

## Frequently Asked Questions

**Q: Why is the West Virginia CARE Coalition proposing medical liability reform legislation?**

**A:** Access to quality health care is being threatened because of rising medical liability insurance costs and the loss of insurance carriers in West Virginia. Some physicians have been forced to stop seeing patients because of the lack of available or affordable insurance coverage. Other physicians are making tough choices about whether to continue obstetrics, emergency care, and surgery. Some have retired prematurely. Medical liability reform is needed to help ensure stable insurance rates and to encourage other carriers to offer policies in West Virginia and to encourage new physicians to come to West Virginia to practice.

**Q: Is the quality of medical care declining, and is that the reason for increased medical liability premiums?**

**A:** Nothing indicates that health care is getting worse. If anything, with improved education and technology, medical care has vastly improved. The increase in premiums does not rise from an increase in bad medical care. Rather, it rises from an increase in the number, cost and unpredictability of lawsuits driven in part by aggressive legal advertising, frivolous malpractice lawsuits and outlandish jury awards. Economic impacts on the insurance industry also influence rates, requiring the industry to avoid bad markets such as West Virginia.

**Q: Can't doctors raise their rates to cover the increasing costs of liability insurance?**

**A:** No. Doctors can't "cost-shift" to cover the increased cost of liability insurance. The reason is that health insurance – including private-pay insurance and government-sponsored Medicaid and Medicare– have fixed reimbursement schedules that limit payments for medical visits and procedures. Health insurance reimbursements don't go up when liability rates rise. Even if it were possible, raising rates would not be the answer. Those rates would ultimately be passed on to patients through higher health insurance premiums that are already difficult to afford.

## **Page 2 – Frequently Asked Questions**

### **Q: How many states are involved in legislative efforts like this one?**

**A:** Some states have had medical liability reform legislation for decades. California, for example, has had the Medical Injury and Compensation Reform Act (MICRA) for more than 25 years. The MICRA components, some of which are being proposed in West Virginia, have created a stable market in California that continues today. Indiana, Louisiana and Wisconsin have also passed medical liability bills similar to MICRA. In special legislative sessions this year, Mississippi and Nevada passed medical liability reform in response to the closing of their trauma centers, the loss of obstetricians and the unavailability of medical liability insurance carriers. Our neighbors in Pennsylvania have also passed numerous reforms in this last year and are considering additional reforms.

### **Q: Why does West Virginia face a crisis in medical liability insurance?**

**A:** Several years ago, a number of commercial insurance carriers were actively writing medical liability policies in West Virginia. Today, while approximately 60 commercial carriers are licensed to write policies in West Virginia, only a few choose to do so and they write policies only for a small group of medical professionals and health care entities.

Currently, St. Paul, once the largest medical liability carrier in the state, is no longer writing medical liability insurance policies in West Virginia or anywhere else in the nation. This leaves only one major commercial carrier - Medical Assurance, and the state plan - the Board of Risk and Insurance Management (BRIM), as the only remaining insurance options for health care providers in West Virginia. Medical Assurance chooses to insure only a few hundred doctors.

The state plan was established by House Bill 601 in December 2001 to give providers an option for insurance if they were non-renewed or could not find coverage by one of the commercial carriers. It was designed to be a temporary solution until additional commercial carriers could be induced to write policies in WV. The State does not want to be in the insurance business.

### **Q: What medical specialties are at the greatest risk?**

**A:** Obstetrics, orthopedics, neurosurgery and general surgery. They are among the highest-risk medical fields, and they produce the most medical liability suits. Obstetrics, in particular, is threatened by the skyrocketing medical liability insurance premiums, and it threatens to harm the quality of care for women and children. In states without liability reform, ob/gyns are being forced to stop delivering babies, reduce the number they do deliver, and curtail or eliminate care for high-risk patients.

## **Page 3 – Frequently Asked Questions**

### **Q: Will this medical liability reform legislation undermine the legal system?**

**A:** No. The West Virginia CARE Coalition has taken great care to protect the legal rights of West Virginians in crafting the bill. Nothing in the bill limits or prohibits patients from fully recovering their economic losses due to medical liability. The reforms are designed to bring a measure of certainty to litigation. The limitation on non-economic damages is a limit on the possible awards for emotional distress, not a limit on actually measurable damages such as unpaid medical bills and lost wages.

### **Q: Does the West Virginia CARE Coalition believe that doctors never commit malpractice?**

**A:** Medical liability occurs when a doctor or other medical professional practices below the standard of care and, as a result, the patient is injured. It is important to note that not all medical injuries or “bad outcomes” are the result of medical malpractice. Medicine is not an exact science. A medical professional is expected to use good medical judgment. Many procedures are known to have risks associated, which sometimes do occur. However, when a patient is injured as a result of medical liability they should be fully compensated for their economic losses and compensated for pain and suffering. The issue here is making sure that the damages assessed by juries for these mistakes are fair and fitting for the nature of the injury and the level of negligence involved.

### **Q: Why should I care if doctors have to pay high rates for insurance?**

**A:** Because doctors who cannot obtain coverage or who cannot afford the higher premiums are forced to quit practice, retire early, move or stop performing certain “high risk” procedures such as delivering babies. Access to health care becomes increasingly limited, particularly in our rural areas, where there is already a shortage of doctors. Access to specialists declines everywhere in West Virginia.

### **Q: What groups support the position of the West Virginia CARE Coalition on the medical liability reform issue?**

**A:** The West Virginia Hospital Association, the West Virginia State Medical Association, the West Virginia Health Care Association and virtually every health care-related organization in the state. A complete listing may be found at [www.carecoalition.org](http://www.carecoalition.org)

## Page 4 – Frequently Asked Questions

### **Q: Who opposes medical liability reform?**

**A:** The West Virginia Trial Lawyers Association opposes medical liability reform because it limits the legal fees that the plaintiffs' attorneys' recover from medical liability cases.

### **Q: What does joint and several liability mean?**

**A:** When there are several defendants in a medical liability action, the law presently allows the plaintiff to collect all monies awarded by the jury from just one of the defendants, as long as the defendant has been found by a jury to be more than 25% at fault. This is called "joint" liability meaning that each defendant may be responsible for an entire verdict even though he/she/it is only partially to blame. This results in an insurer paying more to satisfy a verdict than the jury intended. Several liability as proposed by the West Virginia CARE Coalition means that each defendant will only pay the percentage of the verdict that the jury intended.

### **Q: What is a collateral source and can those sources recover their expenditures in the proposed bill?**

**A:** A collateral source is a health insurance policy or a state or federal government health insurance program or W.Va. Workers Compensation that pays an injured person's medical bills. If a jury awards a person damages that the collateral source has already paid, then under the present system the injured person gets paid twice: once by the collateral source and again by the jury for the same treatment. The new law sets forth a procedure to bring the collateral source entities before the Court to get their payments refunded from the verdict assessed against the medical professionals or health care entity.

### **Q: Where can I obtain more information or a copy of the bill proposed by the West Virginia CARE Coalition?**

**A:** The West Virginia CARE Coalition

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Charleston, WV 25333

304-352-7245 (local)

1-800-407-8308 (toll-free)

304-6973 (fax)

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