IMPLEMENTING HEALTH REFORM

Medical Malpractice

Physicians have long sought an overhaul of the nation's tort system in the hope of reducing the financial and emotional costs involved with medical malpractice. The Affordable Care Act took a small step by funding demonstration projects to develop litigation alternatives. The law provides $50 million to states for 5-year grants in fiscal year 2011, which began on Oct. 1, 2010. The Obama administration said it will give preference to states that develop programs that improve access to liability insurance and improve patient safety by reducing medical errors.

Dr. Albert L. Strunk, deputy executive vice president of the American College of Obstetricians and Gynecologists, discusses the current malpractice environment and the impact of health reform.

RHEUMATOLOGY NEWS: Does ACOG consider this proposal a step in the right direction?

Dr. Strunk: Any step that reduces the cost of litigation and improve determinations of good vs. bad medical care is a good idea. Whether you think medically related litigation costs $11 billion or $60 billion a year, the figures are substantial, so we're anxious to have trial or pilot programs go forward. We are grateful for any impact from the Affordable Care Act, but I think that real innovation also is occurring apart from the grants. There is increasing awareness that the way in which less-than-optimal outcomes occur requires attention to a constellation of factors; personnel is only one element. And we accept the notion that we have to pull ourselves up by our own bootstraps: While the 112th Congress may be more receptive to tort reform, we have to look to the states for legislative solutions.

RN: Some studies have suggested that the cost of medical malpractice is a fraction of overall health spending, and that tort reform would do little to bring down total health spending. How does the cost of medical malpractice impact the practice of ob.gyns.?

Dr. Strunk: In ob.gyn., tort awards are attached to neurologically impaired or neonatal encephalopathy types of cases, which allege primarily economic damages based on the life-care of an impaired infant, so reforms involving caps on noneconomic damages are of little assistance.

In addition, there has been a good deal of judicial nullification of statutes of limitations in cases involving infants. So obstetricians today face a practice environment whereby simply being at the wrong place at the wrong time can literally cause economic ruin. Surveys tell us that anxiety associated with this risk – as well as the cost and availability of liability insurance – influences the behavior of ob.gyns., and causes our physicians to leave obstetrics in their 40s (a significant impact on the workforce), all adding to our total health bill.

RN: Is ACOG working to reform tort laws at the state level?

Dr. Strunk: We are. Most state initiatives relate to traditional California MICRA (Medical Injury Compensation Reform Act)–style tort reform, addressing noneconomic damages through caps, as well as limiting contingency fees. The most successful initiative has been in Texas, where the impact of the cap on noneconomic damages – coupled with a constitutional amendment that prevented the courts from overturning the legislation – has resulted in a huge influx of doctors. Access to care, particularly in low-income populations, has been dramatically increased.

Congress may be more receptive to tort reform, but we also have to look to the states for legislative solutions.

DR. STRUNK

In the short term, caps on noneconomic damages are helpful in selected state environments. Some states are exploring a contractual arrangement between patient and physician for predispute voluntary binding arbitration. Another long-term goal would be the implementation of health courts.

RN: What would ACOG ideally like to see happen with the malpractice reform demonstration projects?

Dr. Strunk: We are very supportive of a project grant in Missouri, which is going to focus on the quality of perinatal care and the way adverse perinatal events are managed in five Missouri hospitals. They are going to establish an evidence-based obstetrics practice model. We believe that the use of evidence-based guidelines and checklists increases patient safety and reduces risk.

The Carilion Roanoke Memorial Hospital Center has a planning grant to enhance teamwork and systems management, the goal being to improve the quality of obstetrical and patient care and reduce risk and liability. Team-based care, systems analysis, and systems solutions are essential. Most mishaps that occur in the delivery of care don't really relate to the negligence of a single person, notwithstanding what the tort system would have us believe. It is generally a constellation of factors.

So these are things we are not merely supportive of, but also enthusiastic about. ■

DR. STRUNK *is also the vice president for fellowship activities at ACOG.*