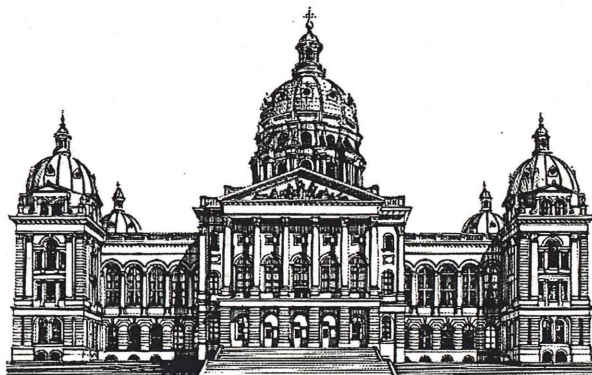


FINAL REPORT

MEDICAL MALPRACTICE STUDY COMMITTEE



Presented to the
LEGISLATIVE COUNCIL
and the
IOWA GENERAL ASSEMBLY
September 2006

Prepared by the
LEGISLATIVE SERVICES AGENCY



FINAL REPORT

Medical Malpractice Study Committee

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MEMBERS

Senator Bob Brunkhorst,
Co-chairperson
Senator Keith A. Kreiman,
Co-chairperson
Senator Nancy J. Boettger
Senator Michael Connolly
Senator William A. Dotzler, Jr.
Senator Ron Wieck

Representative Kraig Paulsen,
Co-chairperson
Representative Clarence Hoffman
Representative Lance Horbach
Representative Pam Jochum
Representative Joe Oldson

Staff Contacts:

Rachele Hjelmaas, Legal Counsel
(515) 281-8127
rachele.hjelmaas@legis.state.ia.us

Ann Ver Huel, Legal Counsel
(515) 281-3837
ann.ver.huel@legis.state.ia.us

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AUTHORIZATION AND APPOINTMENT

The Legislative Council established the Medical Malpractice Study Committee in 2005 and authorized the Committee to meet for two days during the 2005 Interim. The Committee was charged to study issues relating to the costs of professional liability (malpractice) insurance coverage for health care providers in Iowa and to consider a broad range of factors affecting the availability of the coverage in the state.



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I. October 5, 2005, Meeting — Testimony and Discussion.

A. Overview. The agenda focused on presentations and discussions with Ms. Susan Voss, the Iowa Insurance Commissioner; Ms. Trina Caudle, a research analyst with the Law and Criminal Justice Committee, National Conference of State Legislatures (NCSL); Mr. David Brown, an Iowa attorney whose practice includes the defense of medical malpractice lawsuits (appearing on behalf of the Iowa Defense Counsel Association); and Mr. Jay Angoff, an attorney and former Insurance Commissioner for the state of Missouri who currently practices law in Jefferson City, Missouri (appearing on behalf of the Iowa Trial Lawyers Association). The Committee also received written testimony and heard comments from interested persons.

B. Insurance Commissioner. Ms. Voss presented background information that included a brief history of medical malpractice insurance in Iowa from the 1970s through 2002. She presented current information about the four leading carriers of medical malpractice insurance in Iowa, including a discussion of rates and rate issues, premium information, Iowa Code chapter 515 regulatory requirements, and Iowa Code chapter 519A joint underwriting association requirements. Ms. Voss also discussed the concept of a patient compensation fund as a state-operated mechanism to pay claims over a fixed amount. She also indicated that the Insurance Division surveyed carriers who left the state to determine why they left and how the state could encourage them to return. She indicated that more competition among the carriers is desirable and that she would like to find ways to bring more insurance carriers to the state. Ms. Voss stated that evidentiary issues, medical errors, and risk management practices should also be considered in the discussion.

Ms. Ramona Lee, actuarial administrator, Insurance Division, answered questions relating to the ratemaking process. Committee members raised questions concerning the average rates charged to different medical specialists in Iowa and in surrounding states, the number of claims filed with Iowa medical malpractice insurance carriers over the past five years, the impact of investment income on the ratemaking process, Iowa law relating to investment income on surplus in ratemaking and public review of rates prior to approval, the Consumer Price Index in relation to medical malpractice costs, suggestions to assist the Insurance Division in expanding the market for medical malpractice carriers to Iowa, the possibility of creating a Certificate of Merit Program in Iowa, and an explanation of the projected increase in rates for 2006.

C. NCSL — State Medical Malpractice Laws. Ms. Caudle presented an overview of state medical malpractice laws, both proposed and enacted during the 2005 Legislative Session. Ms. Caudle's presentation included a discussion of medical malpractice tort reform efforts implemented in many states, including caps or damage limits on monetary awards in medical malpractice cases; case resolution alternatives such as arbitration, mediation, and pretrial screening hearings; and other reforms, including expert witness affidavits, expert witness standards, doctor apology exemptions, "three strikes" rules, joint and several liability rules, state-operated patient compensation funds, and attorney fee limits. She also discussed certain federal legislative efforts. Committee discussion included further inquiry on the



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effects of capping noneconomic damages as well as a discussion of other procedural and evidentiary reforms.

D. Iowa Defense Counsel Association. Mr. Brown spoke to the Committee. Mr. Brown stated that the statistics in Iowa do not support a concern that Iowa is experiencing a tort "crisis." He stated the Iowa General Assembly and the Iowa courts have enacted and implemented many tort reforms in regard to medical malpractice law that addressed many of the concerns presented to the Committee, including the collateral source rule, special expert witness rules, statutes of limitations, and attorney fee review rules. Committee discussion focused on the feasibility of implementing a compressed discovery process, ways to encourage alternative resolution processes, and the possibility of extending the statute of limitations in medical malpractice cases.

E. Iowa Trial Lawyers Association. Mr. Angoff spoke about the results of a study he authored for the Center for Justice and Democracy entitled "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry." Mr. Angoff's report is based primarily on 15 of the nation's largest medical malpractice insurance carriers' 2004 Annual Statements filed with state insurance departments. Mr. Angoff presented his findings and compared Iowa to other states in regard to loss ratios and measures of profitability in the medical malpractice insurance industry, and concluded that medical malpractice insurance in Iowa is more profitable when compared nationwide. Committee discussion raised concerns with Mr. Angoff's analysis.

F. Public Comment. Following speaker presentations, the Committee provided an opportunity for interested persons to submit written testimony and for interested persons in attendance to make comments. The following persons representing various interest groups gave brief comments concerning their perspectives on the medical malpractice insurance industry:

- Ms. Karla Fultz McHenry, representing the Iowa Medical Society, and Mr. John Riccolo, an Iowa attorney, spoke about the Iowa Medical Society Liability Group, a committee formed to examine ways to reduce the costs of medical malpractice litigation in Iowa. Ms. McHenry also addressed the Committee on behalf of the Iowa Medical Society.
- Ms. Lorelei Heisinger and Dr. James Palazzo representing the Iowa Medical Group Management Association.
- Dr. Paul Dayton representing the Iowa Podiatric Medical Society.
- Mr. Matt Russell representing the Iowa Citizen Action Network.
- Ms. Jennifer Harbison representing the Iowa Academy of Family Physicians.
- Mr. Vern Dostel, an interested citizen.
- Mr. Jim Carney representing the Iowa Bar Association.

II. November 7, 2005, Meeting — Testimony and Discussion.

A. Overview. The agenda focused on presentations and discussions with Ms. Susan Voss, the Iowa Insurance Commissioner; Mr. David Bounk, President and CEO, Midwest



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Medical Insurance Company (MMIC), and Ms. Libby Lincoln, General Counsel, MMIC; Ms. Karla Fultz McHenry and Mr. Keith Luchtel, Iowa Medical Society (IMS); and Ms. Lucia D'Hooge, Iowa Department of Public Health and Mr. Greg Boattenhamer, Iowa Hospital Association (IHA). Committee members caucused during a working lunch and returned to the full Committee in the afternoon to discuss and make recommendations.

B. Insurance Commissioner. Ms. Voss and Ms. Ramona Lee, an actuarial administrator from the Insurance Division, provided members with answers to questions raised during the first Committee meeting. Ms. Voss had provided this information to members in advance of the meeting. Ms. Voss and Ms. Lee's information and discussion addressed issues relating to the average premium rates charged to certain specialties both in Iowa and around states surrounding Iowa, insurer claims, settlements, and lawsuit information (three carriers), whether lifting the statutory ban on the use of surplus income for ratemaking purposes would drop rates significantly, the impact of changing the date that rate filings are considered public record, medical malpractice trends vs. the Consumer Price Index, the feasibility of expanding the marketplace for medical malpractice carriers in Iowa, the use of a certificate of merit as a means of expediting medical malpractice cases, and factors relating to the stabilization of rate changes over the 2004-2005 period.

C. Midwest Medical Insurance Company. Mr. Bounk and Ms. Lincoln provided members with information relating to MMIC, a physician-owned and -governed insurance company that writes medical malpractice insurance in six midwestern states, including Iowa. The presenters provided MMIC data relating to Iowa base rates, including factors utilized in setting the base rates, loss adjustment expenses, and risk management activities. The presenters further provided information and answered questions about the company's Statement of Income for physician business from the period 1994-2004.

D. Iowa Medical Society. Ms. McHenry provided a brief overview of the IMS perspective regarding the history of medical liability reform in Iowa and concluded that Iowa is in a good position regarding medical liability laws when compared to other states due to significant tort reform laws enacted during 1977-1997. She commented on certain reform efforts used by other states not enacted in Iowa, including certificates of merit, caps on damages, pretrial screening panels, mandated mediation panels, and new reform efforts such as patient compensation funds, medical courts, and physician apology ("I'm Sorry") protections. She provided additional information relating to certificates of merit and physician apology initiatives and further noted the IMS is not in favor of the patient compensation fund approach.

E. Iowa Department of Public Health and Iowa Hospital Association. Ms. D'Hooge and Mr. Boattenhamer spoke about patient care quality and safety initiatives. Mr. Boattenhamer spoke about the Iowa Healthcare Collaborative (IHC), a joint undertaking between the IHA and the IMS that focuses on data collection and educational efforts to improve patient care quality and safety in Iowa.



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F. Committee Discussion and Recommendations. Following caucus meetings and Committee discussion, the Committee made the following 10 recommendations with the understanding that the co-chairs will finalize the language of the recommendations, circulate them for comment by the Committee, and make any necessary revisions to these recommendations prior to approval of the Committee's final report:

1. Incent physicians and other health care providers to increase efforts to reduce medical errors.
2. Give use immunity to health care providers who say, "I'm sorry."
3. Allow the statute of limitations in a medical malpractice lawsuit to be stayed by agreement of the parties.
4. Require insurance claims and income data from medical malpractice insurers.
5. Revise expert witness standards and limit the number of experts in a specialty area. Ensure medical records are accessible as soon as possible.
6. Provide a state tax credit to assist in paying medical malpractice costs of specialty physicians in physician-shortage areas of the state.
7. Require criminal background checks (state and federal checks) for licensing new health care providers.
8. Include a provision in new legislation requiring a study of the effectiveness of the legislation, to sunset in three to five years.
9. Require a certificate of merit to be issued before the filing or continuation of a medical malpractice lawsuit.
10. Consider a medical error reporting system, including an aggregate reporting system.

III. Committee Action.

Committee members failed to reach a consensus regarding the final language of the Committee recommendations presented at the November 7 meeting. Accordingly, no formal Committee recommendations were submitted to the General Assembly. The formal report summarizing the Committee testimony and discussion was distributed to Committee members in the fall of 2006 and approved September 15, 2006.



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IV. Materials Filed With the Legislative Services Agency.

The following materials were distributed at or in connection with the meeting and are on file with the Legislative Services Agency and may be accessed at the Internet at

<http://www.legis.state.ia.us/aspx/Archives/Committees/Interim/2005/Committee.aspx?id=72>

- [11/29/2005 - Susan Voss Additional Information Request](#)
- [11/28/2005 - MMIC Follow-Up Information](#)
- [11/1/2005 - Follow-up Committee Information from Susan Voss](#)
- [10/5/2005 - Committee Presentation: Jay Angoff, "The Medical Malpractice Insurance Cycle: Evidence, Causes, Solutions"](#)
- [10/4/2005 - Jay Angoff, "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry", July, 2005](#)
- [10/3/2005 - Comments on Report by Jay Angoff, Towers Perrin, August, 2005](#)
- [10/2/2005 - Committee Presentation: Trina Caudle, National Conference of State Legislators](#)
- [10/1/2005 - Committee Presentation: Susan Voss, Iowa Insurance Commissioner](#)
- [9/28/2005 - Background Information for Medical Malpractice Insurance Interim](#)
- [9/28/2005 - Attachment B Proposed Committee Rules](#)
- [9/28/2005 - Attachment C Legislation Requesting the Committee - HR 50](#)
- [9/28/2005 - Attachment D Proposed Legislation on Noneconomic Caps in Medical Malpractice Cases - HF 704](#)
- [9/28/2005 - Attachment E Proposed Legislation-Patient Compensation Fund - HF 598](#)
- [9/28/2005 - Attachment F Council of State Governments \(CSG\): Evaluating State Approaches to the Medical Malpractice Crisis](#)
- [9/28/2005 - Attachment G CSG Transcript from April 2004 Council of State Governments Teleconference - Evaluating State Approaches to the Medical Malpractice Crisis](#)
- [9/28/2005 - Attachment H National Conference of State Legislatures \(NCSL\) Medical Malpractice Tort Reform - Background](#)
- [9/28/2005 - Attachment I NCSL State Medical Malpractice Tort Laws](#)
- [9/28/2005 - Attachment J NCSL 2005 Enacted Medical Liability Legislation - States](#)
- [9/28/2005 - Attachment K NCSL State Medical Malpractice Reform Action 2005](#)
- [9/27/2005 - Iowa Action Network Comments](#)
- [9/27/2005 - Iowa Bar Association Comment Documents](#)
- [9/27/2005 - Iowa Hospital Association Comments](#)
- [9/27/2005 - Iowa Insurance Institute Comments](#)
- [9/27/2005 - Iowa Medical Group Management Comments](#)
- [9/27/2005 - Iowa Medical Society Comments](#)
- [9/27/2005 - Iowa Osteopathic Medical Association Comments](#)
- [9/27/2005 - Iowa Osteopathic Medical Association Document A](#)
- [9/27/2005 - Iowa Osteopathic Medical Association Document B](#)
- [9/27/2005 - Iowa Podiatric Medical Society Comments](#)
- [9/27/2005 - Polk County Medical Society Comments](#)
- [9/27/2005 - Vern Dostal Citizen Comments](#)
- [9/26/2005 - Governing Magazine Article, "Plague of Errors", August, 2005](#)

