Iowa Medical Group Management Association

Medical Malpractice Interim Committee
October 5, 2005

The Iowa Medical Group Management Association (IMGMA) is a non-profit organization of approximately 600 members dedicated to quality health care management. IMGMA assists members to develop effective and efficient practices, thus enhancing the provision of quality health care services within Iowa. IMGMA members have become increasingly concerned about the impact of Iowa's medical malpractice liability climate upon the practices they manage. IMGMA is generally supportive of legislative and other policy changes that will improve the accessibility and affordability of medical malpractice insurance and create an environment that promotes the broad availability of quality health care to patients.

The broad charge of the Medical Malpractice Interim Committee is to "study issues relating to the costs of professional liability (malpractice) insurance coverage for health care providers in Iowa [and to] consider a broad range of factors affecting the availability of the coverage in the state." IMGMA presents the following information to assist the Committee in completing its charge.

There is a medical malpractice problem in Iowa. IMGMA urges you to give substantial consideration to Iowa-specific information presented to you during the course of your meetings, recognizing that much of that information will not be in the form of "hard data", which is extremely difficult to generate. [1] Those who deal with the provision of health care in Iowa on a daily basis will tell you there is a significant threat to the provision of patient care and the continued viability of physician practices. Their examples are essential to your understanding of the dynamics that affect the provision of health care in Iowa.

The problem Iowa faces is this: medical malpractice costs are increasing, and medical malpractice insurance is becoming increasingly difficult to obtain. These difficulties are causing physicians to limit the services they provide to Iowa patients and affect physician recruitment and retention.

Medical malpractice liability costs are significant and increasing.

- Medical malpractice insurance premiums have increased: One report indicates that over the last five years malpractice carriers have increased

[1] See, e.g, Report to the Iowa General Assembly: *Access to Obstetrical Care in Iowa*, Iowa Department of Public Health, January 2005, http://staffweb.legis.state.ia.us/lsadocs/Docs_Filed/2005/DFJYD043.PDF; *Medical Malpractice Law in the United States*, Kaiser Family Foundation, May 2005, http://www.kff.org/insurance/upload/Medical-Malpractice-Law-in-the-United-States-Report.pdf.

net premiums by 120% [2] Whether these increased premiums are a result of insurance company "profiteering" (the report notes that in the same period, net claims payments rose by only 5.7%), or not, the increased cost is real.

- Total US medical malpractice claims payments have more than doubled between 1991 and 2003, rising from $2.12 billion in 1991 to $4.5 billion in 2003. [3]
- The average amount of a malpractice claim rose over the same period (by 88% to 131%) [4] One health care risk consulting firm estimates an annual increase in the average amount of claim of 7.5%. [5]
- Average defense costs have also increased substantially even in cases where no payment is made (61% of all claims) -- from approximately $12,000 per physician claim in 1991 to $23,500 in 2003. [6]

Medical malpractice liability insurance costs affect physician practice and ultimately affect patient care and the availability of health care services.

Rising costs lead to a number of changes in the ways that physicians practice and provide services to their patients – namely in the practice of "defensive medicine". Defensive medicine has been defined as providing unnecessary or inappropriate care that would not be undertaken but for the fear of liability, such as ordering unnecessary tests, making unnecessary referrals, suggesting unnecessary biopsies, or prescribing unnecessary antibiotics. [7] The provision of "extra" services certainly increases the cost of medical care.

However, defensive medicine goes far beyond the practice of providing "extra" care, and reaches to the heart of the availability of patient care. In a recent study, avoidance of patients and procedures that are perceived to elevate the probability of litigation were found to be widespread among physicians. [8] This means that physicians are:

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[2] *Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry*, by Jay Angoff, Commissioned by the Center for Justice and Democracy, July 2005, http://www.centerjd.org/ANGOFFReport.pdf.

[3] *Medical Malpractice Law in the United States*, Kaiser Family Foundation, May 2005

[4] Id.

[5] *Hospital Professional Liability and Physician Liability, 2004 Benchmark Analysis Executive Summary*, Aon Health Care Risk and Consulting, October 13, 2004, http://www.aon.com/us/busi/risk_management/risk_consulting/wp_2004_hpl_report_highlights_oct04.pdf.

[6] *Medical Malpractice Law in the United States*, Kaiser Family Foundation, May 2005

[7] See e.g. The Harris Poll #22, May 8, 2002: *Most Doctors Report Fear of Malpractice Liability has Harmed Their Ability to Provide Quality Care*, http://www.harrisinteractive.com/harris%5Fpoll/index.asp?PID=300. See also *Doctors With Malpractice Fears More Likely to Admit Patients*, Sioux City Journal, July 14, 2005.

[8] Studdert, *Defensive Medicine Among High Risk Specialist Physicians in a Volatile Malpractice Environment*, JAMA, June 1, 2005, Vol 293, No. 21.

- Stopping practice altogether
- Eliminating specific high risk procedures
- Avoiding patients who are risky propositions, either because of their clinical complexity or personal propensity for litigation, such as children and patients covered by workers compensation and medical assistance. [9]

These national survey findings are consistent with experiences of IMGMA members, who report:

- "In 1995 the 2 MD's in our office paid a total of $14,280 for medical malpractice insurance. In 2005 (we have had no claims) our office is paying $31,128.00 for the same 2 physicians. These physicians both do obstetric care (and have done so since they started practicing medicine). Even if they were to stop now, the premium for the necessary tail coverage is astronomical! We have been trying to recruit a third MD specializing in family practice that also does obstetrics and have been having a difficult time. It seems that "new" family practice MD's hesitate to get into the field of OB due to the high cost of the medical malpractice insurance. As of this time, both physicians are going to continue to maintain their obstetric care but they are seriously looking at the situation. In a rural setting, as much of Iowa is, the patients would definitely be the ones to suffer should too many physicians, decide to stop providing OB care to patients."
- "You are aware that we have struggled with this issue for a few years…It is now to the point that it may impact the direction our group will be going in the near future. We have a December 31 renewal date and we are now starting the renewal process with our carrier…and looking at other carriers. I do not anticipate rates dropping for us dramatically…but we are considering eliminating [certain surgeries] because that may reduce our premium significantly. [We are also considering dropping hip fractures in order to lower premiums. I was referred] to a new insurance company in the state of Iowa and I am just now working on new applications with United Medical Liability Company. It seems like a possible alternative, but I also know it is a new company, so there is no track record for the long haul…which could also bring forth other concerns. Malpractice premiums for our rural surgery group has had such a huge impact on us that if we are unable to get assistance from our local hospitals, we will ultimately dissolve and lose surgery coverage in four rural hospitals in central Iowa. This would have a huge impact on C-section coverage and therefore an impact on family practice physicians being able to do OB…and that does not even include the impact on the hospitals' financial bottom line because of the revenue they receive

[9] Id.

through surgery. Obviously we are in the process of discussing with the hospitals various options.

- " [Our practice] is a multi-specialty primary care clinic serving [one] County. There are 3 other primary care physicians in the county but none provide OB services. [We] cover most of the 20,000 County population base along with overlap from surrounding counties; a recent U of I study estimated our service population around 23,000. In [our practice], 5 family physicians provide OB coverage, 3 of them are trained and credentialed at the local hospital to provide C-Section coverage. The 2 general surgeons & Gyn Surgeon in the county choose not to provide C-Section coverage because of the increase cost to their malpractice insurance along with the fact that the current physicians have years of experience and demonstrate unquestioned competency. In 2004 at malpractice renewal time, an insurance agent in Des Moines went to solicit competitive bids as an option to our current insurer. After submitting the malpractice applications to the underwriting of several malpractice carriers, they refused to bid with family physicians continuing to provide OB & C-section coverage. GE Medical Protective would have bid with several restrictions and premiums close to 3 times our current insurer's rate (in effect pricing themselves out of consideration). Only our current insurer was willing to provide to coverage. Without C-section coverage normal delivery OB services are also not able to be performed. If our current insurer would not cover, then [we] would have no choice but stop OB services, leaving the local hospital OB department w/o a medical staff and the county without OB services. Summary: A medical service to a county is potentially at risk. If one company changes their stance, then coverage for C-section would be at risk, and without C-section coverage, OB services offered in area would also need to cease. A residual issues related to this, 3 of the 5 family physicians noted that having OB as part of their practice is important, if they were unable to perform OB in this town, they would consider relocating to another town or state where they could continue OB as part of their practice."
- "There is a general surgeon in [our community] who also performed peripheral vascular work. We provide dialysis services in rural Iowa of which routinely require vascular access surgery. In 2004, the general surgeon analyzed the cost of malpractice with and without peripheral vascular work. He determined that his volumes did just enough to pay the increase insurance premium. He quit performing the surgery in the local hospital. The patients are now referred to a neighboring hospital or the University for a surgery that could easily be performed locally. "

Now that you have devoted significant meeting time to hearing from the insurance and legal communities, IMGMA urges the committee to allot

additional meeting time to hear the concerns of the medical community, and to consider legislative and policy changes that will help make patient care more readily available to Iowans. [10]

[10] See e.g. Kessler, *Impact of Malpractice Reforms on the Supply of Physician Services*, JAMA, June 1, 2005 – Vol 293, No 21, finding that the adoption of direct malpractice reforms leads to greater growth in the overall supply of physicians.