

### 3. Occurrence of Negligent Injury and of Claims and Payouts in Maternity Care

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

**Problem:** In comparison with most other clinical areas, maternity care providers are at elevated risk for liability claims and legal proceedings, and many believe that non-meritorious claims are widespread. These are sources of deep discontent.

**Report findings:** A large carefully conducted state-level study with random samples found that about 0.6% of childbearing women and about 0.2% of newborns sustained negligent injury while receiving care in U.S. hospitals. That and a replication study in two additional states found that the negligent injury rate in hospital labor and delivery units ranged from 0.8% to 1.8%. While childbearing women may be several times as likely as newborns to sustain negligent injury, newborn injuries overall are more severe. Across ten clinical areas in the initial study, childbearing women had the highest rate of negligence among adverse events, at 38.3%. Subsequent research clarified that these landmark studies greatly underestimated rates of harm, but replications in maternity care have not taken place. The patient safety movement has identified extensive opportunity to improve safety, especially in hospitals.

Tracking the initial cases that experts identified as meeting the legal standard of malpractice and not separately reporting maternity-specific data, investigators found that from 1.5% to 2.5% of patients who sustained negligent injury filed a claim. Tracking claims from the initial study to closure, investigators found that less than 1% of those with negligent injury received compensation. A recent closed claims analysis from five insurance companies in four regions of the country, including 23% with maternity-related claims, found that 54% of all compensation payments (and 78% when claims involved harmful errors) went to lawyers, experts, and courts, with a minority going to plaintiffs.

The closed claim analysis found that about 13% to 16% of dollars expended were associated with non-meritorious claims. The legal system does a fairly good job of sorting these out. Dr. Steven Clark, Medical Director for Women's and Children's Clinical Services within the nation's largest hospital system, reports that defense teams have repeatedly found that about 75% of paid claims in maternity care involved substandard care.

**Takeaways:** One of the two widely accepted objectives of the liability system is to attend to the needs of those who are injured as a result of negligence. Available evidence, not separately available for maternity care, suggests that the present liability system fails in about 99% of cases to compensate people who are injured as a result of medical error. Those who are compensated following injuries due to error may retain for their own needs about one-quarter of the money awarded.

The estimated 25% of paid claims in maternity care that are non-meritorious is substantial but is dwarfed by the roughly three-quarters associated with substandard care. Claims involving negligent injury appear to involve disproportionately greater legal costs.

The report found that in the practice of an average obstetrician-gynecologist, negligent injury of mothers and newborns appears to occur more frequently than any claim (warranted or not, obstetric or gynecologic), and far more frequently than any payout or trial.

\* **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>.

