Keep abreast of medical liability reforms in your state
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Pediatricians need to understand their state's medical liability environment in order to gauge their relative risk for malpractice claims, the adequacy of their professional liability insurance coverage and the level of risk management needed in how they practice.

While the majority of state legislatures have enacted various medical liability reforms (MLR) aimed at balancing the needs of the patient alleging injury and those of the physician providing care, many have not. Pediatricians can change the malpractice climate of their communities by advocating for MLR.

Challenges for pediatric providers

Physicians who care for children and minor adolescents face unique medical malpractice challenges. Because they typically care for patients from the newborn period to young adulthood, the dynamics of growth and development must be considered when addressing pediatric patients' malpractice claims. The most frequent malpractice allegations in pediatric claims are errors in diagnosis, improper performance of procedures, failure to supervise or monitor care, and medication errors.

Approximately one in four pediatricians will be a defendant in a lawsuit during the course of his or her career, including one in 10 for care delivered during residency and fellowship training.

Although pediatricians are not sued as frequently as many other specialists (ranking 10th among 28 medical specialists), average payments in pediatric cases are significantly higher ($520,900 vs. $274,890). This is largely because pediatric indemnities are allocated over the lifespan of minor patients - a much longer period than that of adults.

Beyond financial costs, pediatrician defendants spend an average of 7% of their careers with an open malpractice claim, the stress of which takes an enormous toll on their physical, mental and professional health.

Implications of state medical liability reforms

In the absence of a federal medical liability reform, most states have enacted various MLR measures. The first was California's landmark legislation, the Medical Injury Compensation Reform Act (MICRA) of 1975, which has a proven track record of making medical liability insurance more available and affordable. Many states have adopted specific MICRA policy solutions. Growing evidence shows that particular MLR provisions influence how and where physicians practice and may result in lower medical liability premiums and health care costs.

The following aspects of MLR have unique implications for pediatric practice.

Reduce the statute of limitations for minors (SOLFM) for medical liability to a reasonable period for the patient and the physician.

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The SOLFM laws set a time window in which a patient must start a malpractice claim after the injury occurs or is discovered. Historically, state statutes have ranged from three years (typical negligence limitation) to 21 years (claim from care of an infant where the statute would not start to run until 18 years of age as a legal adult, plus two to three years for a typical negligence action). The prolonged SOLFM in some states compel pediatricians to archive medical records for decades.

A reasonable SOLFM often is difficult to determine in neonatal claims, as the judicial system must strike a balance between a reasonable time to make a claim after injury and the possibility that the injured child will show consequential developmental delay many years after the initial injury - a key factor in determining a damage award. While 35 states set some age threshold on medical liability claims, eight states set their SOLFM at age 6 or less.

Limit liability for noneconomic damages (often referred to as pain and suffering claim) to reasonable amounts.

Thirty states have enacted legislation placing some cap on noneconomic damages. The courts in approximately 15 states have upheld caps on noneconomic damage statutes, while 12 states have struck them down finding that they are a violation of the equal protection clause in the state constitution.

Make each party liable only for the amount of damages directly proportional to such party's percentage of responsibility.

Thirty-two states have enacted joint liability reforms.

Set controls on attorneys' contingency fees to be fair to victims.

Sixteen states place caps on attorney fees.

Allow the introduction of collateral source benefits such as medical insurance payments and the amount paid to secure such benefits to prevent plaintiffs from "double-dipping."

Thirty-four states have reformed their collateral source rules.

Impose reasonable punitive damages only with a "clear and convincing" standard of evidence.

States vary widely in their standards of evidence for punitive damage awards.

Tighten the requirements for expert witnesses in malpractice proceedings to improve quality, obviate the use of spurious testimony and hold experts accountable for their testimony.

Thirty-two states have done so.

Structure periodic payments over $100,000 for future damages.

Thirty states do this, but it is not constitutional in five states.

Practice pointers

Annually review the following with your medical liability insurance carrier or institution's self-insured liability insurance representative:

- Identify any MLR reforms that have passed (or been overturned) within your state that affect your practice and your liability insurance policy. Consider increasing your coverage limits if needed based on the physicians' claims experience and the medical liability environment in your state.
- Know the current statutes of limitation for a malpractice claim within your state. Obtain advice as to how long and in what manner to store your medical records (paper and electronic) to account for that
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SOLFM and other legally relevant factors.

- Attend available risk management seminars and implement tools to help you identify and address medical liability vulnerabilities in your office operations.

Beyond your practice, work with your AAP chapter to advocate for MLR and seek policy solutions that are just and fair to physicians and those harmed by medical errors. Your state medical society and state affiliates in family medicine, internal medicine, obstetrics and gynecology, emergency medicine, and others are invaluable partners in MLR advocacy.

*Dr. Rusher is a member of the AAP Committee on Medical Liability and Risk Management.*

**Resources**

- [AAP position paper Advocating for Medical Liability Reform](#)
- [State Advocacy Focus on medical liability reform](#)
- [Medicolegal Issues in Pediatrics, 7th Edition](#)