

**ILLINOIS STATE MEDICAL SOCIETY**

**Resolution 09.2021-09  
(A-22)**

Introduced by: David A. Stumpf, MD, ISMS Member

Subject: Illinois Birth-Related Neurological Injury Compensation Plan

Referred to: Medical Legal Council

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1           Whereas, the Illinois Supreme Court has struck down legislation addressing a  
2 broad range of malpractice scenarios; and

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4           Whereas, litigation has resulted in physicians delivering fewer babies in rural  
5 locations<sup>1</sup>; and

6  
7           Whereas, women in rural Illinois have difficulty accessing desired obstetric care  
8 in their own rural communities; and

9  
10           Whereas, most obstetric adverse neurological outcomes are not attributable to the  
11 events during labor and delivery; and

12  
13           Whereas, malpractice insurers had withdrawn from some markets due to obstetric  
14 claims<sup>2</sup> thereby limiting physician's ability to deliver obstetric care; and

15  
16           Whereas, the no-fault National Vaccine Injury Program enabled the continuation  
17 of vaccination programs threatened by litigation<sup>3</sup>; and

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<sup>1</sup> Gordon, R.J., McMullen, G., Weiss, B.D. and Nichols, A.W. (1987), The Effect of Malpractice Liability on the Delivery of Rural Obstetrical Care\*. The Journal of Rural Health, 3: 7-13. <https://doi.org/10.1111/j.1748-0361.1987.tb00153.x>

<sup>2</sup> George Coppolo, Saul Spigel, Medical malpractice-no-fault systems.. OLR Research Report, 2003. <https://www.cga.ct.gov/2003/olrdata/ins/rpt/2003-r-0885.htm>

<sup>3</sup> <https://www.hrsa.gov/vaccine-compensation/index.html>

18           Whereas, the malpractice “negligence rule” performs poorly by a) creating an  
19 average 4-year delay in compensating persons with adverse outcomes, b) compensating  
20 only 1 in 15 with a valid claim, c) compensating persons with no evidence of negligence  
21 in five-sixths of cases, d) diverting over 50% of compensation for litigation and  
22 transaction expenses and e) failing to incentivize improvements in medical care<sup>4</sup>; and  
23

24           Whereas, Virginia has implemented no-fault programs compensating families for  
25 adverse outcomes during pregnancy: “Designed to assure access to obstetrical services  
26 for all Commonwealth residents, the Virginia Birth-Related Neurological Injury  
27 Compensation Program also has distinguished itself by assuring superior care for  
28 admitted children<sup>5</sup>.”; and  
29

30           Whereas, Florida law created a no-fault program compensating families for  
31 adverse outcomes during pregnancy: “There is established the Florida Birth-Related  
32 Neurological Injury Compensation Plan for the purpose of providing compensation,  
33 irrespective of fault, for birth-related neurological injury claims. Such plan shall apply  
34 to births occurring on or after January 1, 1989, and shall be administered by the Florida  
35 Birth-Related Neurological Injury Compensation Association.<sup>6</sup>”; and  
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37           Whereas, several foreign countries have successfully implemented no-fault care  
38 that is broader in scope; and  
39

40           Whereas, it is desirable for patients with birth related neurological injury to  
41 receive unencumbered and prompt compensation and good care; therefore, be it  
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43           RESOLVED, that the Illinois State Medical Society (ISMS) create a work group  
44 on no-fault obstetric care in rural Illinois to address and report back on the following:  
45

- 46           1. Define the scope of issues affecting obstetric care in rural Illinois, and
- 47           2. Survey physicians in rural Illinois and document the impact of litigation on their  
48           practices, and
- 49           3. Compile impact statements from women in rural Illinois regard obstetric and  
50           newborn care and
- 51           4. Collaborate with malpractice insurance companies and relevant Illinois medical  
52           specialty associations to compile relevant data and
- 53           5. Develop model legislation for an Illinois no-fault Birth-Related Neurological  
54           Injury Compensation Plan; and be it further

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<sup>4</sup> Kessler DP: Evaluating the Medical Malpractice System and Options for Reform. J Econ Perspect. 2011 ; 25(2): 93– 110.

<sup>5</sup> Virginia Birth-Related Neurological Injury Compensation Program. <https://www.vabirthinjury.com/>

<sup>6</sup> [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0766/Sections/0766.303.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0766/Sections/0766.303.html)

55           RESOLVED, that ISMS develop an advocacy plan for the model legislation and  
56 report back to the ISMS Annual Meeting.

**Fiscal Note:**

n/a

**Existing ISMS policy related to this issue:**

It is the policy of the Society to require appropriate limits on non-economic damages for malpractice suits to be included as an integral and necessary part of any health care policy reform plan adopted and as a necessary pre-requisite for effective resolution of our current access and cost problems. (HOD 1992; Reaffirmed 2010; Reaffirmed 2011; Last BOT Review 2011)

It is the policy of the Society to support caps on malpractice awards. (HOD 1999; Last BOT Review 2011)

ISMS supports a cap on malpractice judgments for Illinois physicians. (HOD 2000; Reaffirmed 2010; Reaffirmed 2011; Reaffirmed 2012; Last BOT Review 2011)

Illinois State Medical Society opposes any and all efforts by the legislature and any other parties to mislead the public through the release—through avenues including, but not limited to the World Wide Web—of malpractice data which may be misinterpreted as a quality indicator. (HOD 2001; Reaffirmed 2006; Last BOT Review 2011)

ISMS supports the holding of a Constitutional Convention to include language into our Illinois Constitution specifically authorizing monetary caps on non-economic damage awards in medical negligence lawsuits. (HOD 2006; Reaffirmed 2010; Reaffirmed 2017; Last BOT Review 2011)

It is the policy of ISMS to support the concept of physician-directed and supervised low-risk obstetrical services within rural community hospitals in underserved areas. This type of service should include appropriate pre-natal care and transportation to higher level obstetrical centers when necessary. (HOD 1989; Last BOT Review 2013)

It is the policy of the Society that in the management of neurological trauma, the decision to intervene surgically, including the insertion of an intracranial pressure monitor, should be at the discretion of the neurosurgeon working as part of the trauma team; and

recommend that there be neurosurgical representation on the State Trauma Advisory Board. (HOD 1998; Last BOT Review 2012)

ISMS continues to support efforts at meaningful tort reform and works vigorously to have such reforms held constitutional by Illinois courts. (HOD 1995; Reaffirmed 2010; Reaffirmed 2011; Last BOT Review 2011)

The Illinois State Medical Society supports the incorporation of patient-centered tools into physicians' practices to improve the quality of care delivered, and endorses demonstration projects and programs that display appropriate financial, educational, and professional incentives, so that the barriers to adopting patient-centered care are addressed in a manner that minimizes any negative impact on physicians, both financially and technically, including effects on productivity and liability. (HOD 2007; Last BOT Review 2012)