

Mass. eyes separate system to hear medical malpractice

Copyright. InsuranceTimes™ © 2003 by M&S Communications, Inc. All rights reserved. November 25, 2003

BOSTON (AP) — The Romney administration and the Harvard School of Public Health are drawing up a plan that would keep most malpractice lawsuits out of state courts, resolving them instead with tribunals of administrative law judges.

Under the proposal, which will require Legislative approval, the panels of judges would determine whether the harm suffered was avoidable and, if it was, they would award damages based on a compensation schedule set by state law.

The new system would allow only limited appeals to the courts, such as cases involving fraud.

"Right now, we have a system where a relatively small number of people who suffer medical injuries get very large awards, and where the system takes a lot of time, has large administrative costs and has the effect of encouraging doctors to hide errors," Robert Pozen, the governor's chief economic adviser, told *The Boston Globe*.

"We want to have a different system where we have more people getting awards in smaller amounts," Pozen said. "We want to reduce administrative delay and costs, while increasing medical safety and having people learn from their mistakes."

Under the current system, medical malpractice claims are first screened by a special court-appointed tribunal and then are sent to state courts for jury trials if the tribunal finds that the evidence "properly supports a legitimate question of liability."

There is no timetable for a pilot malpractice-limiting program, which has been in the works since last year by Pozen and Dr. Troyen Brennan of Harvard. Pozen said statewide implementation is unlikely to go before the Legislature for several years, while the results of the pilot program are studied.

While medical malpractice insurance premiums have risen 77 percent in Massachusetts since 1998, Pozen said obstetrics is being targeted for the pilot program because its rates have risen the most.

The average yearly medical malpractice insurance premium for an obstetrician in Massachusetts is now \$103,000, the 14th highest in the nation, according to a recent survey by the publication *Medical Liability Monitor*, which tracks malpractice insurance rates.

Dr. Thomas E. Sullivan, president of the Massachusetts Medical Society, praised the proposal, but urged that other malpractice reforms, such as capping

malpractice awards, be implemented while pilot program's results are being studied.

Paul Wingle, a spokesman for the Massachusetts Hospital Association, said hospital leaders "welcome the administration's interest in the issue" because rising insurance costs are making it difficult for hospitals to retain talented doctors. □