Tips for Curbing Malpractice Insurance Costs

BY DOUG BRUNK

CORONADO, CALIF. — As general counsel and director of risk management for Canton, Ohio–based Emergency Medicine Physicians, Dr. Michael Frank fields his share of calls from partner groups asking for insight on how to keep a lid on malpractice insurance costs.

"Any time you see another patient, that's going to expose you to more risk," Dr. Michael Frank said at a meeting on reimbursement sponsored by the American College of Emergency Physicians. "The only sure way to eliminate your risk is to stop taking care of patients. But that's not going to be a very good solution."

He offered three ways to save money on medical malpractice insurance:

► **Sign up with the insurance carrier that offers the lowest premiums.** "Be careful about doing that, because the history of medical malpractice insurance companies is littered with the stories of companies that tried to buy business by charging too low of a premium, and they're now bankrupt," he said. "What do you wind up with? No coverage or coverage by a state guarantee association."

► **Set up shop in a state with effective tort reform.** Each year, the American Tort Reform Association publishes "Judicial Hellholes," a list of some of the nation's most "unfair" civil court jurisdictions in which to be sued (www.atra.org). According to the 2008-2009 edition, the current leading "judicial hellholes" include West Virginia; South Florida; Cook County, Ill.; Atlantic County, N.J.; Montgomery and Macon counties, Ala.; Los Angeles County, Calif.; and Clark County, Nev.

The publication's "watch list" includes Rio Grande Valley and the Gulf Coast of Texas; Madison County, Ill.; Baltimore; the city of St. Louis, as well as St. Louis and Jackson counties, Mo.

"Does tort reform really decrease medical malpractice premiums?" Dr. Frank asked. "California has one of the best tort reforms, limiting noneconomic damages to $250,000. The Las Vegas premiums we charge are about three times that of California. That's mostly because of what tort reform has done."

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DR. FRANK

► **Start your own insurance company.** Options include a "group captive," an insurance company that is primarily owned and controlled by its policyholders, or a risk retention group, which is a type of captive authorized under the Liability Risk Retention Act of 1986. Captives can be created by either small practices or larger groups.

Risk retention groups are not subject to individual state laws that ordinarily apply to insurance companies. In addition, "once you are chartered in one state, you don't have to get permission to operate in any other state," said Dr. Frank, who is also chairman of the board of trustees and an attending emergency physician at Summa Barberton (Ohio) Hospital.

He went on to note that, regardless of your business model, one surefire way to lose money on medical malpractice insurance is to not report claims promptly. "One of the first things the insurance company will do is to look for a way to deny coverage," he said. "Try reporting after you should have done so. Almost every medical malpractice policy requires prompt reporting."

Another way to lose money on medical malpractice insurance is to lose control of underwriting expenses. He spoke of one risk retention group that applies 60 cents of every dollar it earns from premiums into operating expenses. "Sooner or later that [group] is going to have to start charging higher premiums," he said.

Buying too much coverage is another common way to lose money on medical malpractice insurance. Higher limits "are as much a target as they are a shield," Dr. Frank said. "You have to be very careful about how policy limits are allocated, whether you have shared limits or individual limits. In our policy we have shared limits. Let's say Dr. X and Y were our employees and were named in a lawsuit. In our policy there would be $1 million in coverage for both. If they decided to name the medical group as well, it would still be only $1 million in coverage."

On the other hand, if the policy limits were stacked, "that's like blood in the water to sharks," he said. "The plaintiff attorneys who might be looking to settle for policy limits of $1 million would see coverage of $3 million and think, 'There's $3 million in coverage, and so that's what the case is worth.' "

Dr. Frank had no conflicts of interest to disclose. ■

Poor Documentation Can Open the Door to Lawsuits

BY DOUG BRUNK

CORONADO, CALIF. — In his dual roles as an emergency physician and health care lawyer, Dr. Michael Frank has seen an increasing number of patients seeking copies of their medical records—and finding entries that are incomplete, inaccurate, or completely wrong.

"If you want to spend more time with patients to the exclusion of certain documentation, that's fine," he said at a conference on reimbursement sponsored by the American College of Emergency Physicians. "Just understand that if and when you get sued—even though it may not be fair—if the documentation has suffered, so has your defense."

Dr. Frank, general counsel and director of risk management for Canton, Ohio–based Emergency Medicine Physicians, discussed the case of a 51-year-old woman who presented to the emergency department complaining of a dog bite laceration to the finger. The laceration was repaired under digital block, and she was discharged.

After receiving a printed version of her medical chart in the mail, the patient wrote notes of correction next to several items and returned it to the physician. For example, the vital signs and physical exam section of the chart indicated no evidence of significant external trauma. But in that section, the patient wrote "dog bite to hand." According to the chart, she underwent an ENT exam, but the patient wrote that this "did not happen."

The chart also indicated that there was no evidence of local chest wall tenderness or external injury (patient wrote "never looked or touched"), and that the breath sounds were normal (patient wrote "never listened").

"We are seeing more complaints from patients who are saying, 'This didn't happen,' that the documentation was wrong," Dr. Frank said. "This is true, for example, for a review of systems. It has very little to do with our clinical practice, but it's a requirement for certain documentation. So, if we're documenting a review of systems that weren't really done … we are opening ourselves up to fraud allegations.

"You'd better be careful that what you're documenting is exactly what you do, because patients are reading the medical record," he added.

Physicians who cancel the medical bill of a patient who may be unhappy with services rendered or who threatens to sue don't necessarily put themselves at legal risk. "The issue of whether you cancel the bill or not is not relevant to the issue of whether the care you provided was or was not below the standard of care. There are lots of different reasons for why you might want to cancel a bill," said Dr. Frank, who is also chairman of the board of trustees and an attending emergency physician at Summa Barberton Hospital in Barberton, Ohio.

If you don't cancel a bill in a case where a patient is really upset, "that might lead that person to pursue a lawsuit," he added. "If you do cancel a bill, it's possible that they might interpret that as a sign of weakness or that you did something wrong." If you believe the care you provided was inappropriate, "you should cancel those bills," he advised. "On the other hand, if you feel you didn't do anything wrong, then it becomes a matter of public relations and customer satisfaction. In the long run, it might be worth your time to foot that bill."

Dr. Frank had no conflicts of interest to disclose. ■