Medscape Medical News

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Physician Offices Nearly as Malpractice-Prone as Hospitals

June 14, 2011 — Most efforts to improve patient safety center on inpatient care, but almost as many malpractice claims paid on behalf of physicians arise from outpatient settings as they do from hospitals, according to a study published June 15 in the *Journal of the American Medical Association* (*JAMA*).

"Patient safety initiatives should focus on the outpatient setting, not just on inpatient care," the researchers, with lead author Tara Bishop, MD, MPH, an assistant professor in the Department of Public Health at Weill Cornell Medical College, write.

Dr. Bishop and her coauthors view the number of malpractice cases that conclude with an award for the plaintiff — along with their dollar amounts — as a "crude indicator of the prevalence and seriousness of adverse medical events."

To compare medical malpractice in the hospital and the physician's office, the investigators dug into the National Practitioner Data Bank (NPDB). Any party paying a malpractice claim on behalf of a physician or some other clinician must report those payments to the NPDB.

From 2005 to 2009, the number of paid claims involving physicians declined 23.3%, from 14,006 to 10,739, according to Dr. Bishop, who provided *Medscape Medical News* claims data not published in the *JAMA* article. However, in both years, a small proportion of claims did not identify a location where medical malpractice allegedly occurred. For claims that identified a practice setting, the decrease from 2005 to 2009 was 21.8%.

During that period, paid claims for outpatient events decreased at a slower rate: 19.3%. The rate of decrease in hospitals was considerably higher at 24.6%. Paid claims that spanned both settings declined 18.3%.

At the same time, the proportion of paid claims involving outpatient settings rose from 41.7% to 43.1%, while the inpatient proportion declined from 49.3% to 47.6%.

Diagnostic Errors Leading Source of Outpatient Paid Claims

The near equality in paid inpatient and outpatient claims should come as no surprise, the authors suggest. After all, there are 30 times more outpatient visits than hospital discharges each year. And surgical procedures are increasingly performed in physician offices and ambulatory surgery centers "that may not have the same safety controls as hospitals."

The researchers point out that the outcomes of outpatient events that led to paid claims were not trivial. Roughly 70% involved death, a grave permanent injury such as brain damage, or a major injury, compared with 81% for inpatient outcomes. The average payment for outpatient malpractice claims — $290,000 — was nothing to sneeze at either, although it was considerably less than the $363,000 for their inpatient counterparts.

The paid-claims record in physician offices, the investigators write, is a call for patient safety advocates to pay attention to more than just hospitals. They note that over the past 5 years, the federal Agency for Healthcare Research and Quality has funded almost 10 times as many studies of inpatient safety as those of outpatient safety.

Another research area given short shrift, the authors point out, is diagnostic errors, the leading source of paid malpractice claims in physician offices (in hospitals, surgical mishaps topped the list). They note the conditions in physician offices that invite diagnostic errors: A patient's signs and symptoms "may be subtle or not adequately noted" by physicians seeing a constant stream of patients, and follow-up is harder than in the hospital.

"Communication and coordination of care are problems," Dr. Bishop told *Medscape Medical News*. "A doctor who orders a test or refers to a specialist won't be 100% sure that they happen until he gets back a report."

Bearing down on patient safety in this environment is especially challenging, according to the authors, because there are many more physician offices than hospitals. In addition, small medical practices may come up short in terms of well-trained staffers who can devote significant time and energy to patient safety projects. "However, the high volume of outpatient malpractice claims and the serious nature of many...suggest that the relative neglect of outpatients safety should not persist," the authors write.

They discuss several limitations to their study, including the use of NPDB data that critiques of other malpractice studies have called problematic.

The problem lies in the "corporate shield" loophole that exempts hospitals from having to report malpractice claims paid on their behalf. The loophole comes into play when someone sues both a hospital and a physician for malpractice and then reaches a settlement that drops the physician from the case. Such a paid claim never makes it to the NPDB.

This scenario — more and more common as physicians increasingly become hospital employees — results in the NPBD's underestimating total malpractice claims by roughly 20%, according to one estimate. However, Dr. Bishop and coauthors write that it is unclear how this underreporting affects the relative proportion of inpatient and outpatient malpractice claims, noting that hospitals employ physicians who work both inside and outside their walls.

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