

PROPOSAL TO REDESIGN MEDICAID

Proposal Number: 131

Proposal Author:

DOH, GNYHA, HANY; Nassau-Suffolk Hosp. Council; NY Hospital Queens, Anne Weeks; New York Presbyterian Hospital; ACOG and others that testified at the MRT hearings

Proposal (Short Title):

Reform Medical Malpractice and Patient Safety

Theme: Eliminate Government Barriers to Quality Improvement and Cost Containment

Program Area: Hospital

Effective Date: 04/01/2011

Implementation Complexity: High

Implementation Timeline: Short Term

Required Approvals:

Administrative Action: Yes

Statutory Change: Yes

State Plan Amend: No

Federal Waiver: No

Proposal Description:

Create a neurologically impaired infant medical indemnity fund and establish a cap on non-economic damages in medical malpractice cases in addition to exploring alternatives such as disclosure and early settlement and judge-directed negotiations.

In 2009, NYS hospitals spent \$1.6 billion to cover medical malpractice expenses. This represents an estimated 3% of their revenue. In addition, it has been estimated that 30-50% of the premium dollar is directed toward obstetrical cases (\$500m-\$800m). Of these obstetrical cases, Medicaid is the insurer for an estimated 50% of the deliveries and covers the medical costs of a significant number of children affected by neurological impairment both before and after settlement or award. The variation in both malpractice payouts and premiums differs significantly between upstate and downstate. There are some downstate providers that cite that they pay up to \$9,400 a delivery in Medical malpractice expense . This can significantly undermine patient access to critical services in many communities and provider financial health.

This proposal would:

• Cap non-economic damages for medical malpractice awards. In 2004, Milliman estimated that a \$250,000 cap would reduce hospital and physician premiums Statewide by 24%, which translates to a \$384m savings for hospitals.

• Establish a Neurologically Impaired Infant Medical Indemnity Fund that will provide payment for medical expenses of eligible children as well as repayment of the State's Medicaid lien where applicable. Participation would be mandatory. The Fund could be capitalized by an assessment on all insurers' gross premiums (except annuities) or other sources including HCRA funds or some combination of sources. GNYHA estimates that a Fund of this nature would reduce costs to hospitals by 20% or \$320m. It also estimates that the Fund would

result in additional savings to the State Medicaid program in terms of Medicaid lien repayment from the Fund (estimated to be \$75m per year) and from reduced expenditures for future medical expenses of children covered by the Fund (ranging from \$5m in year one to \$37.5m by year 8).

OB providers would be required to demonstrate participation in meaningful obstetrical safety and quality initiatives.

â€¢ Monitor the impact of the \$3 million/ 3year AHRQ demonstration project that DOH is conducting along with the Unified Court System and Maimonides, Montefiore, Beth Israel, Mount Sinai and NY Presbyterian hospitals. The project will assess and measure patient safety culture and outcomes of malpractice adjudication as the hospitals implement increased emphasis on patient safety culture, specific patient safety interventions in the surgical departments, a disclosure and early settlement program and judge-directed negotiations for cases that do end up in Court.

These projects do not require statute but do require significant investment in provider resources to try these relatively new approaches in disclosure and settlement, along with new Court based procedures for judges.

â€¢ To support the foregoing proposals, a few modest tort reforms are also recommended:

- o Allow peer review privileges to be extended to defendants;
- o Early pre-trial showing of each defendants' involvement in case;
- o Some protection of statements of remorse and acceptance of responsibility;
- o Require a 182 Day Pre-Suit Notice Period.

Additionally, Proposal # 103 seeks to eliminate financial incentives for cesarean deliveries. This will also assist in reducing medical malpractice premium costs.

Final Financial Impact (Dollars in Millions):

State Fiscal Year	2011-12	2012-13	2013-14	2014-15
State Savings	\$-208.50	\$-208.50	\$-208.50	\$-208.50
Total Savings	\$-417.00	\$-417.00	\$-417.00	\$-417.00

Benefits of Proposal:

The proposal has the potential of reducing medical malpractice premiums for both physicians and hospitals.

Concerns with Proposal:

There will concerns from plaintiffs/consumer groups that medical care maybe limited.

A medical indemnity fund and capping of non economic damage does not address or change the tort system's approach to these cases

Impacted Stakeholders:

Trial lawyers, medical malpractice insurers, consumer groups, hospitals, physicians.

Additional Technical Detail: (if needed, to evaluate proposal)

ACOG has recommended a no-fault neurological impaired infant fund that is farther reaching than a medical indemnity fund for these children. The no-fault fund provides lifetime care for children based on condition opposed to an award or settlement of a legal claim.

System Implications:

Metrics to Track Savings:

Longitudinal studies on the number and amount of medical malpractice claims and settlements. Also, on the level of medical malpractice premiums adjusted for medical inflation and number of providers participating.

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