Differences In The Obstetric Malpractice Claims Filed By Medicaid And Non-Medicaid Patients

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***Abstract:* *Background:* Many physicians believe Medicaid patients are more likely than non-Medicaid patients to file malpractice claims. This study examines the accuracy of this belief in regard to obstetric malpractice claims.**

***Methods:* Claims filed between January 1982 and June 1988 from the major malpractice insurer in Washington State were used to compare obstetric malpractice claims filed on behalf of Medicaid and non-Medicaid patients.**

***Results:* Eleven percent (7/62) of all closed obstetric claims were filed by Medicaid patients, whereas 19 percent of all births in Washington State were to Medicaid patients between 1982 and 1988. Failure to diagnose or treat a fetal condition was the most commonly alleged negligence in both Medicaid and non-Medicaid groups. Most claims in both groups were settled before the cases went to court; a substantial minority of claims were dropped. The mean cost of Medicaid claims ($406,984) was three times that of non-Medicaid claims ($133,743), suggesting that paid Medicaid claims were more severe than paid non-Medicaid claims.**

***Conclusions:* Medicaid patients appear no more likely to file obstetric malpractice claims than non-Medicaid patients. The low likelihood of filing claims, coupled with large settlements, suggests that Medicaid patients may have less access to legal services than non-Medicaid patients. (J Am Board Fam Pract 1992; 5:623-27.)**

Access to obstetric care for indigent women has been increasingly limited during the past 6 years as physicians have dropped the obstetric component of their practices or decreased the care provided to indigent women.[1,2] A sizeable percentage of physicians who limit care to pregnant Medicaid patients believe that these patients are more likely than non-Medicaid patients to file malpractice claims. Results of a 1989 survey of all family physician, general practitioner, and obstetrician-gynecologist members of Washington's medical professional societies revealed that 40 percent of physicians who limited care to Medicaid obstetric patients believed that these patients were more likely to file a malpractice suit against them than were non-Medicaid patients (unpublished data, Obstetrical Access Project, University of Washington, Seattle).

Numerous studies have refuted the hypothesis that Medicaid patients are more likely to sue.[3] A review of Michigan's closed-claim data base showed that between 1985 and 1987, Medicaid patients accounted for about 6 percent of all claims, whereas Medicaid recipients represented 10 to 11 percent of Michigan's total population.[4] The US General Accounting Office analyzed data from a random sample of malpractice claim files in 1984 by 25 insurers across the country and found that 5.8 percent of the claims for which insurance status was known were filed by Medicaid patients, while Medicaid recipients totaled about 9 percent of the US population.[3,5] A 1988 survey of a random sample of Texas physicians in all specialties revealed that Medicaid patients accounted for about 4 percent of their malpractice

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claims, and 11 percent of their total patient load.[6] These studies examined the malpractice claims rates of all types of Medicaid patients. Only one study has specifically examined the Medicaid malpractice claims rate for obstetric patients. Mussman, et al.[7] used the 1985 and 1986 Maryland medical malpractice claims data base, Medicaid enrollment history data, and vital statistics data and found that the proportion of obstetric claims filed by Medicaid enrollees (21 percent) equalled the proportion of obstetric hospital discharges for this same group. Our study sought to determine whether similar findings regarding the Medicaid malpractice claims rate for obstetric patients can be documented in Washington State.

We used data from the major obstetric malpractice insurer in Washington State to calculate the percentage of all obstetric malpractice claims attributable to Medicaid patients and to describe and compare these claims with those filed on behalf of non-Medicaid patients. We hypothesized that Medicaid obstetric patients would be either less or equally likely to file claims than non-Medicaid obstetric patients. We also hypothesized that Medicaid obstetric patients would have difficulty gaining access to legal services, which would result in a greater time lapse between the incident and the opening of the claim file, and that they would have a disproportionately large number of claims of greater severity compared with non-Medicaid patients.

Methods

We reviewed all closed claims filed against physicians insured for obstetrics with the Washington State Physicians Insurance Exchange and Association (WSPIEA) between January 1982 and June 1988. WSPIEA is a physician-owned and -operated professional liability company sponsored by the Washington State Medical Association. It began writing policies in January 1982 and quickly became the dominant malpractice carrier in the state. In 1988 about 60 percent of family and general practitioners and 68 percent of obstetricians in Washington obtained their coverage through this insurer.

In this study a claim is defined as either a suit filed in a court of law or a nonjudicial claim. A nonjudicial claim is an action taken by a patient or her lawyer against a physician that was resolved by the insurer and the involved parties outside the legal system. A closed claim is one in which final resolution has been reached between the involved parties either within or outside a court of law. Computerized claims file data include (1) a yes or no Medicaid designation for the patient involved in each malpractice action, (2) a short description of the alleged negligence and medical outcome, (3) a designation of whether a formal suit was filed, (4) the date the incident occurred, (5) the date the claim was filed, (6) whether the claim was open or closed, (7) the disposition of the claim when closed, (8) the legal expenses paid, (9) the indemnity paid, (10) the city or town of the physician named in the claim, and (11) the specialty of the physician named in the claim.

Using the 60-letter description of the claim, we identified all obstetric claims for the physicians included in the study. Obstetric claims were defined as those relating to the care of the pregnant woman in the prenatal, intrapartum, and postpartum period or to the care of the fetus or neonate. These claims were divided into five categories of alleged negligence and four categories of medical outcome. The categories of alleged negligence included (1) failure to diagnose or treat a maternal condition, (2) failure to diagnose or treat a fetal condition, (3) negligence during labor and delivery, (4) complication of a maternal procedure, and (5) miscellaneous. The categories of medical outcome were (1) fetal injury, (2) fetal death, (3) maternal injury, and (4) maternal death. We also categorized the timing of the alleged negligence into the prenatal, intrapartum, or postpartum periods.

There were numerous descriptors used by the insurer for the disposition of the closed claims, which we collapsed into three categories: dropped, settled, and court cases. The dropped claim category included those claims in which the patient or her lawyer dropped the claim and those in which a suit was filed but papers never served on the physician. The settled claim category included all claims that were settled by arbitration, summary judgment, or other means prior to a trial. These claims could be settled in favor of either the defense or the plaintiff. The court case category included any claim that went to trial.

To examine the question of whether Medicaid obstetric patients have lesser access to legal services, we used the date of the incident and date that the claim was filed to determine the time lapse in months between the two. From the city or town

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identifier, we categorized physicians as either urban or rural. Urban physicians were those practicing in counties designated as Metropolitan Statistical Areas by the Office of Management and Budget.[8] Rural physicians were those practicing in all other counties. Using this definition, 11 Washington State counties were considered urban, 28 rural. Physicians were differentiated into two specialty groups as recorded by the insurer — obstetrician-gynecologists or family physician-general practitioners.

Several of the claims involved more than 1 physician. In these claims we added the legal expenses and indemnity paid for all of the physicians and attributed the total for each to the physician who had been given primary responsibility for the claim by the insurer. The geographic identifier and specialty used were those of the physician with primary responsibility for the claim.

We used simple arithmetic calculations to determine the percentage of all claims attributable to Medicaid patients. We also compared the characteristics of claims filed by Medicaid patients with those of non-Medicaid patients. Because of the small sample size, no statistical testing is reported.

Results

Sixty-two obstetric claims were filed during the study period and closed by August 1991. Of these 62 claims, 7 (11 percent) were filed by Medicaid patients, and 55 (89 percent) were filed by non-Medicaid patients. On average, Medicaid claims were filed nearly 3 months later than non-Medicaid claims (Table 1). One-half of the Medicaid claims were based on alleged negligence in the prenatal period. The majority of non-Medicaid claims were based on events that took place in the intrapartum period. Failure to diagnose or treat a fetal condition was the most commonly reported negligence alleged by both Medicaid and non-Medicaid groups. As expected, fetal injury and fetal death were the most common outcomes in these claims. The disposition of claims also followed a similar pattern in the two groups (Table 2). Most claims were settled before the case went to court, and a substantial minority of claims were dropped.

Of most interest were the costs of these claims. Table 2 shows that the mean cost was at least three times greater for the Medicaid claims than the non-Medicaid claims. Figure 1 displays the distribution of indemnity payments. Although roughly equal proportions of each group's claims resulted in no payment, higher payments were made to Medicaid claimants. Two of the 7 Medicaid settlements were for more than $500,000, whereas only 4 of the 55 non-Medicaid settlements were at that level.

Table 1. Characteristics of Medicaid and Non-Medicaid Obstetric Claims.

Characteristics	Medicaid (n = 7)*	Non-Medicaid (n = 55)*
Months between incident and claim file opening (mean)	15.3	12.6
Timing of incident (%)		
Prenatal	50	27
Intrapartum	33	60
Postpartum	17	13
Alleged negligence (%)		
Fail to diagnose or treat maternal condition	20	14
Fail to diagnose or treat fetal condition	60	36
Negligent labor and delivery	0	18
Complicated maternal procedure	0	14
Miscellaneous	20	18
Who was injured (%)		
Fetal injury	86	51
Fetal or neonatal death	14	32
Maternal injury	0	15
Maternal death	0	2

*Actual n varies based on missing values.

Discussion

Previous work has shown that obstetric malpractice claims in Washington State are infrequent events, which is clearly evident in the number of claims available for study in this report.[9] As such, our findings must be considered exploratory rather than conclusive. Despite these small numbers, our results reinforce the findings of others

Table 2. Disposition and Costs of Medicaid and Non-Medicaid Obstetric Claims.

	Medicaid (n = 7)	Non-Medicaid (n = 55)
Disposition (%)*		
Dropped	29	29
Settled	43	66
Court case	29	6
Costs (mean $)		
Indemnity plus expenses	$406,984	$133,743
Indemnity only	$351,280	$107,748

*May not add up to 100% due to rounding error.

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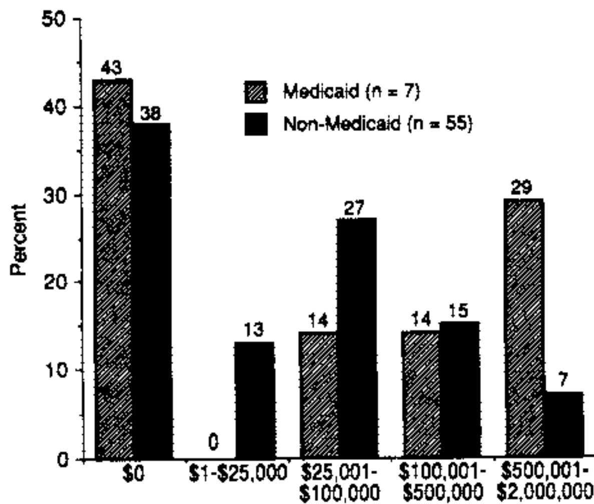

Figure 1. Distribution of Medicaid and non-Medicaid indemnity payments.

who have examined malpractice claims rates of Medicaid patients. Of those patients initiating an obstetric malpractice claim during our study period, only 11 percent were attributed to Medicaid patients. Yet between 1982 and 1988 approximately 19 percent of all births were to Medicaid patients in Washington State (personal communication, Dan Conlon, Washington State Department of Social and Health Services, 17 July 1991). Medicaid patients appear no more likely to file obstetric malpractice claims than non-Medicaid patients, a finding similar to Mussman and colleagues' findings in Maryland.[7]

To compare most accurately the Medicaid obstetric claims rate for the private practitioners insured by WSPIEA with the rate of Medicaid births statewide, we must adjust for the lower percentage of Medicaid obstetric patients cared for by private practitioners. A 1989 survey of Washington's obstetric providers found that private physicians cared for 8 percent fewer Medicaid patients than physicians overall (unpublished data, Obstetrical Access Project, University of Washington). If these figures are applied to the percentage of Medicaid patients giving birth in Washington State between 1982 and 1988, private physicians' practices would have cared for approximately 17.5 percent of the Medicaid patients. This adjusted figure still supports the finding that Medicaid patients are less or equally likely to file malpractice claims than other patients.

The most striking finding of this work is the higher settlements made on behalf of Medicaid patients. Payment for claims is the only quantitative proxy for severity of outcome available from our data. One-third of the indemnity payments exceeding $500,000 were made to Medicaid patients, even though only 11 percent of the claims were filed by this group. This finding suggests that Medicaid patients file claims for more severe obstetric injuries than do non-Medicaid patients.

The low rate of obstetric claims for Medicaid patients coupled with the large settlements suggest that Medicaid patients may have less access to legal services than non-Medicaid patients. Although the Medicaid patients in our sample did not wait much longer to file their claims than other patients, some may have been unable to find any legal representation for their less severe injuries. Clearly, additional data sets with larger numbers of claims must be used to validate this hypothesis.

This study should serve to reassure obstetric providers that the equal or lower rate with which Medicaid patients overall file malpractice claims also applies to Medicaid obstetric patients. Although our small numbers preclude us from drawing definitive conclusions, this work suggests that the claims filed by Medicaid patients may be of greater severity, leading to higher and thus more memorable settlements. These rare but dramatic settlements could influence the beliefs of physicians about the likelihood of Medicaid patients to sue. Yet these and other data imply that privately insured patients may be more likely to file malpractice claims than their medically indigent counterparts. Further work exploring the characteristics of Medicaid and non-Medicaid obstetric claims is necessary to verify the finding that claims filed by Medicaid patients may be of greater severity than those filed by non-Medicaid patients.

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References

1. Rosenblatt RA, Detering B. Changing patterns of obstetric practice in Washington State: the impact of tort reform. Fam Med 1988; 20:101-7.
2. Institute of Medicine. Committee to Study Medical Professional Liability and the Delivery of Obstetrical Care. Medical professional liability and the delivery of obstetrical care. Vols. I and II. Washington, DC: National Academy Press, 1989.

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3. McNulty M. Are poor patients likely to sue for malpractice? JAMA 1989; 262:1391-2.
4. Michigan Department of Social Services. Medicaid Matters. February 1989; 3(2):1-2.
5. US General Accounting Office. Medical malpractice: characteristics of claims closed in 1984. Washington, DC: General Accounting Office, 1987 (GAO-HRD-87-55).
6. The Texas Medical Association's 1988 professional liability insurance survey. Vols 1 and 2. Austin, Texas: Texas Medical Association, 1988.
7. Mussman MG, Zawistowich L, Weisman CS, Malitz FE, Morlock LL. Medical malpractice claims filed by Medicaid and non-Medicaid recipients in Maryland. JAMA 1991; 265:2992-4.
8. US Bureau of the Census county and city data book. Washington, DC: Government Printing Office, 1983.
9. Baldwin L-M, Larson E, Greer T, Hart LG, Lloyd M, Rosenblatt RA. Characteristics of physicians with obstetric malpractice claims experience. Obstet Gynecol 1991; 78:1050-4.

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