

About the Author



Robert J. Walling

Mr. Walling is a Principal and Consultant in Pinnacle's Bloomington, IL headquarters. He is a Fellow of the Casualty Actuarial Society (CAS) and a member of the American Academy of Actuaries. He has served the CAS as Chairman of the Ratemaking Seminar, Risk and Capital Management and New Fellows Committees.

Mr. Walling is a frequent industry speaker on medical malpractice, commercial lines ratemaking, and predictive modeling topics.

In the area of medical malpractice, Mr. Walling has been involved in:

- Industry surveys of market conditions for state regulators, healthcare industry associations, and other interested parties,
- Legislative costing studies examining issues such as caps on non-economic damages, attorney fee caps, medical review boards, physician apology ("I'm Sorry") laws, and Patient Compensation Funds,
- Reserving, ratemaking, and legislative costing studies of birth related neurological injury compensation funds and other patient compensation funds,
- Reserving and funding studies for captives & self insurance programs,
- Reserve analyses of medical malpractice insurers, and
- Stochastic modeling of Death, Disability & Retirement ("Free Tail") liabilities.

Mr. Walling holds a B.S. in Mathematics Education from Miami University.



Pinnacle News Flash

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Pinnacle Predicts Climbing Wisconsin Med Mal Costs

One of the medical malpractice insurance industry's last remaining American Medical Association "white states" — medical malpractice environments viewed as "currently okay" — is in danger of losing financial stability due to a recent Wisconsin Supreme Court decision.

Pinnacle Actuarial Resources, Inc. (Pinnacle) has performed an initial analysis of the potential impact of the Wisconsin Supreme Court's decision in *Ferdon vs. Wisconsin Patients Compensation Fund*.

Pinnacle's analysis suggests that health care providers' overall insurance costs could increase by 18% to 22%. This includes a 12% to 15% rise in insurance company premiums and up to 150% growth in Wisconsin Patient Compensation Fund (PCF) assessments. These results highlight the fact that the PCF will soften the blow for insurers but not for health care providers.

Wisconsin providers' insurance costs could go up 18% to 22%

The analysis also finds that insurance industry reserves may experience additional adverse development of \$35-\$40 million because of the court's ruling. This amount represents about 25% of current annual industry premium. The finding excludes the likely material adverse development of PCF loss reserves.

The court's ruling in the *Ferdon* case found that the state's cap on non-economic damages was unconstitutional. The 4-3 decision 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. Reinstatement of the caps may require a change in the state's constitution.

Outstanding claim liabilities are significant because open claims will now be tried under legal conditions not contemplated in the insurance rates or the insurer loss reserves prior to the ruling. This includes some claims that remain open more than a decade after the claim event.

Higher rates and loss reserves, along with the increased uncertainty created by not having a cap on non-economic damages, will add to the instability of the market. This will create uncertainty which could have several detrimental effects on the market.

Wisconsin insurance company loss reserves could increase by \$35 to \$40 million

This volatility could reduce the availability of affordable coverage as insurers respond to the uncertainty created with more conservative pricing assumptions and higher contingency margins. Elimination of caps could adversely affect market stability as insurers restrict new business and look to redirect their capital to more financially attractive lines and states. At its worst, deteriorating conditions could lead to a reduction in available healthcare providers.

It is worth noting that several other elements of the state's medical liability reform remain intact and should continue to provide stability.

To learn more about Pinnacle's Wisconsin analysis or our other medical malpractice services, contact Rob Walling at rwalling@pinnacleactuaries.com or (309) 665-5010 or visit us at www.pinnacleactuaries.com.

Wisconsin Medical Malpractice At a Glance

- Non-Economic Damage Caps instituted in 1995 at \$350,000 with inflation adjustment now \$445,775
- Rates are typically among the 10 lowest in the U.S. (source: Medical Liability Monitor)
- Annual Premium of approximately \$110M (24th largest state market)
- Loss and ALAE Ratio 1999-2003 averaged 51.8% (2nd best in the U.S.)
- Leading writers:
 - PIC Wisconsin (33%)
 - Medical Protective (17%)
 - CNA (13%)