

The Role of Government Insurance Programs in Medical Professional Liability Insurance **Birth Injury Funds**

Session C-36

Ted Zubulake
Partner
Oliver Wyman Actuarial Consulting, Inc.
November 10, 2014

CAS ANTITRUST NOTICE

- The Casualty Actuarial Society is committed to adhering strictly to the letter and spirit of the antitrust laws. Seminars conducted under the auspices of the CAS are designed solely to provide a forum for the expression of various points of view on topics described in the programs or agendas for such meetings.
- Under no circumstances shall CAS seminars be used as a means for competing companies or firms to reach any understanding – expressed or implied – that restricts competition or in any way impairs the ability of members to exercise independent business judgment regarding matters affecting competition.
- It is the responsibility of all seminar participants to be aware of antitrust regulations, to prevent any written or verbal discussions that appear to violate these laws, and to adhere in every respect to the CAS antitrust compliance policy.

Introduction

**California Jury Awards
Family of Brain-damaged Boy
\$12.1 Million**

(Contra Costa Times – 9/19/14)

Introduction

Awards Greater than \$1 Million (Indemnity)

	# Percentage	\$ Percentage
1985	0.6%	8.1%
1995	2.7%	18.9%
2005	6.7%	27.4%
2012	9.0%	33.8%

• [Source: PIAA Closed Claim Comparative 2014]

© Oliver Wyman

3

Introduction

• **Birth Injury Fund General Goals**

- provide needed care to injured children
- reduce medical professional liability costs
- make medical professional liability insurance premiums more affordable
- make medical professional liability insurance more available so that, in particular, physicians will continue to provide obstetrics services

© Oliver Wyman

4

Virginia Birth-Related Neurological Injury
Compensation Program

Virginia Birth-Related Neurological Injury Compensation Program

- **Established in 1987**
- **Governed by a Board appointed by the Governor; Executive Director; Funded by the Virginia Birth-Related Neurological Injury Compensation Fund**
- **Participation is Optional for Physicians and Hospitals**
 - Hospitals – 36 participated in 2013
 - Physicians – 703 participated in 2013

© Oliver Wyman

6

Virginia Birth-Related Neurological Injury Compensation Program

- **Eligibility**
 - injury must be a birth-related neurological injury as defined by law
 - and either
 - obstetrical services were performed by a participating physician
 - or
 - birth occurred in a participating hospital

© Oliver Wyman

7

Virginia Birth-Related Neurological Injury Compensation Program

- **Process**
 - file claim with the Virginia Workers' Compensation Commission
 - must be filed by claimant's 10th birthday
 - case reviewed by experts
 - hearing
 - WCC decision

© Oliver Wyman

8

Virginia Birth-Related Neurological Injury Compensation Program

• **Eligible Benefits Include (among other benefits):**

- medical
- hospital
- nursing care
- rehabilitation
- lost earnings
- prescription drugs
- special equipment/facilities

• **Excess over Other Government Programs, Pre-Paid Health Plans, or Private Insurance**

© Oliver Wyman

9

Virginia Birth-Related Neurological Injury Compensation Program

• **Funding**

- hospitals – \$55 per live birth (subject to a maximum)
- participating physicians - \$6,250 annual assessment currently
- non participating physicians – annual assessment if necessary \$300
- liability insurers – may be assessed a % of written premium (currently .25%)

© Oliver Wyman

10

Virginia Birth-Related Neurological Injury Compensation Program

• **Facts & Figures**

- # of claimants in the Fund as of 12/31/13: 183 (plus 42 not-yet-admitted)...about 10 per birth year
- financials as of 12/31/13:
 - assets: \$384M
 - liabilities: \$442M (discounted reserves)
 - operating revenue: about \$25M per year (~half from insurance company fees)
 - investment income: \$37M in 2013
 - sufficiently funded for more than 20 years

© Oliver Wyman

11

Virginia Birth-Related Neurological Injury Compensation Program

• **Actuarial Studies of Reserve Needs and Funding Adequacy**

- conducted at the direction of the Virginia Bureau of Insurance

- performed at least once every two years

© Oliver Wyman

12

Virginia Birth-Related Neurological Injury Compensation Program

• **Considerations**

- ultimate number of claimants/participants – development methods

- annual costs: by benefit category, by claimant category
 - inflation

 - changes in utilization

 - investment rates

 - risk margin (implicit)

 - payment patterns

 - mortality (Shavelle tables; combined tables for Group C)

© Oliver Wyman

13

Florida Birth-Related Neurological Injury
Compensation Plan

Florida Birth-Related Neurological Injury Compensation Plan

- **Established in 1988**
- **Administered By The Florida Birth-Related Neurological Injury Compensation Association (NICA)**
- **Participation is Optional for Physicians**
 - about 1,000 as of 1/1/14

Florida Birth-Related Neurological Injury Compensation Plan

- **Eligibility**
 - injuries must be birth-related neurological injuries as defined by law
 - and
 - obstetrical services were performed by a participating physician

Florida Birth-Related Neurological Injury Compensation Plan

- **Process**
 - acceptance into the Plan is determined by an Administrative Law Judge after a petition is filed with the Florida Division of Administrative Hearings
 - petition must be filed by the child's fifth birthday

Florida Birth-Related Neurological Injury Compensation Plan

• **Eligible Benefits Include (among other benefits):**

- medical
- hospital
- nursing care
- rehabilitation
- special equipment/facilities
- prescription drugs
- one time cash award \$100K to parents/guardians

• **Excess over Other State/Federal Government Programs, Pre-Paid Health Plans, or Private Insurance**

© Oliver Wyman

18

Florida Birth-Related Neurological Injury Compensation Plan

• **Funding**

- hospitals – \$50 per live birth
- participating physicians - \$5,000 annual assessment
- non-participating physicians – annual assessment of \$250
- Insurance Regulatory Trust Fund – initial \$20M transfer; can transfer another \$20M
- liability insurers - may be assessed a % of written premium (max is .25%)

© Oliver Wyman

19

Florida Birth-Related Neurological Injury Compensation Plan

• **Facts & Figures**

- # of claimants in the Fund as of 9/30/12: 314 (about 15 per birth year)
- financials as of 6/30/13:
 - assets: \$1,062M
 - liabilities: \$1,059M (discounted reserves)
 - operating revenue: about \$25M per year (most from physician assessments)
 - investment income: \$74M in fiscal year 2013

© Oliver Wyman

20

Florida Birth-Related Neurological Injury Compensation Plan

- **Actuarial Studies of Reserve Needs and Funding Adequacy**

- performed quarterly

Florida Birth-Related Neurological Injury Compensation Plan

- **Considerations**

- historical development (triangles)
- several methods
- inflation
- investment rates
- risk margin (explicit)
- unreported claims
- payment patterns (based on history, case reserve worksheets, and mortality)
- mortality

New York Medical Indemnity Fund

New York Medical Indemnity Fund

- **Established in 2011**
- **To Pay for all Future Costs Necessary to Meet the Health Care Needs of “Qualified Plaintiffs” and to Reduce Medical Professional Liability Costs and Insurance Premiums**
- **Administered by the Department of Financial Services**
- **Mandatory Participation**

New York Medical Indemnity Fund

- **Eligibility**
 - any person deemed in a court approved settlement or judgment to have sustained a birth-related neurological injury during labor, delivery, or resuscitation after birth as a result of medical malpractice or alleged medical malpractice is a qualified plaintiff
 - applies to related actions for which no judgment/settlement had been entered before April 1, 2011

New York Medical Indemnity Fund

- **Eligible Benefits Include (among other benefits):**
 - medical
 - hospital
 - nursing
 - rehabilitation
 - medical equipment
 - drugs
- **Excess over Private Insurance**

New York Medical Indemnity Fund

• Funding

- general appropriations (\$30M first year)
- "quality contribution" collected from hospitals = 1.6% of inpatient revenue derived from inpatient obstetrical services

New York Medical Indemnity Fund

• Process

- plaintiff (injured party) files suit against healthcare provider
- go through the litigation process
- if plaintiff wins, or gets favorable settlement, court awards a total settlement amount and allocates it between future medical care and other (i.e., pain & suffering, economic)
- plaintiff receives non-medical portion and applies to Fund for future medical care
- if accepted (intention is to accept all), future medical costs are paid by Fund and amount of such payments are not at all linked to the amount of the award/settlement....Fund decides on type of care, quality of care, amount of care, and how much it will pay
- statute is silent on how to do the allocation; first case, court allocated 50/50.

New York Medical Indemnity Fund

• Illustration: \$12.1 Million Award

- \$55,000 for past medical care
- \$9.6 million for future medical care
- \$2 million for loss of future earnings
- \$500,000 for past pain & suffering

New York Medical Indemnity Fund

DAMAGES	PRE-MIF	MIF
Pain & Suffering	\$500,000	\$500,000
Past Medical	\$55,000	\$55,000
Future Medical Expenses	\$9,600,000	Paid by MIF
Lost Earnings	\$2,000,000	\$2,000,000
Plaintiff Attorney Fees (est.)	\$1,000,000	\$1,000,000 21% Paid to Attorney by Plaintiff; 79% Paid by Defendant
Total Liability of Defendant	\$12,100,000	\$3,345,000

New York Medical Indemnity Fund

• **Attorney Fees**

- if plaintiff wins, plaintiff's attorney fees determined based on the full settlement amount (per calculation rules) and pro-rated between medical and non-medical
- fees allocated to medical are paid by defendant
- fees allocated to non-medical are paid by plaintiff
- defendant is responsible for paying portion of plaintiff attorney fees allocable to Fund damages, and plaintiff is responsible for the remainder

New York Medical Indemnity Fund

• **Incentives**

- defendant wants more allocated to medical
- plaintiff wants more allocated to non-medical
- plaintiff attorney?

New York Medical Indemnity Fund

• **Actuarial Studies**

- supposed to be performed quarterly
- important because new enrollment is suspended when Fund's liabilities equal or exceed 80% of the Fund's assets

© Oliver Wyman

33

New York Medical Indemnity Fund

• **Considerations (must)**

- # admitted plaintiffs
- mortality experience of the plaintiffs
- amounts of benefits paid
- patterns of utilization
- inflationary patterns
- impact of available health insurance on benefits, investment earnings

© Oliver Wyman

34
