The Current
Medical Malpractice Environment in Russia

March 2003

Health, Nutrition and Population (HNP)
Human Development Sector Unit
Europe and Central Asia Region

Document of the World Bank
The Russian government has expressed an interest in implementing medical malpractice system during the mandatory health insurance system modernization.

Currently there exists a malpractice structure for victims of medical injuries to seek compensation for their losses from the responsible party – notably from a health institution- who is responsible for the injuries. But there is no framework or a legislative body that regulates the medical malpractice environment. Patients receive compensation for injuries when the following conditions are met; (1) the injury should occur during the medical treatment; (2) the injury should be outcome of the treatment, and (3) the negligence, mistake or fault of the health care institution should be determined as a cause of the injury by medical expert committees from initiation to verdict.

Thus, a patient first submits the claim to the health care institution where he/she received the treatment. The patient has to submit the claim in a written form and claim that the criteria for compensation – (1) through (3)- exist. Other medical document should be attached to the written statement when the claim is submitted. When the decision of health care institution is not satisfactory, patient can submit the claim to a house review committee in a health department. The committee consists of medical experts appointed independently by the health department to review the case. When the patient is not satisfied with the review committee’s decision, he/she can file the claim to court. The court requests the patients’ medical records from the health institution and forms an independent medical expert committee to review both patient’s and health care institution’s documents. The court’s decision is final and binding. Patient may hire a lawyer to follow up the claim but bears the lawyer’s fee out of his/her pocket.

The system deters health care institutions not to practice substandard care by holding them liable for paying the compensations. If the health care institution has a liability coverage, then it is the insurance company’s responsibility to pay for the compensation. Insurance companies base their liability premiums on experience-rating and by specialty. Thus, the premiums of health care institutions are determined based on risky procedures they perform, and the history of claims or complains filed against them. If the cost of covering a health care institution increases, the insurance company adjusts the liability premium of the institution to cover the costs. In a case where the cost of covering an institution increases tremendously, then the insurance company has right to stop issuing the liability policy to the institution. In other words, when the number of claims and the costs of compensation increase, insurance companies may stop issuing liability coverage to health care institutions which may cause a political outbreak as seen in the US in 1980s and 1990s. Despite strong deterrence signals, the system would not encourage health institutions and providers to practice quality of care in the short run, as long as the system is not fully utilized by the victims of meritorious claims.
Although there exists a competitive insurance market providing liability coverage to health care institutions, it appears that the liability insurance market is in early stage for handling medical malpractice system. As a result, the companies are not implementing risk management programs for their clients on how to reduce the number of claims and the severity of injuries.

Currently, health institutions finance the medical malpractice system through their premiums. Medical malpractice is a new phenomenon among health care institutions in Russian Federation, and many feel that they are not in risk of being sued- or not aware the situation at all. Therefore, only a small pool of private health care institutions that provide risky procedures such as cosmetic and eye surgery, and dental care- seek coverage for the malpractice claims. In 2002, less than 5% of private health institutions had medical malpractice liability coverage. Currently, there are small but increasing number of private health care institutions providing health care in Russian Federation. But according to Russian officials, there are increasing number of medical malpractice claims filed against private health care institutions. For example, in 2002, 700 claims filed only in Moscow against these institutions. During 2000-2002, 20 medical malpractice cases filed in one of regional human rights center and received compensation for total 600,000Rb.

The current malpractice system controls the costs of medical malpractice environment by allowing compensation only for economic damages and ignores compensation for pain and suffering. Moreover the system keeps the cost under control by taking the victim’s salary into consideration when the compensation for economic damages is determined. There is no provision stating that medical expenses should be estimated and compensated as part of economic damages. Further more, the system does not have a “gate keeping” mechanism to detect the merit of the claims in early stages of the process. There is no financial consequences or penalties to patients who bring frivolous claims and proceed their claims until they reach to court’s verdict. It is expected that the likelihood of filing claims regardless of their merit will increase when more and more patients became aware of their rights to seek remedies for medical injuries, and if the frivolous claims are not determined and eliminated at the early stages, the costs of processing these claims will increase total health care costs.

Draft mandatory health insurance brings many provisions related to medical malpractice and defines patients’ rights from broader perspective than the current system does. For example, patients will have right to have pre-judicial review of claims within the mandatory health insurance system, and will participate in the review process. The health insurance organizations would play significant role in the medical malpractice system to the extend which they would protect the rights of insured person when the person is injured from a medical treatment. For example, health insurance organization will inform the patients about the procedures of seeking compensation for medical injuries. Moreover, the health insurance organization can file a claim to health care institution and seek remedy on behalf of the insured person to cover medical expenses, and hire medical experts to review the case. In case a health care institution provides unsubstantiated and/or substandard medical services as confirmed by an expert report the
insurer shall have the right to refuse the reimbursement, fully or partially, for the 
expenditures of the health care institution on the provision of such services. Health 
insurance company may represent the interests of insured person in court if the injured 
person grants permission to the company.

Currently there are no provisions regarding where to draw a line for compensable 
injuries, which damages to compensate and how to determine the compensation. 
Moreover, regulatory system is not in place to regulate the claim process from initiation 
to verdict. Currently, negligence and provider fault exist in compensation decision and 
the private health care institutions face blame for the injuries occurred in their care. As 
more and more patients became aware of their rights to seek remedy for medical injuries, 
many private health care institutions will face increasing number of claims against 
themselves. If the liability insurance companies do not extend the risk sharing pool to 
other low risk health care institutions, many private health care institutions providing 
risky procedures will face either very high premiums or not being able to find an 
insurance provider to get coverage. As a result, many private health care institutions may 
stop providing risky treatments to patients.

It appears that negligence or medical errors are the substantial criteria for 
compensating victims for medical injuries. Patient has to claim the negligence to be 
considered for compensation. If there is no provision for “gate-keeping” that requires 
patients to have their case reviewed by a medical expert before submitting the claim, the 
health care costs may increase due to costs of processing large number of frivolous cases.

**Considering Future Policy and Legislation**

In considering medical malpractice insurance, the objectives of enacting a law on 
this issue should be clear as well as what makes for good policy. From a social point of view 
as well as from a quality point at view, two criteria are obvious in judging any 
insurance or compensation scheme for malpractice:

1. Preventing medical errors; and
2. Providing adequate compensation to patients or their relatives for consequences of 
adverse outcome of medical interventions and stay in health care institutions

As for preventing medical errors, there should be an integrated and 
comprehensive policy for continuous quality improvement being endorsed and 
implemented. Such a policy pays attention to all aspects of quality (structure of services 
delivery, process and outcomes as well as the interaction between health staff and 
patients/relatives) on all levels of care (primary, secondary and tertiary care and 
prevention) and likewise to individual professionals and health care institutions. Such a 
policy deals with important factors that influence quality of care, such as:

**Structural Indicators**
- Education of staff
- Management
•Composition of the workforce
•Distribution of equipment and high risk interventions: geography/level of care
•Network of services: cooperation and communication
•Health information system

**Process Indicators**
•Evidence based medicine
•Clinical guidelines based on evidence and international best practice
•Standards for accreditation of services
•Informed public/patients

and

**Outcome Indicators**

Indicators can be developed, based on analysis and priority areas and distinguishing between:
•Professional
•Institutional, and
•System/national level

Such a policy would also pay attention to the *quality enabling environment* through the:
•Legal framework for prevention and care delivery: equal access to prevention/care and patients rights
•Adequate funding level
•Equitable regional distribution of funding
•Provider payment systems
•Remuneration systems
•Enforcement and judicial system

The Ministry of Health of the Russian Federation is currently in the process of finalizing such a comprehensive policy. The planned further development of the systems for licensing of individual professionals and for the accreditation of health care institutions will provide with more adequate quality assurance mechanisms.

It will, of course, take some time to implement the new quality policy Federation-wide and to apply it to the public as well as to the private sector. In the interim, some of the medical errors may be due to system failures like lack of adequate equipment, supplies and support staff, these to some extent due to inadequate funding of the public system. Medical malpractice insurance for professionals working in underfunded and understaffed public institutions will therefore be a difficult thing: who is to blame? Until now, the Russian Medical Malpractice Insurance companies are only serving private doctors/clinics.

The increasing costs of malpractice insurance have caused many insurers to push for the introduction of patient risk management in hospitals. Many national accreditation systems have also been pushed to include patient safety in their standards for accreditation of health care facilities. This is to be seen as a positive contribution of MMI to quality improvement.
However, a malpractice insurance can also, as other punitive systems, lead to the cover up of medical mistakes, thus not leading to quality improvement. The U.S. Institute of Medicine in its report To Err Is Human (2000) has therefore plead for non-punitive systems to systematically uncover errors and to learn and in the future avoid them.

Medical malpractice insurance can also lead to defensive medicine:
- doing more diagnostic tests and procedures than needed, which in itself can have negative consequences for patients;
- referring patients to higher echelons to avoid risks as well as
- refusing to treat difficult cases

The no-fault systems should be complemented with a system of reviewing the medical errors in a systematic and non-punitive way, providing feedback to individual professionals and institutions.

As for compensating patients and relatives, those systems that provide with equal access to compensation and are not subject to proof of medical negligence offer the best perspective as compared with tort systems. Private, for profit, insurance systems are not necessarily the best solution for health systems strapped of cash: the contributions will have to be paid anyhow by the health sector and just increase costs. If private insurance is the option of choice than health care facilities could also cover the costs of insurance for their individual staff, thus preventing patients from falling through the cracks because of doubts about who is to blame and what insurance to charge.

Hospitals and/or health professionals can also establish mutual insurance funds, thus covering the risks as well as preventing the leakage of money out of the system as is the case in private, for profit, insurance.

A (mandatory) social insurance system for compensating the consequences of medical errors could be well-tuned to already existing compensation schemes for income losses and disability, thus achieving more efficiency and preventing patients from not getting what they should to lead a decent life.