

Grant Outcome Report

Promoting a Medical Malpractice Early Settlement Model

The Problem

The existing medical liability litigation system increases the cost of providing effective, quality health care in New York State and the nation. Litigation affects care and costs by raising medical malpractice premiums, encouraging the use of defensive medicine, and decreasing patient access to care, especially in obstetrics. In addition, only a small set of patients who are injured during the course of medical care actually files a claim, and the length of time to reach a resolution is an average of five years. When patient claims are successful, more than half of the dollars paid go to legal fees and other litigation costs, rather than directly compensating medical injuries.

An innovative, but lesser-known, model for addressing medical malpractice litigation has been developed by the New York City Health and Hospitals Corporation (HHC). The program, Active Case Conferencing, was launched in the Bronx in 2002 and has since expanded to include HHC cases from Brooklyn, Manhattan, and Queens. Under this system, each county's State Supreme Court assigns a judge to monitor HHC cases and sets aside one day a month for a conference that includes the plaintiff lawyers, HHC counsel, and the judge. At the case conference, all parties discuss the claims and strive to settle them that day or as early as possible. This approach is also unique in that the same judge—who specializes in medical malpractice—oversees the case until it is settled. This allows the judge to be informed and able to adjudicate claims quickly. Additionally, all key parties are present with the authority to discuss award amounts and finalize decisions.

The HHC model has produced impressive results: claims are settled much faster than in the traditional litigation system and at costs lower than those typically awarded by a jury. Total payouts, including legal expenses for both sides, are reduced in comparison to the traditional system. Both parties do, however, have the option of going to trial if they wish.

Grant Activities and Outcomes

With a \$24,200 grant from the New York State Health Foundation (NYSHealth), the Greater New York Hospital Association (GNYHA) Foundation convened a full-day conference, "Strategies for Early Resolution

KEY INFORMATION:

GRANTEE

The Greater New York Hospital Association Foundation

GRANT TITLE

Promoting a Medical Malpractice Early Settlement Model

DATES

January 1, 2010 – July 7, 2010

GRANT AMOUNT

\$24,200

FUNDING

Cost/Coverage

of Medical Malpractice Claims: Active Case Conferencing,” to educate and train its members and other large hospital systems in New York on the Active Case Conferencing model. Interest in the HHC model had been growing as a result of its successful track record and ability to be implemented without State legislation.

The first half of the conference provided an overview of the model, its components, and barriers and challenges to implementation. Speakers included Honorable Douglas E. McKeon, presiding justice of the Appellate Division, New York Supreme Court, First Department; Honorable Barry Salman, administrative judge, Bronx County Supreme Court; Janice Kabel, deputy counsel of claims and risk management, HHC; Jacqueline B. Stein, senior counsel and executive claims counsel, HHC; Janet Cohn, deputy general counsel, New York State Department of Health; and Michael M. Futterman, partner, Aaronson Rappaport Feinstein & Deutsch, LLP.

The second half of the conference featured a mock case led by Judge McKeon. The interactive debate allowed participants to see firsthand how the model works as the plaintiff and defendant attorneys reviewed the details of a case before Judge McKeon, who then facilitated the settlement discussion.

Nearly 100 representatives from regional hospitals, hospital and physician medical malpractice insurers, and other stakeholders attended the conference. Some organizations were immediately interested in the model, including hospitals within the State University of New York system, Westchester Medical Center, and Kingsbrook Jewish Medical Center. Other organizations also expressed interest in participating, including Combined Coordinating Council, which provides insurance coverage and risk management advisory services to New York University Medical Center, St. Luke’s-Roosevelt Hospital, Hospital for Special Surgery, New York Methodist Hospital, and other hospitals.



The Future

GNYHA will work with these hospitals to implement the Active Case Conferencing model, and introduce the model to additional hospitals in the New York, Bronx, and Kings County regions. This conference also served as a foundation for GNYHA to build on in its medical malpractice education programs. Additionally, New York State has included the Active Case Conferencing model in its Medical Liability Reform and Patient Demonstration project, which is federally funded by the Agency for Healthcare Research and

Quality. This \$3 million initiative will incorporate the Active Case Conferencing model (now called Judge-Directed Negotiation) along with two other components—advancing patient safety and testing early disclosure of errors and resolution. The New York State Unified Court System (UCS) currently is working with the New York State Department of Health and Harvard School of Public Health to implement this three-part approach in five New York City hospitals.¹

To further capitalize on the success of this model, NYSHealth awarded UCS a grant to replicate and evaluate the Judge-Directed Negotiation model in Erie County.² Erie County has the largest upstate concentration of medical malpractice cases, and three of the region's hospital systems will participate in the model. Collectively, the upstate and downstate projects will better inform statewide medical malpractice reforms and further advance NYSHealth's mission to leverage delivery system reform opportunities and contain rising health care costs.

1 Beth Israel Medical Center, New York-Presbyterian Hospital, Maimonides Medical Center, Montefiore Medical Center, and the Mount Sinai Medical Center are participating. Learn more about this federal initiative at: <http://www.ahrq.gov/qual/liability/demogrants.htm>.

2 Learn more about this grant project at: <http://nyshealthfoundation.org/our-grantees/grantee-profile/new-york-state-unified-court-system>.

BACKGROUND INFORMATION:

ABOUT THE GRANTEE

The Greater New York Hospital Association Foundation (GNYHA), founded in 1904, is a trade association comprising nearly 250 hospitals and continuing care facilities, both voluntary and public, in New York, New Jersey, Connecticut, and Rhode Island. Its mission is to advocate on behalf of its members and the communities it serves for improved access to high-quality, cost-efficient health care and for the tools and resources to provide it. GNYHA also provides support to its members through policy analysis, advocacy, communications, education, research, and business support services.

The GNYHA Foundation is the nonprofit affiliate of GNYHA. Established in 1978, GNYHA Foundation works with GNYHA and its members to implement innovative solutions to challenges facing the health care system with the goals of increasing access, reducing costs, and promoting the delivery of quality of health care.

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