



PROFESSIONAL ISSUES

West Virginia court OKs self-funded trust to cover liability

Experts say more doctors are self-insuring as an alternative in areas with high premiums.

By [Amy Lynn Sorrel](#), AMNews staff. April 2, 2007.

A West Virginia surgeon won the right to provide his own medical liability coverage in a case that prompted the state to clarify tort reforms to allow doctors to find coverage outside of traditional insurance carriers.

The West Virginia Supreme Court of Appeals, the state's highest level, in February unanimously rejected a hospital's appeal of a 2005 lower court ruling that the doctor's \$1 million self-funded trust met the requirements of the state's Medical Professional Liability Act.

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The 2003 law requires doctors to carry \$1 million in individual coverage per claim to be protected under the state's tort reform law. The statute limits noneconomic damages to \$250,000 per occurrence in most medical liability cases, and \$500,000 in certain instances. The caps are adjusted annually for inflation.

The law also restricts hospitals' liability for actions by doctors who meet the statutory liability coverage standard.

Charleston Area Medical Center's medical staff policy requires physicians to have no less than \$1 million in current, valid professional liability insurance to work there.

But general surgeon R.E. Hamrick Jr., MD, sued CAMC in 2004 for revoking his privileges when he chose to set up a trust specifically for paying medical liability claims, instead of obtaining his coverage through a commercial insurer.

For many physicians facing unaffordable insurance premiums year after year, self-insuring is one way to ease the financial strain, his attorney, Karen H. Miller, said.

"If you're not sued and if you're paying premiums in excess of \$100,000 for eight or nine years, you end up putting up more than \$1 million and have nothing to show for it," she said.

Dr. Hamrick has never had a claim filed against him, she noted.

"Any physician might look at this and say, 'I can save money on this from the interest on a trust fund and reduce the burden,' " Miller said.

But CAMC argued that Dr. Hamrick's self-funding program was not financially sound, and thus violated hospital policy and state law. Medical center spokesman Dale Witte said the hospital's policy did not prohibit physicians from self-insuring.

"The concerns were whether [Dr. Hamrick's] fund was enough to cover everything -- any judgment, the cost of defending a case -- and what that would mean for other physicians who may be part of the lawsuit and the hospital, as well," he said.

The trial court, however, concluded that Dr. Hamrick's program offered the same protection as a commercial insurance policy. After reviewing financial proof of the funds and an actuarial evaluation of the trust, the court determined that it was solvent and there was little risk that a valid claim would go unpaid as long as Dr. Hamrick maintained the \$1 million account.

The case sparked the West Virginia Legislature in 2006 to pass an amendment establishing criteria for physician self-funded insurance arrangements that would allow them to qualify for medical liability protections. Since then, CAMC has changed its policy to reflect the changes, Witte said.

The minimum standards under the law generally require self-insured doctors to:

- Set up an exclusive trust for covering medical liability claims and legal expenses.
- Maintain the trust with no less than \$1 million in available funds and replenish the money as necessary.
- Designate an independent professional or bank as a trustee to handle disbursements, claims management and adequate fund levels.
- Commission an annual actuarial review of the fund.

Start of a trend?

Anecdotally, experts say that more doctors are finding self-insuring an attractive option in some areas.

"The numbers have gone up significantly in states with high premiums," said Jeffrey Segal, MD, founder and CEO of Greensboro, N.C.-based Medical Justice, which provides legal insurance policies to protect doctors from frivolous suits.

In Florida, for example, where excessive jury awards drive up rates, many doctors have chosen to "go bare" and self-insure instead, Dr. Segal noted. State law requires doctors who do not buy medical liability coverage to show a certificate of financial responsibility from a bank for \$250,000 if they have hospital privileges, \$100,000 if they do not.

Experts warn, however, that the individual risk of self-insuring can outweigh the benefits.

"What you think you are saving could easily disappear," said Lawrence B. Keller of Physician Financial Services, a Woodbury, N.Y., firm specializing in income protection for doctors. Defense and claims investigation costs can add up and eliminate the benefits of self-insuring, he explained.

To doctors looking to go this route, he suggests buying a minimum amount of coverage through a liability carrier to protect against possible frivolous lawsuits. Keller also warned that doctors' personal property could be at risk, so he recommends creating a solid asset protection plan with an attorney's help.

Depending on state requirements, self-insuring is easier said than done, said Evan Jenkins, executive director of the West Virginia State Medical Assn., which took no position on Dr. Hamrick's case. In West Virginia, "basically you have to be able to set aside \$1 million in unencumbered funds, and that's a bar that many physicians would not be able to meet," he said.

The WVSMA also took no position on the changes to the state's medical liability law. But Jenkins said that it will help define the parameters for self-insuring so that as many physicians as possible can benefit from the tort reform protections.

American Medical Association policy states that physicians should be free to determine whether to carry liability insurance, as well as the amount of such coverage.

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ADDITIONAL INFORMATION:

Case at a glance

R.E. Hamrick Jr., MD, v. Charleston Area Medical Center et al.

Venue: West Virginia Supreme Court of Appeals

At issue: Whether a surgeon has the right to provide his own medical liability coverage in the form of a personal trust fund. The court said yes.

Impact: Some experts say the victory gives physicians an alternative to expensive traditional medical liability insurance. Other experts warn that the risk of self-insuring could outweigh the cost-savings benefits.

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