

Is Your Practice Compliant With the HIPAA Privacy Rule?

The Department of Health and Human Services (HHS) mandated that physician practices be compliant with the Privacy Rule section of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 by April 14, 2003. The Privacy Rule is intended to protect a patient's protected health information (PHI) without interfering with the access to, or quality of care.

FPIC has developed packets of materials to assist in compliance with the Privacy Rule. The package contains articles for reference as well as forms that can be customized to your practice. The materials cover the following topics:

- HIPAA Updates
- HIPAA Privacy Rule
- HIPAA Rule Compliance Step-by-Step Guide
- HIPAA Sample Forms and Templates
- HIPAA Risk Management Guidelines
- HIPAA Patient Education and Brochure
- HIPAA Questions and Answers
- HIPAA Websites

In addition to the reference materials, FPIC has also created a presentation eligible for CME credit on HIPAA compliance. The presentation will identify entities and types of information covered by the Privacy Rule, recognize the federal requirements that are pre-empted by Florida statute, and describe the modifications necessary to establish and maintain a HIPAA compliance plan. To schedule a presentation, contact the Risk Management Department.

FPIC's HIPAA information can be obtained by visiting our website at www.medmal.com. Once the FPIC homepage opens, click on the Risk Management heading on the left menu bar, then click on the HIPAA listing in the right submenu. For a hard copy of the HIPAA packet, contact the Risk Management Department at 800-741-3742, ext. 3016, or email rm@fpic.com.



Setting the Record Straight on Medical Malpractice Insurance

By Bob White, President, FPIC



The soaring cost of medical malpractice premiums and what to do about them have become a Florida, indeed national, healthcare priority. If you believe most of what you've read or heard to date, Florida's healthcare system's problems are the fault of malpractice insurers for their greed and doctors for their incompetence. But nothing could be further from the truth.

That is why I'd like to set the record straight.

There have been many inaccurate reports in the media depicting malpractice insurers as entities simply lining their pockets. This is not only unfair and untrue, it is nearly impossible. Florida law clearly stipulates medical malpractice carriers cannot make more than a 7 percent yearly profit. However, there is no law limiting how much money a carrier can lose. Yet on average, over the past three years, medical malpractice carriers have paid out \$1.40 in claims on every premium dollar collected.

What is negatively impacting premiums?

Certainly it is not investment in the stock market. Florida law allows insurance carriers to invest no more than 15 percent of their assets in the stock market. For perspective, FPIC is the state's largest medical malpractice carrier and we have invested less than 1 percent in the stock market since 1995.

Physician negligence is less of a factor than many would imagine. Recent studies on malpractice suits (including studies by Harvard) determined that the severity of a patient's disability – not the occurrence of error or negligence – determined whether suit will be brought and payment made to a plaintiff. Further, medically related adverse events were not even identified in half of the law-suits studied. This same pattern exists in Florida. Fifty-six percent of the cases brought in our state are not even related to a negligent act by a healthcare provider. Yet, because of our "bad faith" laws, more than 50 percent of those cases result in a payment to a patient, compared to the national average of 30 percent.

This would help explain why physicians practicing in Georgia, 30 miles north of Jacksonville, pay five times less in premium than a North Florida physician. This does not mean that a Georgia physician is five times better than a Florida physician but it does mean that Florida has a more liberal legal system. It also helps to explain why over 30 carriers have left Florida in the past few years, including the largest national carrier, St. Paul.

What's the bottom line? Medical malpractice rates continue to rise out-of-control in Florida because of our out-of-control court system.

But there is a solution being offered. A legislatively proposed \$250,000 cap on non-economic damages, along with a change in Florida's onerous Bad Faith Law, would dramatically reduce the percentage of cases being settled, thus the amounts being paid out. This, in turn, would reduce premium costs.

California is proof that caps work. In 1975, the California legislature implemented a \$250,000 cap on non-economic damages and controls on the fees a lawyer can receive in medical malpractice cases. Since that time, medical malpractice rates have increased only 167 percent in California compared to 505 percent nationally. During the same time Florida's have risen an unfathomable 1,927 percent.

Who benefits from the current system? A recent national study by the U.S. Department of Health and Human Services (HHS) concluded patients receive 43 cents of every dollar awarded in medical liability cases, while lawyers and the legal system receive 57 cents. In Florida, according to the National Practitioners Data Bank (NPDB), of the 1,303 Floridians involved in medical liability claims against Florida physicians in 2001, only 301 collected an amount greater than \$250,000 in total damages.

So what we are asking the Florida legislature, and all Floridians, to consider is this simple question: Is it more important to protect the rights of the few, in Florida's case 301 people, so that they can collect unlimited damages through litigation, or to protect the rights of the many, in Florida's case 16 million residents, so that they have affordable access to medical care?

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FPIC at the Forefront

Since the beginning of the year FPIC staff members have been very busy supporting tort reform and participating on the Governor's Task Force. Listed below are just some of the speaking engagements that FPIC has had in the first quarter of 2003.

Date	Function	Location	Speaker
January 11	Florida Society of Ophthalmology	Miami, FL	Patrick Ellis
January 22	Florida House Select Committee	Tallahassee, FL	Bob White
January 28	Palm Beach Medical Society	West Palm Beach, FL	Bob White
January 30	Hillsborough County Pediatric Society	Tampa, FL	Patrick Ellis
February 4	Florida Senate Healthcare Committee	Tallahassee, FL	Bob White
February 13	Lee County Medical Society	Ft. Myers, FL	Patrick Ellis
February 13	Tiger Bay Club	Sarasota, FL	Bob White
February 14	Florida Academy of Family Physicians	St. Petersburg, FL	Patrick Ellis
February 18	Florida House Insurance Committee	Tallahassee, FL	Bob White
February 19	Florida Osteopathic Medical Association	Ft. Lauderdale, FL	Patrick Ellis
February 19	Capital Medical Society	Tallahassee, FL	David Eismont
February 20	Central Florida Independent Agents	Orlando, FL	Gary Izzo
February 20	Greater Naples Leadership Meeting	Naples, FL	Bob White
February 21	Florida. Society of Thoracic and Cardiovascular Surgeons	Palm Beach, FL	Patrick Ellis
February 24	Putnam County Medical Society	Palatka, FL	Patrick Ellis
February 27	Florida Orthopaedic Society	Ft. Myers, FL	Patrick Ellis
February 27	Orlando Central Florida Healthcare Coalition	Orlando, FL	Kurt Driscoll
March 5	Ann Henderson radio Show - Fawcett Memorial Hospital	Port Charlotte, FL	Kurt Driscoll
March 17	Tiger Bay Club	Melbourne, FL	Kurt Driscoll
March 18	Medical Liability Community Forum - AARP Debate	Orlando, FL	Gary Izzo
March 26	Rotary Club	St. Augustine, FL	Patrick Ellis

Other engagements included: meetings of the Governor's Academic Task Force, Leesburg Panel on Tort Reform, Rollins College Panel on Tort Reform, Speaker's Select Committee on Medical Liability Insurance, *Tampa Tribune* Editorial Board, *Florida Times Union* Editorial Board, *St. Petersburg Times* Editorial Board, *Bradenton Herald* Editorial Board, Capitol Press Corps, *Tallahassee Democrat Editorial Board*, Tommy Thompson Town Meeting, and Baptist Hospital in Jacksonville.

FPIC Lifts Florida Moratorium

Physicians, agents, and professional liability insurance carriers faced significant challenges during 2002 in dealing with the availability and affordability of medical professional liability insurance. The problem has been particularly acute in Florida. Premium rates have skyrocketed causing capacity to shrink. The decision made last June to place a moratorium on new business was an extremely difficult decision. However, it was necessary at the time.

We are pleased to announce that on February 1, 2003, FPIC again began accepting applications for Florida policyholders. Our goal is to manage our business so that policyholder counts in Florida are maintained at current levels.

Because of the limited number of applications we will be able to accept and the volume of applications that we anticipate handling over the next several months, we will only be able to underwrite extremely clean business. Please keep this in mind when sending in an application.

Rate Increase for Georgia

Beginning May 1, 2003, a rate increase averaging 58 percent will become effective for Georgia. In addition FPIC will discontinue writing certain specialties in the state.

This was not an easy decision for FPIC to make, but we feel it is the most fiscally responsible for our company. By reducing our presence in Georgia today, FPIC hopes to preserve the Company's ability to have a long-term presence in the Georgia market, thereby giving physicians the opportunity to obtain insurance from multiple market sources.

The changes in Georgia, combined with withdrawing from several states, are all designed to help relieve the current capacity limitations on new policyholders.



Laura Thibodeau Promoted to Asst. Vice President

Effective April 1, Laura Thibodeau was promoted to Assistant Vice President of Underwriting. Ms. Thibodeau joined FPIC in January 2002 as a Senior Underwriter and was then promoted to Underwriting Supervisor last summer. Ms. Thibodeau has an extensive background in underwriting and customer service. Her experience includes underwriting for several insurance companies in the northeast, including Plymouth Rock Assurance Corporation and Promutual Group, the largest medical malpractice carrier in Massachusetts. She joined us from Tampa, Florida where she worked for Brown & Brown, Inc. as a Senior Underwriter in the Professional Programs Division. Ms. Thibodeau is a graduate of Bryant College in Rhode Island with a Bachelor of Science degree in Business Administration. She earned her CPCU designation in 2002. In her new position, Ms. Thibodeau will be responsible for managing the Underwriting Department on a day-to-day basis.

Jeannie Whitter, Vice President of Underwriting, since 1988, will fill the newly created position of Executive Underwriter.

FPIC will be conducting a nationwide search for a new Vice President of Underwriting.

Feel free to contact Ms. Thibodeau at 800-741-3742, ext. 3087.

Arbitration Program

FPIC is offering an arbitration program for Florida physicians. The program was developed as a way to deal with rising court costs and jury verdicts.

For participants, any claims that arise will be handled by binding arbitration. A panel of three arbitrators will review the facts and determine the results. Patients and their representatives who have signed the agreement must abide by the decision of the panel of arbitrators.

There are two versions of the FPIC arbitration program available. Under the first scenario, patients have the option to not sign the agreement and still receive treatment. With the second option, patients must sign the agreement in order to receive treatment in any form.

The program is complimentary for all FPIC insureds in Florida. To reserve your copy, contact Amy Waller, Director of Communications at 800-741-3742, ext. 3057 or waller@fpic.com.

The order form, commonly asked questions, and participation agreement can also be downloaded from our website at www.medmal.com

Policyholders in the Military

FPIC will suspend coverage for all policyholders who are called to active military duty during the current Iraq campaign. Premium payments will be waived during service. To qualify for suspension of coverage, a copy of your military orders must be provided to FPIC. The suspension will be effective from your starting day of service until you return. Policyholders will be required to notify FPIC when they will begin practicing again. FPIC will then calculate a premium credit based on the number of days served. This credit can cross over to the next period of coverage. For additional information contact FPIC Policyholder Services at 800-741-3742, ext. 3217.

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