

In This Month's Issue:

- > A look at the success of tort reform in Florida
- > The potential impact of the Medicare Risk Adjustment system
- > Opening of the Miami office in November



Florida Legislation on Tort Reform, will it survive?

In a recent medical malpractice continuing education seminar, an enlightening fact was brought to fore. Tort reform has been passed by several states, thirteen to be exact. Of those states, only California has been chal-

Florida Legislature



lenged and successfully upheld to date. Some are in process of being challenged or have had recent challenges adjudicated. In many cases, the original intent of the law has been watered down significantly.

In recent trends, some states have incorporated the "I'm Sorry" clause in their legislation. This makes allowances for a physician to express condolences without that expression being an admission of liability. This is important, as often, an apology is used by unscrupulous attorneys as a means to tie the apology to malpractice.

What does this mean for practitioners today? This remains unclear. Five years is a relatively short period to evaluate the impact of legislative reform of this nature but be certain, challenges are coming. The best way to mitigate this becoming your issue is to utilize "Best Practice" guidelines as a standard.

There are many good practice guidelines available. Some by the

AMA ® and the various specialty organizations. When these practice guidelines are incorporated, there is statistical evidence of reduced exposure as well as a better chance that should a suit be brought forward, the practice has a much better chance of being defended successfully.

Successful implementation of Electronic Health Records, Outcome Tracking and minimally invasive procedures have all impacted patient satisfaction. This has been proven to be directly tied to malpractice as what one views as a successful outcome is often interpreted differently by "opposing counsel".

As for tort reform, only time will tell how well it holds up.

By Darren Majors,

Is my liability coverage "Adequate" or "Thorough"

Seems like an odd question, right? Maybe not. Often, due to the high cost of malpractice, practitioners often seek minimal coverage simply to meet their statutory requirements. In some cases, certain key coverage elements are left off. For example, think of "sexual misconduct". Most physicians would never violate the trust of a patient however, we have to acknowl-

edge that some patients may interpret innocent gestures differently. That pat on the knee or the friendly smile to put a patient at ease. Did he or she take that the wrong way? This is



an unfortunate and very disturbing question to have to ask but there are even more consid-

erations. Example: are you carrying the minimum required of \$250k/\$750k or higher, safer limits of \$1m/\$3m. (As is often required to participate in certain Managed Care plans). What would happen if the settlement was higher than the \$250k? And are the costs to defend part of the limit or over and above?

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Medicare Update for November, 2008



Medicare Update—Medicare Risk Adjustment

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How the Medicare Risk Adjustment payment methodology to HMO's has the potential of affecting your business probably isn't something you've thought about. But should you?

Did you know that the ICD9 (diagnosis) code you insert on a claim affects the reimbursement the HMO receives?

Under the Medicare Risk Adjustment system, the chronically sick (e.g. diabetic) patients are reimbursed to the HMO's at a

higher capitated rate than the healthier patients assigned to the HMO. Conversely, the healthier members are paid at a much lower rate.

How does this impact your practice? Consider the trickle-down effect of lower reimbursement. If your patients are being treated for a primary illness but their secondary illness is, say, diabetes. If you ignore the secondary, non-influencing diagnosis and it doesn't appear on the claim, your insurance may have a net result of lower reimbursement. This would 'trickle-down' to

lower reimbursement fee schedules.

From a liability perspective, often patients don't want unrelated diagnosis information documented in their medical record. Savvy patients know this has other ramifications on their MIB. This places the physician in a very difficult position. The key is patient education. It is important to inform them of the reporting of their medical information to their HMO and why.

Otherwise, you may be facing angry patients.

"With the percentage of claims settled in excess of the \$1,000,000 mark being near 10% of all claims..."

Protecting Your Practice — Asset Protection Consideration

In our litigious environment, it is important to consider all of the aspects of protecting your assets. As many of our physicians are aware, once a settlement has been reached, the attorneys will seek almost limitless means to collect. It is therefore important to consider all aspects of "Asset Protection" for both your practice and your personal well-being.

One of the simplest ways to protect your practice is to carry sufficient professional liability limits. For the physicians who have decided to go bare or under-insured, this can be a slippery trail. If a suit is brought forward, no longer is the insurance's cap the target. In many recent cases, claimants have settled on long-term pay-outs; meaning, the practice has to pay them over decades.

Whether you are considering placing your assets in trust* or

gifting* your items, sufficient liability should be considered as a first step in protection in this industry. When limits are carried less than \$1,000,000 per incident, you have to consider that with the percentage of claims settled in excess of the \$1,000,000 mark being near 10% of all claims, even \$1,000,000 can be insufficient on a per claim basis. To carry the Florida-



required minimum is a very risky move.

It is important to consult with a proper financial advisor on how to utilize the other methods. Trusts can be very difficult to set up and should be considered carefully. Gifting has to be considered for all of its ramifica-

tions. Both vehicles as well as other avenues such as Limited Liability partnerships* are all viable solutions that should be discussed with a reputable attorney and your financial advisor.

Proper professional liability coverage as well as a supporting general liability policy are not only good business mechanisms but essential in this environment.

*Note: Bayshore Insurance Underwriters in no way implies or warrants the aforementioned vehicles for protection of finances. We stress the importance of seeking and consulting with a qualified legal advisor as well as financial advisor for any consideration of these methods.



"Where do I go to protect my assets"? Dr. G (anonymous)



BIU to open Miami office

This coming month, we are set to open our space in Miami. It has been nearly four years in coming but now we're set to open our showcase office in the downtown district of Miami.

This office will provide many new opportunities to our existing clients as we will now be local to our South Florida clients. Whether you are requesting a visit from one of our agents or wish to stop by to discuss your insurance needs, we are going to

be locally situated to serve Miami-Dade and Broward Counties. For our clients north of this area, we will continue to serve you but now we can do so from our Miami branch.



Staffing our Miami office will be Darren Majors, Licensed Senior Agent and Yesabel Cordero,

Managing Customer Rep. We are privileged to have them both and they look forward to serving our practices and facilities.

Please visit our website to get further details on the opening of the new office which should be ready in early November. You can always reach our Tampa office at:

Main: (813) 348-0762
Fax: (954) 337-0280
info@bayshoreinsurance.com



Announcing the Miami office location

Letter from our President

Dear Clients,

On behalf of all of us at Bayshore Insurance Underwriters, I'd like to thank you for the opportunity to participate in insuring your business. Over the past few years Bayshore has grown to keep up with the needs of our clients. As always, we remain dedicated to insuring your organization and will continue to provide the exceptional service you've become accustomed to.



We are launching several new initiatives this upcoming year including an enhanced website, this quarterly newsletter, the before mentioned Miami office and of course the additional staff. We are also exploring new opportunities to provide more options with your insurance. I can assure you that we remain dedicated to the individualized one-on-one approach that has made BIU successful.

As the new year approaches, we'd like to wish everyone a wonderful holiday season and look forward to a prosperous and healthy 2009.

Sincerely,

Carolyn A. Dehlinger



**"We Remain
Dedicated to the
individualized one-on-
-one approach that
has made [us]
successful"**

The BIU Team is here to service
your needs:

We are proud members of:





1411 North Westshore Blvd
Suite 311
Tampa, FL 33607
Phone: 813-348-0762
Fax: 954-337-0280
E-mail: info@bayshoreinsurance.com

Top 10 Patient Complaints in Offices

We polled several friends, family members and people in the community about their recent visit to the doctor. Here are the informal results:

10. No parking spaces for patients in the parking lot or paying for parking to see the doctor.

9. Could not retrieve my lab or diagnostic results.

8. Doctor's office was un-kept, odorous or dirty

7. I wasn't seen in order.

6. The office was over-crowded.

5. The doctor didn't spend enough time with me.

4. Too much paperwork every time we see the doctor.

3. Can't get an appointment to see my doctor.

2. The wait time to see the doctor was too long (most complained of excess over 30 minutes from appointment time)

1. The office staff was very rude

We thought we might share information as it is beneficial to see what people think of their recent visit to the office.

Although we have no way of knowing, we believe that none of these were patients at any of the doctors or facilities insured with Bayshore.



We're on the web! www.BayshoreInsurance.com

Profiles in BIU:

