

The Effects of Risk Management Practices and Legislative Reforms on Medical Malpractice Lawsuits

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Introduction and Background

Medical malpractice occurs when a healthcare provider deviates from the standards of practice and causes harm to the patient. When harm occurs, the provider may be found liable under medical liability, which is tort law as applied to healthcare patients. Risk management (RM) in the medical field is defined as a cohesive effort and strategy to identify, evaluate, and reduce harm to patients, staff and visitors.

The State of Louisiana passed The Medical Malpractice Act of 1975 in response to concerns about rising medical malpractice claims, increasing insurance premiums, and exits from the marketplace by providers and insurers (Levin 2008). This tort reform capped total malpractice damages at \$500,000, a value that has not changed since 1975. The provider or provider's insurer is liable for up to \$100,000. The rest comes out of the state Patient's Compensation Fund (PCF), created to compensate patients, and funded by the malpractice insurance premiums (Dekarkis and Mims 2014). Future medical costs are excluded from the cap (as of 1984). Plaintiffs are required to file a lawsuit within a year of knowing about the malpractice, with an absolute time limit for filing suit of three years. Also, prior to filing a lawsuit, the plaintiff must go before a medical review panel, which renders a non-binding opinion on the evidence.

According to *Assessment of Hospital Risk Management Activities in Michigan* (Ray 2015), RM in hospitals has two related yet distinct roles: minimizing financial loss when harm occurs and reducing the occurrence and severity of injuries and accidents. In the past, hospitals tended to focus on the former, while hospitals now tend to focus on the later. There are few academic papers that involve RM in Louisiana hospitals.

The two research questions of this study are: (1) what have been the trends in medical malpractice cases and insurance costs in Louisiana and (2) how have reforms to medical tort law and RM practices affected the trends in Louisiana.

Materials and Methods

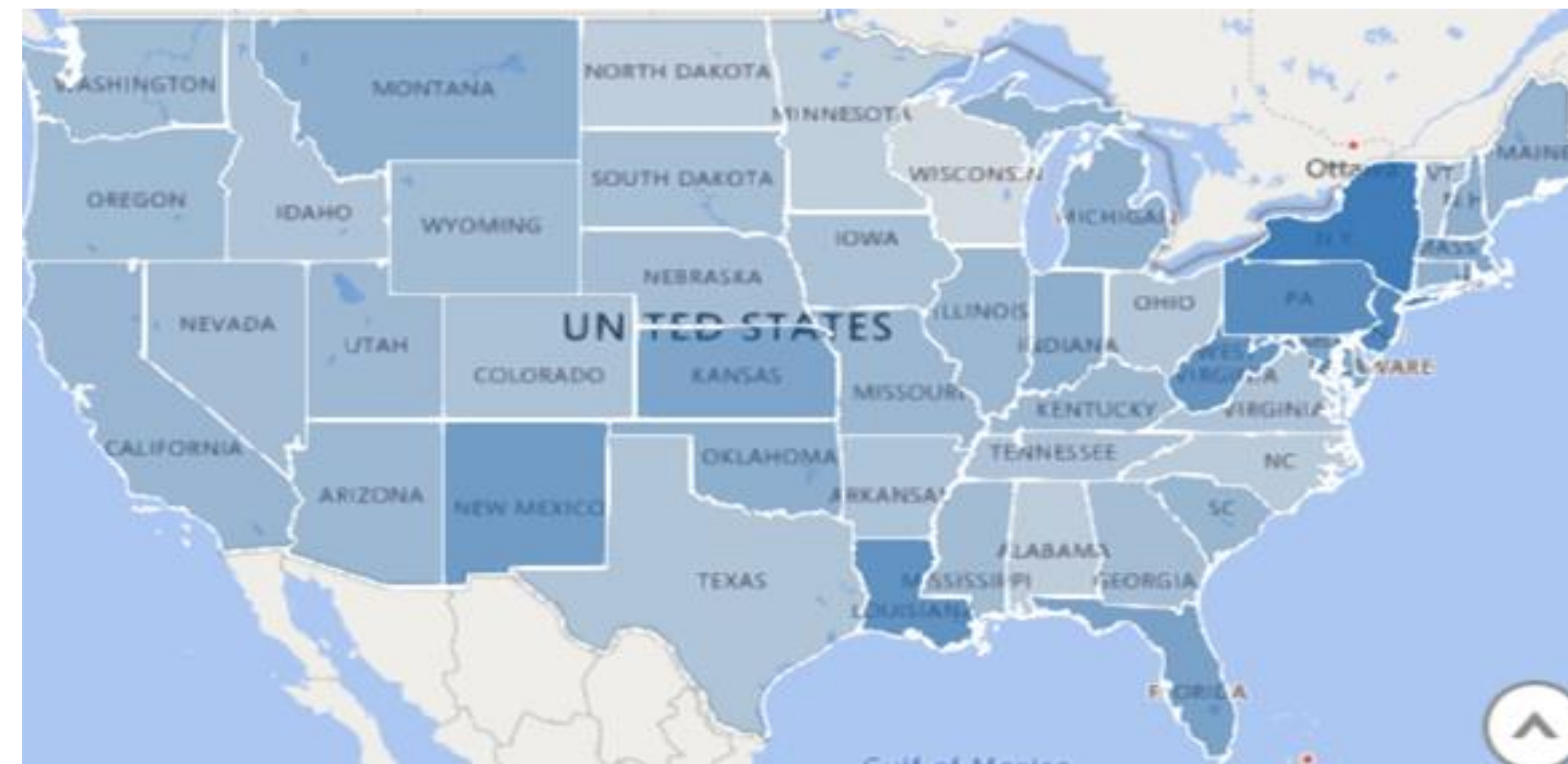
Source of Data and Information

- Peer reviewed journal articles.
- Data from the Patient's Compensation Fund.
- Interview with a hospital risk manager.

Questions asked of the hospital risk manager

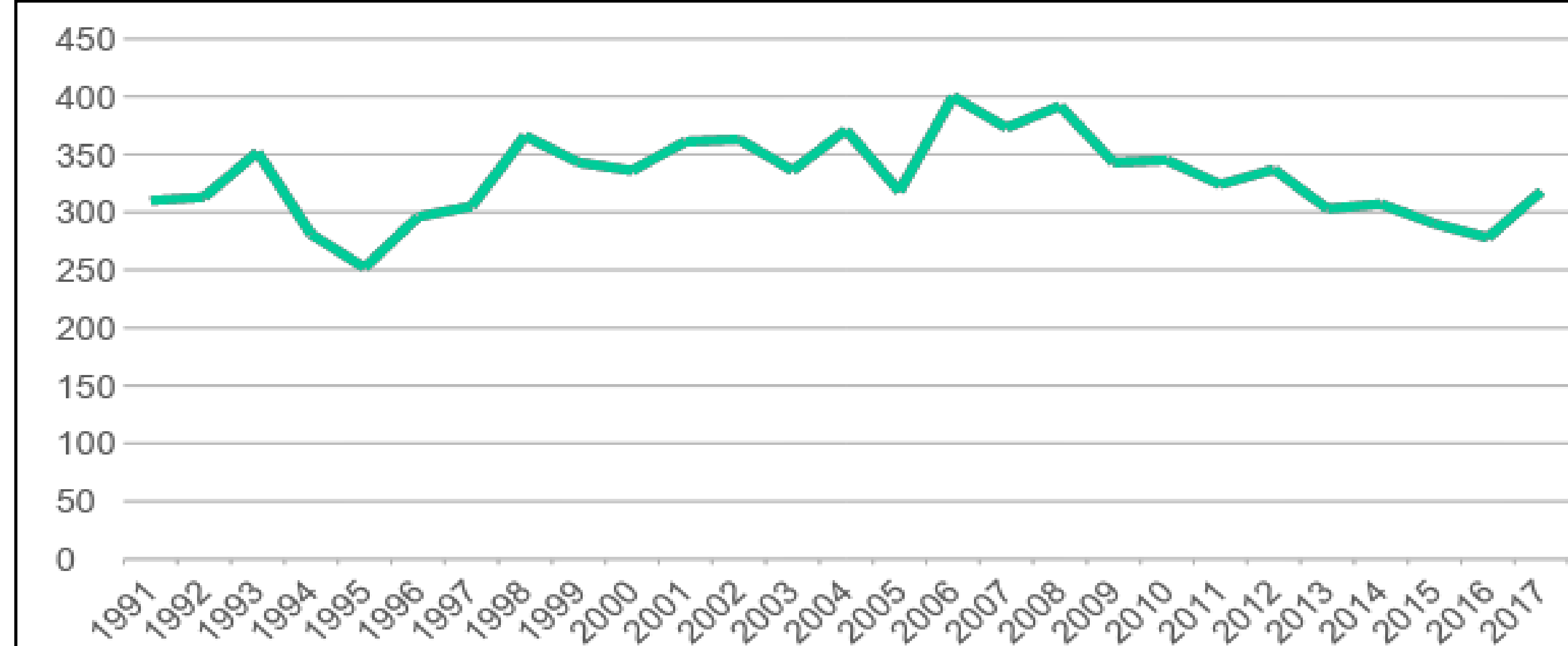
- What is the most prevalent use of time related to risk management?
- Which practices are most frequently used in risk management?
- How effective is RM? What are some strengths and area for possible improvement?
- How have RM style and practices changed over the decades?

Louisiana Ranks 4 (Claims per Million Pop.)



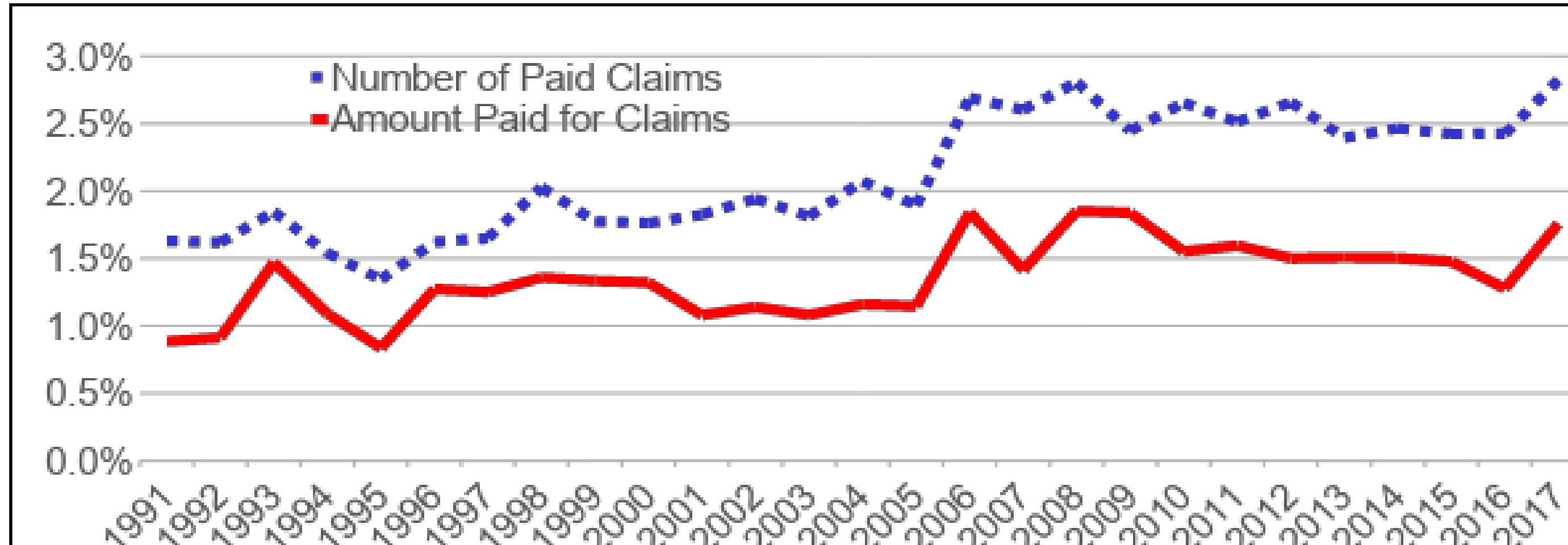
In 2016, LA experienced 65 Claims per million population versus a median of 31 Claims. Only NY, NJ and PA have higher rates of Claims.

Paid Claims in Louisiana, 1991-2017



The number of paid claims has mostly been between 300 and 350 for the past 25 years.

Louisiana as a % of US Totals



Louisiana's population is ~2.5% of the total US population, so the number of paid claims is proportionate and the amount paid is lower.

PCF Financial Values, 2019-20

Category	Amount
Net Surcharge: Amount Paid into the PCF	\$17,896,411
Net Filing Fees: Administrative Income	\$41,095
Investment Income: Earnings on Fund Balances	\$2,346,917
Operating Expenses: Administrative Activities	(\$794,590)
Claim Expenses: Payments for Claims	(\$24,427,059)
Prior Year Carryover: Beginning of the Year Amount	\$1,104,899,302
Fund Balance: End of the Year Amount	\$1,099,962,076

The financial status of the PCF is solid. If claim expenses were \$25 million per year, the current Fund balance would support payments for more than 40 years.

Discussion and Conclusions

According to my interview with a risk manager, the largest use of time is dealing with day to day issues and tracking and trending incidents, to make things safer for staff and patients. There is also a large focus on education - finding ways to improve practices and informing employees. The main focus of efforts is eliminating preventable accidents and root cause analysis (why something happened) with input from frontline staff. The main area for improvement is having staff be more willing to report accidents and mistakes. The largest shift in RM is that mistakes used to get you fired. Now there is a just culture that focuses on being honest so they can learn how to improve the system.

Louisiana still ranks high in medical malpractice claims. Medical malpractice tort reform and new RM practices may have been effective in stabilizing malpractice claims and insurance costs, as seen by the two line graphs. There are still problems with Louisiana's system. The \$500,000 overall cap makes it difficult for seriously injured patients to receive full compensation. Among states with a cap, Louisiana's is the lowest. Still, the strengths of the system are that the PCF is solvent and pays for medical expenses when needed, and RM is becoming focused on preventing injuries and tracking and trending to find where and when accidents occur and what groups are more vulnerable.

References

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- Todd Ray. *Assessment of Hospital Risk Management Activities in Michigan*. PhD Dissertation, University of Michigan School of Public Health, 2015.
- Levin. *The Medical Malpractice System and the Payment of Payment of Future Medical Damages: On Life Support Elsewhere, Resuscitated in Louisiana*, 2008
- Dekarkis and Mims. *Recent Developments: Louisiana Medical Malpractice Law*, 2014