Patient Compensation System Laws; Will they help?

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Compensation Models

- Tort system
- No – Fault
- Insurance per event
- Contingency
- Patient compensation fund
- Patient Compensation System (PCS)

Tort System

- Complaint
- Discovery
- Settlement or trial

No Fault (Sweden)

- No liability
- Hospital is responsible for all claims
- All claims reviewed by Patient Insurance Association
- Physicians do not have malpractice insurance

Compensation

- Specialist Rule - best specialist would have avoided the injury
- Equipment Rule - failure of equipment
- Alternative Rule – injury would have been avoided by a different technique
- Insurability Rule – injuries that could not have been avoided and are not compensable under any other rules
Insurance per event
• Similar to airline insurance
• Purchase policy upon entering the hospital
• If complication occurs, you collect
• If not, the policy is void

Contingency
• Physician sets fee for procedure
• If patient survives, he pays the full amount
• If patient dies, physician forgoes his fee

Patient Compensation Fund
• State administered fund
• Are supplementary to physician’s insurance policy
• Work in conjunction with physician’s policy
• Funded by physician surcharge

Patient Compensation System
• Claims can be filed by patient or family member (attorney not necessary)
• Cases reviewed by medical panel
• Decide if medical injury occurred
• Decide if compensation is indicated and the amount of compensation

Medical Injury
• Medical treatment was performed
• Applicant suffered a medical injury with damages
• Injury was proximate cause of damages
• An accepted method of medical services was not used
• Accepted method was used but not in an accepted manner

Negligence is not the basis of these claims
Purpose is not to assess blame but rather to focus on how things might have been done better

**Advantages**
- Avoid the legal system
- State based (not reported to the (NPDB)
- Claims paid in a more timely manner
- Limit compensation
- Decrease costs

**Funding**
- Physicians
- Insurance companies
- Hospitals
- Patients

**Georgia Patient Compensation Law**
- 11 person panel consisting of physicians, lawyers, accountants, and patient advocates
- Maximum compensation limits
- Cases reviewed by specialty panels
- No reporting to NPDB

**Georgia Senate Bill 86**
- Introduced in February 2015
- Opponents state that it denies patients their Seventh Amendment rights to jury trials
Conclusions

- Tort system is seriously flawed
- Patient compensation systems seem to be a reasonable alternative
- Unlikely to pass at this time because of the political power of the trial lawyers
- Physicians should continue to pursue all avenues in their effort to reform the tort system