GREATER
NEW YORK
HOSPITAL
ASSOCIATION

MRT Medical Malpractice Subcommittee:
Hospital Malpractice coverage Costs

October 17, 2011

GNYHA And Hospital Goals

With respect to the health care system

- Improve quality, efficacy, and efficiency of care
- Improve patient safety/ reduce adverse events
- Improve patient satisfaction
- Reduce unnecessary costs in general and medical malpractice costs in particular

With respect to the tort system

- Improve efficiency and efficacy of the claims/ judicial system for patients and providers alike
- Reduce unnecessary costs of the system while also ensuring fair compensation of those injured due to negligence of the medical system

MED MAL COVERAGE COSTS, CAUSES, AND IMPACTS

Significant costs related to OB services, often due to NI newborns; many cases not caused by negligence

Overall severity, not frequency is the problem: severity in NY is among highest in U.S.

"Exorbitant overhead:" equal to 54% of compensation paid

High med mal costs
- Hospitals:
  - > $1.6B/year
  - High losses/bed
- Physicians: $200,000 for OBs

Wrong use of health care resources

Negative impact on access and quality: hospital losses, service curtailments, and closures

Defensive medicine: $25B-$210B/year nationwide; costs all payers

NYS Hospital Malpractice "Coverage"

Many types of "coverage" and funding due to unavailability/unaffordability of commercial insurance

- Self-insured (self-pay)
- Self-insured with recommended reserves
- Self-insured trusts or RRGs with premium structures
- Commercial insurance (if so, most often the initial layer)
- Reinsurance
- Layers of the above

Involves actuarial analyses and input

No motivation to "over charge" or over reserve

NYS Hospital Malpractice Coverage Costs

GNYHA surveyed hospitals re 2010 med mal coverage costs (2011 costs not yet available for most hospitals)

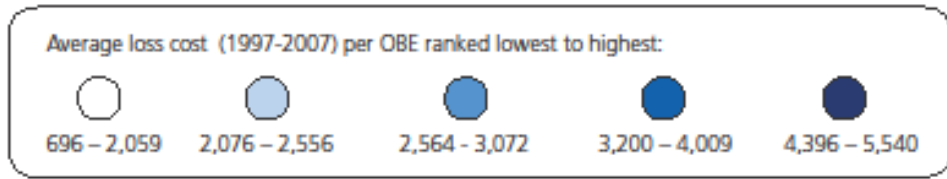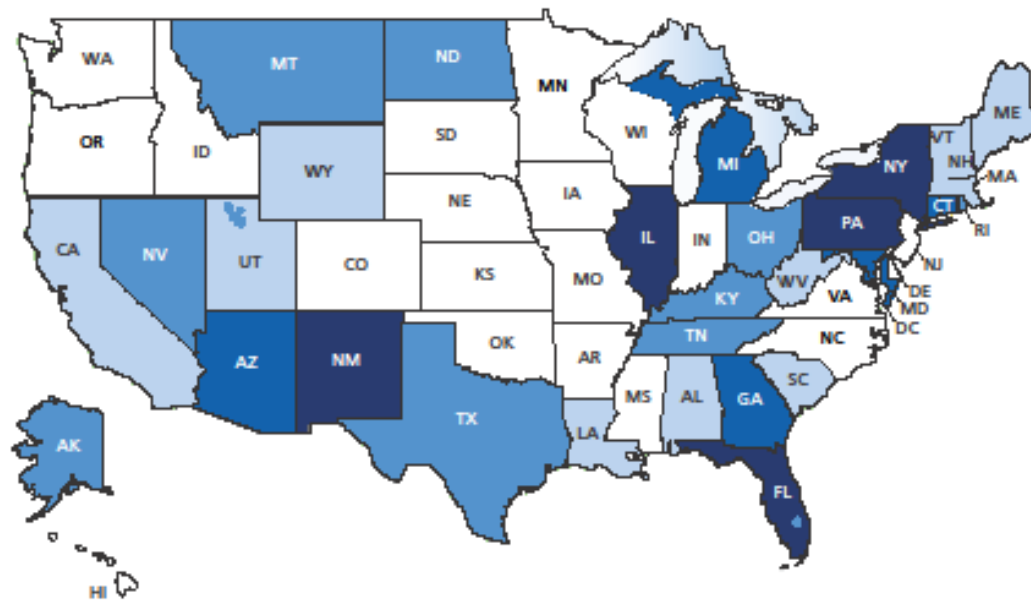Hospitals surveyed represent 50% of Statewide hospital operating costs

- Total coverage costs of surveyed hospitals: $1 billion
- By extrapolation, GNYHA estimates hospital costs Statewide exceed $1.6 billion

Five hospitals/systems had costs in excess of $100 million each

- Of those, four had costs of $120 million or more each
- Of those, two had costs in excess of $130 million each

New York's Average Loss Costs Per Occupied Bed Equivalent is Fourth Highest in the Country

Loss costs by state

Average loss cost (1997-2007) per OBE ranked lowest to highest:

| 696 – 2,059 | 2,076 – 2,556 | 2,564 – 3,072 | 3,200 – 4,009 | 4,396 – 5,540 |

Source: Zurich Annual Benchmarking Report on Claims Trends in the Healthcare Industry, Fall 2010

Addressing Cost Drivers: OB Coverage Costs

Perinatal Safety Initiatives

- GNYHA Perinatal Safety Collaborative
- Hospital and hospital system initiatives
- Professional society activities (ACOG- NY)
- Insurer initiatives with hospitals and physicians
- NYS Department of Health programs, workgroups, and hospital quality initiative

Medical Indemnity Fund

- Provides lifetime of care for eligible plaintiffs
- Helps reduce the cost of coverage for OB services by
  - Reducing overpayments and double payments
  - Sharing cost of future medical care
- Reduces costs to Medicaid program
- More narrow than requested
- Hospitals are assessing its impact on coverage costs
- Had little impact on OB rates

Addressing Cost Drivers: Claims

Focus on Reducing Adverse Events

Reducing adverse events accrues to everyone's benefit, but foremost of course to the benefit of patients

A lot of effort is being devoted to reducing adverse events and is reflected in part by reduced frequency of claims

Key elements of successful efforts to reduce adverse events:

- Culture of safety/just culture
- Collaborative approach—across institutions/organizations/regions
- Development of best practices/practice guidelines
- Team training/psychological safety and respect
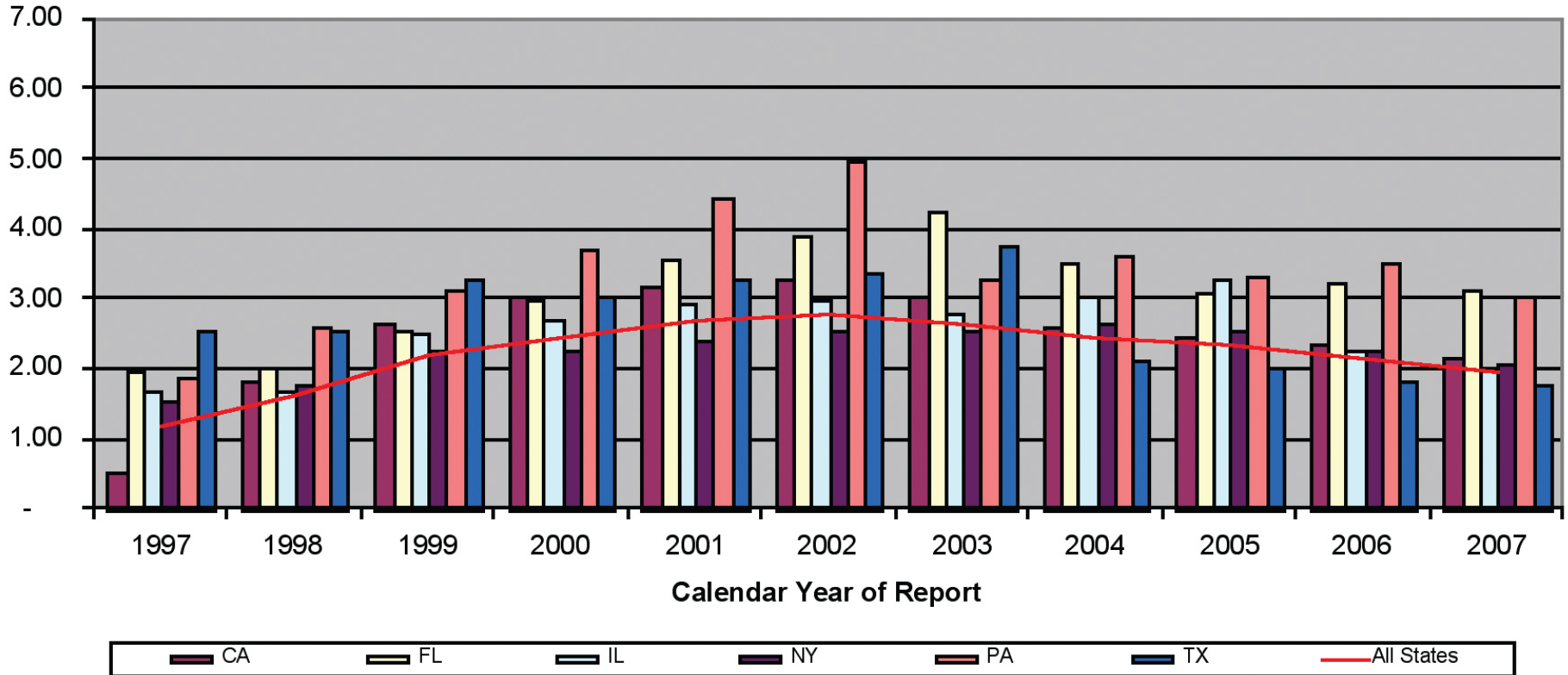- Transparency, disclosure, and reporting
- System redesign

Some adverse outcomes cannot be avoided

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ADDRESSING COST DRIVERS: CLAIMS

Frequency in NY is Declining and Reflects National Average

Ultimate Frequency per 100 Exposures

Legend: CA, FL, IL, NY, PA, TX, All States

X-axis: Calendar Year of Report (1997–2007)

Source: Zurich Annual Benchmarking Report on Claims Trends in the Healthcare Industry, Fall 2010

Yet Severity in NY is Among Highest in the Country

Claim Severity

Legend: CA, FL, IL, NY, PA, TX, All States, All States Excluding: NY-IL-PA

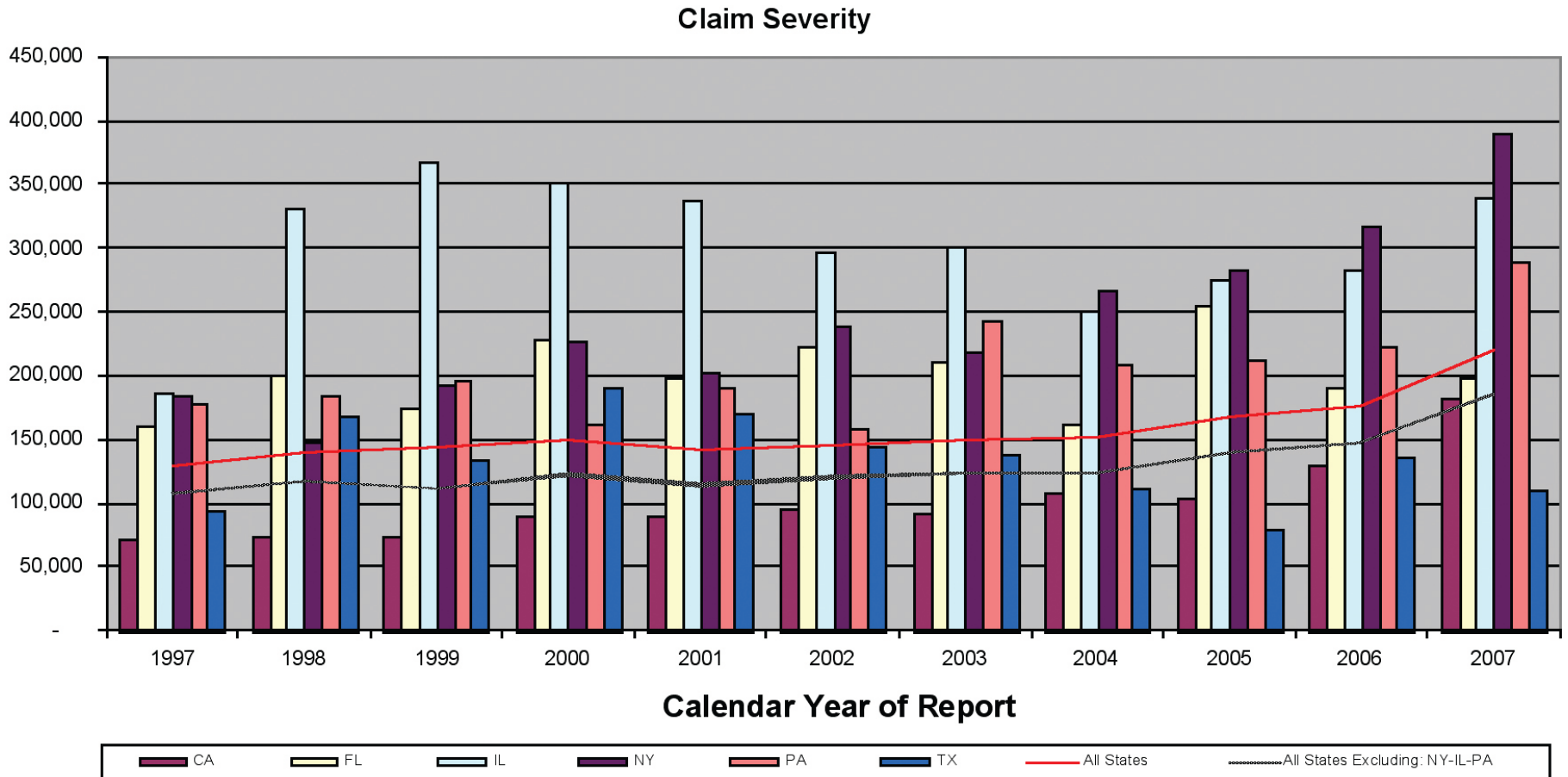X-axis: Calendar Year of Report (1997–2007)

Source: Zurich Annual Benchmarking Report on Claims Trends in the Healthcare Industry, Fall 2010

ADDRESSING COST DRIVERS: COST AND EFFICACY OF TORT SYSTEM

Harvard Medical Practice Study (as discussed through the decades)

- Requested by NYS and evaluated 1984 claims data
- Many patients with injuries stemming from negligence do not assert claims
- Only 17% of claims asserted appeared to involve negligent injury
- Key predictor of payment was patient's degree of disability, not the presence of negligence
- Tort system is "tremendously inefficient"
  - Approximately 60 cents of every dollar expended goes to administrative costs, predominantly legal fees

Studdert, Mello, and Brennan, "Medical Malpractice," NEJM (Jan. 15, 2004): 283

Addressing Cost Drivers: Cost and Efficacy of Tort System

"There is a deep-seated tension between the malpractice system and the goals and initiative of the patient-safety movement. At its root, the problem is one of conflicting cultures: trial attorneys believe that the threat of litigation makes doctors practice more safely, but the punitive, individualistic, adversarial approach of tort law is antithetical to the nonpunitive, systems-oriented, cooperative strategies promoted by leaders of the patient-safety movement."

Studdert, Mello, and Brennan, "Medical Malpractice,"
NEJM (Jan. 15, 2004): 283

Addressing Cost Drivers: Cost and Efficacy of Tort System

Study of closed claims (83% closed 1995-2004) to determine whether

- Medical injury occurred
- If medical injury occurred, was injury due to "error"
  - Defined using IOM definition: failure of planned action to be completed as intended or use of wrong plan to achieve aim
  - Definition of error *broader than negligence*

Results

- 3% of claims had no medical injuries
  - 16% of those with no injury resulted in compensation
- 37% of claims with injuries did not involve errors
  - 28% of those (with injury but no error) resulted in compensation
- Of those injury claims that did involve errors
  - 73% did involve compensation
  - (27% did not involve compensation)

Studdert, Mello, Brennan, et al., "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," NEJM (May 11, 2006): 2024

Addressing Cost Drivers: Cost and Efficacy of Tort System

Administrative costs of system

- "Overhead costs are exorbitant"
- Total cost of litigating claims equaled 54% of compensation paid to plaintiffs
  - 22% of administrative costs are attributable to claims with no error
- Average time between injury and resolution: 5 years
- Long periods for plaintiffs to await decisions about compensation
- Long periods for defendants to endure uncertainty, acrimony, time away from patient care
- High-value target: Streamline processing of claims

Studdert, Mello, Brennan, et al., "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," NEJM (May 11, 2006): 2024

Point of Agreement:
The System Should Serve the Patient

All of us want to reduce adverse outcomes and provide safe patient care

Significant patient safety efforts have been undertaken/are under way

- Even though the "clash between tort law and the patient-safety movement undermines efforts to improve quality"
- By definition, a system that determines damages based on fault is inconsistent with the key elements of successful efforts to reduce adverse events

The tort system could do a much better job of serving patients

- Administrative costs of the system are exorbitant
- Process is lengthy and acrimonious
- Many patients enter the system who are not injured or who are injured but not due to "error"
- Many injured patients don't enter the system at all
- Some patients receive extraordinary payments; their injuries may be significant but is the payment reasonable? equitable?

Recommended Goals and Outcomes

Continued intensive focus on patient safety initiatives

Reduce the costs of the tort system by

- Streamlining the process
- Ensuring more accurate, efficient, and transparent process
- Promoting less acrimonious process
- Promoting more predictability and equity among plaintiffs
- Developing a system that more effectively promotes safe patient care

Expected Outcomes

- Safer patient care
- Lower costs of coverage for providers
- Less defensive medicine
- Reduced costs for all payers particularly the State Medicaid program