



THE HOSPITAL & HEALTHSYSTEM
ASSOCIATION OF PENNSYLVANIA

Testimony
Submitted on behalf of The Hospital &
Healthsystem Association of Pennsylvania

To the
**Judiciary Committee of the
Pennsylvania House of
Representatives**

Presented by
James M. Redmond
Senior Vice President, Legislative Services
The Hospital & Healthsystem Association of Pennsylvania (HAP)

and

James E. Robinson
Senior Vice President, Thomas Jefferson Hospitals and
Chief Administrative Officer, Methodist Hospital Division

Harrisburg, Pennsylvania
May 14, 2002

4750 Lindle Road
P.O. Box 8600
Harrisburg, PA 17105-8600
717.564.9200 Phone
717.561.5334 Fax
<http://www.haponline.org>

Statement of The Hospital & Healthsystem Association of Pennsylvania

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Chairmen Gannon and members of the Judiciary Committee, I am James M. Redmond, Senior Vice President, Legislative Services of The Hospital & Healthsystem Association of Pennsylvania (HAP). HAP represents and advocates for nearly 250 acute care and specialty hospitals and health systems in the commonwealth. I appreciate the invitation to present our views on joint and several liability.

Joining me today is James E. Robinson, Senior Vice President for Thomas Jefferson University Hospitals and Chief Administrative Officer for the Methodist Hospital Division.

Overview

The deteriorating medical liability insurance market exacerbates already existing financial pressures on Pennsylvania hospitals and health systems. And while recently enacted legislation (the Medical Care Availability and Reduction of Error Act—Act 13 of 2002) included tort reforms and some economic relief through reduction of the CAT Fund surcharge, the current crisis of obtaining affordable medical liability insurance continues in Pennsylvania:

- Insurers continue to leave or limit the sale of medical liability insurance in Pennsylvania.
- Five commercial carriers that insured more than half of the hospitals and health systems in Pennsylvania have left the market or are not renewing policies during this current annual insurance renewal cycle.
- Several major liability insurers have experienced significant downgrades in their credit ratings, creating even further market instability.

Hospitals and physicians continue to face skyrocketing premiums that for primary coverage have increased on average by more than 70% and for excess coverage by more than 150% during the past year. The increased costs are equal to the salaries and wages of approximately 3800 nurses.

Many hospitals and physicians are having great difficulty obtaining commercial medical liability insurance at any price and have had to turn to Pennsylvania's insurer of last resort, the Joint Underwriting Association (JUA).

These data and other information are included in a recent hospital and health system survey regarding medical liability insurance, including its availability; costs of primary, CAT Fund surcharge, and excess coverage; renewal timeframes; and changes being made to coverage policies. Information garnered from the survey illustrates the magnitude of the problem and the trend statewide. As of May 1, 112 hospitals and health systems representing more than 170 licensed hospitals responded to the survey. This represents 74% of HAP's member hospitals and health systems. I have included a copy of the complete survey with this testimony.

Before, I discuss our views on joint and several liability I would like to ask Mr. Robinson to describe the situation his hospital faces.

Good morning. I want to thank the members of the House Judiciary Committee for giving me the opportunity to speak to you this morning. As Mr. Redmond stated, my name is James E. Robinson and I serve as Senior Vice President for Thomas Jefferson University Hospitals and Chief Administrative Officer for the Methodist Hospital Division.

For approximately 110 years, Methodist has provided a full array of primary health care services, including maternity services, to the community of South Philadelphia. Since 1984, Methodist has been the only hospital in South Philadelphia delivering babies. Due to the dramatic increase in the cost of medical malpractice insurance premiums, the Methodist Hospital Division will discontinue delivering babies effective June 30, 2002. The hospital will continue to provide outpatient prenatal care but the actual deliveries will take place at Thomas Jefferson University Hospital, center city campus.

The decision to consolidate maternity services will reduce a portion of the high malpractice insurance premium for the coming fiscal year. Currently, the hospital is facing a near doubling of its malpractice premiums. In real terms, this means an increase of nearly \$3 million. The consolidation of services will result in an estimated \$700,000 reduction in premiums. Since the hospital employs the obstetricians, we bear the entire cost of malpractice insurance. Obstetricians region-wide are faced with unusually high premium increases. At Methodist, the cost of insuring an obstetrician is averaging about \$125,000 per physician. The renewal date for these physicians is July 1, 2002, and the only insurance the hospital can obtain is through the Joint Underwriters Association. In addition, of the six obstetricians the hospital employs, all but one have requested to be released from their contracts to pursue opportunities out of the area, and in some cases, out of state.

The consolidation of obstetrical services will result in the elimination of 91 full and part-time positions. Methodist has committed to making every effort to reassign affected employees either at Methodist or at other Jefferson Health System hospitals.

If I could summarize my remarks in one sentence, it would be that this is what the exorbitant rise in malpractice insurance costs looks like in human terms, from the perspective of the residents of the community we serve and those who provide health care.

Again, I thank the members of the committee for providing me this opportunity to speak to you this morning, and I ask Mr. Redmond to continue his remarks.

Joint and Several Liability

Repeal of joint and several liability is another important and necessary step toward improving the availability and affordability of medical liability insurance. HAP supports Senate Bill 1376 and House Bill 2315.

The rule of joint and several liability allows a plaintiff to collect the entire judgment against any of the defendants regardless of the culpability of that defendant. The rule also discourages a minimally negligent defendant from settling when a co-defendant is either uninsured or underinsured. Abolition of this rule would mean that defendants would have to satisfy the portion of the judgment equal to their share of the negligence. This should reduce both the amount of judgments and the number of frivolous lawsuits filed against minimally negligent defendants.

Hospitals are especially impacted by joint and several liability, since most hospitals obtain insurance above the mandated limits. In many cases, hospitals may be named in a suit simply because they have insurance coverage, even though they may have been only remotely involved.

I would like to provide some recent examples of cases from around the state.

Case #1

A Pennsylvania jury found two physicians and a hospital responsible for \$13 million for failure to diagnose breast cancer. The actual damages were about \$2 million and the remainder was for non-economic damages. The physicians agreed to pay the amount of their insurance coverage, about \$3 million, and the remaining amount of about \$10 million has been shifted to the hospital as the "deep pocket." Neither physician was employed by the hospital.

Case #2

Two physicians and the hospital in which they practice have agreed to a \$7 million settlement. The hospital agreed to pay 64 percent of the amount for fear that if the case went to a jury trial the judgment would be significantly higher and the hospital would pay an even higher amount. The responsibility of the hospital was estimated to be 25-30 percent. As a result of joint and several liability the hospital will pay about \$4.5 million when it should have paid no more than \$2.1 million.

Case #3

A physician and hospital were subject to a \$20 million judgment where the hospital was found by the jury to be 15 percent responsible and the physician 85 percent responsible. The hospital

ended up paying almost the entire amount because of the limited amount of insurance purchased by the physician.

Case #4

Two physicians and a hospital received an \$11 million verdict against them in a birth injury case. One of the physicians was found not to be liable while the other was found to be 95 percent responsible. The nurse employed by the hospital was found to be 5 percent liable. Under the rule of joint and several liability, the hospital is likely to pay about \$8.8 million as opposed to about \$600,000.

Case # 5

A physician and a hospital settled a case for \$13 million. The physician had only \$1.4 million in coverage and the hospital was called upon to pay the remaining \$11.6 million. The hospital agreed to the payment for fear of a “runaway” jury verdict.

These are just a few examples of the financial burden placed on our hospitals and health systems. The result is a lack of choices for excess insurance coverage, including less coverage and substantially higher costs.

In cases where responsibility for damages from injuries can be attributed to more than one individual or corporation, each defendant is only liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of their own responsibility.

We believe that repeal of joint and several liability will result in fewer lawsuits that enjoin a “deep pocket” such as a hospital. It will also more equitably represent the economic realities of each of the defendants by placing responsibility for their fair share of any financial burden as the result of a lawsuit involving injuries. Pennsylvania’s hospitals can no longer sustain the increasing financial burden imposed by the rule of joint and several liability.

Other States’ Approaches to Joint and Several Liability

If joint and several liability were to be repealed, Pennsylvania would join ten other states that do not recognize joint and several liability (Alabama, Alaska, Indiana, Kansas, Kentucky, Louisiana, Oklahoma, Utah, Vermont and Wyoming).

In addition, 33 other states have modified their rule of joint and several liability. For example New York and New Jersey have adopted a specific threshold before a defendant will be required to be responsible for damages caused by others. In New York the threshold is 50 percent and in New Jersey the threshold is 69 percent.

Conclusion

There has been increasing activity over the last six months by hospitals and health systems in Pennsylvania pursuing alternative forms of risk financing, such as creating new captives and self-insured plans, as well as reactivation of dormant captives and self-insured plans. Greater numbers of hospitals are likely to have to turn to the JUA for coverage. Given the increased costs of professional liability insurance coverage, the precipitous drop in availability of coverage, and

greater use of self-insurance that the survey depicts for policy renewals over the past 12 months, hospitals and health systems are now faced with significant hurdles for securing liability insurance coverage over the coming months. They are aggressively exploring options for continuing professional liability coverage for both the primary and excess layers.

The complexity of factors that contributed to the deteriorating medical liability insurance market necessitates a focus on longer-term tort reform efforts to stabilize and improve the medical liability insurance market. Without repeal of joint and several liability as a critical step, hospitals and health systems, already operating in a crushing financial environment, will not be able to assure patient access to essential health care services as the medical liability crisis continues over the next several years.

Thank you. We would be happy to answer any of your questions.



Professional Liability Coverage in Pennsylvania

Findings of Statewide Survey

Introduction

The deteriorating medical liability insurance market exacerbates already existing financial pressures on Pennsylvania hospitals and health systems. And while recently enacted legislation (the Medical Care Availability and Reduction of Error Act—Act 13 of 2002) included tort reforms and some economic relief through reduction of the CAT Fund surcharge, the current crisis of obtaining affordable medical liability insurance continues in Pennsylvania:

- Insurers continue to leave or limit the sale of medical liability insurance in Pennsylvania. Five commercial carriers that insured more than half of the hospitals and health systems in Pennsylvania have left the market or are not renewing policies during this current annual insurance renewal cycle.
- Several major liability insurers have experienced significant downgrades in their credit ratings, creating even further market instability.
- Hospitals and physicians continue to face skyrocketing premiums that for primary coverage have increased on average by more than 70% and for excess coverage by more than 150% during the past year.
- Many hospitals and physicians are having great difficulty obtaining commercial medical liability insurance at any price and have had to turn to Pennsylvania's insurer of last resort, the Joint Underwriting Association (JUA).

The continued deterioration of the medical liability insurance market in Pennsylvania threatens the financial viability of hospitals and health systems, and ultimately, ongoing patient access to essential health care services. The state Senate and House are positioned to take the next step in the reform effort through S.B. 1376 and H.B. 2315, which repeal the joint and several liability rule in Pennsylvania. In addition, the following actions are required:

- Short-term financial assistance to support increased insurance premiums.
- Passage, at the federal level, of H.R. 4600, the HEALTH Act of 2002.
- Enhanced opportunities for available and reasonably priced insurance coverage.



Professional Liability Coverage in Pennsylvania Findings of Statewide Survey

Background

Recently, The Hospital & Healthsystem Association of Pennsylvania (HAP) surveyed hospitals and health systems regarding medical liability insurance, including its availability; costs of primary, CAT Fund surcharge, and excess coverage; renewal timeframes; and changes being made to coverage policies. Information garnered from the survey illustrates the magnitude of the problem and the trend statewide.

As of May 1, 112 hospitals and health systems responded to the survey, representing more than 170 licensed hospitals. This represents 74% of HAP's member hospitals and health systems.

Key Statewide Findings

Primary Coverage

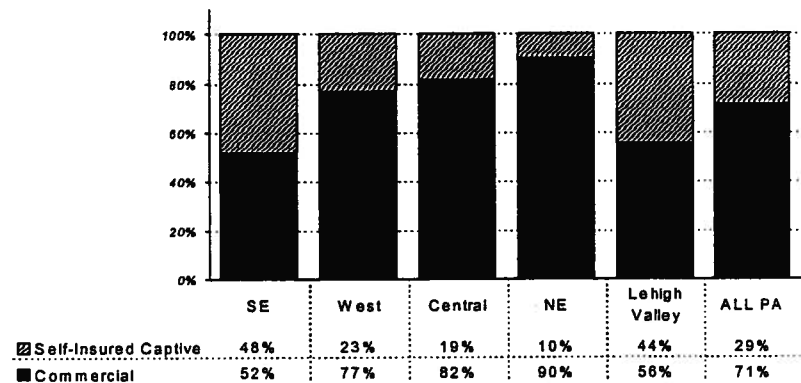
Options for the primary level of professional liability coverage in Pennsylvania include:

- Contracting with a commercial insurer.
- Self-insuring through such vehicles as captives, self-insured trusts, or risk retention groups.
- Insuring through the Joint Underwriting Association (JUA), Pennsylvania's insurer of last resort.

Currently, seven out of ten hospitals and health systems in the state are insured commercially. There are significant regional variations in how primary coverage is obtained. The use of self-insured arrangements is greatest in southeastern Pennsylvania (48%) and the Lehigh Valley (44%). There is a greater reliance on commercial carriers in western Pennsylvania (77%), central Pennsylvania (82%), and in northeastern Pennsylvania (90%).

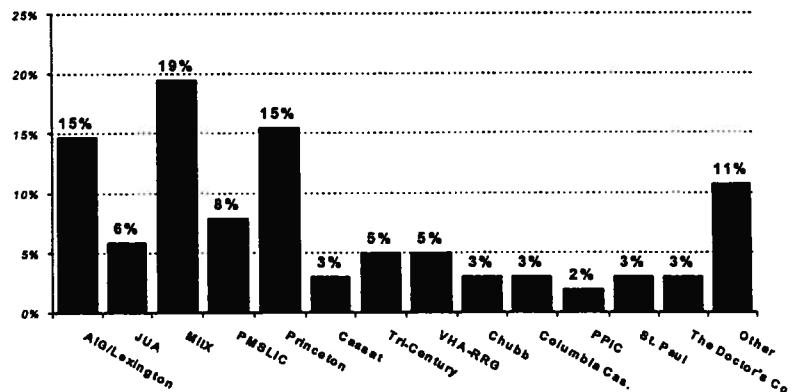
Professional Liability Coverage in Pennsylvania

Primary professional liability insurance is provided by:



Professional Liability Coverage in Pennsylvania

Malpractice Carriers (Commercially-Insured Hospitals) – ALL PA





Professional Liability Coverage in Pennsylvania Findings of Statewide Survey

Among the most prevalent commercial hospital insurers are MIIX and Princeton, representing more than 34% of the commercial market. Both MIIX and Princeton have issued non-renewal notices for all of their Pennsylvania hospital policies, which means that they are not available for primary coverage over the next several months. The withdrawal of MIIX and Princeton from Pennsylvania will be most significant in northeast Pennsylvania, where their combined market share is 55%, and in central Pennsylvania, where their combined market share is 44%.

Lexington Group, an AIG subsidiary, appears to be the fastest-growing carrier providing hospital professional liability coverage in Pennsylvania, with 15% of the current hospital policies. For the first time in more than a decade, 6% of hospitals have contracted with the JUA, Pennsylvania's insurer of last resort, at rates which are 50% higher than commercial insurers. Other commercial carriers in Pennsylvania, on average, have less than 5% market share.

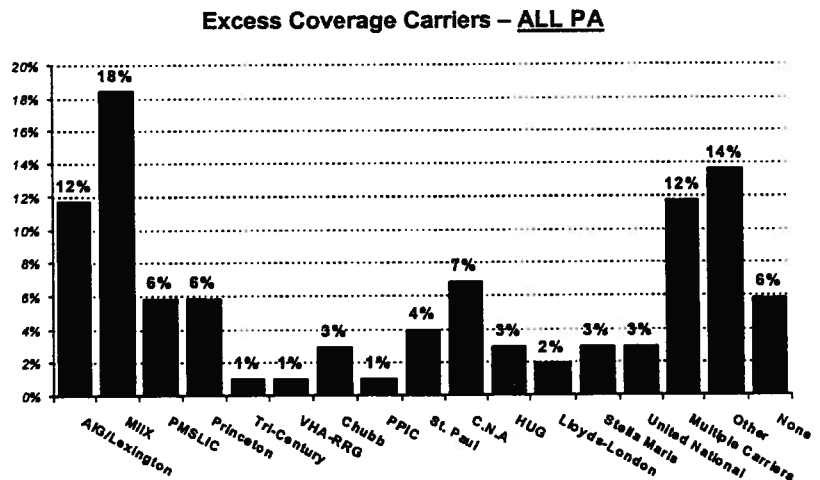
Excess coverage

As is the case with primary coverage, MIIX and Princeton together are among the most prevalent carriers of excess insurance (coverage beyond the required \$1.2 million of primary and CAT Fund coverage), with a combined 24% of the market. The Lexington Group represents 12% of the market. Twelve percent of hospitals reported simultaneously using multiple carriers to assure excess coverage. Like primary coverage, there are a large number of excess carriers each serving a small number of hospitals. Most alarming is that 6% of hospitals reported having no excess coverage.

There are regional variations in excess coverage:

- Hospitals in southeastern Pennsylvania reported greater simultaneous use of multiple carriers (33%).
- Hospitals in western and central Pennsylvania reported a greater reliance on MIIX (21% and 28%, respectively).
- Hospitals in northeastern Pennsylvania reported more reliance on Princeton (20%).
- Hospitals in the Lehigh Valley reported a greater use of the Lexington Group (25%).

Professional Liability Coverage in Pennsylvania





Professional Liability Coverage in Pennsylvania Findings of Statewide Survey

Renewal Dates

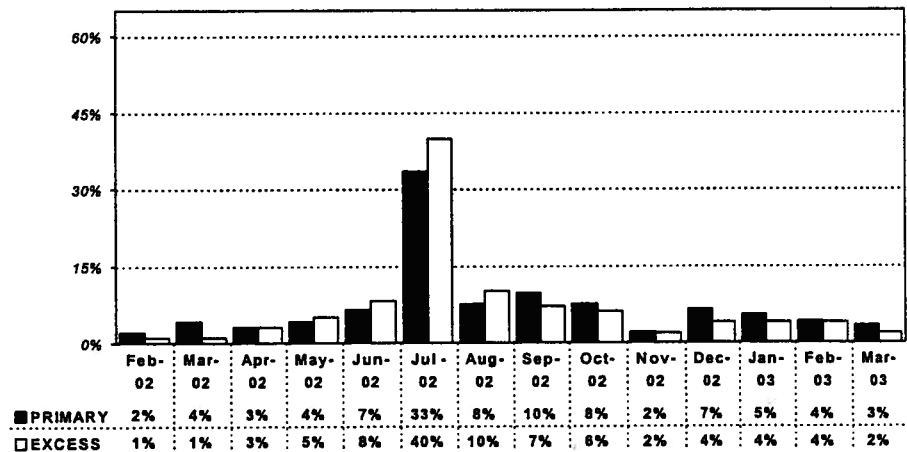
Since most hospitals in Pennsylvania follow a July to June fiscal year, many professional liability policies have an anniversary date in mid-summer. Sixty-six percent of hospital primary policies will expire between June and October of 2002. Hospitals with policy renewals over the next six months will be facing one of the most challenging professional liability markets in the past 15 years. With the exodus of MIIIX and Princeton from Pennsylvania, it is unclear whether remaining carriers will be able to cover the Pennsylvania market.

There are regional variations in the renewal periods of both primary and excess coverage:

- Almost 60% of southeastern Pennsylvania hospitals have July renewals for primary and excess coverage.
- 41% of western Pennsylvania hospitals have July/August primary coverage renewals and 50% have excess coverage renewals during these same months.
- In central Pennsylvania, 29% of primary policies and 44% of excess policies have a July renewal. This region also has another renewal surge in September/October with 34% of primary policies and 30% of excess policies renewing during these months.
- Primary coverage renewals in northeast Pennsylvania are more evenly spaced across the year (11% per month), with a slight increase in July (22%), while excess coverage has two months—June and August—with a 22% renewal.
- Lehigh Valley has two months—July and March—with higher renewals of primary coverage at 29% each, whereas July is the month with the greatest excess coverage renewals at 43%.

Professional Liability Coverage In Pennsylvania

Distribution of Policy Renewal Dates – ALL PA





Professional Liability Coverage in Pennsylvania

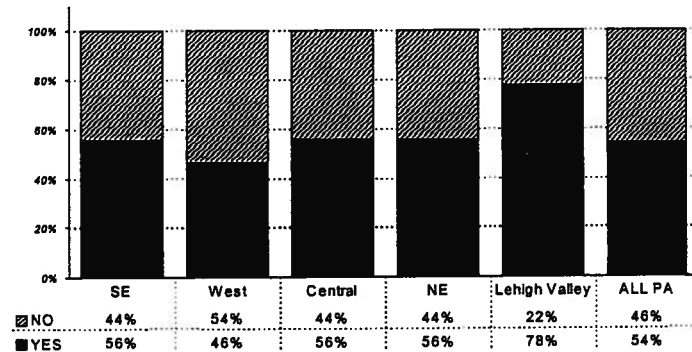
Findings of Statewide Survey

Changes in Coverage

A majority (54%) of hospitals and health systems statewide also report that changes have been made to their policies in terms of higher deductibles and changes in risk retention. Almost 80% of hospitals in the Lehigh Valley reported policy changes, while in western Pennsylvania slightly less than half of the hospitals reported changes.

Professional Liability Coverage In Pennsylvania

Any changes made to your coverage (higher deductibles, risk retention)?



Overall Past Increases

Given the limited market options for commercial insurance and the increasing frequency and valuation of professional liability claims, both commercially insured hospitals and self-insured plans are experiencing extraordinary premium increases. The average total premium (including primary, CAT Fund, and excess coverage) increase for the prior 12 month period for hospital policy renewals was 81%. However, increases ranged as high as 444%.

When looking at actual dollar increases for premiums, the average increase ranges from \$300,000 in northeast Pennsylvania to \$2.8 million in southeastern Pennsylvania. The maximum dollar increases reported were \$12 million in southeastern Pennsylvania and \$16 million in western Pennsylvania.

Projecting survey responses to all Pennsylvania hospitals, we estimate that total professional liability insurance costs increased more than \$180 million over the past 12 months. Given current market conditions, cost increases over the next 12 months could be even greater. With 70% of Pennsylvania hospitals and health systems losing money on patient care, the cost increases in medical liability insurance are unsustainable.

Professional Liability Coverage In Pennsylvania

TOTAL PREMIUM: Increase Over Past 12 Months (Primary + CAT Fund + Excess)

	Southeast	West	Central	Northeast	Lehigh	ALL PA
Dollar Increase (\$):						
Minimum	\$3,684	-\$156,786	\$33,656	\$49,800	\$52,477	-\$156,786
Maximum	\$11,765,000	\$15,906,000	\$8,341,000	\$1,432,845	\$778,000	\$15,906,000
Mean	\$2,841,691	\$770,676	\$1,003,627	\$306,678	\$419,810	\$1,237,625
Median	\$1,940,000	\$230,200	\$359,400	\$131,908	\$451,781	\$318,393
Total	\$62,517,206	\$26,973,645	\$21,076,168	\$2,760,105	\$2,938,672	\$116,265,796
Responses (n)	22	35	21	9	7	94
Percent Increase (%):						
Minimum	-17%	-22%	16%	6%	4%	-22%
Maximum	444%	262%	300%	165%	218%	444%
Mean	115%	71%	83%	48%	61%	81%
Median	62%	55%	65%	27%	33%	52%
Responses (n)	23	37	21	9	8	98



Professional Liability Coverage in Pennsylvania *Findings of Statewide Survey*

These premium increases have occurred even as coverage has decreased, either in the form of higher deductibles or higher retention levels. Hospitals have had to turn to the JUA for their professional liability coverage, due to the lack of availability of commercial carriers in the standard market. Additionally, some hospitals have not been able to purchase excess coverage—only the primary coverage of \$1.2 million as required in Pennsylvania.

Key Regional Findings

Southeast Region: (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties)

- Southeastern Pennsylvania has the highest proportion of self-insured hospitals (48%) and has experienced the highest average total premium increase (115%) over the past 12 months.
- Dominant professional liability carriers during this period in southeastern Pennsylvania are the Lexington Group (20%), VHA (20%), and MIIX (16%).
- The Lexington Group and MIIX each currently have 11% of the excess policies in southeastern Pennsylvania.

Northeast Region: (Bradford, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne, and Wyoming counties)

- Northeast Pennsylvania has the lowest proportion of self-insured hospitals (10%) and has experienced an average total premium increase of 48% over the past 12 months.
- Dominant professional liability carriers in the northeast are Princeton (44%) and the JUA (22%).
- Princeton currently has the largest share (20%) of excess policies in this region.

Western Region: (Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, and Westmoreland counties)

- Hospitals and health systems in western Pennsylvania closely reflected the statewide picture by having 77% of the region commercially insured.
- The region experienced an average total premium increase of 71% over the past 12 months.
- Dominant professional liability carriers in the west are MIIX (19%), PMSLIC (16%), Princeton (14%), and Tri-Century (14%).
- Currently, MIIX (21%), PMSLIC (12%), and the Lexington Group (12%) have the majority of excess policies in western Pennsylvania.

Professional Liability Coverage in Pennsylvania *Findings of Statewide Survey*

Central Region: (Adams, Centre, Clearfield, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Tioga, Union, and York counties)

- Hospitals and health systems in central Pennsylvania reported having 82% of the region commercially insured for professional liability coverage.
- The region experienced an average total premium increase of 83% over the past 12 months.
- Dominant professional liability carriers in central Pennsylvania are MIIX (28%), Princeton (16%), and the Lexington Group (16%).
- Currently, MIIX (28%), PMSLIC (8%), and the Lexington Group (8%) have the majority of excess policies in central Pennsylvania.

Lehigh Valley Region: (Berks, Carbon, Lehigh, Northampton, and Schuylkill counties)

- More than 55% of the hospitals and health systems in the Lehigh Valley reported being commercially insured for professional liability coverage.
- The region experienced an average total premium increase of 61% over the past 12 months.
- The dominant professional liability carrier in the Lehigh Valley is the Lexington Group (50%).
- The Lexington Group (25%) is also the dominant insurer for excess coverage in this region.



Professional Liability Coverage in Pennsylvania *Findings of Statewide Survey*

Conclusion

There has been increasing activity over the last six months by providers in Pennsylvania pursuing alternative forms of risk financing, such as creating new captives and self-insured plans, as well as reactivation of dormant captives and self-insured plans. Greater numbers of hospitals are likely to have to turn to the JUA for coverage. Given the increased costs of professional liability insurance coverage, the precipitous drop in availability of coverage, and greater use of self-insurance that the survey depicts for policy renewals over the past 12 months, hospitals and health systems are now faced with significant hurdles for securing liability insurance coverage over the coming months. They are aggressively exploring options for continuing professional liability coverage for both the primary and excess layers.

The complexity of factors that contributed to the deteriorating medical liability insurance market necessitates a focus on longer term tort reform efforts to stabilize and improve the medical liability insurance market. At the same time, as this survey clearly shows, continued escalation of premiums only exacerbates the more immediate financial pressures faced by Pennsylvania hospitals and health systems. Hospitals and health systems, already operating in a crushing financial environment, will not be able to assure patient access to essential health care services as the medical liability crisis continues over the next several years. Therefore, action is required to:

- Provide short-term financial assistance to support increased insurance premiums.
- Gain passage of Senate Bill 1376 and House Bill 2315, which repeal the joint and several liability rule.
- Gain passage, at the federal level, of H.R. 4600, the HEALTH Act of 2002, which includes tort reforms, such as limits on non-economic and punitive damages, needed to stabilize the liability insurance market.
- Increase market opportunities for insurance coverage.

5/6/02