

Appendix K:

Glossary

Accelerated compensation events (ACE)

A set of medical injuries deemed to be statistically “avoidable” with good medical care which would be compensated under a limited no-fault claims resolution system.

Affirmative defense

A response by the defendant in a legal suit that, if true, constitutes a complete defense to the plaintiff’s complaint.

Alternative dispute resolution (ADR)

A process outside the judicial system for resolving legal claims. Decisions are made by dispute resolution professionals. ADR can be binding or non-binding (see *arbitration*).

American Medical Association/Specialty Society Malpractice Liability Project (AMA/SSMLP)

Administrative System

A proposed alternative to the malpractice system in which the medical licensing boards in each state would decide medical malpractice cases based on fault (negligence), using an administrative process designed to be more abbreviated and less costly than the current malpractice system.

Arbitration

A form of ADR in which the parties agree to have one or more trained arbitrators hear the evidence of the case and make a determination on liability

or damages. The rules of evidence and other procedural matters may often be specified by the parties. There are two types of arbitration: binding and nonbinding. In binding arbitration the arbitration decision is subject to very limited judicial review. If arbitration is nonbinding, the parties may proceed to trial if they are not satisfied with the outcome of the arbitration. Some states require parties to submit a claim to nonbinding arbitration before trial (see also *pretrial screening*).

Attorney fee limits

Legislation that either limits a plaintiff attorney fees to a set percentage of the award or allows for court review of the proposed fee and approval of what it considers to be a “reasonable fee.”

Awarding costs, expenses, and fees

Statutes that provide that the losing party in a frivolous suit may be required to pay the other party’s reasonable attorney and expert witness fees and court costs. These provisions are designed to deter the pursuit of frivolous medical injury claims.

Caps on damages

Legislative limits on the amount of money that can be awarded to the plaintiff for economic or noneconomic damages in a personal injury claim, such as medical malpractice. The limit is imposed regardless of the actual amount of economic and noneconomic damages.

Certificate of merit

As a prerequisite to filing suit, some states require that a plaintiff obtain a written affidavit from an independent physician attesting that the plaintiff suit has merit. This provision is designed to limit nonmeritorious suits.

Claim frequency

A rate expressing the frequency with which physicians are named in malpractice claims. It is usually expressed as the number of malpractice claims per 100 physicians per year.

Collateral source rule

A rule of evidence that prohibits the introduction at trial of any evidence that a patient has been compensated or reimbursed for the injury from any source (e.g., health or disability insurer). Legislation modifying the collateral source rule has taken two basic approaches: 1) permitting the jury to consider the compensation or payments received from some or all collateral sources and decide whether to reduce the award by the amount of collateral sources; or 2) requiring a mandatory offset against any award in the amount of some or all collateral source payments received by the plaintiff.

Confidence interval

An interval that contains, with certain probability, the true value of a statistic. The mean is a typical statistic. The true mean lies within the bounds of the 95-percent confidence interval in 95-percent of all samples.

Correlation

A statistic that gauges the strength of association between two variables. The value of a correlation coefficient usually ranges from a minimum of zero (no association at all between the two variables) to a maximum of one (perfect association between the two variables). Some correlation coefficients also have a sign indicating the direction of association between the two variables: a positive sign indicates direct association (as one variable increases in value, the other also increases); and a negative sign indicates inverse association (as one variable increases in value, the other decreases).

Damages

See *economic damages* and *noneconomic damages*.

Defensive medicine

The ordering of extra tests, procedures, and visits or the avoidance of high-risk patients or procedures primarily (but not necessarily solely) to reduce their risk of malpractice liability. The performance of extra procedures for defensive purposes is positive defensive medicine. Avoidance of high-risk patients or procedures is negative defensive medicine.

Difference-of-means test

A test of the statistical significance of the difference between two groups in their mean scores on a single variable.

Direct malpractice costs

The net costs of compensating injuries through the medical malpractice system, including costs borne by malpractice insurers, defendants, and plaintiffs.

Discovery

Pretrial tools for obtaining information in preparation for trial. The tools include written and oral questioning of relevant parties, requests for documents, and physical examination of evidence and physical premises. The process of discovery is governed by federal and state rules of civil procedure.

Economic damages

Monetary damages that compensate the plaintiff for his or her actual economic losses—i.e., past and future medical expenses, lost wages, rehabilitation expenses, and other tangible losses,

Enterprise liability

A system under which a health care institution or health insurance plan assumes full legal liability for the actions of physicians acting as their agents, and individual physicians cannot be named as defendants.

Error in judgment rule

An exception to the general requirement that the physician must meet the prevailing standard of care provided by his or her profession. A physi-

cian's conduct will not be judged to fall below the standard of care if the physician chooses between two or more legitimate choices of treatment, even though a better result might have been obtained with a different treatment.

Guidelines

Generally referring to clinical practice guidelines, which are defined by the Institute of Medicine as "systematically developed statements to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances." However, ● 'guidelines' in some cases refers to clinical practice guidelines developed with additional goals explicitly in mind, such as cost containment or reduction of defensive medicine.

Health maintenance organization (HMO)

A health care organization that, in return for prospective per capita payments (cavitation), acts as both insurer and provider of comprehensive but specific health care services. A defined set of physicians (and often other health care providers such as physician assistants and nurse midwives) provide services to a voluntarily enrolled population. Prepaid group practices and individual practice associations, as well as ● 'staff models,' are types of HMOs.

Iatrogenic injury

Unintended, detrimental effects on a patient's health as a result of medical care. The term is commonly applied to secondary infections, adverse drug reactions, injuries, or other complications that may follow treatment.

Indirect malpractice costs

A cost of the malpractice system that is not directly associated with the compensation of persons injured by medical malpractice. Defensive medicine is an example of an indirect cost of the malpractice system (see *defensive medicine*, compare *direct malpractice costs*).

Informed consent

As applied to clinical care, a patient's agreement to allow a medical procedure based on full disclosure of the material facts needed to make an in-

formed decision. The required elements of disclosure differ from state to state.

Joint and several liability

A rule under which each of the defendants in a tort suit can be held liable for the total amount of damages, regardless of his or her individual responsibility. In other words, even if a defendant was only 20 percent responsible, he or she could be held liable for 100 percent of the damages if other defendants are unable to pay. Several states have eliminated joint and several liability for medical malpractice so that physicians are liable only in proportion to their responsibility.

Low osmolality contrast agent (LOCA)

A contrast agent is a substance that is used to improve the visibility of structures during radiologic imaging-e. g., angiography, intravenous urography, or computerized tomography (CT) scans. A low osmolality contrast agent has an osmolality (i.e., concentration of dissolved particles in solution) that is closer to the osmolality of body fluids than the osmolality of traditional contrast agents.

Malpractice cost indicators

Factors that reflect direct costs of the medical malpractice system, such as claim frequency, payment per paid claim, and malpractice insurance premiums (see *direct malpractice costs*).

Multivariate analysis

Statistical analysis of three or more variables simultaneously. The most widely used form of multivariate analysis is multiple regression analysis, in which a single dependent variable (the presumed effect) is analyzed as a function of two or more independent variables (presumed causes).

Negligence

In medical malpractice, conduct that falls below the prevailing standard of care in the medical profession (see *standard of care*).

No-fault compensation program

A malpractice reform under which certain medical injuries would be compensated regardless of whether they are caused by negligence. This reform

would be administered in a manner analogous to worker's compensation programs in the states.

Noneconomic damages

Monetary damages that compensate the plaintiff for "pain and suffering," which includes:

- tangible physiologic] pain suffered by a victim at the time of injury and during recuperation,
- the anguish and terror felt in the face of impending death or injury,
- emotional distress and long-term loss of love and companionship resulting from injury or death of a close family member, and
- loss of enjoyment of life by the plaintiff who is denied pleasures of a normal person because of physical impairment.

Normal distribution

A bell-shaped frequency distribution of the values of a variable, so that most of the values fall in the middle of the distribution and few of them fall at the extremes.

Odds ratio

The ratio of the odds of an event occurring under one set of circumstances to the odds of the event occurring under another set of circumstances.

Patient compensation fund (PCF)

A government-operated mechanism that pays the portion of any judgment or settlement against a health care provider in excess of a statutorily designated amount. A PCF may pay the remainder of the award or it may have a statutory maximum (e.g., \$1 million).

Payment per paid claim

The average dollar amount awarded to plaintiffs for claims that result in payment.

Periodic payments

Payments to the plaintiff for future damages made over the actual lifetime of the plaintiff or for the actual period of disability rather than in a prospective lump sum.

Point estimate

A sample-based estimate of the true population value of a statistic—e.g., the mean of a variable (see also *confidence interval*).

Pretrial screening

An alternative dispute resolution procedure that parties use prior to filing a legal suit. The pretrial screening panel usually comprises health care professionals, legal experts, and sometimes, consumers. The panel hears the evidence, including expert testimony, and makes a finding on liability and, in certain cases, on damages. Pretrial screening may be voluntary or mandatory, as specified by legislation. The panel decision is not binding on the parties, so parties may continue to pursue claims through the legal system.

Punitive damages

Monetary damages awarded when the defendant conduct is found to be intentional, malicious, or outrageous, with a disregard for the plaintiffs well-being. (Punitive damages are rarely awarded in malpractice suits.)

Reliability

The reproducibility of a measure. A measure is reliable if it yields similar results each time it is used on similar samples, or if its components yield similar results for the same or similar samples (compare *validity*).

Res ipsa loquitur

A legal doctrine that allows plaintiffs with certain types of injuries to prevail without having to introduce expert testimony of negligence. (Literally, "the thing speaks for itself.") A plaintiff must establish that the procedure or incident causing the injury was under the exclusive control of the physician and that such injuries do not occur in the absence of negligence.

Respectable minority rule

An exception to the general rule that a physician must meet the prevailing standard of care provided in his or her profession. A physician is shielded from liability when his or her clinical decision is consistent with the practices of a minority of physicians in good standing.

Right of subrogation

A provision typically found in health and disability insurance contracts that requires a plaintiff to reimburse the insurance company for any pay-

ments received from the tort system that were for services reimbursed by the insurer.

Scale

A composite statistical measure comprising several variables.

Schedule of damages

A set of guidelines for juries to use in deciding appropriate awards for noneconomic damages in malpractice cases.

Standard of care

A legal standard defined as the level of care provided by the majority of physicians in a particular clinical situation. In a malpractice action, a physician's actions are judged against the prevailing standard of care. Negligence is defined as failure to meet the standard of care.

Statistical significance

A statistically significant finding is one that is unlikely to have occurred solely as a result of chance. Throughout this report, a finding is considered to be statistically significant if the probability that it occurred by chance alone is no greater than five out of 100—i.e., a “p value” of 0.05 or less.

Statute of limitations

A legal rule that determines how long after an injury one can bring a lawsuit—e.g., two years after the injury. In many states, the “clock” does not start until discovery of the injury. The *discovery rule* states that the date of injury, from which the statutory time period is measured, is the date that it was reasonable for the plaintiff to have discovered the injury rather than the actual date of injury. Injuries may be discovered years after the treatment was provided, so the time period for filing action may be uncertain.

Stratified random sampling

A method of drawing a random sample from a population that has been grouped by population characteristics.

Tort law

A body of law that provides citizens a private, judicially enforced, remedy for injuries caused by another person. Legal actions based in tort have three elements: existence of a legal duty from defendant to plaintiff, breach of that duty, and injury to the plaintiff as a result of that breach.

Tort reform

A legal reform that changes the way tort claims are handled in the legal system or removes claims from the civil judicial system.

Tort signal

Direct or indirect signals from the malpractice system that apprise physicians of their liability risk (e.g., litigation exposure of self or peers, malpractice insurance rates, professional literature and popular media).

Unweighed results

Statistical results based on a disproportionate stratified sample (see *stratified random sampling*) without applying sampling weights (see *weight*).

Validity

Broadly, the extent to which an observed situation reflects the true situation. *Internal* validity is a measure of the extent to which study results reflect the true relationship of an intervention to the outcome of interest in the study subjects. *External* validity is the extent to which the results of a study may be generalized beyond the subjects of the study to other settings, providers, procedures, diagnostics, etc. (compare *reliability*).

Weight

A multiplier applied to each element of a given stratum of a sample (see *stratified random sampling*) so that the sample accurately represents the population from which the sample was drawn. A weight can be thought of as the number of members of the population represented by each respondent.

Weighted results

Results to which sampling weights have been applied (see *weight*).