



**BlueCross BlueShield  
Association**

An Association of Independent  
Blue Cross and Blue Shield Plans

# The Malpractice Insurance Crisis: The Impact on Healthcare Cost and Access

**A Blue Cross and Blue Shield Association Analysis**

*According to a new survey of the nation's 42 Blue Cross and Blue Shield (BCBS) companies, the medical malpractice insurance crisis is threatening healthcare affordability and access to care. This survey addresses the first-hand experiences of Blue Plans that regularly interact with hospitals and physicians in all 50 states and the District of Columbia on behalf of more than 84 million BCBS Plan members – or nearly 30 percent of the U.S. population.*

## BACKGROUND

The threat of walkouts by physicians in Pennsylvania and West Virginia and growing general unrest by physicians across the country is the most recent warning that America's medical malpractice insurance system is in dire need of reform. The current backlash toward our nation's medical tort system dates to the St. Paul Companies' announcement that it was getting out of the malpractice business – which immediately put the issue of affordable medical malpractice insurance on the front page.

Almost immediately, doctors and hospitals began confronting premium hikes of 50 percent, a rate of increase not seen in almost two decades. Shortly afterward, physician groups started reporting incidents of doctors eliminating critically needed high-risk services or relocating their practices to communities where premiums were more affordable. The growing cost of malpractice insurance was also said to be fueling medical cost inflation.

For their part, trial lawyers responded that physicians were being alarmist. Doctors were accused of trying to avoid taking responsibility for dangerous behavior by shifting blame to the legal system that exposes it. Separately, some consumer groups challenged the link between overall medical costs and higher malpractice premiums. Meanwhile, even supposedly objective data was called into question. For example, critics noted that the *Jury Verdict Research's* medical malpractice statistics are based on an unsystematic sampling that also excludes those cases won by doctors and hospitals.<sup>1</sup>

What is not in dispute is that the medical liability problem has gained prominence at a time when public concerns about access to care and the cost of that care have re-emerged with new strength. So, for example, President Bush has termed the medical malpractice insurance system “a national problem that needs a national solution” and has proposed the first federal limits on damage awards against providers of health care. Separately, a group of Democratic legislators has asked the U.S. General Accounting Office to investigate what role medical malpractice insurers played in creating the current crisis.

*In an effort to provide timely and reliable information, Blue Cross and Blue Shield Association (BCBSA) surveyed its constituent health plans about the community impact of the medical malpractice insurance problem. Survey questions addressed the first-hand experience of plans that regularly interact with hospitals and physicians in all 50 states and the District of Columbia on behalf of more than 84 million Blue Cross and Blue Shield (BCBS) Plan members — or nearly 30 percent of the U.S. population.*

### RESULTS

---

There is overwhelming agreement (88 percent) among BCBS Plans that rising medical malpractice premiums pose a problem for their communities. They believe the problem:

- *increases* costs through the practice of so-called “defensive medicine”; and
- *decreases* patients’ ability to access care from physicians in legally high-risk specialties, such as obstetricians/gynecologists.

The BCBS survey also gives strong support to a June 2002, American Medical Association (AMA) study that identified 12 “crisis” states. The AMA study, based primarily on a poll of state medical associations, concluded that rising medical malpractice insurance premiums have created a “crisis” situation in a dozen states – Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington and West Virginia.

States not yet on the crisis list, however, have little room for complacency. The AMA identified 30 other states that are seeing signs of problems. Similarly, in the BCBS survey 23 states and the District of Columbia say that rising malpractice rates will “soon be a problem.” The roster includes:

Alabama, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Virginia and Wyoming.

The BCBS survey highlights the impact that rising malpractice premiums can have on a community’s access to care and the cost of that care. For example:

- One hundred percent of Blue Plan Executives in crisis states believe that rising medical malpractice premiums are a problem, with three-quarters (75 percent) saying it is “extremely important” and one-quarter (25 percent) calling it “very important” to doctors and hospitals. Among non-crisis states, about a third (32 percent) of Blue Plan Executives believe the problem is very important, another third say it is “very important” (34 percent) and the remaining third say it as “somewhat or less important.”
- A majority of Plans in both crisis and non-crisis states believe that rising malpractice premiums are affecting all doctors, although 44 percent of plans in crisis states say the problem is affecting “specialists only.” Among all Plans, those who believe that specialists are being affected single out doctors who are obstetrician/gynecologists (ob/gyns), surgeons, emergency room physicians, anesthesiologists and pediatric subspecialists, such as neurosurgeons.
- A majority of Blue Cross and Blue Shield Plans in crisis states report that local doctors are cutting back on some aspect of patient care.
  - > Fifty-six percent of Plans in crisis states say physicians are *refusing some high-risk procedures*, versus 32 percent for non-crisis states.

- > Fifty-six percent of Plans in crisis states say more physicians are *leaving practice or retiring*, versus 42 percent of respondents in non-crisis states.
  - > More than twice as many crisis-state Plans as non-crisis state plans report *physicians reducing emergency room calls* (44 percent versus 17 percent) or refusing to see patients (38 percent versus 17 percent).
  - > Nearly a third (31 percent) of crisis-state Plans say physicians are *moving practices out of state*; a fifth (20 percent) of non-crisis plans give the same response.
- Not surprisingly, the malpractice crisis states also provide fertile soil for the growth of what is often referred to as defensive medicine by those doctors who are still willing to provide care. Plans in crisis states were two and a half times more likely than non-crisis states to identify defensive medicine as “already a very serious problem” in relation to cost increases. Defensive medicine occurs when physicians order extra tests or procedures that they perceive to be needed more for potential legal defense purposes than for clinical ones.
  - A majority of BCBS Plans (54 percent) predict that *ob/gyn fees* are likely to rise in response to higher medical liability premiums. (Ob/gyn fees were mentioned as likely to rise by 69 percent of Plans in crisis states and 49 percent of those in non-crisis ones.) Last May, the American College of Obstetricians and Gynecologists (ACOG) identified nine crisis states where liability insurance for ob/gyns was becoming unaffordable or even unavailable. Those nine were all AMA crisis states; however, the ACOG list did not include Georgia, Ohio or Oregon.
  - Half (49 percent) of Plans say that *surgical fees* in their communities will rise (63 percent of plans serving crisis states and 44 percent of Plans in non-crisis ones). Meanwhile, roughly equal numbers of Plans in crisis states (39 percent) and in non-crisis states (37 percent) believe that hospital emergency room costs will go up, too.
  - “Increased litigiousness by patients” was ranked first nationally as a factor contributing to the increase in malpractice premiums. Among all Plans, it received a score of 3.7 on a scale of “1” to “5,” with “5” being the factor with the most impact. Plans in non-crisis states gave increased patient litigiousness a 3.6 rating (their highest ranking of any factor), while Plans in crisis states gave it a 3.9. However, Plans in crisis states gave an even higher score of 4.5 to inappropriately large jury verdicts. Inappropriately large jury verdicts ranked second in non-crisis states, with a 3.5 score.

### DISCUSSION

---

Survey data from BCBS Plans serving all 50 states and the District of Columbia show that rising medical malpractice premiums are causing significant access and cost problems in a dozen states and are beginning to cause significant problems in almost all the remaining states. The data also show that health plans in crisis states are much more likely than plans in non-crisis states to believe that “inappropriately large jury verdicts” are an important cause of the problem. A second factor related to the legal system, “increased litigiousness by patients,” was ranked second in crisis states and first in non-crisis states. These responses clearly raise the question of the role that tort reform should play in the public policy response to the malpractice liability problem.

Tort reform refers to laws designed to limit the size of jury verdicts or erect barriers to so-called frivolous lawsuits; however, the definition of “reform” can vary widely. Moreover, the impact of tort reform beyond the narrow realm of jury verdicts is also controversial. For example, California’s pioneering Medical Injury Compensation Reform Act of 1975 (MICRA) has demonstrably restrained premium increases. While physicians hail this as a victory for patients, attorneys argue that the cost savings has been achieved by discouraging patients from suing and reducing the size of the verdicts for successful suits.

### CONCLUSION

---

A Blue Cross and Blue Shield Association survey of health plans representing all 50 states and the District of Columbia, with membership constituting nearly a third of the U.S. population, found near-universal agreement that rising medical malpractice premiums pose a problem. Because of those rising premiums, some patients may be facing reduced access to care, particularly care from ob/gyns, some surgeons and emergency room care. When care is provided, high-risk physicians are more likely to practice defensive medicine, thereby raising medical costs.

Amidst all the uncertainty, the BCBS survey results provide a measure of clear and unbiased information. The current medical liability crisis is harming the practice of medicine in many communities, increasing the chances of harm to patients and raising costs in at least a dozen states. It is likely to have the same impact in the rest of the country if the problem is not quickly addressed.

---

<sup>1</sup> Rachel Zimmerman and Christopher Oster. “Assigning Liability: Insurers’ Missteps Helped Provoke Malpractice ‘Crisis’.” *The Wall Street Journal*. June 24, 2002. A1, 8.

# Impact of Rising Malpractice Insurance Rates on Individual BCBS Plans

## BACKGROUND AND METHODOLOGY

- In a recent study that received widespread publicity, the American Medical Association concluded that the rising price of malpractice insurance premiums for physicians has reached a crisis situation in a dozen states—Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia—and in 30 other states, it is reaching the breaking point.
- As part of the Healthcare Cost Campaign, BCBSA wanted to obtain the perspectives of member Plans about the AMA’s findings. A short survey was emailed in early August to all BCBS Plans across the country.
- The following analysis will be the foundation for a report that BCBSA will issue regarding how the malpractice situation is specifically affecting individual Blue Cross and Blue Shield Plans.

## REPRESENTATION OF PLAN STATES

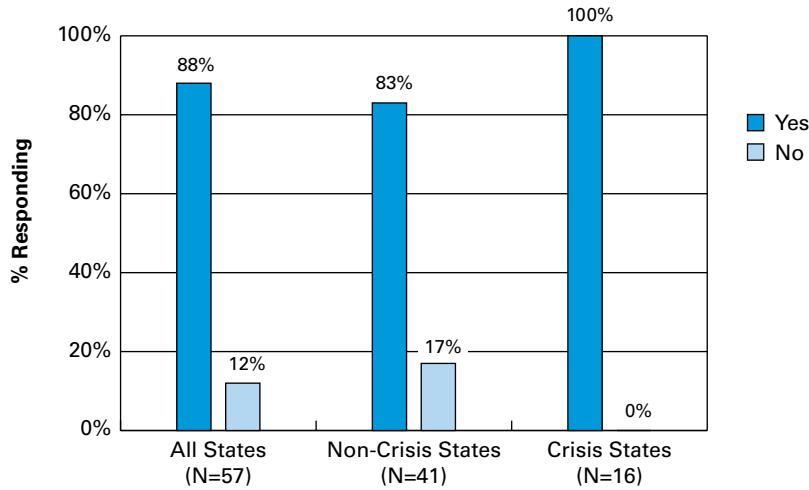
- Of the surveys that were initially distributed to BCBS Plans, all were returned (100% response rate).
- All 50 US states and the District of Columbia are represented in the following analysis. The 12 states that are designated by the AMA as being in a “crisis situation” are highlighted below and are analyzed separately.

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	<b>Nevada</b>	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California (2)	Kentucky	<b>New Jersey</b>	<b>Texas</b>
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	<b>New York (2)</b>	Vermont
Delaware	Maryland	North Carolina	Virginia
D.C.	Massachusetts	North Dakota	<b>Washington</b>
<b>Florida</b>	Michigan	<b>Ohio</b>	<b>West Virginia</b>
<b>Georgia</b>	Minnesota	Oklahoma	Wisconsin
Hawaii	<b>Mississippi</b>	<b>Oregon</b>	Wyoming
Idaho (2)	Missouri	<b>Pennsylvania (4)</b>	

Q1: Please indicate which state your perspective will represent.

PERCEPTION OF RISING MALPRACTICE PREMIUMS BEING A PROBLEM

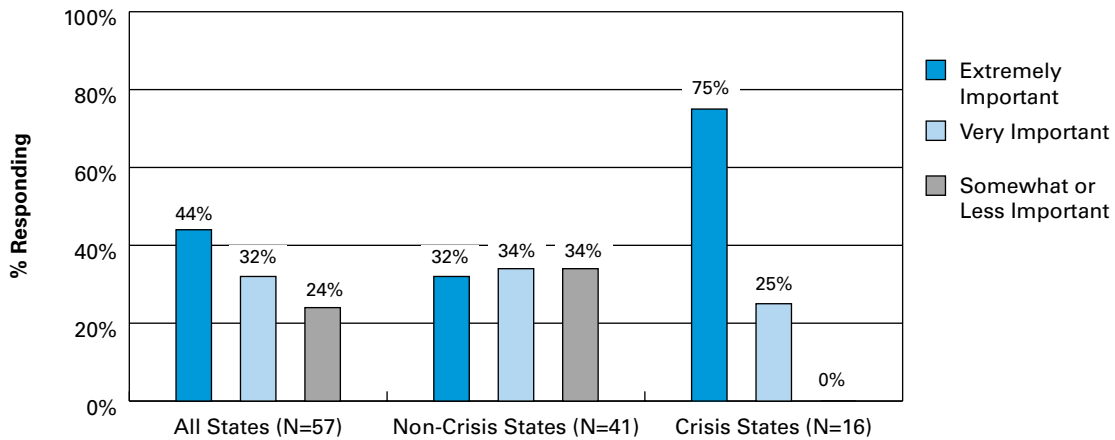
- Among BCBS Plans, all but seven claim that rising malpractice insurance premiums are a problem in their states, including all 12 of the “crisis” states as identified by the AMA.



Q2: Do you perceive that rising malpractice insurance premiums are a problem in your state?

PERCEIVED IMPORTANCE OF RISING MALPRACTICE PREMIUMS TO PROVIDERS

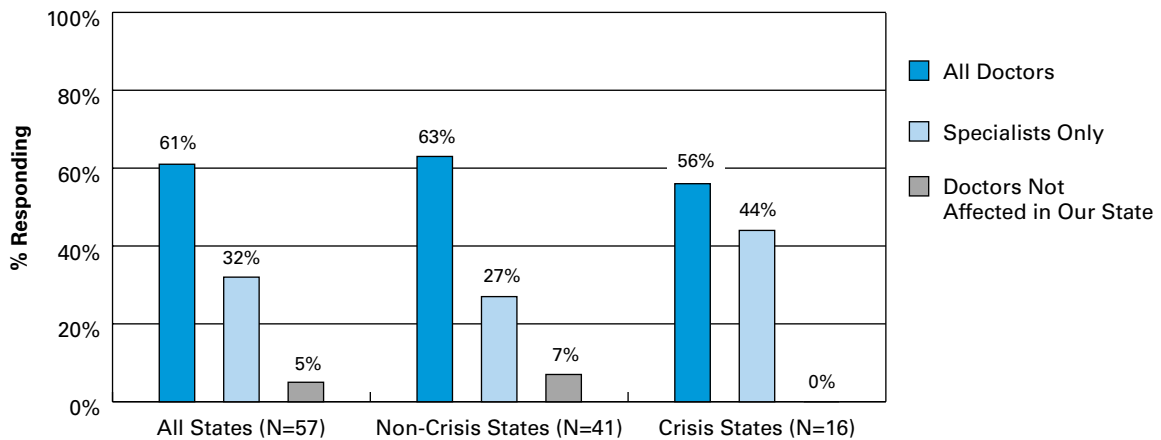
- There is no doubt that responding BCBS Plans believe rising malpractice insurance premiums have become an important issue to both physicians and hospitals in the last couple of years.
- It is an “extremely” important issue according to 44% of total Plans, and to 75% of the crisis state Plans.



Q3: Over the last two years, how important do you think rising malpractice insurance premiums have become to physicians and hospitals in your state?

## DOCTORS WHO ARE IMPACTED THE MOST BY RISING MALPRACTICE PREMIUMS

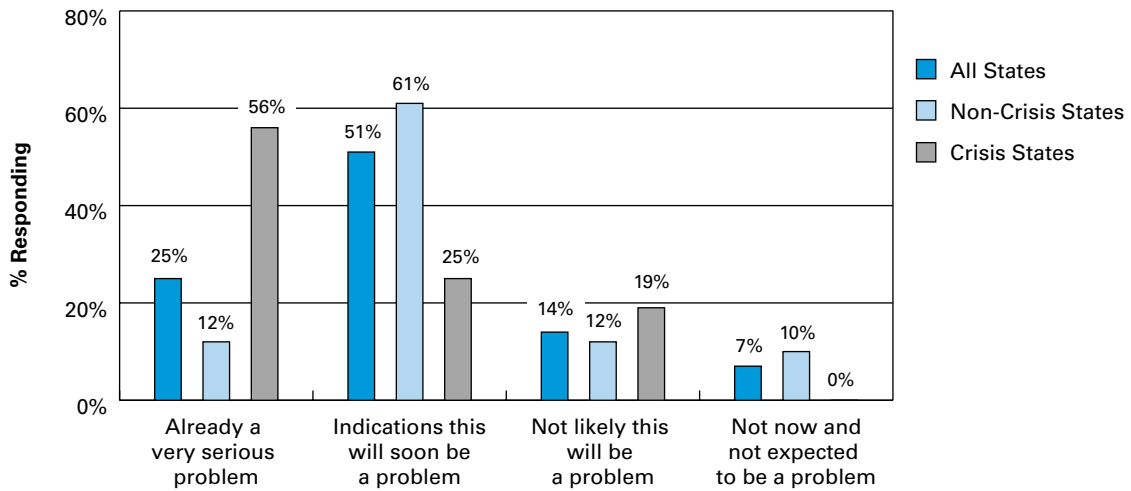
- When considering which doctors are most impacted by rising malpractice premiums, BCBS Plans lean toward saying it's an issue that affects all doctors, not just specialists.
- Those who say just specialists, specify: OB/GYNs, surgeons (i.e., neurosurgeons, orthopedic surgeons, and cardiovascular surgeons), ER physicians, anesthesiologists, and pediatric sub-specialists (i.e., neurosurgeons).



*Q4a/4b: Thinking about the impact of rising malpractice insurance premiums, which doctors are affected the most? Please indicate which specialists you feel are most impacted by rising malpractice insurance premiums in your state.*

**PERCEIVED IMPACT OF RISING MALPRACTICE PREMIUMS ON PATIENT ACCESS TO CARE**

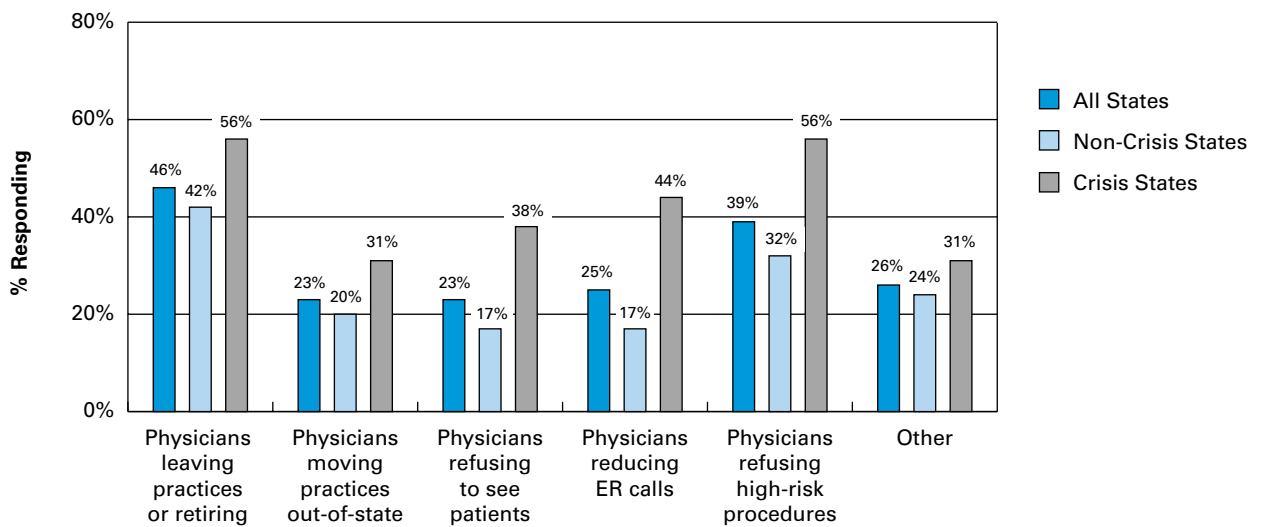
- There is a strong consensus among the responding BCBS Plans that rising malpractice rates have a very important impact on patient access to care.
- For the majority of the crisis states (56%), it is already seen as a very serious problem; for the rest of the states, half (51%) feels it is an inevitable problem.



Q5a: Based on your Plan’s first-hand knowledge, which of the following statements best describes the impact, in your state, of rising malpractice insurance premiums on patient access to care?

## PERCEIVED IMPACT OF RISING MALPRACTICE PREMIUMS ON PATIENT ACCESS TO CARE

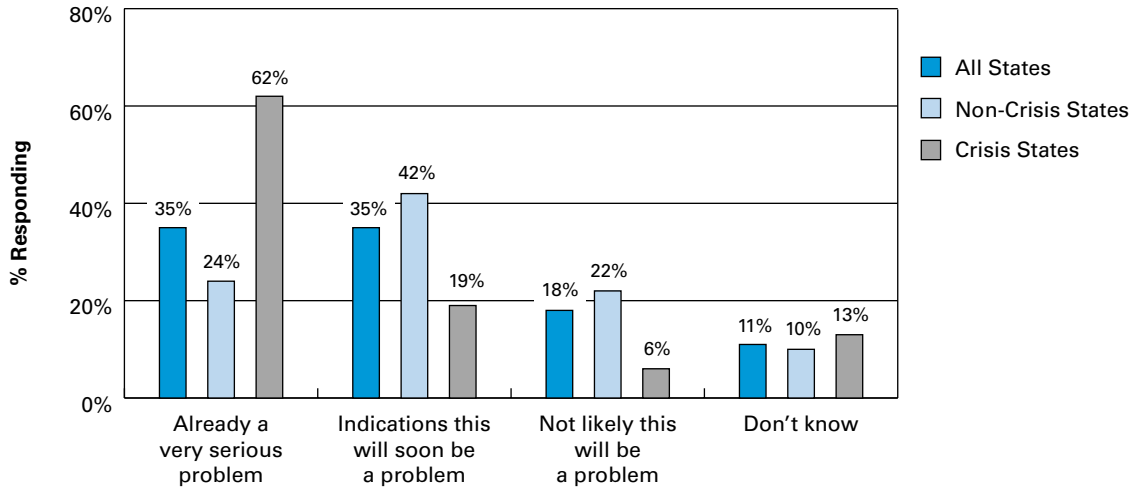
- Among those who indicate that rising malpractice premiums do have a direct impact on patient access to care, many BCBS Plans—in both the crisis and non-crisis states—suspect (as it’s often hard to verify) that physicians are limiting their level of exposure to high-risk situations or simply getting out of medicine all together.
- In addition to the effects listed below, a few Plans also speculate that OB/GYNs are choosing not to practice obstetrics and that physicians are simply demanding higher reimbursement from payers.



Q5b: Again, based on your Plan’s first-hand knowledge, which of the following do you feel has been a direct result of rising malpractice premiums on patient access to care?

PERCEIVED IMPACT OF DEFENSIVE MEDICINE ON STATE'S HEALTHCARE COSTS

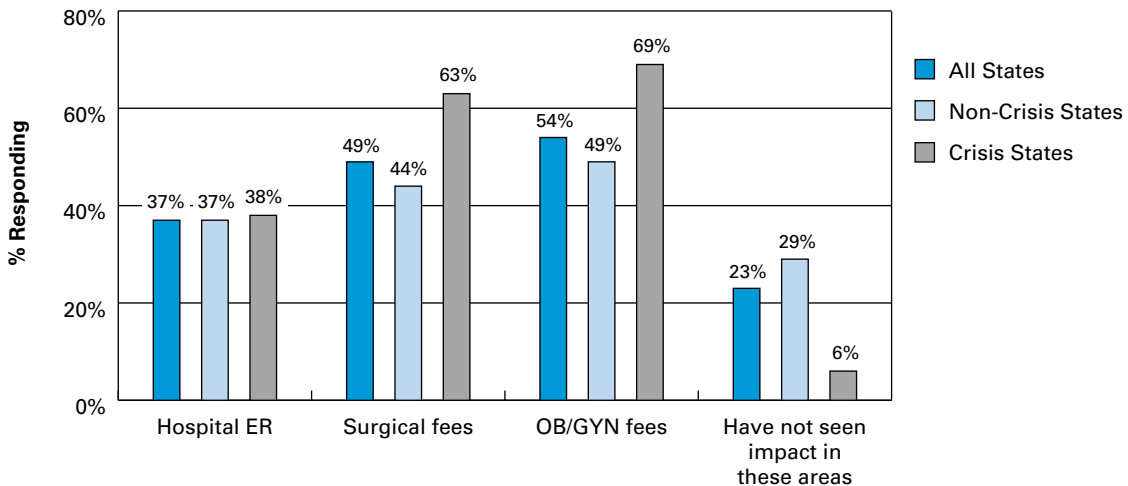
- Of the BCBS Plans that responded to the survey, the majority feel that the practice of defensive medicine has a direct impact on their states' overall healthcare costs, with well over half (62%) of the crisis states indicating that it is already a very serious problem.



Q6: Which of the following statements best describes the impact of the practice of defensive medicine on healthcare costs in your state?

IMPACT OF RISING MALPRACTICE PREMIUMS ON PROVIDER FEES

- The majority of BCBS Plans would agree that, to date, the greatest impact of rising malpractice premiums has been on OB/GYN fees and surgical fees.
- And, half of the crisis states consider the impact on these two areas to be “very significant” (as opposed to somewhat significant). For the balance of states, there’s less consensus regarding the severity of the impact.



Q7a/7b: Based on your Plan's experience, in which of the following areas are you seeing an impact from rising malpractice insurance costs? Please indicate if the impact from rising malpractice insurance costs on these areas has been very significant or somewhat significant.

## SIGNIFICANCE OF SPECIFIC FACTORS ON THE INCREASE IN MALPRACTICE PREMIUMS

- When asked to comment on the reasons behind rising malpractice insurance premiums, BCBS Plans across the board indicate that several factors play an important role: increased lawsuits by patients, large jury verdicts, and malpractice insurers compensating for past under-pricing and/or market losses.

Average Significance of Specific Factors (5-point scale where a “5” means “most significant”)			
Factors	All States	Non-Crisis States	Crisis States
Increased litigiousness by patients	3.7	3.6	3.9
Inappropriately large jury verdicts	3.5	3.1	4.5
Malpractice insurers compensating for past under-pricing and market losses	3.3	3.1	3.8
Poor communication between doctors and patients	3.0	3.2	2.6
Too many preventable errors being made	2.8	2.7	3.0
Shared risk pool of “good” and “bad” doctors	2.7	2.7	2.8

*Q8: Based on the situation in your state, please indicate the significance that the following factors have on the increase in malpractice insurance premiums in your state. Please use a five-point scale where a “5” means the “most significant factor,” and a “1” means the “least significant factor.”*



**BlueCross BlueShield  
Association**

An Association of Independent  
Blue Cross and Blue Shield Plans

225 N. Michigan Avenue  
Chicago, Illinois 60601-7680

[www.BCBS.com](http://www.BCBS.com)