Report Summary

LAC

January 2000

A Review of the Medical Malpractice Patients' Compensation Fund

As requested by members of the General Assembly, we conducted an audit of the Medical Malpractice Patients' Compensation Fund (PCF). The requesters were concerned about the fund's solvency and whether the state would be liable in the event of a default.

In the 1970s there was a national crisis of availability and affordability of medical malpractice insurance. In 1976 the General Assembly created the Medical Malpractice Patients' Compensation Fund to provide unlimited coverage for malpractice claims that exceed the members' primary coverage. Although there is no longer a crisis in availability of private insurance, most healthcare providers in this state still obtain their insurance through the PCF.

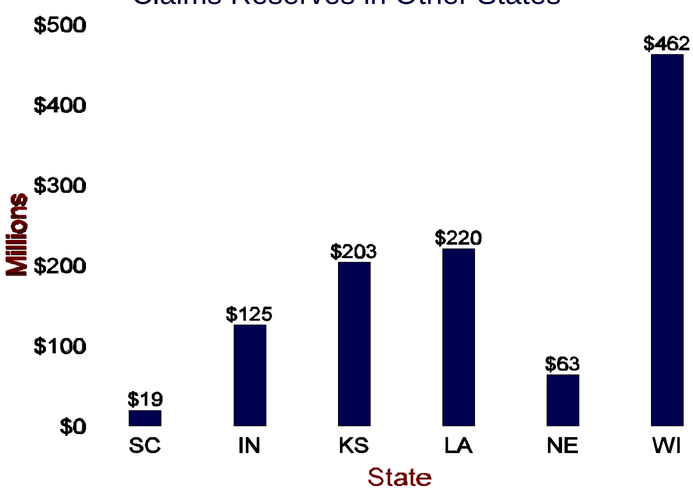
PCF's Reserves and Risk

An informal opinion from the Attorney General's office in July 1999 concluded that the state should not be liable for claims made against the PCF. However, the PCF operates with a high level of risk.

The PCF has not maintained adequate reserves to pay future claims. A Department of Insurance analysis estimated that the PCF has a minimum reserve deficiency of $30 million. Also, the PCF's methods for establishing reserves are inadequate and have resulted in a pattern of reserve deficiencies. The PCF has substantially less in reserves than similar funds in other states.

The PCF has primarily operated on a pay-as-you-go basis, in part because it has the authority to assess its members if necessary. However, this approach is riskier than maintaining adequate reserves. According to PCF officials, if the fund became insolvent, individual healthcare providers may be sued for the full amount claimed.

Claims Reserves in Other States



Participation in the PCF is Voluntary

If faced with large or repeated assessments, many PCF members might opt to obtain their malpractice insurance from the private market. Pennsylvania's excess malpractice fund operates on a pay-as-you-go basis, but fund membership is mandatory.

The PCF has Unlimited Liability

There is no limit on the amount of an award for which the PCF could be responsible. Wisconsin has the only other state excess malpractice fund with unlimited liability.

The PCF does not Maintain Reinsurance

Reinsurance is designed to lessen the impact of large claims by paying the amount of any award above a certain level. The state's Insurance Reserve Fund carries reinsurance.

The PCF is not Subject to Oversight by the Department of Insurance

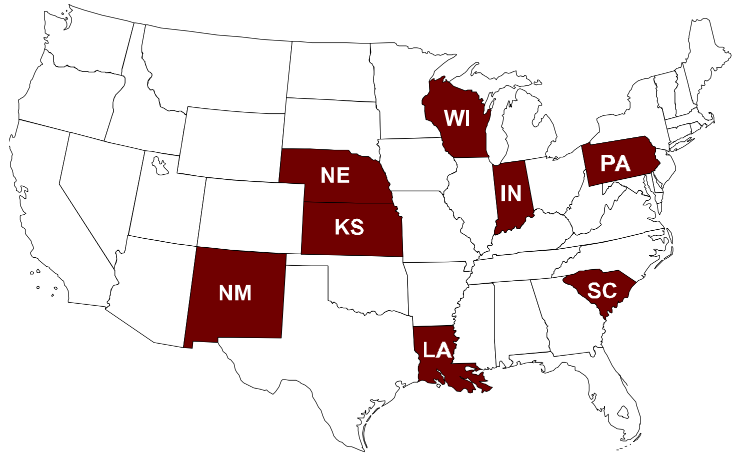
Other insurance entities in South Carolina regularly file reports with and are examined by the South Carolina Department of Insurance to ensure they operate in a responsible manner. The majority of the PCF board and all PCF members are healthcare providers who may have inadequate expertise in issues related to insurance.

Need for the PCF

We reviewed the purpose of the PCF and recommend that the General Assembly examine whether the fund is still needed. The private malpractice insurance market should be able to furnish malpractice coverage to healthcare providers. The PCF benefits healthcare professionals by providing coverage at lower rates than private insurance. However, these rates have been too low to establish adequate reserves. Also, the benefits of the PCF are not available to other professions whose members also need liability insurance.

In most states, private insurers are the only providers of medical malpractice insurance. We could only identify seven other states, none in the southeast, with funds similar to the PCF.

States With Funds Similar to the PCF



Members and Claims

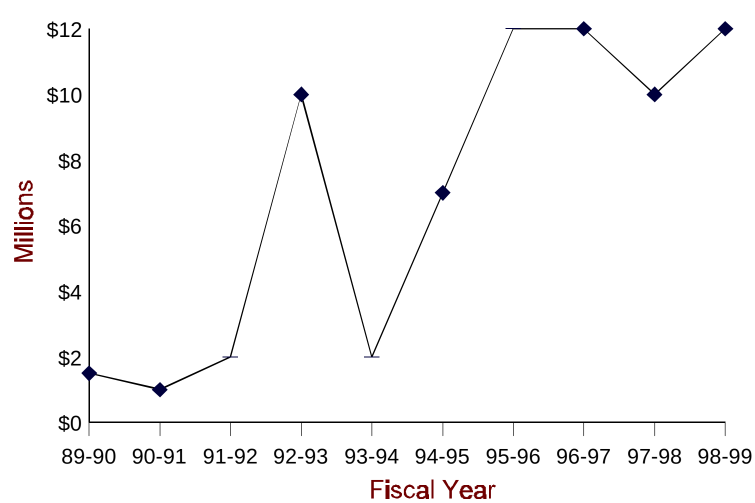
Over the last ten years, the PCF's activity has greatly increased. The number of PCF members increased by 67% to 8,372 as of June 30, 1999. The number of open claims more than doubled during this period, from 382 in FY 89-90 to more than 900 in FY 98-99.

The PCF's claims payments have been rising. Since it began in 1977, the PCF has paid a total of $81 million to settle 243 medical malpractice claims. More than half of this amount, $45.6 million, has been paid in the last four years (see graph).

PCF Membership

Type of Provider	Members	Percent
Physicians	5,466	65.3%
Dentists and oral surgeons	1,217	14.5%
Professional associations	1,002	12.0%
Nurse practitioners, nurses and CRNAs	398	4.8%
Physicians Assistants	131	1.6%
Podiatrists	60	0.7%
Hospitals	25	0.3%
Other	73	0.9%
TOTAL	**8,372**	**100.0%**

PCF Claims Payments



Management Controls

The PCF does not have adequate management controls to ensure the proper administration of the fund.

The PCF does not have adequate written policies and procedures to ensure consistency and continuity of administration.

The PCF routinely grants retroactive coverage to members after a claim is filed. We identified 61 cases since 1988 where the PCF granted retroactive coverage to individual physicians or professional associations. In 21 cases the retroactive coverage was granted after a claim was reported to the PCF. This practice is inappropriate.

Information received from the primary insurer about claims is not adequately verified by the PCF. Proper documentation of accident dates and settlement amounts is needed to verify coverage and payments made from the fund.

The PCF does not have appropriate controls to ensure the accuracy of key information about claims in its computer database.

The PCF does not have appropriate controls to ensure that it is informed of pending claims. Although its members are required by law to notify the PCF within 5 days of receipt of a claim, in 7 (14%) of our sample of 50 paid claims, the PCF was not notified of the claim until more than a year after the primary insurer received notification.

The PCF does not report claims payments to the National Practitioner Data Bank in a timely manner. Thirteen (34%) of 38 reports were submitted after the 30-day limit.

Compliance With the Law

The PCF has not always conducted business in compliance with state law.

The PCF has violated the Freedom of Information Act (FOIA) with its claims committee voting practices, use of proxies for voting and quorums, discussion of confidential matters in open session, and lack of minutes for committee meetings.

The PCF has violated the Administrative Procedures Act (APA) by not promulgating regulations to establish board policy for fund membership and administration. In the absence of regulations, board policy and actions could be challenged.

The PCF's executive director also works for the Medical Malpractice Joint Underwriting Association (JUA), a private organization, as part of his state job. We could identify no provision in state law that would authorize a state employee to work on state time for a private organization.

Seven of the eleven current PCF board members are serving with expired terms. One consumer member position has been vacant since 1987. Five of the current board members have served since the PCF began in 1977.

ORGANIZATIONS SIMILAR TO THE PCF IN OTHER STATES

Healthcare providers in most states obtain malpractice insurance through the private market. We identified only seven other active state programs that offer excess medical malpractice coverage to healthcare providers. The seven funds vary in structure and provisions. Four funds, including the PCF, are separate state agencies, while the others are housed under state insurance departments. Each of the funds requires that participants carry primary coverage from another insurer. The amounts of this coverage have to be exceeded before the state funds make any claim payments.

The South Carolina PCF has broader coverage and greater liability than any of the other funds. South Carolina, along with Louisiana has the lowest attachment point (amount of insurance above which the fund will pay). Also, South Carolina's PCF has unlimited liability.

Cost of Coverage

Although it is difficult to compare malpractice insurance rates, evidence indicates that South Carolina providers pay less than providers in other states for excess malpractice coverage. However, the PCF's rates have been too low to establish adequate reserves. We obtained rate information for two specialities from the other seven funds that are similar to the PCF (see table). Although other states, such as Nebraska, have lower rates, the coverage of the PCF is broader.

OTHER STATES' RATES FOR TWO SPECIALITIES

State	Internal Medicine	OB/GYN
South Carolina	$1,008	$5,225
Indiana	$1,803	$15,326
Kansas	$991	$5,956
Louisiana	$3,080	$11,119
Nebraska	$130	$635
New Mexico	$4,476	$15,543
Pennsylvania	$4,253	$21,613
Wisconsin	$2,531	$15,186

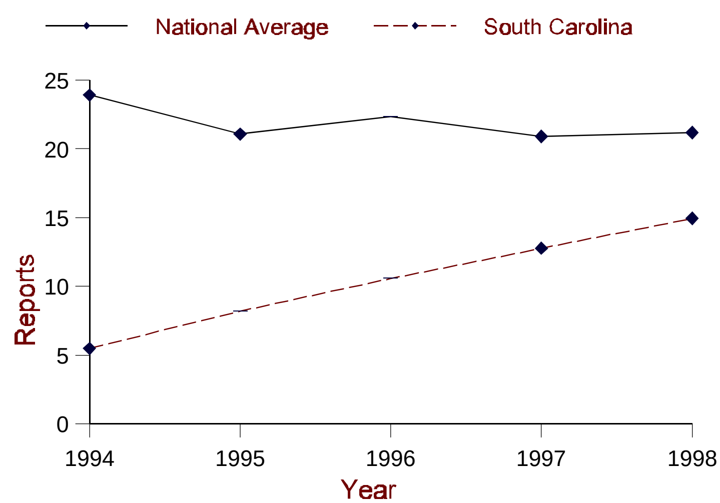
See full report for table notes.

Rising Incidence of Claims

The number of reported medical malpractice awards in South Carolina has been low compared to other states, but the incidence has been rising. The National Practitioner Data Bank (NPDB) provides claims information by state. According to cumulative data for September 1990 through December 1998, South Carolina had the 4th lowest incidence of malpractice payments per 1,000 physicians and nurses, and the lowest number of claims per 1,000 dentists.

NPDB data from 1994 through 1998 shows that the number of reports per 1,000 physicians in South Carolina has increased each year. The national average does not show the same yearly increase (see graph). In 1998 there were 15 states with a claims rate lower than South Carolina's.

Malpractice Payment Reports Per 1,000 Physicians



This document summarizes our full report, ***A Review of the Medical Malpractice Patients' Compensation Fund.*** A full report of this and all LAC audits is available free of charge. Audit reports and agency information are also published on the Internet at www.state.sc.us/sclac. If you have questions, contact George L. Schroeder, Director.