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Maternity Care and Liability: Many Solutions Could Alleviate Persistent Problems
New report shows that many widely held beliefs about maternity care and liability lack empirical support; better understanding points the way to effective interventions

NEW YORK, January 9, 2013 – Medical liability has been a longstanding concern in maternity care, a major segment of the health care system. A new report issued by Childbirth Connection, Maternity Care and Liability: Pressing Problems, Substantive Solutions, is the first comprehensive look at these matters in nearly a quarter century. Recent rigorous research enables a new understanding of areas of dysfunction and effective ways to address them. The report finds that best available studies do not support many widely held beliefs about maternity care and liability.

“We cannot let longstanding liability concerns continue to get in the way of achieving a high—quality, high-value maternity care system. By seeking guidance from the best evidence on the nature of liability problems in maternity care and the effectiveness of possible solutions, we can move discourse and policy beyond unsupported beliefs,” said the lead author, Carol Sakala, Director of Programs at Childbirth Connection.

On the positive side, the report found:

• A growing number of hospitals and health systems are reporting that rigorous maternity care quality improvement programs can lead to better care, better health outcomes for women and babies, and a considerable and rapid drop in liability claims, payouts, and insurance premiums.
• Costs of liability premiums are a relatively small and declining portion of practice expenses; these do not appear to be prohibitive for the declining portion of maternity care providers who do not receive coverage as a benefit of employment.
• Defensive medicine, motivated by fear of liability, appears to be modest at best in maternity care.

Troubling report findings include:

• Traditional reforms have had narrow aims (e.g., reducing liability premiums) and have not prioritized needs of childbearing women and newborns and those who pay for their care.
• Tort reforms, which maternity care providers have strongly supported and policy makers have widely enacted, have a modest impact at best in maternity care; studies are consistent and most extensive for much-advocated caps on non-economic damages.
• Defense teams judge about 75% of paid maternity claims to result from substandard care.
• While liability attention is particularly focused on newborn harm, mothers may be several times more likely than newborns to experience negligent injury.
• While maternity-specific data are not available, only about 2% of people who experience negligent injury in medicine generally file a claim, about half of those receive any compensation, and most compensation appears to cover legal expenses.
• Some liability insurance policies restrict access to essential maternity services through exclusions (e.g., vaginal birth after cesarean) or surcharges (e.g., obstetrician collaborative practice with midwives or family physician provision of maternity care).
• Many liability-related aspects of professional practice can be confusing, uncertain, misunderstood, and/or anxiety arousing and disproportionately affect maternity providers.

“The discourse of maternity care professionals often focuses on unfair legal actions against clinicians. However, we found that in the practice of an average obstetrician-gynecologist, negligent injury of mothers and newborns appears to occur more frequently than any claim and far more frequently than any payout or trial,” said Y. Tony Yang, Assistant Professor of Health Policy and Law at George Mason University and a co-author.

The report offers a new framework for a high-functioning liability system in maternity care to ensure that needs of women and newborns, clinicians, and maternity care payers are met. It holds 25 possible reforms up to this framework, and identifies 10 that have been shown, or would likely be found, to contribute to diverse aims. These are all candidates for piloting and evaluation within states, health systems, or other appropriate entities. They have the potential to help prevent harm and ensure that it is rare and also to respond more appropriately to harm or claims of harm when they occur.

“Some promising solutions will require statutory or regulatory action and new infrastructure. However, the highest rated prevention strategy, rigorous quality improvement programs, and the highest rated redress strategy, disclosure and apology programs, can proceed with strong committed leadership,” said Maureen P. Corry, Executive Director of Childbirth Connection and a report co-author. “Many of the 10 strategies that held up favorably to our framework appear to be win-win-win solutions for women and newborns, clinicians, and payers.”

Simultaneous with publication of the full report, the journal Women’s Health Issues is publishing three related peer-reviewed articles and an invited commentary by legal scholars Sara Rosenbaum, JD, and William Sage, MD, JD. Editor-in-Chief Anne Markus, PhD, JD, said, “We are pleased to foster new, constructive dialogue about crucial policy matters for childbearing women and newborns, those who care for them, and those who pay for their care.” For broad access to results of this investigation, the journal articles are freely available online, and a report appendix provides 10 one-page fact sheets on topics of interest to the various stakeholders.

The full report and fact sheets are available at transform.childbirthconnection.org/reports/liability/. The published articles and invited commentary are available without charge in the January 2013 issue of Women’s Health Issues at whijournal.com/issues/.

Childbirth Connection (childbirthconnection.org), a national not-for-profit organization founded in 1918 as the Maternity Center Association, has worked continuously to improve maternity care quality on behalf of women, newborns, and families. The organization is implementing priority recommendations from its direction-setting consensus report "Blueprint for Action: Steps Toward a High-Quality, High-Value Maternity Care System," developed to move expeditiously toward the optimal care described in a companion consensus report, "2020 Vision for a High-Quality, High-Value Maternity Care System." Developed through deliberative processes with over 100 leaders from across the health care system, these reports delineate needed work on maternity care and liability, performance measurement and reporting, quality-aligned payment reform, and other core strategies for achieving high-quality, high-value maternity care. Childbirth Connection is generating many resources to help stakeholders improve the quality of maternity care, including a new report on The Cost of Having a Baby in the United States, cesarean section resources for professionals and consumers, and a website that supports maternity care quality improvement.