

**Med-mal claims stable since '90, new study finds**  
**Research suggests soaring Florida premiums could be fault of insurance**  
**business cycle.**

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**Associate Managing Editor**

DURHAM, N.C. -- There has been no dramatic increase in the number of medical malpractice claims filed in Florida in the past 14 years, when compared with the state's population growth, according to an exhaustive analysis of data by two Duke University professors.

The new study, in essence, contradicts a popular assertion made to justify higher med-mal insurance costs.

"There are two arguments about the cause -- one is that the number of claims went up and the other is the insurance industry's business cycle," says Neil Vidmar, co-author of the study and a law professor at Duke University in Durham, N.C. "We say one of the alleged causes is not the cause -- so you're left to fall back on the other alleged cause."

Lawyers, who have been roundly criticized by the medical profession, agree with the research.

"It underscores what we've been saying forever," says Alexander Clem, president of the Academy of Florida Trial Lawyers.

Adds Orlando attorney John Morgan, "There is no medical malpractice crisis. The 'crisis' has been created by insurance companies that want to write medical malpractice insurance but not pay claims. And doctors are paying outlandish amounts for malpractice premiums."

The study, which spanned 1990-2003, also says most large payments to malpractice victims were made in settlements -- many without a lawsuit being filed. That, researchers say, suggests the cry for tort reform is out of line.

"It doesn't look like the jury is the big culprit," says Vidmar.

Officials at the Rockville, Md.-based Physician Insurers Association of America say they haven't seen the study yet, but agree with its main premises that the number of claims has stayed relatively even and that most claims are settled.

Instead, association officials blame rising malpractice premiums on the increase in the average amount of med-mal claims payment.

The study says the growth in the amounts paid to med-mal victims has increased only slightly, along with the severity of injuries suffered. "There has been a shift in the kinds of cases coming forward," Vidmar says. "In the 1990s, there were more low injury-type cases, but in 2000 to 2003, there are substantially more death cases."

Florida Medical Association officials couldn't be reached for comment.

The study, "Uncovering the 'Invisible' Profile of Medical Malpractice Litigation: Insights from Florida," is being published at a time when the Florida Legislature continues to grapple with ways to solve the state's thorny med-mal crisis.

The study was done by Vidmar and Dr. Paul Lee, who is a physician-attorney and a medical professor at Duke. Others involved in the research were Duke law students Kara MacKillop and Kieran McCarthy, as well as University of Alabama associate professor of epidemiology, Gerald McGwin.

The study will be released as early as this month in the DePaul Law Review, a national law journal published by DePaul University in Chicago.

The data came from detailed reports of all closed claims submitted by medical malpractice insurers to the Florida Department of Health. The researchers also used jury verdict reports compiled by Westlaw, a provider of online legal resources. The research was paid for by Duke University.

"Florida has a wonderful database, so we seized upon it," says Vidmar. "It is the best data available anyplace in the country, and Florida has had considerable controversy, so it all fit together."

### **Who's at fault?**

Doctors and medical malpractice insurers typically say the reason med-mal insurance costs have climbed dramatically in recent years is because the number of cases and dollar amounts of paid claims have increased through the years.

That's why Florida doctors fought for -- and won -- caps put on the amount of money that could be awarded to malpractice victims for pain and suffering.

Meanwhile, trial lawyers dispute the argument that the number of med-mal cases has risen in the state. Instead, they blame rising insurance costs on the underpricing of policies, poor insurer investments and downturns in the business cycle.

State law forbids insurers from raising rates to make up for lackluster investments and past pricing mistakes.

There are 92 companies that offered med-mal coverage in Florida last year with a total of \$858.5 million in direct premiums written, according to state records. The five largest in the state were granted average statewide rate hikes of 18.4 percent in 2003, 17.2 percent last year and 8.6 percent this year, say officials at the Florida Office of Insurance Regulation.

### **Study: No. of cases stable**

The number of paid med-mal claims between 1990 and 2003 averaged 1,508 per year, according to the Duke study. There was a 26 percent increase in frequency of claims between the first four years of the 1990s and the first four years of the 2000 decade.

But, say researchers, when compared with increases in population and the number of health care providers, the frequency of paid malpractice claims remained stable for the past 14 years.

Consider: The population in Florida grew by 31.5 percent between 1990 and 2003, from 12.9 million residents to 17 million people. Conversely, the number of med-mal claims paid in Florida per 100,000 residents actually decreased from a high of 12.36 in 1996 to 9.74 in 2003, the report says.

In addition, the number of licensed doctors in Florida grew by about 3.5 percent a year, while the number of claims paid per 100 doctors declined from 4.47 in 1996 to 3.33 in 2002, according to the most recent data available.

### **More money**

When it comes to the sums paid out, the Duke University report points out that the average severity of injuries in the cases increased consistently in the past 14 years, and, thus, average payments also increased during that time frame, going from \$176,603 in 1990 to \$300,280 in 2003 -- amounts Vidmar says he adjusted for inflation.

Researchers say this could be because of either an increase in injuries and deaths resulting from medical incidents -- or a shift in how plaintiff lawyers select the med-mal cases they choose to pursue.

In addition, researchers say medical inflation could explain the upward trend in payments. In other words, future medical treatments would cost more and patients are

expected to live longer after the injury, which would affect the cost of their continued care, as well as increase the amount of lost-income estimates.

Researchers also looked at large payments exceeding \$1 million in Florida between 1990 and 2003. A total of 21,116 malpractice claims were paid during that time period, and of those, 801 claims were more than \$1 million, or 3.8 percent of all claims paid.

In addition, say researchers, 93 percent of million-dollar payments to Florida patients were settled rather than awarded by a jury during the past 14 years. Thus, says the report, "debate about the role of juries in so-called 'mega awards' is misplaced" in Florida.

### **Softening the blow?**

Meanwhile, the Legislature continues to try to address the med-mal issue, including two bills that are meant to soften the impact of two state constitutional amendments on doctors.

One of the amendments, passed last year, revokes the medical license of any doctor found guilty of three or more acts of malpractice. The other makes public all adverse medical incident reports for health care facilities and health professionals.

Two bills now before House committees would modify the amendments to give doctors more protection from lawsuits and from losing their licenses.

And look for more medical malpractice studies to come out of Duke University in the near future.

Vidmar already is involved in further research on the matter, and another report could be finished as early as this summer.

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According to Robert Hunter, the director of insurance for the Consumer Federation of America and a former insurance regulator, "There is an underlying cost push, but there has not been an explosion of big jury verdicts or settlements. It's constant drip, drip every year."

In fact, the more important factors appear to be the declining investment earnings of insurance companies and the changing nature of competition in the industry.

This information seems to poke holes in the Bush administration's assertions that big money lawsuits are to blame for sharply rising medical malpractice premiums. The Bush administration, supported by the insurance industry and American Medical Association, is proposing a remedy – a national limit on what juries can award in medical malpractice cases. Such a cap has often been cited by the president as an important part of what has been called tort reform – limiting what Bush calls "costly and frivolous" lawsuits. The Bush administration is pushing for a \$250,000 limit on jury awards to victims of medical mistakes and their families for pain and suffering, with no limit on payment for economic losses.

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