

## 4. Defensive Practice in Maternity Care

### Fact Sheet for Stakeholders from *Maternity Care and Liability Report* \*

**Problem:** Defensive clinical practice — deviating from sound practice primarily to reduce one’s risk of liability rather than to benefit the patient — is believed to be widespread in maternity care. Defensive practice encompasses two types of clinical behavior with different implications for those who receive and pay for care. “Avoidance” behaviors include curtailing high-risk care and dropping maternity care altogether, which may reduce access to care. “Assurance” behaviors include providing unnecessary tests, procedures, and referrals, which increases the cost of care, reduces efficiency, and may expose women and babies to unnecessary harm.

**Report findings:** Surveys and commentaries of maternity professionals raise troubling concerns about extensive avoidance and assurance defensive behavior in maternity care. However, many do not consider diverse drivers of practice decisions and have very low response rates, limiting the value of these studies. Studies that examine diverse drivers of decisions such as to carry out a cesarean section or to cease maternity care practice found that they are multifactorial.

Three investigations to corroborate reports of extensive *avoidance* behavior in maternity care found sporadic concerns in selected settings; did not substantiate reported levels of relocation, discontinuation of maternity services, or retirement; and/or identified liability as one factor among many others in practice changes. Six formal national studies and six state-level studies were consistent with these: various measures of liability pressure (e.g., premium levels, professional designation as “crisis” or “red alert” states, hard versus soft phases of liability cycles) were not associated with avoidance behavior or had an association under limited circumstances (e.g., older physicians in rural areas).

Six formal national studies and seven state-level studies investigated whether some portion of cesarean sections can be attributed to *assurance* behaviors during the present or previous liability cycle. Most used premium or claim levels as a measure of liability pressure. Results ranged from no relationship to a small positive one, with most studies finding a small positive relationship. At most, the association accounts for a small portion of the substantial increase in the cesarean section rate since the mid-1990s. The few studies of use of other maternity practices found similar results.

**Takeaways:** Decisions about limiting maternity care practice are multi-factorial. Liability pressure appears to have a modest role at best. Other considerations that have been identified include: having a more balanced lifestyle, fulfilling family duties, needing access to backup, getting adequate reimbursement, being available for ambulatory patients, and carrying out retirement plans. Other factors that have been cited in decisions to close maternity practices or birth centers include: fewer childbearing women in the area, inadequate reimbursement, restrictions on scope of practice, inability to compete with higher salaries offered by other employers, and difficulty securing collaborative practice relationships.

Decisions about whether to perform cesareans are also multi-factorial. A major factor in the recent steep increase appears to be a lowering of the bar for carrying out this procedure, with increased rates for all demographic groups regardless of risk level, along with some growth in the number of higher-risk groups such as older women and women with twins and triplets. Total payments for maternity care with cesareans are about 50% higher than total payments with vaginal births, providing incentives for the surgical pathway, which, especially when scheduled, is beneficial to physicians and hospitals.

\* **Learn more:** Sakala C, Yang YT, Corry MP. *Maternity Care and Liability: Pressing Problems, Substantive Solutions*. New York: Childbirth Connection, January 2013. Available at <http://transform.childbirthconnection.org/reports/liability/>. See also open access “Maternity Care and Liability” articles in *Women’s Health Issues* 2013;23(1) at <http://www.whijournal.com/issues>.

