital levels. According to the most recent data, New York ranks highest in the nation in terms of direct medical liability loss ratio, meaning that New York insurers have the highest losses per dollar of premium charged – in other words *the lowest profit margin in the nation*.<sup>7</sup>

## High medical liability costs impact New York's physicians, hospitals, and patients

New York State retains only 36% of physicians from undergraduate medical education, making us 28<sup>th</sup> in the nation.<sup>8</sup> In 2013, 75% of surveyed hospitals reported that the recruitment of primary care physicians was very difficult due to shortages, while 87% indicated that their ability to recruit physicians was the same or worse than the previous year.<sup>9</sup> It was recently estimated that New York – excluding New York City – faces an immediate shortage of over 1,000 physicians.<sup>10</sup> High-liability risk specialties, such as OB-GYNs, are hard hit; a recent report found that OB-GYNs are among the hardest profession to recruit in New York. Eight New York counties now have zero practicing OB-GYNs, and more than a dozen New York hospitals have stopped providing regular obstetrical services because of liability costs.<sup>11</sup>

## New York's lawsuit system must be reformed

Comprehensive medical liability reform is proven to reduce non-meritorious lawsuits, lower insurance premiums, and improve physician supply. Texas, which once faced its own medical liability crisis, report-

---

<sup>6</sup> Medical Society of the State of New York

<sup>7</sup> Florida Office of Insurance Regulation, 2013 Annual Report: Medical Malpractice Financial Information Closed Claim Database and Rate Filings.

<sup>8</sup> Healthcare Association of New York, 2013 Physician Advocacy Survey

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> American Congress of Obstetricians and Gynecologists, District II Report, 2012.

ed a 70% reduction in lawsuits against hospitals in the year following comprehensive lawsuit reform in 2003. Physician license applications increased by 30% in the same time, and approximately 430,000 uninsured individuals were able obtain insurance.<sup>12</sup>

To resolve our medical liability crisis, New York must raise the bar for litigation by enacting comprehensive lawsuit reform which includes higher standards for expert evidence, mandatory certificates of merit, and reasonable limits on non-economic damages.

---

<sup>12</sup> The Perryman Group. "A Texas Turnaroud: The Impact of Lawsuit Reform on Business Activity in the Lone Star State." 2008.



**Lawsuit Reform Alliance  
of New York**

Justice. Fairness. Common Sense.

19 Dove St., Suite 201 - Albany, NY 12210 - 518.512.5265

[www.lrany.org](http://www.lrany.org)