

December 1986

MEDICAL  
MALPRACTICE

Case Study on  
Indiana



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# Preface

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December 31, 1986

Representative John Edward Porter and Senator John Heinz, Chairman, Senate Special Committee on Aging, asked GAO to identify the actions taken by the states to address medical malpractice insurance problems and to determine changes in insurance costs, the number of claims filed, and the average amount paid per claim. These case studies discuss the situation in each state.

This study on Indiana focuses on the views of various interest groups on perceived problems, actions taken by the state to deal with the problems, the results of these actions, and the need for federal involvement. A summary of the findings for all six case studies can be found in our overall report, Medical Malpractice: Six State Case Studies Show Claims and Insurance Costs Still Rise Despite Reforms (GAO/HRD-87-21, December 31, 1986).



Richard L. Fogel  
Assistant Comptroller General  
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# Overview

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Indiana officials generally believed that Indiana's Medical Malpractice Act of 1975 and subsequent amendments have greatly stabilized the state's malpractice insurance situation over the past 11 years by holding down premium costs and attracting additional companies into the market. They support these views by pointing out that the cost of insurance for Indiana physicians and hospitals is among the lowest in the nation,<sup>1</sup> compared to the mid-1970's, when it was higher than most neighboring states. In addition, they pointed out that the Rockwood Insurance Company, the Pennsylvania Hospital Insurance Company, and the Physicians Insurance Company of Indiana entered the Indiana medical malpractice market in 1978, 1981, and 1982, respectively, which helped ensure the continued availability of insurance at competitive prices.

Indiana officials also commented that the leading physician medical malpractice insurer had no rate increases from January 1, 1975, until July 1985, when the rate increased by 12 percent. However, most physician insurers increased their premiums in 1985. For example, the Department of Insurance reported rate increases in 1985 ranging from 12 to 76 percent.

A key provision of the act was the establishment of a Patient's Compensation Fund to pay malpractice awards or settlements in excess of \$100,000 up to a \$500,000 cap. To participate, physicians and hospitals pay a surcharge based on the premiums paid to their insurance companies for the basic coverage.

Indiana officials were concerned that the increasing number and size of payments from the Fund might adversely affect its solvency. For example, claims paid by the Fund increased from 11 in 1980 to 36 in 1985, while amounts paid increased from \$3.9 million to \$11.7 million. The surcharge rate increased from 50 percent in April 1984 to 100 percent in April 1986. According to the consulting actuary for the Indiana Department of Insurance, the Fund had accrued \$90 million in unfunded liabilities as of December 31, 1985. If this trend continues, further increases in the surcharge may be needed.

Our consulting actuary noted that because of the normal development pattern of payouts, increases in the number of claims paid and the total amount paid out by the Fund during this period would have been

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<sup>1</sup>See Medical Malpractice: Insurance Costs Increased but Varied Among Physicians and Hospitals (GAO/HRD-86-112), September 15, 1986, pp.31-34, 60-69.

expected. He added that since the fund was established on a pay-as-you-go basis, increases in the surcharge rate would have been expected as the number of claims and total amount paid out increased.

According to the Department of Insurance, the state Patient's Compensation Fund was kept solvent in 1984 only by a transfer of \$7.2 million from the reserves of the state's medical malpractice joint underwriting association.

Several actions have been taken in recent years to strengthen the Fund's ability to remain solvent. These actions include (1) increasing surcharges, (2) allowing the Department of Insurance to hire private-sector lawyers and other personnel to help defend claims against the Fund, and (3) permitting periodic payments in lieu of lump-sum payments.

While many state officials believed that Indiana's legislation has benefitted the state's malpractice situation, the state's trial lawyers have expressed the view that injured parties have lost certain rights. They are principally concerned that the \$500,000 cap on total awards may be insufficient to compensate some individuals who sustain major injuries from malpractice incidents. The Trial Lawyers Association believes that Indiana's cap should be raised to at least \$1 million per claim and that insurance companies should be required to accept liability for the first \$200,000 of each claim and the Patient's Compensation Fund the remainder.

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# Indiana: Low Rates but Solvency of State Patient's Compensation Fund a Concern

## Background

### Population, Physician, and Hospital Characteristics

Almost two-thirds of Indiana's 5.5 million people live in urban areas.<sup>2</sup> Indiana is the 14th most populous state. Indiana had 8,542 physicians as of December 31, 1985,<sup>3</sup> and 116 nonfederal community hospitals with 24,696 available beds in 1984.<sup>4</sup> A total of 7,270 physicians were providing patient care—5,904 were office-based and 1,366 were hospital-based. Table 1 shows the distribution of patient care physicians among 13 selected specialties:

**Table 1: Number of Nonfederal Patient Care Physicians in Indiana in Selected Specialties as of December 31, 1985**

	Office-based practice	Hospital-based practice		Total
		Residents	Full-time physician staff	
General practice	1,562	206	51	1,819
Internal medicine	661	192	30	883
Pediatrics	299	65	28	392
Psychiatry	188	34	56	278
Pathology	149	31	40	220
Radiology	159	0	16	175
Ophthalmology	204	25	1	230
General surgery	453	88	14	555
Anesthesiology	334	82	21	437
Plastic surgery	38	3	0	41
Orthopedic surgery	234	30	5	269
Obstetrics/gynecology	352	57	6	415
Neurosurgery	45	7	4	56

Of Indiana's community hospitals, 60 were nongovernment, not-for-profit; 52 were state and local government institutions; and the remaining four were investor-owned. Sixty-nine percent of the state's hospital beds were located in nongovernment, not-for-profit hospitals; 28 percent in state and local government hospitals; and 3 percent in investor-owned hospitals. The most prevalent hospital size was 50 to 99

<sup>2</sup>Population and ranking are as of July 1, 1984 (preliminary), and the urban/rural mix is as of April 1, 1980, from the *Statistical Abstract of the United States 1986*, 106th Edition, pp. 10, 12.

<sup>3</sup>*Physician Characteristics and Distribution in the U.S., 1986 Edition*, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association (forthcoming).

<sup>4</sup>*Hospital Statistics, 1985 Edition*, American Hospital Association, p. 70.



beds. However, the 36 hospitals of this size accounted for only 11 percent of the hospital beds. Indiana has 11 hospitals with more than 500 beds each, which accounted for 30 percent of the hospital beds in the state. The occupancy rate of the state's community hospitals averaged 68 percent for 1984.

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**Regulation of Insurance  
Rates and Description of  
Medical Malpractice  
Insurers**

Indiana is a "file and use" state. Companies must file proposed rate changes with the Department of Insurance before they become effective; however, prior approval is not required before the effective date. State Department of Insurance officials advised us that the highly competitive insurance situation in Indiana has kept rates low and has made their regulatory responsibilities easier. These officials stated that most of their effort is directed toward ensuring that the rates are not discriminatory and that they are adequate to ensure each company's continued solvency without being excessive.

The Medical Protective Insurance Company insures over 70 percent of the physicians in the state. The remainder are insured by either the St. Paul Fire and Marine Insurance Company (St. Paul Company), the Physician's Insurance Company of Indiana, or the Rockwood Insurance Company (Rockwood). The three companies participating in our study<sup>5</sup> insured over 85 percent of the physicians seeking malpractice insurance in the state.

The Pennsylvania Hospital Insurance Company and the St. Paul Company were the two major insurers of Indiana hospitals, and they both participated in our study.<sup>5</sup> Rockwood also insures some hospitals in the state.

The Pennsylvania Hospital Insurance Company and the St. Paul Company insure over 70 percent of total occupied hospital beds in Indiana. If the self-insured occupied hospital beds are not considered as part of the insurance market, the two companies insure over 90 percent of the beds.

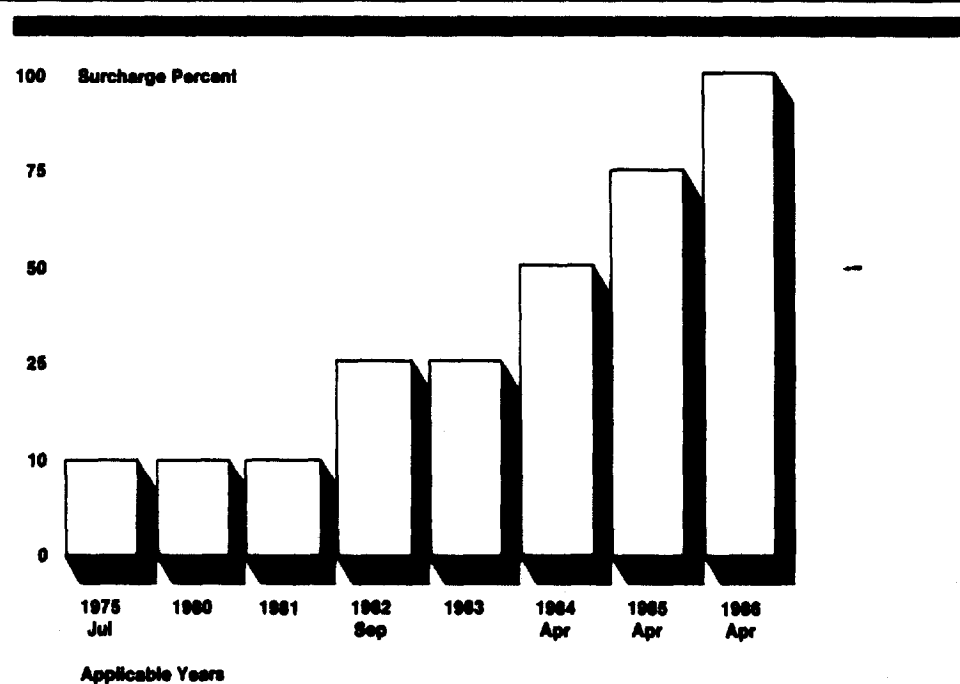
Indiana's Patient's Compensation Fund, created by the medical malpractice legislation of 1975, is a major source of insurance for both physicians and hospitals in the state. At the time of our review, Indiana officials stated that virtually all of the state's physicians and hospitals

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<sup>5</sup>See appendix I for a list of malpractice insurers requested to provide data for Indiana.

were voluntarily participating in the Fund. To participate, each physician and hospital is assessed a surcharge. The surcharge remained constant at 10 percent of the premium paid by the provider for basic coverage from July 1975 through August 1982. However, since September 1982, the surcharge rate has increased four times to reach its current rate of 100 percent. Figure 1 shows the changes in the Fund surcharge rate.

Figure 1: Surcharge Rate of the Indiana Patient's Compensation Fund, 1975-86



### Medical Malpractice Situation in the Mid-1970's

In the mid-1970's, Indiana's health care system was approaching a crisis due to the increasing number of medical malpractice suits being filed and the large amounts of damages being awarded for such suits. The Indiana Medical Malpractice Commission reported that between 1970 and 1975, the frequency of claims filed against physicians had increased by 42 percent, and the average damage award had increased from \$12,993 to \$34,297. The Indiana Medical Malpractice Study Commission also reported that physicians' medical malpractice insurance premiums increased by 410 percent from 1970 to 1975. During this period, 7 of the 10 primary medical malpractice insurance companies in Indiana stopped writing new policies, canceled policies, or limited their new business and

their liability. As a result, many physicians were left with inadequate malpractice insurance coverage, or no coverage at all.

The insurance availability crisis was also affecting the practice of medicine. For example, some primary care physicians opted for early retirement, while others stopped doing the more complicated procedures that entailed greater risks. Hospitals discontinued some emergency services and canceled some types of surgery due to threat of malpractice claims. The increasing threat of medical malpractice suits, coupled with the decreasing availability of medical malpractice insurance, had begun to adversely affect how and what type of medical care was provided to patients.

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## **Response to Problems**

To ensure the continuation of medical services in Indiana, the state legislature passed the Medical Malpractice Act of 1975 on April 4, 1975. The bill was signed into law on April 24 and became effective on July 1, 1975. This was the first comprehensive malpractice statute in the nation. The Indiana Supreme Court has upheld the constitutionality of key aspects of the legislation given that its goal is to protect the health of the citizens of Indiana by preventing a reduction of health care services. These key aspects include (1) placing limits on recoverable amounts, (2) establishing the Patient's Compensation Fund, (3) setting a statutory time limit for filing malpractice claims, and (4) requiring submission of claims to medical review panels.

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## **Limits on Recoverable Amounts**

Indiana's Medical Malpractice Act of 1975 limits the total amount recoverable for any patient injury or death to \$500,000. This limit applies to any and all damages, including pain and suffering, economic losses, and the cost of future medical care. The Indiana Supreme Court has held that the limitation on recovery was a reasonable means to achieve the goals of securing medical malpractice insurance availability and assuring that medical practitioners continue practicing in Indiana.

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## **State Patient's Compensation Fund**

Indiana's Medical Malpractice Act created the Fund, in which surcharges are collected from health care providers to pay claims filed for amounts greater than \$100,000. The Fund receives no funds appropriated by the legislature or tax dollars, and all administrative expenses are paid from the Fund. The Department of Insurance may use money from the Fund to retain risk managers, defense counsel, and financial

advisors. Claims against the Fund are either settled by negotiation or may be litigated in court.

The cost of a patient's award is apportioned between the health care providers (or their insurers) and the state-run Fund. As a condition of participation in the Fund, health care providers are required to purchase basic coverage (\$100,000/\$300,000 for physicians; \$100,000/\$2 million for hospitals under 100 beds and \$100,000/\$3 million for hospitals of 100 beds or more) or prove self-insurability. To recover more than \$100,000, the plaintiff must file a claim against the Fund. Claims against the Fund may be litigated only as to the amount of damages as the liability is established either by litigation or settlement against the individual health care provider or his insurer on the initial \$100,000 of liability.

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### **Statute of Limitations**

Indiana's statute of limitations requires claims to be made within 2 years of the alleged act, omission, or neglect. Minors alleging injury at any time before their sixth birthday have until their eighth birthday to file a claim. According to an Indiana Hospital Association official, the courts of Indiana have held this statute runs from the time of alleged incident rather than from the date of discovery. Officials of the Indiana Medical Association and a malpractice insurer stated that this shortened period enables insurers in Indiana to better defend malpractice claims by reducing many of the problems caused by the long periods which may elapse between the incident and the claim and between the claim and its closure.

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### **Medical Review Panels**

Indiana's Medical Malpractice Act provides for the establishment of panels to review all proposed malpractice complaints against health care providers before the claim can be filed in court. A panel is composed of a health care provider selected by the plaintiff, a health care provider selected by the defendant or defendants, and a third health care provider selected by the first two panel members. The panel is chaired by an attorney, who is charged with advising panel members on legal matters and drafting the panel's final opinion, but he has no vote on the final opinion. The panel's sole duty is to consider evidence submitted by both parties and to express an opinion as to whether the defendant(s) acted or failed to act within the appropriate standards of care as charged in the complaint. The panel opinion is not binding upon any party, but it may be admitted into evidence by either side if litigation results. The aim of the panels is to reduce nuisance suits and to avoid

lawsuits whenever possible by advocating quicker settlements of claims outside of the court system.

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## **Claims Reporting**

Under Indiana's Medical Malpractice Act, all malpractice claims settled or adjudicated against a health care provider (including hospitals) must be reported to the Department of Insurance. The department must then report claims against individual practitioners to the Medical Licensing Board and other licensing authorities of the state. This board may then review the health care provider's fitness to remain in practice and censure, place on probation, suspend, or revoke the provider's license.

Indiana's Medical Malpractice Act also

- established the Indiana Residual Malpractice Insurance Authority to provide liability insurance to physicians unable to obtain it from commercial insurers, commonly referred to as a joint underwriting association;
- precluded inclusion of dollar amounts in medical malpractice pleadings; and
- limited attorney's fees to 15 percent of any recovery from the Patient's Compensation Fund.

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## **Recent Changes to Indiana's Medical Malpractice Act**

In the last 2 years, the Indiana legislature enacted the following changes:

- Allowed the Fund and insurers to use periodic payments in lieu of lump-sum payments in paying awards or settlements to the claimant.
- Permitted Fund dollars to be used to purchase the services of persons, firms, and corporations to aid in protecting the fund against claims.
- Allowed the Fund to make payments to claimants twice a year (January 15 and July 15) instead of only once a year.
- Raised the Fund's annual surcharge rate in April 1985 to 75 percent of the cost of needed medical malpractice insurance and to 100 percent in April 1986.
- Required a health care provider's insurer to notify the insurance commissioner of any malpractice case upon which it has placed a reserve of \$50,000 or more.
- Allowed a patient to commence court action against a provider for malpractice without a Panel opinion as long as damages sought are no greater than \$15,000.

- Allowed defendants to introduce evidence to the jury that a plaintiff received reimbursement of costs from other sources.

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## Effect of Indiana Tort Reforms

Officials of Indiana's Medical Association, Hospital Association, Bar Association, and leading malpractice insurers believe that Indiana's tort reforms have greatly stabilized Indiana's medical malpractice situation over the last 11 years. Regarding specific provisions of the act, three or more interest groups believed the limitation on total size of awards/settlements and the use of pretrial screening panels had a major stabilizing effect.<sup>6</sup>

Four of the six interest groups believed that Indiana's \$500,000 statutory limit on the recoverable amount for medical malpractice awards/settlements had a major effect on decreasing the size of awards/settlements. As pointed out by an Indiana Medical Association official, the limit has precluded any million-dollar settlements. Officials of a large malpractice insurance company added that the limit on awards, along with Indiana's pretrial screening panels, had helped keep the legal costs associated with defending malpractice claims in Indiana well below those for the rest of the country. However, the Indiana Trial Lawyers Association believed that the \$500,000 limit deprives severely injured patients of fair compensation.

Three of the six interest groups believed there had been some major effect from the act's provision requiring claims in excess of \$15,000 to obtain a medical review panel opinion before any court action. The physician group, Indiana Bar Association, and Indiana Department of Insurance agreed that the panel process had decreased the number of claims that go to trial. The Indiana Medical Association stated that the panel process substantially decreases the number of claims going to trial and decreases the time required to close claims. According to officials of a large Indiana malpractice insurance company, only 2 percent of claims filed against the company go to court. They stated that such a low percentage of claims going to court can be attributed to Indiana's panel process. This company also attributed its much lower legal costs to defend claims in Indiana to the panel process. For example, according to company officials, the company's average cost of defending a claim in Indiana is about \$2,100 versus about \$10,000 in Michigan and Illinois.

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<sup>6</sup>Our methodology for obtaining the views of major interest groups and for analyzing their responses is described in GAO/HRD-87-21, pp. 10-11. The specific interest groups for Indiana are presented in appendix II of this report.

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## Key Indicators of the Situation Since 1980

Malpractice insurance premiums for physicians and hospitals have risen during the last 6 years. Most of the increases occurred in 1985 and 1986 and resulted primarily from increases in the Fund surcharge rate as the Fund experienced a dramatic increase in both the number of claims and total amount paid. From 1980 through 1984, frequency of claims against physicians almost doubled, but the average paid claim decreased slightly. The frequency of claims against hospitals increased only slightly from 1981 to 1984; however, the average paid claim increased by 57 percent. Insurers' average costs to investigate and defend claims increased by 18 percent over this period for claims against physicians and 19 percent for claims against hospitals.

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## Physicians

### Cost of Malpractice Insurance

As of January 1, 1986, there was a wide variation in malpractice insurance rates among different physician specialties in Indiana. For example, The Medical Protective Company's annual premium, including the Fund surcharge, ranged from \$1,293 for the specialties of general practice (no surgery), internal medicine (no surgery), pediatrics (no surgery), and pathology to \$11,380 for obstetrics/gynecology and neurosurgery.

The rate of increase in medical malpractice premiums has not been uniform among physician specialties. High-risk specialties, such as neurosurgery and obstetrics/gynecology, have experienced the highest percentage increases. As shown in table 2, the increases in premiums (including the Fund surcharge) from 1980 to 1986 ranged from 53 percent for ophthalmology to 116 percent for obstetrics/gynecology.

**Indiana: Low Rates but Solvency of State  
Patient's Compensation Fund a Concern**

**Table 2: Cost of Insurance<sup>a</sup> for Selected  
Specialties, 1980 and 1986**

Specialty	Insurance rate plus Fund surcharge		Percent increase 1980-1986
	1980	1986	
General practice (no surgery)	\$725	\$1,293	78
Internal medicine (no surgery)	725	1,293	78
Pediatrics (no surgery)	725	1,293	78
Pathology	725	1,293	78
General practice (minor surgery)	1,208	2,328	93
Internal medicine (minor surgery)	1,208	2,328	93
Pediatrics (minor surgery)	1,208	2,328	93
Radiology	1,208	2,328	93
Psychiatry	1,208	2,328	93
Ophthalmology/surgery	2,120	3,234	53
General surgery	4,973	7,760	56
Anesthesiology	4,973	7,760	56
Plastic surgery	5,271	9,312	77
Orthopedic surgery	5,798	10,605	83
Obstetrics/gynecology	5,271	11,380	116
Neurosurgery	5,798	11,380	96

<sup>a</sup>Rates shown are those of The Medical Protective Company for a \$100,000/\$300,000 occurrence policy plus the Fund surcharge as of January 1 each year. Total coverage is \$500,000/unlimited for providers participating in the Fund. Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed.

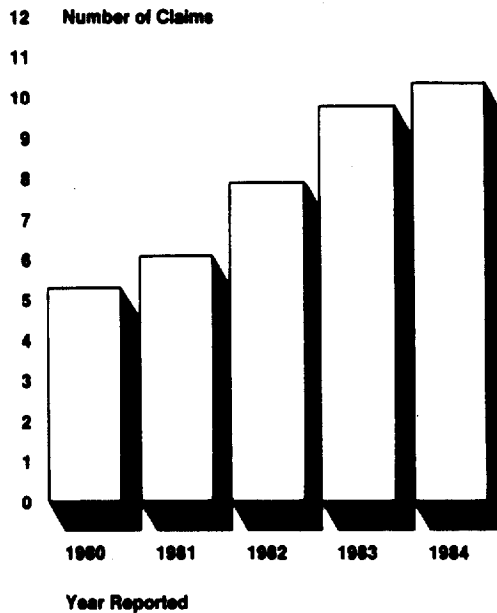
The St. Paul Company and the Physicians Insurance Company of Indiana increased their rates by an average overall increase of 76 percent and 17 percent, respectively, during 1985, according to the Department of Insurance. It should be noted, however, that this represented the first increase for the latter company since it began providing medical malpractice insurance on July 1, 1982.

**Frequency of Claims**

The claims experience for The Medical Protective Company and the St. Paul Company indicated that the frequency of claims filed (per 100 physicians) for all physicians increased each year from 1980 to 1984. As shown in figure 2, the frequency of claims filed against physicians insured by these companies almost doubled from— 5.3 in 1980 to 10.2 in 1984.



Figure 2: Frequency of Claims per 100  
Physicians, 1980-84



These data also showed variations in the frequency of claims filed (per 100 physicians) among the selected specialties. As shown in table 3, the frequency of claims for the majority of specialties fluctuated from year to year. For example, the frequency of claims for general surgery increased from 12.0 in 1980 to 21.2 in 1981 and then remained relatively constant through 1984. For orthopedic surgery and obstetrics/gynecology, however, the frequency of claims increased dramatically between 1980 and 1984, 159 and 251 percent, respectively. The frequency of claims for the remaining specialties fluctuated from year to year but, with the exception of plastic surgery, each had more reported claims in 1984 than in 1980.

**Indiana: Low Rates but Solvency of State  
Patient's Compensation Fund a Concern**

**Table 3: Frequency of Claims per 100  
Physicians for Selected Specialties,  
1980-84**

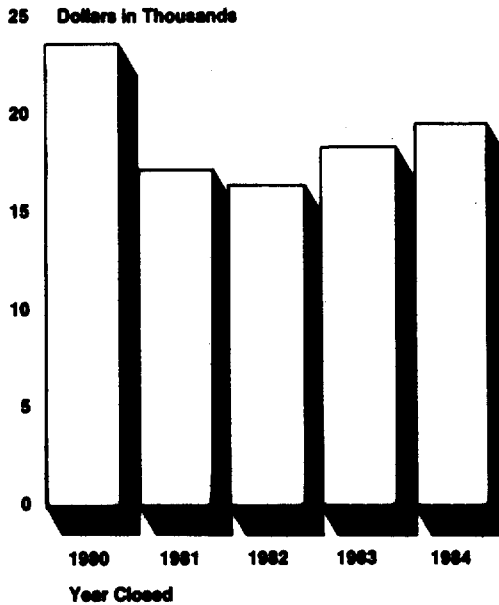
Specialty	1980	1981	1982	1983	1984	Percent increase (1980-1984)
General practice	1.0	3.9	3.3	4.1	4.3	330
Internal medicine	2.7	1.8	4.4	5.6	4.2	56
Pediatrics	1.7	1.2	2.4	3.9	5.5	224
General surgery	12.0	21.2	19.8	19.4	19.3	61
Neurosurgery	23.7	19.2	30.2	36.6	24.5	3
Ophthalmology/surgery	6.8	4.0	7.2	6.1	9.1	34
Orthopedic surgery	13.2	16.9	24.4	33.5	34.2	159
Plastic surgery	25.1	37.0	9.6	44.9	18.1	(28)
Obstetrics/ gynecology	9.5	14.5	21.6	26.8	33.3	251
Radiology	2.9	2.7	6.3	3.2	5.7	97
Psychiatry	1.8	3.0	0.6	5.2	5.2	189
Anesthesiology	3.7	5.8	7.3	6.1	5.9	59
Pathology	0	1.5	0.9	2.4	2.5	

\*Cannot compute due to zero value in 1980.

**Size of Awards/Settlements**

The average size of awards/settlements (average paid claim) for all physicians fluctuated somewhat. For example, figure 3 shows the paid claims experience of The Medical Protective Company and the St. Paul Company. The average paid claim in 1984 was smaller than it was in 1980.

**Figure 3: Average Paid Claim<sup>a</sup> for  
Physicians, 1980-84**



<sup>a</sup>Each indemnity payment limited to \$100,000.

As shown in table 4, no clear trend is evident in the average paid claim for the selected specialties. Because the number of physicians in any one specialty is relatively small, the base of spreading total claims paid is small. As a result, a few large claims paid in a given year for a given specialty could have a significant effect on the average paid claim for that specialty that year.

**Table 4: Average Paid Claim for  
Selected Specialties, 1980 and 1984**

	1980	1984
All Physicians	\$23,801	\$19,510
<b>Specialty</b>		
General practice	2,337	14,679
Internal medicine	50,500	20,286
Pediatrics	17,250	15,214
General surgery	22,214	29,208
Neurosurgery	3,750	17,565
Ophthalmology/surgery	0	26,516
Orthopedic surgery	74,167	30,677
Plastic surgery	5,333	0
Obstetrics/ gynecology	6,021	18,772
Radiology	5,750	21,083
Psychiatry	1,625	600
Anesthesiology	31,909	-- 15,450
Pathology	0	4,909

**Cost to Investigate and Defend  
Claims**

The average cost to investigate and defend claims against Indiana physicians, based on the experience of The Medical Protective Company and the St. Paul Company, increased from \$3,012 in 1980 to \$3,567 in 1984—an increase of 18 percent.

Nine percent of the malpractice claims closed against physicians in 1984 involved no expense to the insurer. Forty-three percent of the claims were closed with an indemnity payment, while 49 percent were closed with costs only for investigating and defending the claim. The percentage of the latter remained about the same in 1984 compared to 1980. Over the same period, however, the percentage of claims closed with indemnity payment rose from 37 to 43 percent and the percentage of claims closed with no expense dropped from 13 to 9 percent.

**Hospitals**

**Cost of Malpractice Insurance**

As shown in table 5, the estimated malpractice insurance costs for hospitals in Indiana<sup>7</sup> increased from \$6.6 million in 1983 to \$9.4 million in 1985—an increase of 42 percent.

<sup>7</sup>See GAO/HRD-87-21, p. 11, for methodology for obtaining and analyzing hospital cost data. See appendix III of this report for information on the number of Indiana hospitals in the universe, GAO's sample, and the survey response. Unless otherwise indicated, the estimates presented in this study are also included with sampling errors in tables IV.1 through IV.5.

**Indiana: Low Rates but Solvency of State  
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**Table 5: Estimated Hospital Malpractice Insurance Costs by Type of Expenditure, 1983-85**

Dollars in millions					
Expenditure	1983	1984	1985	1983-85 increase <sup>a</sup>	
				Amount	Percent
<b>Total</b>	<b>\$6.6</b>	<b>\$7.1</b>	<b>\$9.4</b>	<b>\$2.8</b>	<b>42</b>
Contributions to self-insurance trust funds	0.7	0.8	1.6	0.9	129
Premiums for purchased insurance	5.8	6.1	7.6	1.8	31
Uninsured losses	0.1	0.1	0.1	0.0	0

<sup>a</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

Note: Detail may not add to total due to independent estimation.

In 1985, 57 percent of the hospitals had annual malpractice insurance costs of less than \$50,000, as shown in table 6. No Indiana hospital had annual insurance costs of \$1 million or more in 1983 or 1985.

**Table 6: Estimated Distribution of Annual Malpractice Insurance Costs for Hospitals, 1983 and 1985**

Annual costs	1983			1985		
	No.	Percent	Cum. percent	No.	Percent	Cum. percent
Less than \$10,000	8	9.6	9.6	6	7.0	7.0
\$10,000 to \$24,999	27	31.9	41.5	18	20.9	27.9
\$25,000 to \$49,999	14	16.5	58.0	25	28.7	56.6
\$50,000 to \$99,999	13	15.1	73.1	6	7.5	64.1
\$100,000 to \$249,999	20	22.8	95.9	23	27.0	91.1
\$250,000 to \$499,999	2	2.8	98.7	4	4.3	95.4
\$500,000 to \$999,999	1	1.4	100.1 <sup>a</sup>	4	4.5	99.9 <sup>a</sup>
\$1 million or more	0	0.0	•	0	0	•
<b>Total</b>	<b>85<sup>a</sup></b>	<b>100.1<sup>a</sup></b>		<b>86</b>	<b>99.9<sup>a</sup></b>	

<sup>a</sup>Detail does not add to adjusted universe or 100 percent due to independent rounding.

Note: The total number of hospitals each year is based on the number of responding hospitals that provided the relevant data for that year.

As shown in table 7, the estimated average malpractice insurance cost per inpatient day increased 89 percent from 1983 to 1985. The average annual cost per bed increased 72 percent for the same period.

**Indiana: Low Rates but Solvency of State Patient's Compensation Fund a Concern**

**Table 7: Estimated Average Hospital Malpractice Insurance Costs per Inpatient Day and per Bed,<sup>a</sup> 1983-85**

	1983	1984	1985	1983-85 increase <sup>b</sup>	
				Amount	Percent
Average malpractice cost per inpatient day	\$1.41	\$1.73	\$2.67	\$1.26	89
Average annual malpractice cost per bed	\$426	\$489	\$732	\$306	72

<sup>a</sup>To determine the average annual malpractice cost per bed, we computed the daily occupied bed rate (the total number of inpatient days divided by 365) and increased that number by one bed for every 2,000 outpatient visits (emergency room visits were counted as outpatient visits). This number was divided into the hospital's total annual malpractice insurance cost.

<sup>b</sup>Sampling errors for the amount and percentage of increase are not presented in appendix IV, but they are comparable to the errors for the estimated costs.

As table 8 shows, from 1983 to 1985, 51 percent of Indiana's hospitals had increases in malpractice insurance costs per inpatient day ranging from 10 to 99 percent. Twenty-seven percent had increases between 100 and 199 percent, while 14 percent had increases of 200 percent or more.

**Table 8: Estimated Distribution of Changes in Malpractice Insurance Costs per Inpatient Day From 1983 to 1985**

Percentage change	Number	Hospitals	
		Percent	Cum. Percent
Increases of less than 10 percent or all decreases	6	7.4	7.4
+10 to 49	20	23.4	30.8
+50 to 99	24	28.0	58.8
+100 to 199	23	27.1	85.9
+200 to 299	9	10.9	96.8
+300 or more	3	3.2	100.0
<b>Total</b>	<b>85</b>	<b>100.0</b>	

Note: The total number of hospitals is based on the number of responding hospitals that provided data for both 1983 and 1985 so that the percent change could be calculated.

**Malpractice Insurance Rates for Hospitals**

The Pennsylvania Hospital Insurance Company, Indiana's leading insurer of hospitals, increased its rates for a \$100,000/\$3 million occurrence policy<sup>8</sup> from \$286 per bed in 1981 to \$382 in 1986—34 percent.

<sup>8</sup>Under an occurrence policy, the insurance company is liable for any incidents that occurred during the period the policy was in force, regardless of when the claim may be filed.

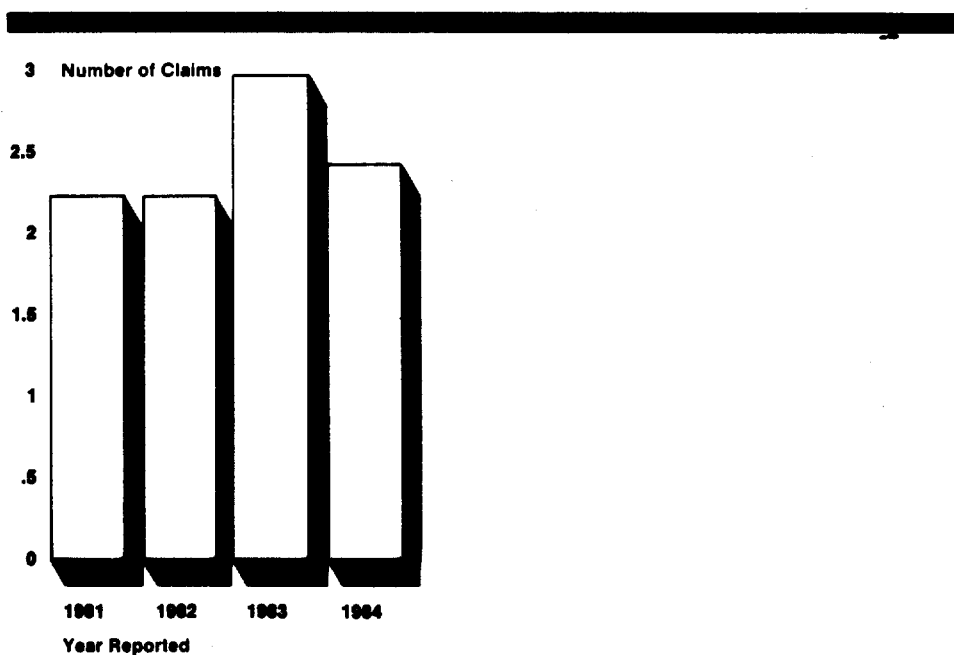
The St. Paul Company's rates for hospital malpractice insurance increased from \$230 per bed in 1980 to \$361 in 1986—57 percent—for a claims-made policy<sup>9</sup> with the same coverage limits.

With the surcharge added, the Pennsylvania Hospital Insurance Company's rates increased 112 percent—from \$315 in 1981 to \$669 in 1986—and the St. Paul Company's rate increased 150 percent—from \$253 in 1980 to \$632 in 1986.

### Frequency of Claims

The combined claims experience of the Pennsylvania Hospital Insurance Company and the St. Paul Company shown in figure 4 indicated that the frequency of malpractice claims filed per 100 occupied beds in the state increased from 2.2 to 2.4 during the period 1981-84.

**Figure 4: Frequency of Claims per 100 Occupied Hospital Beds, 1981-84**

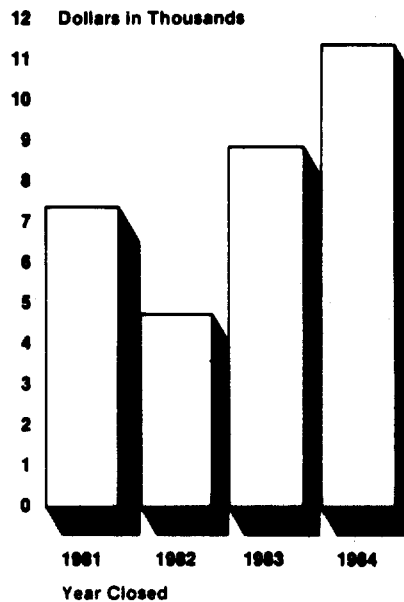


### Size of Awards/Settlements

Based on the combined claims experience of these two insurers, the average paid claim against Indiana hospitals increased from \$7,146 in 1981 to \$11,244 in 1984, as shown in figure 5.

<sup>9</sup>A claims-made policy covers malpractice events that occur after the effective date of the coverage and for which claims are made during the policy period.

Figure 5: Average Paid Claim<sup>a</sup> for  
Hospitals, 1981-84



<sup>a</sup>Each indemnity payment limited to \$100,000.

Cost to Investigate and Defend  
Claims

Based on the claims experience of the Pennsylvania Hospital Insurance Company and the St. Paul Company, the average cost to investigate and defend claims against Indiana hospitals increased by 19 percent, from \$1,075 in 1981 to \$1,275 in 1984.

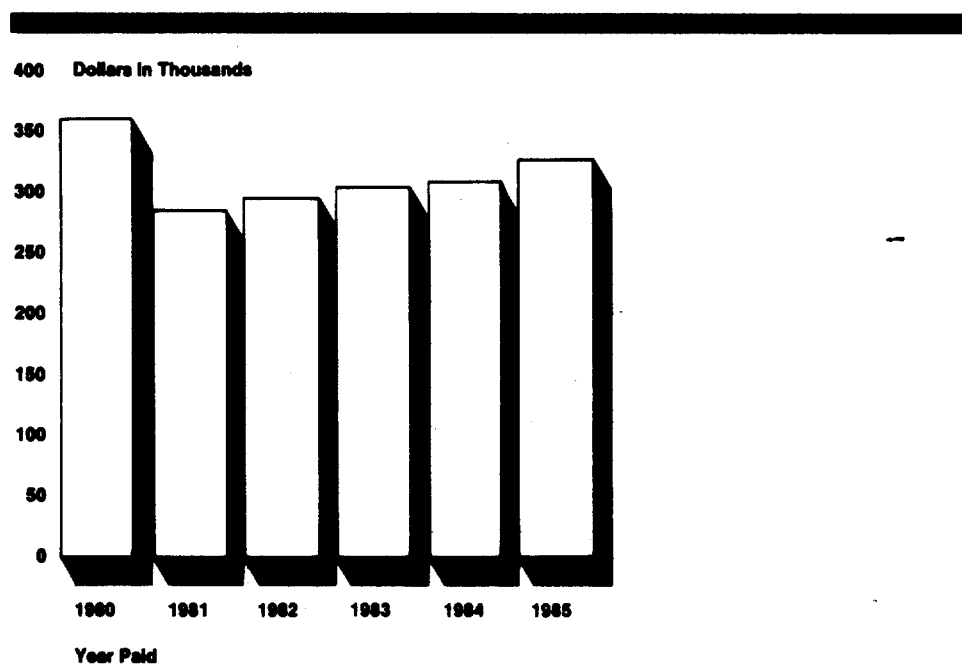
Thirty-five percent of the malpractice claims closed against hospitals in 1984 involved no expense to the insurer. Thirty percent of the claims were closed with an indemnity payment, while 36 percent were closed with costs only for investigating and defending the claim. Between 1981 and 1984, the percentage of claims closed with costs only for investigating and defending the claim increased from 28 to 36 percent, while the percentage of claims closed with no expense dropped from 46 to 35 percent. The claims closed with indemnity increased from 26 to 30 percent during this period.



### Claims Against the Indiana Patient's Compensation Fund

Between 1980 and 1984, the Fund experienced a significant increase in the number and amount of claims paid. Specifically, the Fund paid \$3.9 million for 11 claims in 1980 versus \$17.7 million for 57 claims in 1984, and then decreased to \$11.7 million for 36 claims in 1985. The average amount paid for each claim closed against the Fund decreased from \$354,545 in 1980 to \$325,417 in 1985. However, as shown on figure 6, the average paid claim by the Fund has increased each year since 1981, from \$281,786 to \$325,417 in 1985—a 15-percent increase.

Figure 6: Average Paid Claim by the  
Indiana Patient's Compensation Fund,  
1980-85



### Major Medical Malpractice Problems—Current and Future

Major current or future concerns identified by the Indiana Hospital Association, the Indiana Trial Lawyers Association, and the Indiana Department of Insurance included

- medical societies not taking remedial action (e.g., sanctions or disciplinary measures) against members with malpractice histories; and
- physician specialty boards not taking remedial action against physicians with malpractice histories; and
- peer review groups not taking remedial action against physicians or hospitals with malpractice histories.

An Indiana Hospital Association official commented that effective sanctions against incompetent physicians have been marginal to nonexistent, and physicians are usually disciplined by the state's medical licensing board only for immoral or dishonest acts.

The president of the Indiana Trial Lawyers Association said there are no self-regulating actions by physician or hospital groups to reduce medical malpractice events. He was of the opinion that something similar to the State Bar Association's Attorney's Disciplinary Committee, which conducts hearings, disciplines, reprimands, and/or disbars lawyers, as necessary, is needed.

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### **The Solvency of the Patient's Compensation Fund**

Officials from each of the six interest groups<sup>10</sup> expressed major concerns about the continued solvency of the Fund and the large surcharge increases needed to keep the Fund intact. In the last 2 years, the Indiana legislature has enacted several changes designed to aid the Fund, but officials still foresee future problems for the Fund.

An Indiana Bar Association official said the Fund was not set up to be actuarially sound and that payments have caught up with and exceed the amount set aside to handle claims. In fact, according to the Department of Insurance, the Fund was kept solvent in 1984 by the transfer of \$7.2 million of reserves from the state's medical malpractice joint underwriting association known as the Indiana Residual Malpractice Insurance Authority. According to the consulting actuary for the Indiana Department of Insurance, the Fund had accrued \$90 million in unfunded liabilities as of December 31, 1985.

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### **Solutions to Malpractice Problems**

State actions to strengthen licensing and relicensing for physicians was the most widely supported action among the six groups we surveyed in Indiana. Specifically, the physician group, the Indiana Hospital Association, the Indiana Bar Association, the Indiana Trial Lawyers Association, and the State Department of Insurance firmly supported stronger physician licensing and relicensing practices at the state level. An official of the Department of Insurance commented that Indiana's Medical Licensing Board is doing more now than 5 years ago, but there still needs to be more disciplining of the medical profession. An Indiana Bar Association official said the Medical Licensing Board should be given more power to monitor the quality of practicing physicians.

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<sup>10</sup>The specific interest groups for Indiana are listed in appendix II of this report.

Indiana's Hospital Association, Bar Association, Trial Lawyers Association, and Department of Insurance supported state action to increase peer review of physicians' medical practices. An Indiana Trial Lawyers Association official believed peer review practices should be taught in the medical educational process. An Indiana Bar Association official also expressed the view that there was a need for more physician education about peer review and more emphasis on physicians monitoring other physicians.

Significant support existed for state use of pretrial screening panels, such as the medical review panel currently in place in Indiana. Indiana's physician group, Bar Association, malpractice insurers, and Department of Insurance supported the use of pretrial screening panels. An Indiana Bar Association official added that pretrial screening panels greatly reduce the number of claims going to court.

Indiana's Bar Association, Trial Lawyers Association, and Department of Insurance strongly supported state actions to increase the amount of information available to consumers about physicians and hospitals with medical malpractice histories. An Indiana Trial Lawyers Association official remarked that consumers should be provided more information regarding incompetent doctors but that this is difficult and he is unsure of how this could be done. An Indiana Bar Association official added that information should be available to consumers to demonstrate that physicians can make mistakes and are not "God-like."

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## **Role of the Federal Government**

None of the six interest groups in Indiana expressed strong support for any form of federal intervention because they felt these problems can best be addressed at the state level.

# Medical Malpractice Insurers Requested to Provide Statistical Data for Indiana

	Provided data for		Did not provide requested data
	Physicians	Hospitals	
The Medical Protective Company	X		
Pennsylvania Hospital Insurance Company		X	
Physicians Insurance Company of Indiana	X <sup>a</sup>		
Rockwood Insurance Company			X
St. Paul Fire and Marine Insurance Company	X	X	

<sup>a</sup>Data not included in our data base due to several missing data elements.

# Organizations Receiving GAO Questionnaire for Indiana

Completing questionnaire	Not completing questionnaire
<b>Physician group:</b>	
Indiana State Medical Association	Indiana Chapter of the American College of Physicians and Surgeons
Indiana Association of Pathologists, Inc.	Indiana Chapter, American Academy of Pediatrics
Indiana Psychiatric Society	
Indiana Roentgen Society, Indiana Chapter of American College of Radiology	
Indiana Section, American College of Obstetrics and Gynecology	
Indiana Orthopedic Society	
Indiana Academy of Ophthalmology	
Indiana Academy of Family Physicians	
<b>Hospital association:</b>	
Indiana State Hospital Association	
<b>Bar association:</b>	
Indiana Bar Association	
<b>Trial lawyers:</b>	
Indiana Trial Lawyers Association	
<b>Malpractice insurers:</b>	
The Medical Protective Company	St. Paul Fire and Marine Insurance Company
The Physicians Insurance Company of Indiana	Rockwood Insurance Company of Indiana
	Pennsylvania Hospital Insurance Company
<b>Insurance department:</b>	
Indiana Department of Insurance	

# Number of Indiana Hospitals in the Universe, GAO Sample, and Survey Response

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<b>Number of hospitals</b>		<b>Hospitals completing questionnaire</b>	
<b>Universe<sup>a</sup></b>	<b>Sample</b>	<b>Number</b>	<b>Percent</b>
115	64	50	78

<sup>a</sup>1983 data.

# Estimated Hospital Data and Related Sampling Errors for Policy Years 1983, 1984, and 1985

**Table IV.1: Hospital Malpractice Insurance Costs and Related Sampling Errors by Type of Expenditure**

Dollars in millions

Expenditure	1983		1984		1985	
	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>	Amount	Sampling error <sup>a</sup>
<b>Total cost</b>	<b>\$6.6</b>	<b>\$.8</b>	<b>\$7.1</b>	<b>\$.8</b>	<b>\$9.4</b>	<b>\$1.2</b>
Contribution to self-insurance trust funds	.7	.6	.8	.5	1.6	1.0
Premiums for purchased insurance	5.8	.7	6.1	.8	7.6	.8
Uninsured losses	.08	.05	.13	.08	.13	.07

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: Detail may not add to total due to independent estimation. The adjusted universe of hospitals to which the estimated amounts related was 86 for 1983, 1984, and 1985. The adjusted universe is that portion of the total universe based on the sample response rate for which we can estimate data.

**Table IV.2: Distribution of Annual Malpractice Insurance Costs and Related Sampling Errors for Hospitals**

Figures in percents

Annual cost	1983		1985	
	Hospitals	Sampling error <sup>a</sup>	Hospitals	Sampling error <sup>a</sup>
Less than \$10,000	9.6	3.7	7.0	0.0
\$10,000 to \$24,999	31.9	8.0	20.9	6.8
\$25,000 to \$49,999	16.5	7.8	28.7	8.5
\$50,000 to 99,999	15.1	5.3	7.5	4.4
\$100,000 to \$249,999	22.8	4.8	27.0	5.7
\$250,000 to 499,999	2.8	1.4	4.3	2.0
\$500,000 to \$999,999	1.4	1.1	4.5	2.4
\$1 million or more	0	0.0	0	0.0

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 86 in 1983 and 1985.

**Table IV.3: Average Malpractice Insurance Costs per Inpatient Day and Related Sampling Errors**

Cost per day	1983		1984		1985	
	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>	Cost per day	Sampling error <sup>a</sup>
\$1.41	\$1.41	\$.22	\$1.73	\$.29	\$2.67	\$.40

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

**Table IV.4: Average Annual Malpractice Insurance Costs per Bed and Related Sampling Errors**

Cost per bed	1983		1984		1985	
	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>	Cost per bed	Sampling error <sup>a</sup>
\$426	\$426	\$61	\$489	\$64	\$732	\$100

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

**Appendix IV  
 Estimated Hospital Data and Related  
 Sampling Errors for Policy Years 1983, 1984,  
 and 1985**

**Table IV.5: Distribution of Changes in  
 Malpractice Insurance Costs per  
 Inpatient Day From 1983 to 1985 and  
 Related Sampling Errors**

Figures in percents		
Changes	Hospital	Sampling error <sup>a</sup>
Increases of less than 10% or decreases	7.4	4.6
Increases of 10% to 49%	23.4	7.8
Increases of 50% to 99%	28.0	8.9
Increases of 100% to 199%	27.1	9.6
Increases of 200% to 299%	10.9	7.1
Increases of 300% or more	3.2	2.2

<sup>a</sup>Sampling errors are stated at the 95-percent confidence level.

Note: The adjusted universe of hospitals was 85.



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