

**BIENNIAL REPORT OF THE
TEXAS DEPARTMENT OF INSURANCE
TO THE
78TH LEGISLATURE
DECEMBER 2002**

**TEXAS DEPARTMENT OF INSURANCE
JOSE MONTEMAYOR
COMMISSIONER OF INSURANCE**

MEDICAL MALPRACTICE

PROBLEM:

Physicians and health care providers are facing severe problems with the availability and affordability of medical liability insurance coverage. This is due, in part, to high loss ratios incurred by insurers writing this line of coverage, the withdrawal of several insurers from the marketplace because of solvency and other concerns and the implementation of substantial rate increases by the remaining medical liability insurers writing in Texas.

Many physicians and health care providers have complained that medical liability insurance premiums are becoming so high that it is no longer profitable for them to continue practicing medicine in Texas. Physicians are limiting their practices by eliminating certain services, such as obstetrics. In addition, some physicians are retiring early and others are moving their practices to other states. Physicians of all specialties have also advised the Department that the high cost of medical malpractice insurance has a detrimental effect on the ability of communities to recruit physicians to Texas. The net effect of this problem is that some communities in Texas do not have ready access to the health care providers needed to provide care to the injured and sick persons in their areas.

Because medical liability insurance coverage is so critical to the wellbeing of the state, the Commissioner should have full visibility over the rates charged by all insurers. The Texas Medical Liability Trust (TMLT) is the dominant writer of medical liability insurance in Texas, accounting for 34 percent of the medical liability insurance market (approximately 10,000 physicians) as of December 31, 2001. However, TMLT is governed by Article 21.49-4, Insurance Code, which stipulates that TMLT is not engaged in the business of insurance. Therefore, the rates and forms used by TMLT are not subject to regulation by the Department. Although the TMLT is required to file rates and forms with the Department for informational purposes only, the rate filing does not include actuarial justification. Additionally, TMLT is not subject to the statutory financial reporting requirements with which licensed insurers must comply.

BACKGROUND:

While the causes of the medical malpractice coverage availability and affordability problems are multifaceted, the Department believes that subjecting TMLT to certain insurance laws will greatly increase the Commissioner's ability to ensure that doctors and health care providers obtaining liability insurance are adequately protected by increasing visibility over the market.

Given the TMLT's dominant role in the Texas medical liability market, the Department believes it is critical that the rates charged by TMLT be required to meet commonly used rate standards. The TMLT should also be subject to the same reporting requirements as other licensed insurers writing medical liability insurance. TMLT should

be required to submit financial reports in accordance with statutory accounting principles, and the Commissioner should have specific authority to examine the financial condition of TMLT. This framework would preserve the status of TMLT as a trust yet would provide a basis for comparability with other insurers and significantly increase the Commissioner's visibility over the entire market.

Article 21.49-4, Insurance Code, requires TMLT to file an independently audited annual financial statement with the Department but does not specify a date by which the statement must be submitted. The Department must verify that TMLT satisfies reasonable minimum requirements to ensure TMLT's capability to meet its contractual obligations. Under the current framework, it is unclear what standards the Department must apply in fulfilling this obligation.

SOLUTION:

Amend Article 21.49-4, Insurance Code, to require that the rates charged by the TMLT meet commonly used rate standards. The Commissioner should have the authority to examine TMLT's rates and actuarial justification to ensure that the rate standards are met. The Commissioner also needs the authority to require financial statements and to conduct financial examinations under Article 1.15, Insurance Code, to ensure the solvency of the TMLT.