Task Force Meeting Attendance Sheet

Medical Malpractice Task Force

Date: 6 Oct 05 **Meeting Type:** Working Group

Location: 328 NW

Committee Member	Present	Absent	Excused
Representative Curtis Gielow, Chair	☒	☐	☐
Representative Mike Huebsch	☒	☐	☐
Representative Ann Nischke	☒	☐	☐
Representative Jason Fields	☒	☐	☐
Representative Bob Ziegelbauer	☒	☐	☐
Mr. David Strifling	☒	☐	☐
Ms. Mary Wolverton	☒	☐	☐
Dr. Clyde "Bud" Chumbley	☒	☐	☐
Mr. David Olson	☒	☐	☐
Mr. Ralph Topinka	☒	☐	☐
Totals:	10	0	0

John Reinemann

John Reinemann
Task Force Clerk

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cont.

Wisconsin Medical Society
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WISCONSIN HOSPITAL ASSOCIATION

Contact: Eric Borgerding, 608-274-1820 (office)
Mark Grapentine, 608- 442-3768 (office)

New Study Confirms Urgent Need for Damage Caps

Projects Massive Increases in WI Liability Insurance Premiums Absent a Meaningful Cap on Pain and Suffering Awards

MADISON, WI (October 12, 2005) ------ A new study of Wisconsin's medical liability climate substantiates what health care providers, a majority of the legislature and the public already know: Wisconsin's cap on pain and suffering awards has been a key element of a balanced liability system that has helped shield Wisconsin from the litigation storm now wreaking havoc on health care systems across the country.

That is just one of several key findings included in a September, 2005 study conducted by Pinnacle Actuarial Resources, an independent firm headquartered in Bloomington, IL. Pinnacle, one of ten largest property/casualty actuarial consulting firms in the country, was retained by the Wisconsin Hospital Association (WHA) and the Wisconsin Medical Society (Society) to conduct the analysis.

According to the report, the loss of Wisconsin's cap is expected to result in a 12-15 percent premium increase for medical liability insurance, and a doubling of premiums paid to the Injured Patients and Families Compensation Fund (IPFCF), and that's just for starters. In the long-term, uncapped pain and suffering awards will likely cause liability premiums to increase rapidly and unpredictably. Such volatility has caused physicians to flee from many states with no caps or ineffective caps.

"Wisconsin's balanced environment is now in jeopardy without a meaningful cap," said study author Robert Walling. "It appears that either a low cap such as California's $250,000 cap or a medium cap of less than $550,000 are essential to maintaining the current availability, affordability, and stability of medical malpractice coverage in the State of Wisconsin."

One of the most enlightening components of the study is its analysis of the incremental impact caps have on medical liability premiums. According to the study, physicians in states with either high caps (greater than $550,000) or no caps at all have been hit with premium increases up to four times higher than those in Wisconsin.

According to the report, all caps on pain and suffering awards reduce payouts and, to varying degrees, stabilize liability insurance premiums. But the impact diminishes as the size of the cap increases. A cap of $250,000 eliminates approximately 25% of unlimited losses, a $550,000 cap eliminates about 15% and a $1 million cap eliminates about 7%. (It is important to note that there is no limit on the amount of *economic* damages that can be awarded in Wisconsin).

"Not all caps are created equal, and a flat cap that exceeds $1million, without any other considerations, is effectively no cap at all," said WHA President Steve Brenton. "It is important that the legislature and Governor Doyle not only reinstate a cap, but at a level that will keep physicians in Wisconsin and maintain access to obstetricians, neurosurgeons and other high risk specialists that are fleeing other states amidst a deluge of lawsuits."

The study proves very timely as the State Legislature begins an expedited process to restore caps on pain and suffering awards. A task force appointed by Assembly Speaker John Gard recently made several recommendations on how to reinstate a cap, including a formula that would account for life expectancy, but did not recommend a specific cap amount. Both WHA and the Society believe the study can help guide that decision for both the Legislature and Governor Doyle.

"In the end, this issue is about patients," said Society Executive Vice President/CEO Susan Turney, MD. "Access to care is a nonpartisan issue, so we all need to work together to restore the balance that made our medical liability system one of the best in the country."

Other key findings of the study include:

- Over the last six years, the cost of medical liability insurance premiums has more than doubled in states without caps on pain and suffering awards. Over that same time period, the average annual increase in Wisconsin, which had caps, was just five percent.

- States with caps are more attractive to both current and prospective insurers. This is due in part to the cap on one of the least predictable and most volatile elements of medical malpractice - the non-economic, or pain and suffering, portion of a damage award. Caps make losses and therefore insurance premiums more predictable.

- States with damage caps are more attractive to current and prospective health care providers. This is because providers in states with effective caps:

    1. Have current liability insurance premiums lower than providers in states without effective caps:
    2. Have had more stable rate levels over the last several years, and
    3. More insurance carriers competing for their business.

- Wisconsin's broad approach to medical liability reform, which includes caps on awards for pain and suffering (overturned), uncapped economic damages, unlimited damage recovery from the IPFCF, recognition of collateral sources (also recently overturned by the WI Supreme Court), and mandatory periodic payments, has meant better than average availability and affordability of liability coverage for health care providers and, *unlike any other state*, guaranteed recovery for injured patients.

- States that have operated over the last decade with either low ($250,000) or medium ($250K -$550K) caps on pain and suffering awards overall have more competitive insurance markets and lower liability insurance premiums

END

NOTE: An executive summary of the study is attached to this news release. To obtain a copy of the full study, visit the Pinnacle website at:
http://www.pinnacleactuaries.com/pages/publications/files/Pinnacle-WHAFinalReport.pdf

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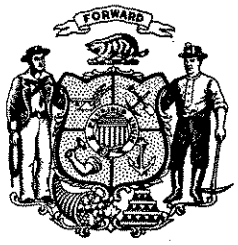

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The Potential Impacts of Caps on Non-Economic Damages in Medical Malpractice Insurance in Wisconsin

September 2005

Pinnacle Actuarial Resources, Inc.
2817 Reed Road, Suite 2
Bloomington, Illinois 61704
(309) 665-5010

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Executive Summary

For states struggling with medical malpractice insurance affordability and availability crises, the state of Wisconsin has long been viewed as a model state. This is due to the ability of the state's broad set of legislative reforms to provide stable and affordable premiums for healthcare providers and a stable environment for insurers. One of the foundational elements of Wisconsin's reforms, the cap on non-economic damages, was recently found to be unconstitutional. The Wisconsin Supreme Court in *Ferdon vs. Wisconsin Patients Compensation Fund* found that the cap violates the state's equal protection guarantees. The court also stated that the ruling does not impact the state's damage cap in wrongful death cases. This decision has led to questions regarding the impact the elimination of the caps may have on coverage availability, affordability and market stability.

Through a review of both publicly available and proprietary data sources, Pinnacle Actuarial Resources, Inc. (Pinnacle) has come to a number of key conclusions regarding the impact of the presence or absence of caps on non-economic damages on the Wisconsin medical malpractice liability environment. The highlights of our findings as regard the various issues include:

- While all caps on non-economic damages reduce losses, the impact diminishes as the size of the cap increases. A cap of $250,000 eliminates approximately 25% of unlimited losses, a $550,000 cap eliminates about 15% and a $1 million cap eliminates about 7%.

- States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have significantly better insurance company loss ratios and combined operating ratios.

- States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have more competitive

insurance markets as measured by the number of insurance companies providing coverage in the state.

- States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have medical malpractice insurance premiums that are much lower than the premiums in states that do not have effective caps.

- The Wisconsin medical malpractice insurance market has significantly outperformed most states in terms of both the affordability of medical malpractice rates and insurance company operating results.

In summary, states with damage caps are more attractive to both current and prospective insurers. This is due in part to the cap on one of the least predictable and most volatile elements of medical malpractice claim costs (i.e. the non-economic portion of high severity, permanent disability claims). This makes losses and therefore rates more predictable.

Similarly, states with damage caps are more attractive to current and prospective health care providers. This is because providers in states with effective caps:

1. have current rates lower than providers in states without effective caps,
2. have had more stable rate levels over the last several years, and
3. more insurance carriers competing for their business

This suggests that healthcare providers find medical malpractice insurance costs more affordable and coverage more available in states with effective caps.

Background

Pinnacle Actuarial Resources, Inc. (Pinnacle) has been retained by the Wisconsin Hospital Association (WHA) and the Wisconsin Medical Society (WMS) to perform analyses of the impact of the presence or absence of caps on non-economic damages at various levels. Specifically, they would like assistance evaluating the impact of:

1. Caps on non-economic damages on claims data from states without caps, and
2. Experience of other states based on the type of cap applicable in the state.

Pinnacle is an Illinois corporation that has been in property and casualty actuarial consulting since 1984. Our 14 consultants make Pinnacle one of the 10 largest property/casualty actuarial consulting firms in the U.S. We specialize in insurance pricing, loss reserving, alternative markets, legislative costing and market analysis and financial risk modeling. Our headquarters are located in Bloomington, IL.

Pinnacle has established a reputation as a provider of unbiased, independent, actuarially sound analyses and reports. This reputation is demonstrated in the variety of clients that have engaged us for projects similar to this one. Clients that have engaged Pinnacle in legislative costing and market evaluation assignments have included insurance industry associations (e.g. NAII, AIA), insurance departments and governmental panels (e.g. Connecticut, Maine, Ohio, Oregon), government insurance programs, (e.g. Virginia), trade associations (e.g. Oregon Medical Association, Illinois Hospital Association) and insurance companies. Pinnacle may be unique in the breadth of parties involved in the medical malpractice insurance system that have engaged us. A list of relevant research and client-related publications follows.

Relevant Pinnacle Reports and Research

- "A Report on Factors Impacting Medical Malpractice Insurance Availability and Affordability", Oregon Professional Panel for Analysis of Medical Professional Liability Insurance, October 2004 (www.pinnacleactuaries.com/pages/publications/files/saiffinalreport.pdf)

- "Final Report on the Feasibility of an Ohio Patients Compensation Fund", Ohio Department of Insurance, May 2003 (www.ohioinsurance.gov/Legal/REPORTS/FinalReportOhioPatientComp.pdf)
- "Preliminary Report on the Feasibility of an Ohio Patients Compensation Fund", Ohio Department of Insurance, February 2003 (www.ohioinsurance.gov/Legal/Reports/Prelim_Patient_Compensation_Report_03-03-03.pdf)
- "The Case of the Medical Malpractice Crisis: A Classic Who Dunnit", Casualty Actuarial Society Discussion Paper Program, Spring 2004 (http://casact.org/pubs/dpp/dpp04/04dpp393.pdf)
- "The Impact of Medical Malpractice Litigation On the Health Care Consumer", A Report to The PLUS Foundation, Summer 2004

Data Sources

A number of data sources were used in the development of this analysis. The data sources relied upon included the following categories:

1. Oregon, Maine, and Florida Closed Claims Database
2. Medical Malpractice Rates and Rate Filings
3. Insurance Company Financial Statements
4. State Statutory and Regulatory Provisions for Medical Malpractice

A brief description of the data sources utilized in each area along with a description of the key data elements and potential limitations of the data follows for each category.

Closed Claims Databases

Statewide closed claim databases are valuable resources for the development of legislative costing estimates in medical malpractice. For this analysis, Pinnacle has relied on databases from the states of Oregon, Maine, and Florida. These databases were selected because the data was readily available, easily accessible and robust in the sense that several years of data for the vast majority of a state's medical malpractice claims experience was available. The use of these databases has enabled us to develop a range of estimated impacts of caps on non-economic damages at various levels which reflect some differing judicial systems and at the same time demonstrate a significant consistency in the estimated reductions in expected losses created by the caps.

In a previous study on behalf of the Oregon Professional Panel for Analysis of Medical Professional Liability Insurance, Pinnacle worked with a number of medical malpractice insurance companies in the state and the Oregon Medical Association to develop an independent, Oregon medical malpractice closed claims database. With these parties' permission Pinnacle has used this database to evaluate the impact of several of the proposed legislative changes. For more information on the specifics of this database, please refer to Pinnacle's earlier report for the Oregon Professional Panel. (www.pinnacleactuaries.com/pages/publications/files/saiffinalreport.pdf)

As a result of the 1977 Maine Health Security Act, "Every insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or to any health care provider shall make a periodic report of claims made under the insurance to the department or board that regulates the insured." This data has been compiled and provided in an electronic format for Pinnacle's analysis by the Maine Bureau of Insurance. For more information on the specifics of this database, please refer to Pinnacle's earlier report for the Maine Bureau of Insurance.

The Florida Department of Insurance has been collecting data on individual medical malpractice claims since 1975. This data contains tremendous descriptive detail about the claim damage amounts, but also about the characteristics of the claim itself. We have chosen to examine claims in the state of Florida that closed during the period from January 1, 1993 through March 1, 2003. This produced 21,639 individual claim records. For more information on the specifics of this database, please refer to Pinnacle's earlier report for the Ohio Department of Insurance.

In all three cases, losses were trended at an annual rate of 7%. The trend factor was selected after a review of recent rate filings from a variety of leading insurers in a variety of jurisdictions, including Wisconsin. In many cases, medical malpractice closed claim data does not contain a split between economic and non-economic damages. We reviewed the closed claim information that is publicly available from the Texas Department of Insurance which does contain the split between economic and non-economic. Based on this data approximately 65% of the total claim amount is due to non-economic damages for claims that closed for amounts between $250,000 and $2 million. For claims greater than $2 million the portion of the claim representing non-economic damages was 50%. Additional data sources such as the Florida Closed Claim database and other industry studies indicate that non-economic damages range from 50% to nearly 70% of the total claim amounts. Unless specific claims detail was available, we have assumed that 60% of claims values, excluding allocated loss adjustment expenses are non-economic damages.

The American Academy of Actuaries has provided guidance on the limitations of using closed claims databases. This guidance can be found at www.actuary.org/pdf/casualty/medmal_042005.pdf. Readers of this report are advised to be aware of these limitations. In spite of these cautions,

closed claim databases such as those used in this analysis remain the most readily available source of large volumes of medical malpractice claims applicable for evaluating the impact of caps on non-economic damages and other legislative changes and are widely used and accepted. These data sources represent states with a variety of different approaches to medical malpractice liability law. While none of the states have a current medical malpractice environment perfectly identical to the climate that exists in Wisconsin subsequent to the *Ferdon* decision, the consistency of the analysis results between the various states suggests that closed claim data are valid for the purpose of estimating the impact of non-economic damage caps. One example of the differences between the states is Maine's mandatory medical review panels. Another is Florida's judicial system which has created a very difficult climate for medical malpractice liability claims that has resulted in a large number of high severity claims. Overall, it appears that the information available in Oregon is most suited to estimating the impact of caps on non-economic damages in Wisconsin. The Florida data may slightly overstate the impact of the damage caps due to the greater frequency and severity of large losses.

Coincidentally, Oregon is another state that has experienced a Supreme Court ruling finding that non-economic damage caps are unconstitutional. The significant rate increases, reduced coverage availability, deteriorating industry operating results and reduced competition in Oregon are troubling evidence of the impact removing damage caps can have on a stable medical malpractice insurance market.

Medical Malpractice Rates and Rate Filings

A tremendous resource for historical rate levels of key insurers in all states is the Medical Liability Monitor. This publication conducts an annual survey of the leading medical malpractice insurers in all 50 states. The information that is requested is mature claims-made rates with limits of $1 million/$3 million (occurrence/aggregate). The Medical Liability Monitor provides rate level information by state for three large physician specialties (internists, general surgeons, and OB/GYNs). Typically data from several insurers is available in a given state. This information is a widely recognized and accepted resource.

Pinnacle has performed an internal analysis of the last nine years of Medical Liability Monitor

data to create an assessment of current insurance industry rate levels by specialty and state as well as average annual rate changes over the period. We attempted to track the rate changes of the largest insurer in state that provided data to the Medical Liability Monitor over the entire nine year period as a measure of rate level changes over the period. Generally, this was the largest or second largest insurer by market share. In a few states, data for a single insurer was not available for the entire period and a judgmental adjustment to reflect the change in leading carriers was necessary. In states where the limits were not typically provided due to coverage from a patient compensation fund or other factors, an estimated adjustment to get the rates to a more "apples to apples" basis was made using available PCF rates and other information. This was used to evaluate the current affordability of medical malpractice coverage by state.

A couple of caveats about this approach to industry rate levels are necessary. First, the current rates for one leading writer of medical malpractice for three specialties in each state are not a precise measure of overall rate levels for the entire industry. Medical malpractice insurers do not move in concert with one another and a leading insurer may have rates that differ materially from other insurers in the state. However, the rate levels of one of the two largest insurers in the state does serve as a reasonable proxy for industry rate levels which are impractical to measure. One complicating factor in this assessment is that other rating factors, including limits purchased and self-insured retentions selected, movement from traditional insurance to self-insurance, and the impact of claims-free credits and experience rating changes are not measured in manual rate changes. Still, the most significant factor influencing health care provider premiums are manual rate level changes.

Insurance Company Financial Statements

In evaluating the relative profitability of both individual medical malpractice insurers and the medical malpractice insurance industry in various states, Pinnacle relied heavily on insurance company annual financial statement data compiled by the A.M. Best Company. Pinnacle examined premiums, losses, loss adjustment expenses and underwriting expenses by line and state. This information was aggregated across all insurers to produce industry composites.

One of the complications of using this data source is that it is limited to carriers that have an

A.M. Best rating. Several writers of medical malpractice insurance, including leading writers such as Northwest Physicians Mutual Insurance Company in Oregon, are no longer in the annual statement databases. For some significant insurers, Pinnacle added data directly from company annual statements to the A.M Best data to produce more accurate industry composite results.

State Statutory and Regulatory Provisions for Medical Malpractice

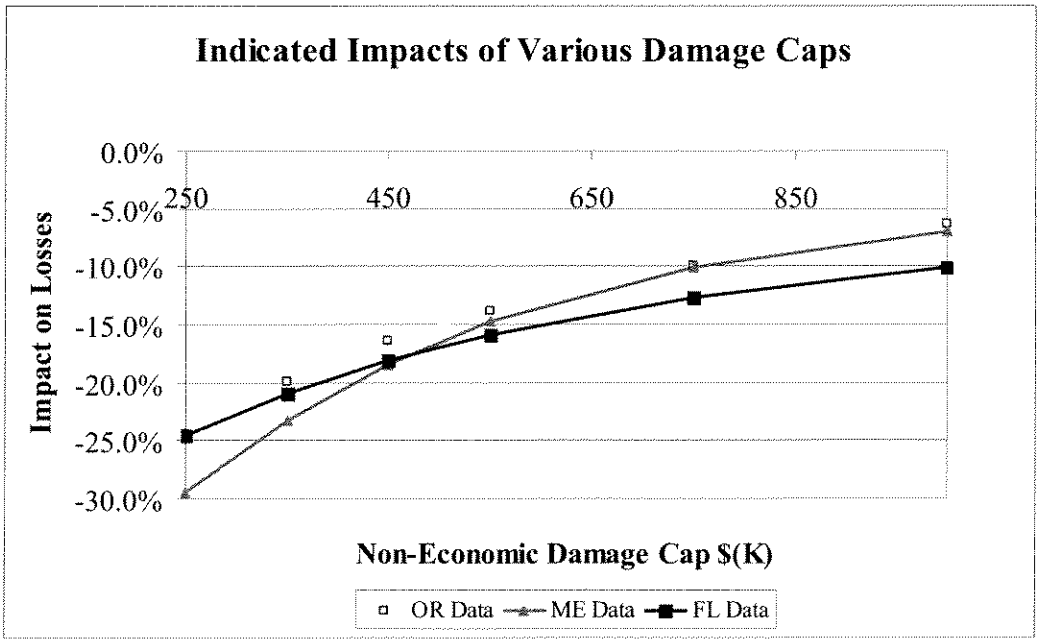
A thorough understanding of the current statutory caps on non-economic damages and any significant changes in these caps over the last decade by state was viewed as essential to providing a meaningful summary of both the presence or absence of damages caps in other states and also the impact these caps have had on the availability and affordability of premiums and insurer loss ratios and combined operating ratios. States with both non-economic damage caps and total caps, e.g. Colorado, were assigned to the state to which their non-economic cap belongs. States with only total damage caps, e.g. Indiana, were given judgmental assignments to the group that their caps most appropriately matched. Reassigning or removing the states with total caps did not materially impact the overall findings of the analysis.

We relied primarily on two resources in compiling information on applicable caps in each state over the last decade. One resource is the website of the law firm of McCullough, Campbell & Lane (www.mcandl.com) which provides a concise summary of many medical malpractice statutory features by state along with the relevant legal citations. The other resource is the website of the American Tort Reform Association (ATRA) which provides a detailed summary of Civil Justice Reforms by State. This information includes both currently active legislation and historical changes. We have followed categorizations of states by non-economic damage caps as Low ($250,000), Medium (between $250,000 and $550,000) and High (greater than $550,000) as they appear to provide reasonable groupings of states with comparable industry conditions. These groupings were recently published in an article in the September 2005 Best Review entitled, "Doctors' Orders", which utilized ATRA data. Pinnacle has used information from both of these resources as a reference in several previous projects and found them to be reliable and accurate.

Discussion and Analysis

While all caps on non-economic damages reduce losses, the impact diminishes as the size of the cap increases. A cap of $250,000 eliminates approximately 25% of unlimited losses, a $550,000 cap eliminates about 15% and a $1 million cap eliminates about 7%. In order to estimate the impact of a cap on non-economic damages, Pinnacle's analysis started by trending the closed claims in the Oregon, Maine and Florida closed claims data set by an annual rate of 7% for indemnity payments and ALAE payments. As noted above, the trend factor was selected based on a review of recent rate filings from leading insurers in a variety of jurisdictions, including Wisconsin. Losses were trended assuming that the non-economic damage caps would begin to apply on January 1, 2006. Exhibit 1 summarizes the results of this analysis.

The results of applying non-economic damage caps ranging from $250,000 to $1,000,000 are remarkably similar for all three databases. A cap on non-economic damages of $250,000 results in an estimated reduction in losses and allocated loss adjustment expenses (ALAE) of between 24.5% and 29.5%. This steadily decreases as the cap increases until the $1 million cap only eliminates 6.3% to 10.1% of total loss and ALAE. We also believe the results in Florida may overstate the likely impact of this high of a cap in Wisconsin due to significant differences in the judicial systems in the two states. The results of this analysis are shown graphically below.



The reverse of this finding is also true. That is we expect that the removal of the Wisconsin caps on non-economic damages which were at approximately $450,000 are likely to increase expected losses by between 18% and 22%. Because of the role played by the Wisconsin Injured Patients and Families Compensation Fund (IPFCF) as the excess coverage provider in the state we expect it will bear a significant portion of the increase losses created by the elimination of the caps. Our analysis suggests that insurance company rates will need to increase by between 12% and 15% while IPFCF assessments may need to more than double. Note that this will reduce the impact on primary insurance company rates but not on health care provider costs as they are responsible for IPFCF assessments as well as their insurance premiums.

This increase in medical malpractice insurance costs will likely involve a single rate correction or potentially a single rate change followed by additional adjustments as the impact is better understood and more data is collected. However, the potential for increased variability in insurance company loss results and increases in loss severity inflationary trends also present the risk of additional rate increases and deterioration of industry loss results. This behavior has been manifested in a number of states without effective caps on non-economic damages and will be discussed later in the report.

The extent to which these estimated cost reductions will be realized depends on a number of issues. The cost reductions do not reflect the potential impact of judicial challenges of damage caps which could delay or reduce the realization of the potential savings. In addition, there is a potential for the migration of some non-economic damages to economic damages. For example, damages paid to the family of a deceased mother who had no outside income can be broadly awarded as pain and suffering, or non-economic damages. If caps are put in place, the costs of the services that can be replaced may be more fully itemized and listed as economic damages. Furthermore, there is no consideration in this analysis of indirect effects such as reductions in claim frequencies due to the cap or reductions in ALAE due to reduced settlement delays created by the caps. These indirect effects are quite difficult to quantify and generally would lead to our estimates being somewhat conservative, i.e. potentially understating the impact of the caps.

This inability to quantify indirect effects of non-economic damage caps based on closed claims data suggests that an additional approach is also needed. Therefore, Pinnacle has compiled industry rate, premium and loss data by state so that state experience by different categories of damage caps can be compared.

States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have significantly better insurance company loss ratios and combined operating ratios. Exhibits 2 through 4 summarize three important measures of the health of an insurance market: loss and defense and cost containment expense (DCC) ratios, combined ratios and market concentrations by the type of damage cap that exists in a state. Loss and DCC ratios are the ratio of losses and defense and cost containment expenses as a percentage of premium earned. The combined ratio starts with the loss and DCC ratio and adds ratios of both other loss adjustment expenses and underwriting expenses to premium. When these ratios are above 100% an insurance company or state insurance market is paying out more than they are collecting in premiums and can signal a need for rate increases or the potential for reduced access to coverage. Note that this metric does not reflect the investment income that insurers can earn between the time premiums are collected and losses and other expenses are paid.

As shown on Exhibit 2, Wisconsin's five year loss and DCC ratio is lower than even the average for states with low noon-economic damage caps. In fact, it is one of the lowest of any state. The statewide combined ratio is also one of the lowest in the nation. As you can see in Exhibits 2 and 3, the states with low or medium caps demonstrate loss and DCC ratios and combined ratios that are much lower than states with high caps or no caps. The five year average combined ratios of over 135% shown by the states without effective caps have led to voluntary company exits from the marketplace, company liquidations and dramatic rate increases by insurers remaining in these states.

States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have more competitive insurance markets as measured by the number of insurance companies providing coverage

in the state. An important measure of the availability of insurance coverage is the degree of competition between insurers to provide coverage in a state. One way to measure the degree of competition is the level of market concentration. A more competitive market will tend to be less concentrated. We have examined medical malpractice market concentrations over time and by state. This type of analysis is widely used in insurance and many other markets to measure the competitiveness of a market.

The metric we used to measure market concentration is the Herfindahl-Hirschman Index (HHI). HHI is computed as the sum of the squares of the market shares of the firms competing in a market. The HHI can range from a minimum of close to 0 to a maximum of 10,000. The U.S. Department of Justice considers a result of less than 1,000 to be a competitive marketplace, a result of 1,000 - 1,800 to be a moderately concentrated marketplace, and a result of 1,800 or greater to be a highly concentrated marketplace. In insurance, it is common to sum the data for statutory insurance companies that operate within a single group in terms of their ownership structure and pooling of financial results. Exhibit 4 shows the HHI results by the state categories by damage cap type for 2004 and a five year average (2000-2004) for the medical malpractice market in total.

Wisconsin's marketplace, which ranked 27th in total premium volume, is slightly less concentrated (HHI=1,656) than most states. Generally, states with caps are much more competitive as reflected in significantly lower HHI statistics. The high average HHI for states with medium caps is heavily influenced by a few states with dominant domestic mutual insurers founded by state physicians groups.

States that have predominantly operated over the last decade with either low ($250K) or medium ($250K-$550K) caps on non-economic damages overall have medical malpractice insurance premiums that are much lower than the premiums in states that do not have effective caps. It is noteworthy that not only are loss ratios lower in states with effective damage caps ($250K to $550K), signifying better insurance company results and thus the potential for a more competitive market and greater availability of coverage; but, these states also have significantly lower premiums on average suggesting more affordable coverage. The

results of this rate comparison are summarized in Exhibits 5 through 7. States with small ($250K) and medium caps on non-economic damages have average rates of $11,600 to $13,800 for the internal medicine specialty while state with no caps or caps that were found to be unconstitutional have average rates in excess of $18,000. Similar differences of 25% to 35% exist for the General Surgery and OB/GYN specialties. This results in average OB/GYN rates in states with effective caps being over $25,000 lower than rates in states without caps. Wisconsin rates are among the lowest in the nation in all three specialties.

Similarly, average rate levels over the last six years in states with effective caps have increased between 8% and 12% while rates in states without caps have increased between 14% and 19% annually. This means that for states without caps, many medical malpractice premiums have more than doubled in six years. Wisconsin annual rate increases over the period have been less than 5%.

The Wisconsin medical malpractice insurance market has significantly outperformed most states in terms of both the affordability of medical malpractice rates and insurance company operating results. Exhibits 2 through 7 show that the state of Wisconsin has significantly outperformed most states in all of the categories presented. Market concentration is lower than average suggesting better than average insurer competition. Industry loss and ALAE ratios and combined operating ratios are much lower than national averages. Leading company rate levels and average annual rate changes over the last six years have typically been among the ten best states in the country. These metrics suggest that the state of Wisconsin's broad approach to medical malpractice reform which includes the IPFCF, caps on attorney contingency fees, recognition of collateral sources, mandatory periodic payments, and damage caps, have led to a market with better than average availability and affordability of coverage for health care providers and an environment that encourages competition for insurers while still offering an opportunity to generate reasonable operating results in a stable loss environment.

It appears based on both the expected impact of the removal of the state of Wisconsin's previous non-economic damage cap and the current conditions in other states that Wisconsin's balanced environment is now in jeopardy without meaningful caps. It appears that either a low cap such

as California's $250,000 cap or a medium cap of less that $550,000 are essential to maintaining the current availability, affordability and stability of medical malpractice coverage in the state of Wisconsin.

Disclosures

Distribution and Use

This report is being provided for the use of the Wisconsin Hospital Association and the Wisconsin Medical Society who commissioned the study. It is understood that this report may also be distributed to makers of public policy and various stakeholders in the healthcare industry in the State of Wisconsin. Distribution to these parties is granted on the conditions that the entire report be distributed rather than any excerpts and that all recipients are made aware that Pinnacle is available to answer any questions regarding the report.

These third parties should recognize that the furnishing of this report is not a substitute for their own due diligence and should place no reliance on this report or the data, computations, interpretations contained herein that would result in the creation of any duty or liability by Pinnacle to the third party.

Reliances and Limitations

Judgments as to conclusions, recommendations, methods, and data contained in this report should be made only after studying the report in its entirety. Furthermore, Pinnacle is available to explain any matter presented herein, and it is assumed that the user of this report will seek such explanation as to any matter in question. It should be understood that the exhibits, graphs and figures are integral elements of the report.

We have relied upon a great deal of publicly available data and information, without audit or verification. Pinnacle reviewed as many elements of this data and information as practical for reasonableness and consistency with our knowledge of the insurance industry. As regards the legislative costing elements of this report, it is possible that the historical data used to make our estimates may not be predictive of future experience in Wisconsin. We have not anticipated any extraordinary changes to the legal, social or economic environment which might affect the size or frequency of medical malpractice claims beyond those contemplated in the proposed legislative changes.

Loss and loss adjustment expense estimates are subject to potential errors of estimation due to the fact that the ultimate liability for claims is subject to the outcome of events yet to occur, e.g., jury decisions, judicial interpretations of statutory changes and attitudes of claimants with respect to settlements. Pinnacle has employed techniques and assumptions that we believe are appropriate, and we believe the conclusions presented herein are reasonable, given the information currently available. It should be recognized that future losses will likely deviate, perhaps substantially, from our estimates.

Pinnacle is not qualified to provide formal legal interpretations of state legislation. The elements of this report that require legal interpretation should be recognized as reasonable interpretations of the available statutes, regulations, and administrative rules. State governments and courts are also constantly in the process of changing and reinterpreting these statutes.

Exhibits

Exhibit 1. Impacts of Various Caps on Non-Economic Damages

Exhibit 2. Rate and Loss Experience by Predominant State Damage Caps

Exhibit 3. Premium and Loss Experience by State

Exhibit 4. State Rate Histories

Wisconsin Hospital Association/Wisconsin Medical Society

Exhibit 1

Impact of Various Caps on Non-Economic Damages

I. Indicated Impact Based On Oregon Closed Claim data

Trended Size of Loss	Trended Loss & ALAE Uncapped	Indicated Reduction in Overall Loss and ALAE					
		$250K Cap	$350K Cap	$450K Cap	$550K Cap	$750K Cap	$1M Cap
0-25	15,882,386	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
25-50	16,393,941	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50-100	26,406,073	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
100-150	19,480,715	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
150-200	19,237,755	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
200-250	14,575,199	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
250-350	27,434,350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
350-500	38,874,756	-2.2%	0.0%	0.0%	0.0%	0.0%	0.0%
500-1000	101,772,269	-22.8%	-10.0%	-2.5%	-0.3%	0.0%	0.0%
1m-2m	123,309,631	-42.2%	-35.4%	-28.6%	-21.8%	-10.3%	-1.9%
2m+	177,954,398	-37.3%	-34.9%	-32.4%	-30.0%	-25.2%	-19.2%
Overall	581,321,472	-24.5%	-19.9%	-16.4%	-13.9%	-9.9%	-6.3%

II. Indicated Impact Based On Maine Closed Claim data

Trended Size of Loss	Trended Loss & ALAE Uncapped	Indicated Reduction in Overall Loss and ALAE					
		$250K Cap	$350K Cap	$450K Cap	$550K Cap	$750K Cap	$1M Cap
Overall	199,784,402	-29.5%	-23.3%	-18.6%	-14.8%	-10.1%	-7.0%

III. Indicated Impact Based On Florida Closed Claim data

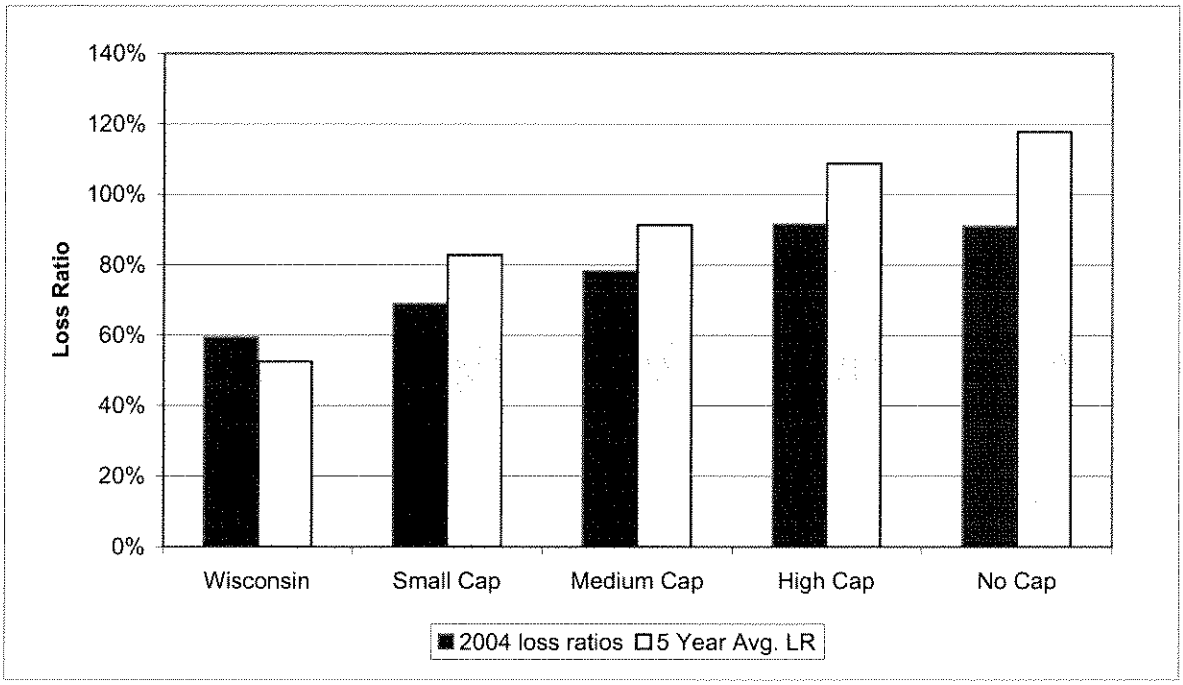
Trended Size of Loss	Trended Loss & ALAE Uncapped	Indicated Reduction in Overall Loss and ALAE					
		$250K Cap	$350K Cap	$450K Cap	$550K Cap	$750K Cap	$1M Cap
Overall	11,219,742,990	-24.6%	-21.0%	-18.1%	-15.8%	-12.7%	-10.1%

Assumes Medical Malpractice Loss Inflation of 7.0% for Indemnity and ALAE.

Wisconsin Hospital Association/Wisconsin Medical Society
Loss Ratios

Industry Experience by State Predominant Damage Cap

Category	2004 Loss Ratio	5 Yr. Average Loss Ratio
Wisconsin	**59.32%**	**52.53%**
Small Cap	68.91%	82.75%
Medium Cap	78.14%	91.32%
High Cap	91.50%	108.69%
No Cap	90.94%	117.72%
Premium Weighted Average	87.40%	110.82%



Source: AM Bests' Aggregates and Averages

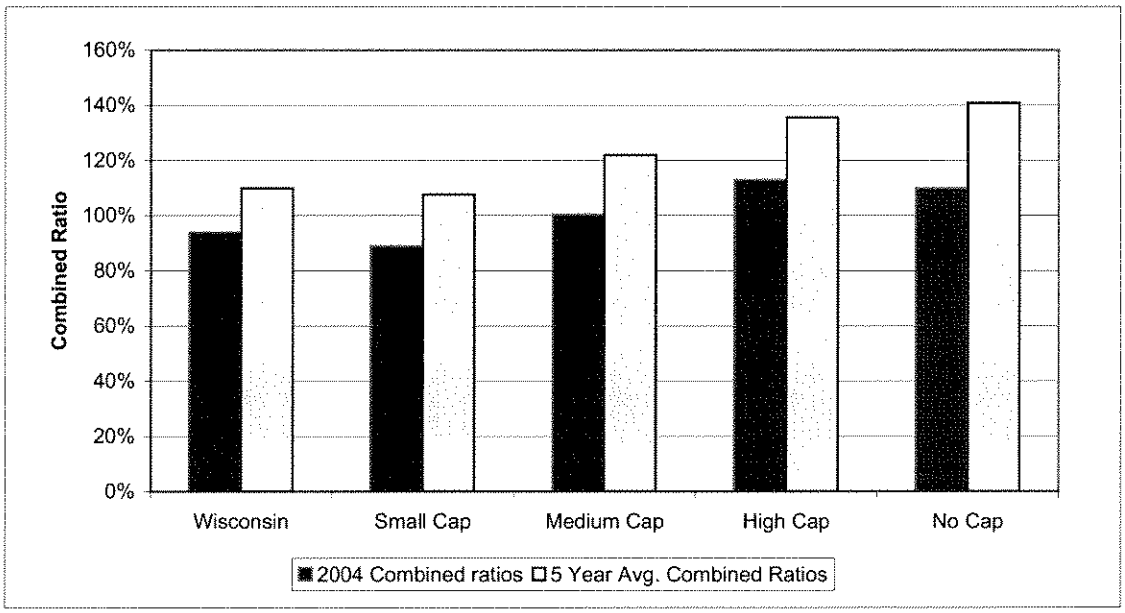
Predominant State Groups are:

Small Cap -	CA,CO, KS, MT, UT
Medium Cap -	AK, HI, ID, IN, MA, MI, ND, OK, SD, WI
High Cap -	MD, MO, NM, VA
No Cap -	AL, AZ, AR, CT, DE, DC, FL, GA, IA, IL, KY, LA, ME, MN, MS, NE, NH, NV, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, WA, WV, WY

Wisconsin Hospital Association/Wisconsin Medical Society
Combined Ratios

Industry Experience by State Predominant Damage Cap

Category	2004 Comb. Ratio	5 Yr. Average Comb. Ratio
Wisconsin	**93.89%**	**109.86%**
Small Cap	88.92%	107.65%
Medium Cap	100.34%	121.93%
High Cap	112.89%	135.64%
No Cap	109.84%	140.77%
Premium Weighted Average	106.90%	135.04%



Source: AM Bests' Aggregates and Averages

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Medium Cap -	AK, HI, ID, IN, MA, MI, ND, OK, SD, WI
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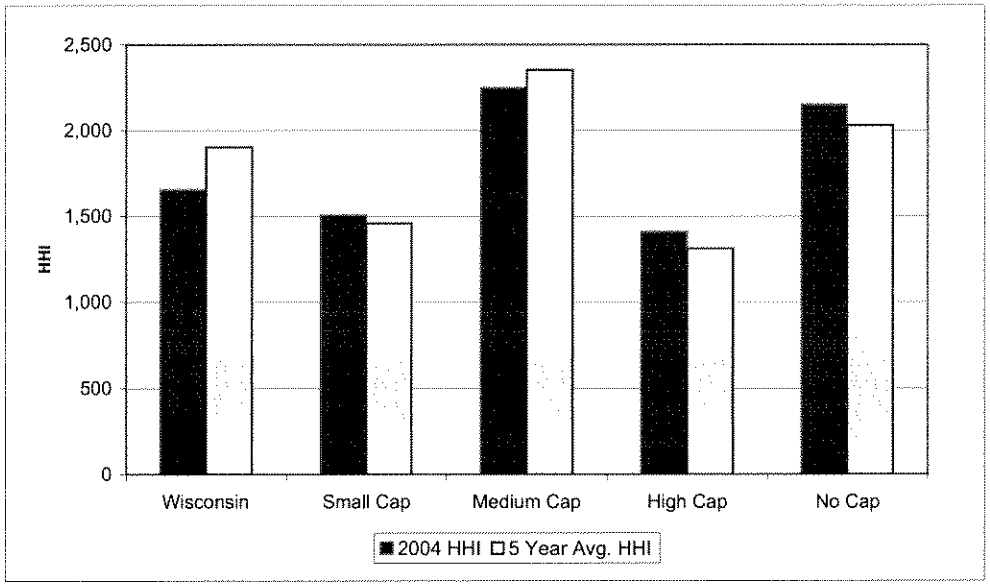
Wisconsin Hospital Association/Wisconsin Medical Society
Market Concentration by State by Year

Comparison by Damage Cap

Category	2004 HHI	5 Year Avg. HHI
Wisconsin	**1,656**	**1,904**
Small Cap	1,507	1,459
Medium Cap	2,246	2,353
High Cap	1,409	1,312
No Cap	2,150	2,028
Written Premium Weighted Average	2,033	1,941



Data Sources: 2004 Direct Written Premium: A.M. Best Page 15 data.

Comments: HHI (Herfindahl-Hirschman Index) is calculated by squaring the market share of each firm competing in a market, and then summing the resulting numbers. The index can range from 0 to 10,000. The U.S. Department of Justice considers a result of less than 1,000 to be a competitive marketplace, a result of 1,000-1,800 to be a moderately concentrated marketplace and a result of 1,800 or greater to be a highly concentrated marketplace.

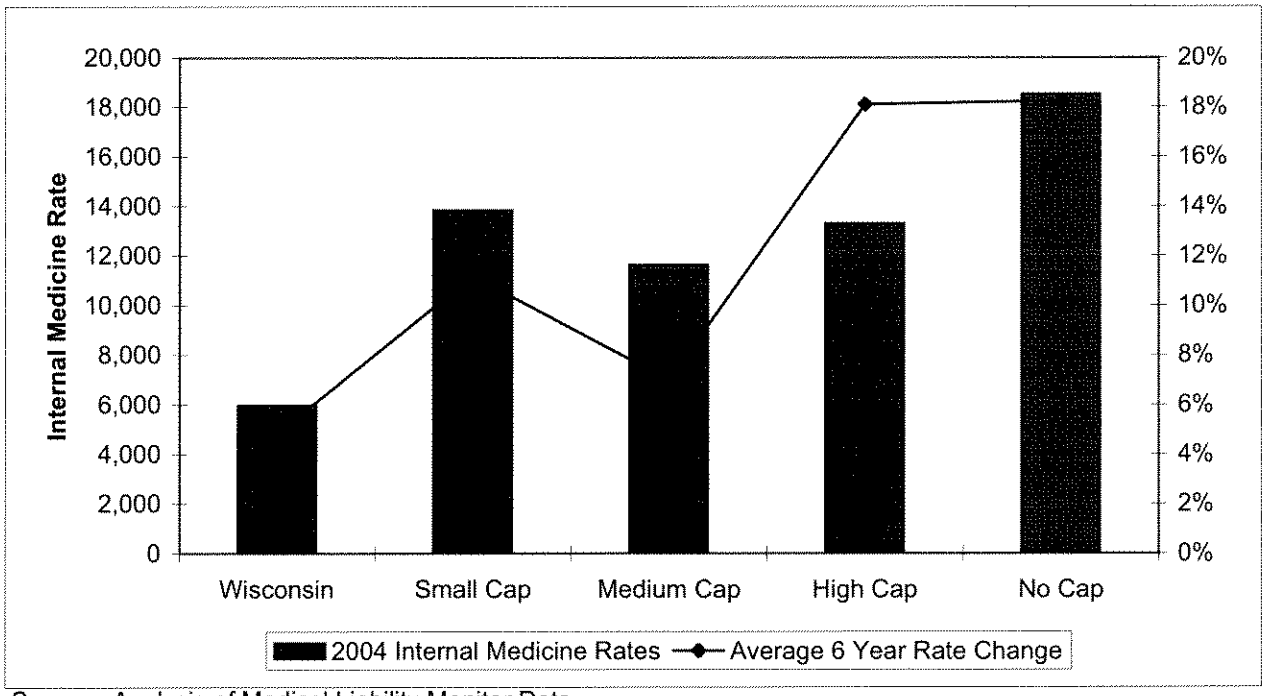
Predominant State Groups are:

Small Cap -	CA,CO, KS, MT, UT
Medium Cap -	AK, HI, ID, IN, MA, MI, ND, OK, SD, WI
High Cap -	MD, MO, NM, VA
No Cap -	AL, AZ, AR, CT, DE, DC, FL, GA, IA, IL, KY, LA, ME, MN, MS, NE, NH, NV, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, WA, WV, WY

Wisconsin Hospital Association/Wisconsin Medical Society
Internal Medicine Rates and Rate Levels

Comparison by Damage Cap

Category	2004 Rate	Average 6 year Rate Change
Wisconsin	**5,973**	**4.85%**
Small Cap	13,834	11.17%
Medium Cap	11,615	6.98%
High Cap	13,292	18.11%
No Cap	18,514	18.24%
Physician Weighted Average	16,587	15.78%



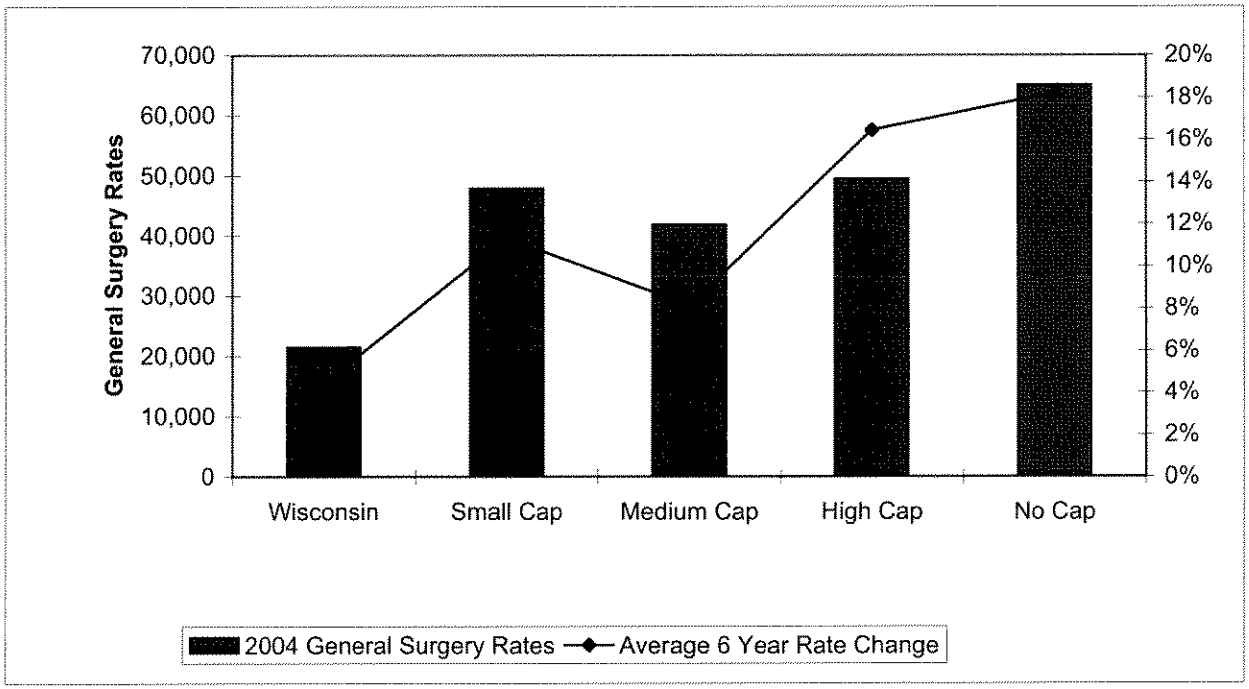
Source: Analysis of Medical Liability Monitor Data

Small Cap -	CA, ID, KS, MT, UT
Medium Cap -	AK, CO, HI, IN, LA, MA, MI, MS, ND, OK, SD, WI
High Cap -	MD, MO, NM, VA
No Cap -	AL, AZ, AR, CT, DE, DC, FL, GA, IA, IL, KY, LA, ME, MN, MS, NE, NH, NV, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, WA, WV, WY

Wisconsin Hospital Association/Wisconsin Medical Society
General Surgery Rates and Rate Levels

Comparison by Damage Cap

Category	2004 Rate	Average 6 year Rate Change
Wisconsin	**21,504**	**4.44%**
Small Cap	47,862	11.33%
Medium Cap	41,819	8.13%
High Cap	49,446	16.45%
No Cap	64,974	18.21%
Physician Weighted Average	58,470	15.81%



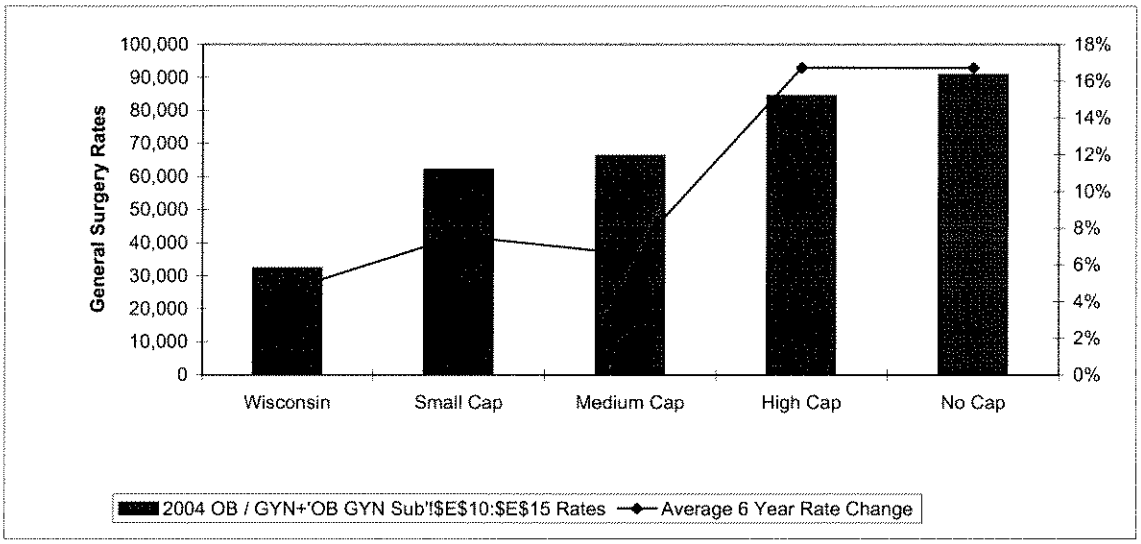
Source: Analysis of Medical Liability Monitor Data

Small Cap -	CA, ID, KS, MT, UT
Medium Cap -	AK, CO, HI, IN, LA, MA, MI, MS, ND, OK, SD, WI
High Cap -	MD, MO, NM, VA
No Cap -	AL, AZ, AR, CT, DE, DC, FL, GA, IA, IL, KY, LA, ME, MN, MS, NE, NH, NV, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, WA, WV, WY

Wisconsin Hospital Association/Wisconsin Medical Society
OB / GYN Rates and Rate Levels

Comparison by Damage Cap

Category	2004 Rate	Average 6 year Rate Change
Wisconsin	**32,255**	**4.61%**
Small Cap	61,999	7.58%
Medium Cap	66,241	6.59%
High Cap	84,354	16.72%
No Cap	90,753	16.72%
Physician Weighted Average	83,223	14.15%



Source: Analysis of Medical Liability Monitor Data

Small Cap -	CA, ID, KS, MT, UT
Medium Cap -	AK, CO, HI, IN, LA, MA, MI, MS, ND, OK, SD, WI
High Cap -	MD, MO, NM, VA
No Cap -	AL, AZ, AR, CT, DE, DC, FL, GA, IA, IL, KY, LA, ME, MN, MS, NE, NH, NV, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, WA, WV, WY