



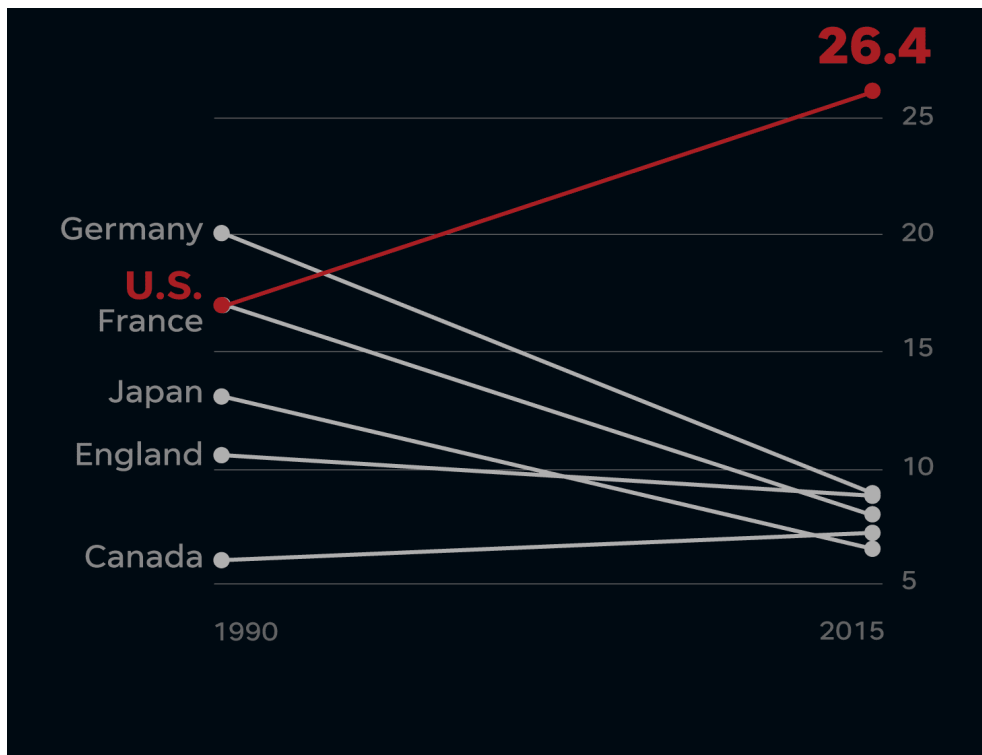
MEDICAL MALPRACTICE FACT SHEET 2021

I. Preventable Medical Errors Are a Crisis of Epidemic Proportion

- a. The Institutes of Medicine estimated in 1999 that as many as 98,000 Americans die each year in hospitals due to preventable medical errors. Recent “evidence-based” calculations place the death toll from “preventable adverse events” between 235,000 and 440,000.¹

More than 1,000 preventable deaths a day is too many.

- b. Preventable errors are especially dangerous in obstetrical care. From 1990 to 2015, the rate of maternal deaths per 100,000 births in most developed countries remained flat or decreased, while the rate of maternal death in the United States rose sharply:²

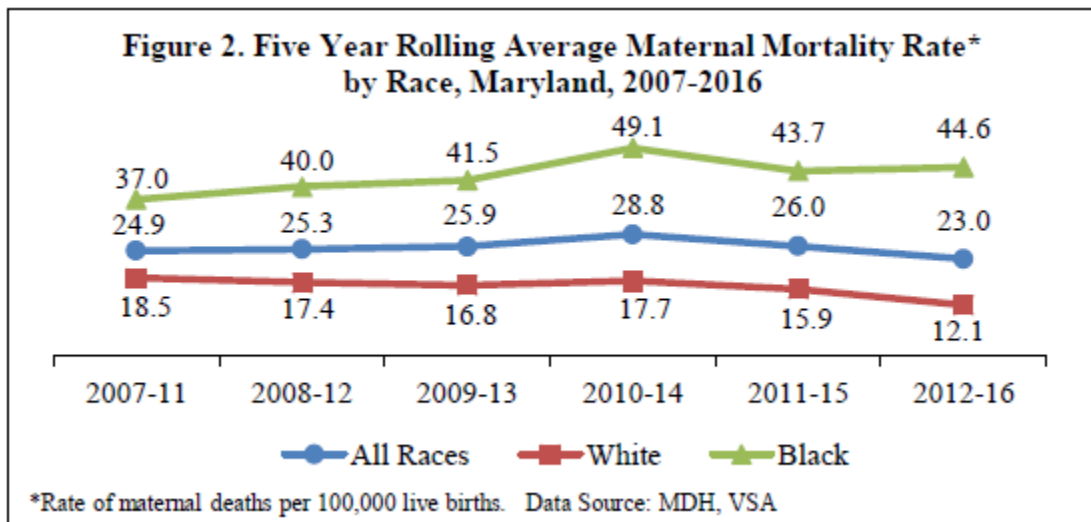


In the first decade of the 21st century, only eight countries in the world saw the rate of childbirth deaths increase. *Despite lavish spending on healthcare, the United States was one of those eight countries.*

¹ John T. James, Ph.D., “A New, Evidence-based Estimate of Patient Harms Associated with Hospital Care,” J. Patient Safety, 9(3): 122-28 (Sept 2013); Marty Makary *et al.*, “Medical errors – the third-leading cause of death in the US,” BMJ 2016; 353:i2139 (May 3, 2016).

² Alison Young, “Hospitals know how to protect mothers. They just aren’t doing it.” USA Today (June 27, 2018), online at <https://www.usatoday.com/in-depth/news/investigations/deadly-deliveries/2018/07/26/maternal-mortality-rates-preeclampsia-postpartum-hemorrhage-safety/546889002/>.

- c. The comparable maternal mortality rate in Maryland was **26.0**, when measured over a five-year period (2011-2015).³ Among minorities in Maryland, the maternal death rate is even higher:



- d. Preventing medical errors could save billions of dollars – which could help fund public education and infrastructure priorities. The Office of the Inspector General at DHHS estimated that 1 in 7 Medicare patients are injured in hospitals, contributing to 180,000 deaths a year and **costing the government and taxpayers an additional \$4.4 billion annually**.⁴
- e. Given the alarming statistics, any discussion of medical negligence that does not focus on reducing preventable medical errors ignores a fundamental problem. **Preventing medical errors would lower health care costs, increase job satisfaction for providers, reduce the cost of health insurance, free up public money for investments in education and infrastructure, and protect the health and well-being of Maryland’s citizens.**

There is no doubt that preventable medical errors kill thousands of Marylanders each year, and catastrophically injure many thousands more. These preventable injuries and deaths disrupt the lives of ordinary Maryland families, **permanently**.

Maryland’s healthcare industry has responded to this crisis by **lobbying to reduce its legal responsibility** for the harms caused by preventable negligence.

Over the last 45 years, so-called “tort reform” has not made Marylanders safer, or their health care less expensive, but countless victims of malpractice have their **legitimate malpractice claims thrown out of court** because of the “Health Care Malpractice Claims Act of 1976,” a confusing law responsible for making health care malpractice lawsuits the most expensive, complex, difficult, and time-consuming kind of civil action in this State.

It is bad legislative policy to shield hospitals and health care providers from responsibility for the consequences of their preventable errors.

³ 2018 Maryland Maternal Mortality Review (MMR) Report. See also Baltimore Sun Editorial Board, “Maternal death rate is an embarrassment” (Dec. 27, 2018), accessible at <https://www.baltimoresun.com/opinion/editorial/bs-ed-1212-maternal-death-20181207-story.html>.

⁴ Daniel R. Levinson, “Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries,” Dept. of Health and Human Services, Office of the Inspector General (Nov. 2010).

II. Maryland Has More Active Physicians *per capita* Than Almost Every Other State

- a. According to data from the American Medical Association (“AMA”) and the American Association of Medical Colleges (“AAMC”), **Maryland ranks second out of all 50 states in the number of active physicians *per capita*.**⁵
- b. **The concentration of active physicians in Maryland has increased.** Maryland currently has 377.8 active physicians per 100,000 population -- more than in 2007 (355.0/100K).
- c. **Maryland has a relative surplus of obstetrical specialists.** AMA/AAMC report that there are 7,819 patients per active OB/GYN in the United States.⁶ In comparison, Maryland has 5,637 patients per OB/GYN – **30% better than the national average.**⁷ By this metric, Maryland ranks second out of all 50 States in the number of OB/GYNs per capita.
- d. By way of comparison, Pennsylvania ranks 8th, Delaware ranks 18th, Virginia ranks 23rd (below the national average), and West Virginia ranks 26th in active physicians *per capita*. Virginia and Florida also rank well below the national average in OB/GYNs per capita;⁸

III. Medical Malpractice Litigation Is Not a Problem in Maryland

- a. **Medical malpractice filings are holding steady.** The number of new filings in HCADRO (an administrative agency charged with screening claims) generally varies between 600 and 650 cases a year, even as the number of health care providers in Maryland continues to increase. In 2018, 2019, and 2020, HCADRO saw new filings of 645 cases, 634 cases, and 603 cases, respectively.
- b. Nearly all malpractice claims filed in Maryland are supported by ***an attestation of merit from a Board-certified physician with relevant clinical experience.*** A large study by Harvard public health researchers published in the New England Journal of Medicine confirmed that ***most malpractice claims involve both medical error and serious personal injury.***⁹

⁵ AMA/AAMC Center for Workforce Studies, “2019 State Physician Workforce Data Book,” Fig. 1.1 and Table 1.1, at 7-8 (Nov. 2019). In this data, “active physicians” are defined by the AMA and AAMC as follows:

Physicians (federal and nonfederal) who are licensed by a state are considered active, provided they are working at least 20 hours per week. Physicians who are retired, semiretired, temporarily not in practice, not active for other reasons or who have not completed their graduate medical education are excluded. Active physicians include those working in direct patient care, administration, medical teaching, research, or other nonpatient care activities.

Maryland has maintained this high ranking – second in the country for active physicians *per capita* – for more than a decade. Maryland also ranks fourth in the country in active female physicians *per capita*,

⁶ AMA/AAMC Center for Workforce Studies, “2018 Physician Specialty Data Report,” Table 1.2 (Nov. 2018).

⁷ AMA/AAMC Center for Workforce Studies, “2019 Maryland Physician Workforce Profile,” at 2 (Nov. 2019).

⁸ Pennsylvania and Delaware have no caps on damages in medical negligence cases, while Virginia and West Virginia both do. ***Overall, the number of physicians per capita is significantly higher in states without caps.*** Plainly, damage caps (like other “tort-reform” laws) have no influence where health care providers choose to live, work and raise a family.

⁹ Studdert D, *et al.*, “Claims, Errors and Compensation Payments in Medical Malpractice Litigation,” New England Journal of Medicine, 354;19 (May 11, 2006).

- c. Maryland’s largest insurer of private physicians (*i.e.*, not employed by hospitals or the government), Medical Mutual Liability Insurance Society of Maryland, has never been more financially secure,¹⁰ maintaining an A (Excellent) Rating from the A.M. Best Company, the world’s oldest independent insurance rating service.
- d. For the 2019 policy year, Medical Mutual was granted a 2% rate decrease. For 2021, Medical Mutual has offered policyholders a **21% Special Dividend Credit** on top of a **20% Renewal Dividend Credit**,¹¹ in addition to a **25% “Pandemic Credit”** they received in 2020.¹² Maryland medical professional liability insurance is *much less expensive than it was 15 years ago* – unlike everything else in healthcare!
- e. Contributing to its rock-solid stability, Medical Mutual’s Policyholder Surplus – money left over *after* establishing reserves to account for expected losses and paying dividends to its policyholders – has *more than quadrupled* from \$103 million in 2000 to \$448.4 million in 2019.
- f. In addition to Medical Mutual, more than 100 insurers currently participate in the Maryland market, and the business of medical professional insurance is substantially more profitable in this State now than it was fifteen years ago, according to data published annually by the National Association of Insurance Commissioners.¹³

IV. The Civil Justice System is Not Broken, and Jury Verdicts Are Not Cause for Alarm

- a. From time to time, corporate hospital systems will complain about a jury verdict. In every such case, a jury of ordinary Maryland citizens reported for jury duty, taking time out of their lives to help the parties to resolve their dispute in accordance with the laws and constitution of the State of Maryland. After hearing the evidence and testimony from both sides, *the jury unanimously found that the hospital failed to follow standards of practice* among members of the same health care profession with similar training and experience and unanimously agreed on the amount of money needed to compensate the victim of the hospital’s malpractice. There has *never* been any allegation that any juror ever acted improperly, or did anything wrong, in any case resulting in a large verdict against a negligent hospital.
- b. In two cases in 2012 with large jury verdicts, **the defendant hospitals did not dispute the damages claimed by the plaintiffs**. The hospitals denied doing anything wrong, but never denied that the child victims of malpractice were catastrophically injured and needed millions to pay for their medical care.
- c. In one of those cases, the jury’s unanimous verdict was affirmed on appeal, which wrote:

In our view, there was legally sufficient evidence presented to the jury that [the child plaintiff] was injured during delivery and that those injuries were the cause of his neurological and physical conditions. The same evidence, in conjunction with evidence regarding the breach of the standard of care, *convinces us that [the hospital’s] breach of duty was the proximate cause of [the child’s] injuries.*

¹⁰ *E.g.*, 2019 Report on Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland (MSAR # 2976), at 1 (Sept. 2019) (“medical malpractice insurance premiums have again remained affordable and stable in Maryland’s market over the past year”).

¹¹ Medical Mutual Liability Insurance Society of Maryland, “Notes” (Dec. 2020).

¹² Medical Mutual Liability Insurance Society of Maryland, “Notes” (Oct. 2020).

¹³ https://www.naic.org/documents/research_stats_medical_malpractice.pdf.