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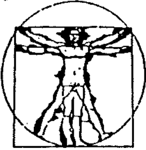

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MEMORANDUM

December 13, 1988

TO: MEMBERS, STAFF
SELECT COMMISSION ON ACCESS TO HEALTH CARE

FROM: RON DEPREZ

RE: DRAFT RECOMMENDATIONS ON MEDICAL MALPRACTICE LIABILITY PREMIUM RATES AND TORT REFORM:

RECOMMENDATION 1: Subsidy Program: The Select Commission on Access To Health Care recommends the creation of a malpractice insurance subsidy fund. The fund will be used to insure access to care for residents in areas underserved by certain medical subspecialties due to high liability premiums and low volumes of per capita health services output for that particular service. The program will be run by the Department of Human Services who will be charged with developing the criteria for the subsidy and certifying those subspecialties and areas eligible.

RECOMMEMDATION 2: Tort Reform: The Select Commission on Access To Health Care recommends that the Legislature undertake a study of tort reform specifically designed to identify those reforms which show the greatest likelihood of stabilizing the premiums rates for medical malpractice insurance.

Rationale: Unlike the medical malpractice insurance "crisis" of the 1970's where the principal issue was the lack of insurance coverage available to providers, the medical malpractice insurance "crisis" of the 1980's has focused primarily on two issues: (1) the cost of insurance premiums and (2) provider decisions regarding the treatment of patients perceived to be at high risk for suit. Both issues affect access to care. However, the cost issue has more acute effects on access to care in rural areas while the practice decision issue affects access to care for certain classes of patients from both rural and urban environments.

Recent tort reforms have been enacted explicitly or implicitly on the assumption that physicians (or other professionals) may decline to provide services that are categorized as high risk for purposes of malpractice insurance when premium rates are costly. Maine Public Law 1986, Chapter 804 included six tort reforms. Each was designed to address specific problems identified by a coalition of medical, legal, insurance and health care organizations as needing statutory reform. The changes were designed principally to reduce the frequency of claims in Maine, the amount of settlement and awards, and the length of time it takes to dispose of claims once notice is made. In theory, these would result in a lower increases in medical malpractice insurance premiums and increase access to medical care for populations adversely affected.

The cost of malpractice insurance premiums has continued to climb despite these reforms provoking calls for additional changes in the tort system. However, it is not clear that the tort changes of 1986 have had time to have an effect on premiums nor is there clear evidence that the specific reforms passed are likely to have this effect.

There have been a number of reports of medical providers refusing to provide medical services to specific populations--in particular obstetrical services to low income Medicaid recipients--and other providers who stopped providing specific medical services altogether because of the cost of medical malpractice insurance and/or the perceived risk of suit.

There is some evidence that liability insurance increases have reduced availability of obstetrical care services in rural areas more acutely than urban areas. It is argued that this is due to lower obstetrics caseload in rural areas which when coupled with steep increases in malpractice premiums has made it economically inefficient for many primary care providers to continue with obstetrical services. The result is that patients must travel elsewhere to obtain this care, use other providers, or forego care until late in the pregnancy or at delivery.

For those rural obstetrical patients with high risk pregnancies, the prospects of finding a provider in an urban area may be extremely difficult, particularly women on Medicaid or without insurance. These are patients who are usually at higher risk for complications and conditions physicians often associate with increased risk of a malpractice suit. Since reimbursement for obstetrical services for women on Medicaid is lower than for conventionally insured patients, many providers, particular obstetricians, are unwilling to accept these patients for treatment.

The Commission concludes that given this understanding of the problem we need to act immediately to reduce the impact of increased malpractice insurance premiums on obstetrical care availability and conduct a study aimed at determining the impact of recent tort reforms in Maine and elsewhere to determine which are most likely to stabilize premium rates.