

Med Mal Model Open Claim Comments - Academia Silver.txt

From: Charles Silver [CSilver@law.utexas.edu]
Sent: Tuesday, March 20, 2007 4:00 PM
To: Bill Sage; Bieniek, Joe
Cc: Simpson, Pamela K.; vidmar@law.duke.edu; Kathy Zeiler;
wsage@law.utexas.edu
Subject: RE: Statistical Information (C) Task Force Conference Call
March 20, 2007

Hi Joe,

Obviously, I support researcher access to the data, and I hope the model law will provide for this. Pressure to limit access may abate if people come to understand how much identifying information is available from other sources already. For example, in the conference call today we learned that the LA Times reportedly identified certain CA doctors who faced malpractice claims. We were also told that the reporters obtained the data from the state medical board via an open records request.

Thus, doctors' names were made public in a state that does not collect, let alone release, data on closed insurance claims.

Other sources of identifying information also exist. The Texas Medical Board discloses the names of physicians who face patient complaints. I assume that medical boards in other states also do so. Certain states, including New York and Pennsylvania, rate physicians and hospitals on quality scales for certain surgical procedures. I believe the National Practitioner Database also makes identifying information available to entities authorized to query it, such as hospitals. Private sources of information include jury verdict and settlement reporters, which cover most large states, and organizations like HealthGrades.

Best wishes,

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-----Original Message-----

From: Bill Sage
Sent: Tuesday, March 20, 2007 2:14 PM
To: Bieniek, Joe
Cc: Simpson, Pamela K.; vidmar@law.duke.edu; 'Kathy Zeiler'; Charles Silver; 'wsage@law.utexas.edu'
Subject: RE: Statistical Information (C) Task Force Conference Call March 20, 2007

Dear Joe:

Thanks again for hosting us on the conference call.

We academics feel strongly that NAIC should anticipate both research use of information collected pursuant to its model law and use beyond insurance design and regulation (and beyond tort reform).

I understood your need to keep the call on time and refrained from replying to the industry representative who threatened a political firestorm if access isn't severely restricted. I predict a firestorm if access *is* severely restricted, perhaps making it prudent to include both options explicitly in your draft.

To put it succinctly, the politics of malpractice information has changed dramatically from the mid-1980s crisis to

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the present. The purpose of data collection then was to help keep doctors insured and to inform efforts to rein in the perceived excesses of the trial bar.

Insurability and the legal process remain legitimate uses of data, but the major public issues at present are patient safety and the quality of health care given its cost. Restrictive approaches to information are disfavored. More states are requiring reporting of "adverse events" and opening quality-related information repositories to the public.

Even the longstanding practice of allowing confidential settlements of malpractice suits is being questioned because it hides medical errors.

Physicians remain very concerned about their individual reputations, but there is substantially less political sympathy for keeping possibly bad doctors in practice than there used to be.

I'm attaching a couple of readable academic articles laying out these and related issues.

Best
Bill

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