

Summary of Meeting #3 (8/26/2014)

Sara Cherico, DHMH Health Policy Analyst-Advanced, opened the meeting with a brief overview of the last workgroup meeting. She emphasized that the group is looking at the issue of access to obstetrical care, and has examined the issue mainly from a workforce perspective. She also provided a recap of different solutions provided to the group in the last meeting, such as the birth injury fund, other liability reforms, a comprehensive workforce study, quality improvement, and telehealth. The remainder of the meeting consisted of one oral presentation and discussion.

ACOG Data Presentation

- Dr. Diana Cheng shared data she obtained from ACOG to the group.
- According to ACOG, Maryland has the fifth highest professional liability insurance premiums for general OB-GYNs for a \$1million/\$3million claims-made policy as of 2009. The premiums in Maryland were a little under \$120,000, while the median premium was \$67,336. This data does not include the recent awards made by Maryland juries in birth injury cases, so premiums may have gone up since 2009.
- Dr. Cheng also shared Maryland-specific information from a 2012 liability survey conducted by ACOG. Dr. Cheng was not able to share this data electronically or via print, but read statistics aloud to the group. In particular, the survey showed that while Maryland has a similar number of neurologically-impaired infant claims compared to national data, the average payment for neurologically-impaired infants in Maryland was over double that of the national average.

Discussion on Recommendations

- Sue Kinter, University of Maryland Medical System (UMMS), presented a series of proposed recommendations on behalf of UMMS, Johns Hopkins University, Dimensions Health Systems, and Mercy Medical Services for the group to consider and discuss. The proposed recommendations were:
 1. The Maryland General Assembly should take steps to reduce the overall burden of medical liability risk and associated costs, especially those related to the field of obstetrics, in order to safeguard women's access to critical prenatal care.
 2. The Maryland General Assembly should conduct serious exploration of a No-Fault Birth Injury Fund as a promising solution Maryland's medical liability climate, based on the expert testimony from Florida and Virginia program directors and published independent academic research. Further, the Maryland General Assembly should also conduct a financial review to determine the best way to fund the projected costs of a Maryland No-Fault Birth Injury Fund in a way that supports the long-term success of Maryland's new Medicare Waiver
 3. The Maryland General Assembly should establish a comprehensive system to better monitor physician supply, especially in obstetrics and primary care.

4. Attempts to raise the state’s current cap on non-economic damages would damage access to care. Maryland’s current medical liability is already unsustainable; raising or eliminating the damages cap would only make matters worse.
 5. Continue to promote quality improvement and injury reduction, recognizing that:
 - a. Recognizing that quality efforts are always a priority for providers;
 - b. Childbirth/obstetrics has more inherent risk and
 - c. Some birth injuries are unavoidable, even under the best circumstances of medical care during the birthing process.
 6. Health Courts – create a special court docket for medical liability cases. Cases would be assigned to a judge with medical liability expertise and the case would remain with one judge throughout the entire litigation process.
 7. Apology – prohibit expressions of apology or regret to be used against interest in subsequent litigation.
 8. Safe Harbor Pilot - Create a “safe harbor” for providers who follow best practice guidelines that are recognized by the State.
 9. “Cooling off” period - Require claimants to give health care providers 180 days written notice of intent prior to filing a medical liability lawsuit.
 10. Update Post Judgment Interest - Change the legal rate of interest on a money judgment for a medical injury from 10% per year to the greater of: (1) the bank prime loan rate for the month of the date of the judgment, as published by the Board of Governors of the Federal Reserve System; (2) or 3% per year.
 11. Changes to Expert Witness Rules - Require “to a reasonable degree of medical certainty”; clarify that experts must be Board certified in the same field; require experts to certify that some percentage of his/her time is spent on direct patient care; require that the specific person who allegedly breached the standard of care be identified in the certificate of merit; and amend the offer of judgment rule to include attorney’s and expert fees.
- Dr. Brian Avin, MedChi representative, also presented five recommendations:
 1. Attract physicians to underserved communities by funding the loan repayment program, specifically the Maryland Loan Assistance Repayment Program. *Note: This recommendation was modified slightly to specifically reference the Maryland Loan Assistance Repayment Program.*
 2. Telemedicine to help provide physicians with needed backup.
 3. The General Assembly should evaluate and address, and/or should recommend to Maryland Representatives and Senators in Congress to correct the geographic formula used by CMS that lowers payments made to Maryland physicians. *Note: This recommendation was modified slightly to address the General Assembly after discussion.*

4. Tort reform that improves the fairness and efficiency of the court system that leads to improved health outcomes, lower health care costs, and lower malpractice premiums.
 5. Eliminate the Frye standard and switch to the Daubert standard in Maryland.
- The group decided that there is not the expertise on this group to recommend to the Maryland General Assembly any specific programmatic components of a Maryland No-Fault Birth Injury Fund. Recommendations relating to such a fund will remain general. There was discussion as to how Medicaid fits into a system that includes a Birth Injury Fund.
 - The group decided that specific tort reforms could be put forth as recommendations.

Next Meeting (9/10/2014):

- DHMH will continue to collect workforce data and present any updated findings to the group.
- Sue Kinter and colleagues will provide a rationale for each of the proposed recommendations numbered 3 through 11.
- DHMH will put all of the proposed recommendations into one document for the group and share before the next meeting.