

Constitutionality of Tort Reforms Not Yet Tested – Stakes Are High for Illinois Physicians

Illinois' tort reforms (Public Act 94-677), which became effective in August of 2005, have led to dramatic rate decreases and aggressive new competition from liability insurance carriers. At first glance, it seems as though the liability environment has been "fixed." But has it really? The answer, says defense attorney Jenny O. Blake, has yet to be determined.

Blake, a partner in Chicago-based Lewis & Gellen, LLP, points out that the constitutionality of the new law is already being challenged in a Cook County lawsuit (*Lebron v. Gottlieb Memorial Hospital, et. al.*, November 2006). The plaintiff in the case is questioning several provisions of the reforms, the most visible being caps on non-economic damages. However, according to Blake, "Even if the caps are upheld, if any part of the law is found to be unconstitutional, then the entire Act and all of its provisions is invalid. In other words, tort reform is only as strong as its weakest link."

Previous Illinois tort reforms were declared unconstitutional in both 1977 and 1997. Blake says public policy reasons articulated in the current law may make it somewhat less likely to be struck down, but there is no way to be certain before there is a ruling, which could take as long as two years.

In short, even though the reforms are a step in the right direction, it's too soon to know the long-term impact. "Based on what has happened in other states with reform, if the laws are upheld, we can reasonably anticipate physicians' medical liability insurance premiums to go up at half the rate of increase as in non-reform states," Blake says. On the other hand, if the reforms are overturned, the premiums that dropped significantly in the last few months could quickly shoot back up.

According to physician leaders in neighboring Michigan, where tort reforms have been in place since 1994, it is critically important for doctors to support organized medicine in its efforts to uphold reforms. "Getting tort reform legislation passed in Michigan was just the beginning of the battle to level the liability playing field," said Paul O. Farr, MD, president of the Michigan State Medical Society. "Judges could still strike it down as they have in other states."

Doctor Farr said that as soon as tort reform was passed, supporters began fighting challenges in the lower courts and the Michigan Supreme Court through amicus curiae briefs. To date, the Michigan State Medical Society has filed 29 briefs defending tort reform in various lawsuits that have challenged it. The Illinois State Medical Society has hired a former solicitor general of the United States to aid them in upholding Illinois' 2005 reforms.

In addition to supporting organized medicine, physicians should carefully consider their liability insurance options – which, until recently, were very limited in Illinois. Some of the companies vying for business today are the same ones who left the state or stopped actively offering policies to doctors just a few years ago, when the market was not so attractive.

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On the other hand, American Physicians has provided dependable, uninterrupted coverage through good times and challenging periods. We have more experience, as well as more claims data, than many other Illinois insurers. As a result, we are able to set rates based on our own analysis of what is statistically supported and prudent for policyholders.

“Our approach is to offer premiums that are competitive, responsible, and sustainable,” says R. Kevin Clinton, President and CEO. “Low rates are no good if the company offering them is not financially stable and won’t be around to pay claims down the road. It also doesn’t make sense to drastically reduce rates now and then increase them again in a couple of years.”

In fact, malpractice insurance premium stability (not just rate decreases) is a primary goal of most tort reforms. Even though Michigan’s reforms are among the best in the nation, physicians’ premiums in Detroit remain among the highest. This is because rates are determined principally based on payouts and defense costs. Still, American Physicians’ overall rates in Michigan have increased less than the rate of inflation since reforms went into effect in April 1994.

In the long term, consistent rates with reasonable fluctuations based on predictable claims trends are best for everyone, including physicians, insurers, and especially patients. Illinois Public Act 94-677 has most of the right ingredients to make rate stability possible – but it will only happen if the reforms can be upheld.

New Risk Management Seminars

American Physicians’ risk management professionals have developed two new programs that they will be taking on the road in 2007. To find out when these seminars are coming to a location near you, please visit American Physicians’ website at www.apassurance.com, or call 800-748-0465.

Physician CME Seminar: *What Makes a Case Defensible?*

This seminar will provide answers to this complex question. The course, including an analysis of actual case studies, will assist participants in learning how breakdowns in risk management and patient safety make some claims difficult to defend and how good risk management contributes to defensible cases.

This seminar qualifies for 2.0 Category 1 CME credits. A nominal fee of \$35 is charged for this program.

Office Staff Seminar: *Develop a Powerful Work Team the “WRITE” Way: A Workshop to Help Improve Your Policies and Procedures*

Participants in this interactive workshop will learn how defining the role of each staff member, and establishing written protocols and job descriptions, are essential to developing a powerful work team in a medical practice. Office staff are encouraged to bring their current written policies with them and will receive expert assistance in improving and updating these important documents.

A certificate of attendance will be provided. Attendees should contact their professional organization to determine if the seminar counts toward educational credit for certification, recertification, or licensure. A nominal fee of \$25 is charged for this program.

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