Improvement Lead Workshop
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OB MedMal Claims Overview

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Medical Malpractice Defined

• Claims for medical malpractice are claims alleging medical professional negligence

Negligence: 4 elements:

• Duty
• Dereliction of Duty
• Damages
• Direct Causation

Reason for the High Volume of Medical Malpractice Suits

• Contingent fee system
• Technical advances – Increase in consumer expectations
• Deterioration in the physician-patient relationship
• High rate of preventable injuries
Tort Reform

The Tort System is an Ineffective and Overly Expensive Way to Identify and Compensate Victims of Malpractice

Unfair to Patients -

- Less than 4% of Victims Receive Compensation for Their Injuries
- 70% of the Cost of Malpractice Insurance Goes to “Feed” the Tort system – 30% goes to Compensate Victims
- In Most Instances the Damages are too Small ($) to be Considered by a Plaintiff Counsel
Medical Malpractice Liability

Impact on Medical Care

- Physicians:
  - Physicians in high-risk specialties are being forced to leave or limit their practice;
  - Physicians are refusing to be on call for hospital emergency rooms and trauma services;
  - 1 in 11 obstetricians nationwide have scaled back their services to GYN only;
  - Radiologists are deciding to avoid high-risk services such as mammograms;
  - Medical students are avoiding high-risk specialties

- Hospitals
  - Vital Community Services Threatened
  - Emergency/Trauma Services Threatened
  - Professional Services Needed to Operate Expensive Capital Investments Threatened

OB – Healthcare’s Liability Loss Leader

Based on a 10 Year Retrospective Review of MedStar’s Claims History (1991 – 2001) the OB Service Accounted For:

- 4% of MedStar’s Clinical Volume
- Greatest frequency (number of claims) 16%
- Greater severity (financial value of claims) 31%
- Brain and nerve injuries accounted for 50% of the severity
- Clinical judgment was identified as a risk management issue in 75% of all OB cases
MedStar Health Frequency By Service Asserted FY97 Through FY01
(Data As Of 7/31/01)

MedStar Health Severity (Total Incurred) By Service Asserted FY97 Through FY01
(Data As Of 7/31/01)
Adverse Outcomes in OB

• “Fetal Distress” Cases
• VBAC Deliveries
• Shoulder Dystocia
• Instrumented Deliveries

“Fetal Distress” Malpractice Cases

• Claim failure to recognize non-reassuring FHR
• And/or claim failure to deliver in timely manner
• Claim that the method of delivery inappropriate
• And/or claim poor neonatal resuscitation
VBAC Malpractice Cases

• Damages: ruptured uterus, brain damaged child or neonatal death
• Issue of informed consent
• Management during labor and delivery

Shoulder Dystocia Malpractice Cases

• Claims of long term permanent brachial plexus injury
• Brain damage
• Fetal/neonatal death
• Maternal injuries
Instrumented Deliveries

- Inherent risk of injury from the device
- Injury is caused by the device itself
- Indication for the device becomes the issue in malpractice cases

Focus On What You Can Control

- Focus on better outcomes
- Commit to quality
- Actively engage in loss prevention