



Annamarie Bondi-Stoddard: The best way to hold down medical malpractice insurance costs is to reduce the amount of malpractice.

Doctor's dilemma

By: Claude Solnik April 9, 2018

A study has ranked New York among the worst states for doctors to practice, largely due to economic factors such as medical malpractice insurance rates, although data shows the state continues to attract physicians and rates aren't rising rapidly, if at all. WalletHub, a Website that frequently publishes financial rankings, singled out New York State as 49 (ahead of Rhode Island and New Jersey) and among the "worst" states financially for doctors. A deeper look, however, reveals contradictions and positive factors for physicians in New York, which ranked 46 in terms of competition: In other words, there are a lot of doctors, which seems to indicate it's a desirable place to practice. New York ranked 49 for physicians' wages adjusted for cost of living, just after California and ahead of Hawaii and the District of Columbia. Mississippi and South Dakota were number one and two, when you adjusted pay for cost of living. "Wouldn't it be the same for a lawyer or a teacher, because our cost of living is so high?" said Annamarie Bondi-Stoddard, managing partner at Lake Success-based Pegalis & Erickson, a law firm concentrating on medical malpractice and negligence. "That's just economics."

South Dakota ranked as the best state for doctors, followed by Nebraska, Idaho, Iowa, Minnesota, Wisconsin, Kansas, Montana, North Dakota and Wyoming in a study that seemed to favor places with smaller populations. At least one factor probably wasn't much of a surprise to many: New York topped the list for medical liability insurance cost, while Nebraska had the lowest rates, followed by South Dakota and Wisconsin. New York also tied with New Jersey for the highest malpractice award payouts per capita, while Wisconsin had the lowest followed by North and South Dakota. Dr. Thomas Madejski, president, of the Westbury-based Medical Society of the State of New York, said, the state's ranking "shows that we have a long way to go to improve New York's practice climate." Doctors, he said, face financial pressure. "New York's exorbitant malpractice insurance costs, combined with low insurer payments, create an untenable squeeze that makes it exceedingly difficult to continue to be available to deliver patient care," Madejski said. He argues that, unchecked, New York could fall out of favor among doctors, although at least so far, that doesn't appear to be the case. "Make no mistake, physicians, residents and medical students make decisions about where to locate to deliver patient care based upon perception of the practice environment," Madejski added. So far, however, doctors seem to be flocking to and practicing in New York.

A 2014 study by the New York Public Interest Research Group found New York State had the second highest number of practicing doctors per capita in the nation. "The pool of doctors is growing at a significantly higher rate than the state's overall population," according to NYPIRG, which found the number of physicians practicing in New York increased by more than 10 percent from 2004 to 2012. NYPIRG also found that New York was among the top five states for the number of physicians per capita practicing in the "high-risk" specialties such as OB/GYN and general surgery. Downstate counties such as Nassau and Suffolk, in which medical malpractice premiums are highest, had the largest number of doctors, NYPIRG found. "And the same counties also have seen the biggest increase in doctors," according to the group. Medical malpractice, if anything, may be more under control than in the past in New York, while individual health insurance rates rocket. "They are rolling back their rates. The costs are not increasing. They're going down," Bondi-Stoddard said. "The number of cases is going down." New York saw 3,568 medical malpractice claims filed in 2016, down from 3,646 the prior year and 4,195 in 2008. The number was down 21 percent in 2016 from 1995 and 25 percent from the peak year of 2003, with 4,467 claims. The National Practitioner Data Bank reported that between 2005 and 2015 the dollar value of medical malpractice payments in New York dropped by 26 percent adjusted for inflation.

"The only thing people see is what hits the newspaper. They don't see what cases get settled for," Bondi-Stoddard said. "They see the \$100 million verdict. The patient never gets that number." Medical Liability Mutual Insurance Company, New York State's largest medical malpractice insurer, hasn't hiked rates overall since 2014 and in 2016 and 2017 issued a 20 percent dividend on premiums, she said.

MLMIC said dividends are available “when an insurer has sufficient resources to meet its policyholder obligations and when its operating results are better than expected.”

MLMIC’s surplus has risen from \$287 million in 2008 to \$1.5 billion in 2013 and \$1.8 billion in 2015, another sign of an improving picture.

“If there’s a situation where the injury is small, attorneys can’t bring the cases,” Bondi-Stoddard said of another reason limiting claims. “The cost of prosecuting in terms of getting medical experts doesn’t justify the end.” Hospitals, Bondi-Stoddard said, are doing more to provide better care for deliveries, reducing the number of claims, and battling infections with simple things such as washing hands.

And an indemnity fund which hospitals pay into to cover medical care due to neurological injuries related to delivery holds down costs.

“It depends on the specialty,” Bondi-Stoddard said. “The neurosurgeon is making a lot more money than the family practitioner. He has higher exposure. If he makes a mistake, it’s life altering. They get hundreds of thousands of dollars for surgery.” The impact of medical malpractice insurance on healthcare itself may be relatively small, considering the size of the sector. A Congressional Budget Office report found less than 2 percent of overall healthcare costs come from medical malpractice insurance, while another study estimated the impact at 2.4 percent, due to “defensive” medicine. “Doctors need to do a better job of policing their own profession,” Bondi-Stoddard said. “A small number of doctors are responsible for most malpractice payouts.”

Huge jury verdicts also may be misleading, since they are typically reduced significantly on appeal more in keeping with norms.

Still, some changes in laws may increase medical malpractice costs, by allowing cases to be brought that otherwise would not have been allowed.

New York implemented Lavern’s law, which starts the clock in terms of time to file a lawsuit related to cancer when a person finds out about malpractice – not when it occurs.

Misdiagnosed cancer victims of medical malpractice now have two and a half years from the date of discovery of a missed cancer diagnosis and up to seven years from the last date of treatment to file claims. “Memories will fade, witnesses will become unavailable and the standard of care may change, so thorough documentation is more important than ever,” an article in a MLMIC newsletter counsels physicians.

While the question of whether medical malpractice costs in New York are out of control remains moot, physicians want things to improve. Madejski is calling on the state “to advance initiatives to make New York physician- friendly, by reducing hassles with insurance companies, controlling medical liability costs, and providing opportunities for meaningful loan repayments.”

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