



State of California
 Medical Board of California
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Memorandum

Date: January 15, 2009
 To: Members
 From: Abbie French
 Subject: Report on Medical Malpractice Coverage

AB 2342 (Nakanishi; Chap. 276, Stats. of 2006) added Business and Professions Code section 2023, requiring the Medical Board of California (Board) to study the issue of providing medical malpractice insurance for physicians and surgeons who provide voluntary unpaid services, as specified, to indigent patients in medically underserved or critical need population areas of the state and to report its findings to the Legislature. The study was to include, but not be limited to, the cost and process of administering such a program, options for providing medical malpractice insurance and how the coverage could be funded, and whether the voluntary licensure surcharge fee assessed under Section 2435.2 (as added by Chapter 293 of the Statutes of 2005) is sufficient to fund the provision of medical malpractice insurance for the physicians and surgeons. The study was to be completed by January 1, 2008, but was delayed due to problems obtaining a vendor and contract to conduct the study.

On June 30, 2008, the Board executed a contract with UC California, Davis Health Systems (UC Davis) to perform the required malpractice coverage study. On December 31, 2008, UC Davis released the attached report. After analysis of the information required, UC Davis found the following:

- California is one of the seven remaining states in the U.S. that have yet to enact any meaningful legislation that relieves the providers who render voluntary, unpaid care to patients from paying the high cost of professional liability insurance. Lack of malpractice coverage is perceived as a serious impediment to attracting volunteers.
- If California desires to promote physician volunteerism, then legislation must address the following:
 - A. Adoption of one or more of the following liability protection models:
 - Enactment of immunity statutes in which the provider is not liable for common negligence, but only for gross negligence or willful misconduct.
 - Enactment of immunity statutes in which, under circumstances proscribed by the state, a physician volunteer would be considered a state employee when providing uncompensated care.
 - A State-established malpractice insurance program in which the state either purchases insurance for physician volunteers or establishes a self-insured pool.
 - B. Determine settings where liability protection would apply (free clinics, non-profits, hospitals, private physician offices, etc.).

- C. Determine whether there would be any limitation to the type of care that may be rendered (surgical, anesthesia, minor procedures, primary care, etc.).
 - D. Identify what patients would be covered under the program (medically indigent, Medi-Cal, Medicare, etc.).
 - E. Establish a clinic and physician registration process. Criteria would need to be developed to determine who could be a participating provider. Since there is a mechanism already established by the Board to register volunteer physicians, the Physician Volunteer Registry (www.publicdocs.mebd.ca.gov/volmd) could be the repository of names, information and insurance eligibility for those individuals who are approved as a participating provider.
- California has one of the highest medical license fees in the country, so the easiest route to generate revenue for volunteer physician malpractice insurance may be the most difficult to implement (raise license fees). If every licensed physician was assessed an additional \$50 to the biennial fee, over \$3 million could be generated annually, which could easily pay for malpractice coverage for 150-200 clinics (NORCAL non-profit clinic insurance data, estimated costs on page 34 of report), or provide revenue to pay for approximately 450 individual physician premiums (estimated costs on page 33 of report).
 - Additional revenues could be generated by requiring those health care entities that register with the state in order to be an eligible site to receive volunteer physicians who are covered through the state program to pay a nominal annual fee, e.g. \$200. This source of revenue would be limited, but would generate additional dollars.
 - Most states pay for volunteer professional liability coverage out of their general fund. In California, there may be current state program funding that could pay for an insurance coverage program for volunteer physicians (i.e., Medically Underserved Account (physician volunteer program)).
 - Grant opportunities, through organizations like the California Endowment, or other healthcare non profit organizations, could also present potential avenues for revenue generation to pilot this program.
 - If a volunteer physician insurance program was developed in the state of California, it should not be administered by the Board but by another branch of the state (If administered by the Board, there may be a perceived conflict of interest if the Board must determine whether to take disciplinary action against a licensee to whom it has provided medical malpractice insurance).

In conclusion, the report states that California is in a favorable position to take a step forward in introducing a program that would remove the professional liability insurance barrier to providing volunteer physician services. A climate must be created which encourages volunteerism, addresses the concerns of the health care providers regarding malpractice lawsuits, ensures that patients seen by volunteer health care providers retain their rights to compensation for acts of negligence, and avoids the perception that volunteer liability protection permits a lesser standard of care for the uninsured and underinsured. Those physicians that provide voluntary, unpaid medical care to indigent California are performing a service on behalf of the state.

This report was submitted to the legislature for their review and the Legislature will ultimately decide the best route to take, if any, on this issue. Any program would need to be established through legislation.