REPORT 15 OF THE BOARD OF TRUSTEES - A-10
Medical-Legal Partnerships to Improve Health and Well-Being
(Resolution 7, I-09)
(Reference Committee B)

EXECUTIVE SUMMARY

At the 2009 Interim Meeting, the House of Delegates (HOD) referred Resolution 7, "Medical-Legal Partnerships to Improve Health and Well-Being," for a report back at the 2010 Annual Meeting. Resolution 7 asked that our AMA encourage physicians, allied health professionals, hospitals, and community-based health centers to develop medical-legal partnerships (MLPs) to help identify and resolve diverse legal issues that affect patients' health and well-being. Resolution 007 also asked our AMA to work with key stakeholder organizations such as the American Academy of Pediatrics, the American Bar Association, the Legal Services Corporation and the Federation to: (a) educate physicians on the impact of unmet legal needs on the health of patients; (b) provide physicians with information on screening for such unmet legal needs in their patients; and (c) provide physicians, hospitals and health-centers with information on establishing a Medical-Legal Partnership.

Testimony concerning Resolution 7 at the 2009 Interim Meeting was mixed. Testimony against adoption was based on concerns regarding undue burdens that MLP participation might impose on physicians and questioned whether a patient's unmet legal needs are a physician's responsibility. Testimony in favor of adoption pointed to the success of the approximately 180 existing MLPs, stressed that Resolution 7 was not intended to place any undue burden on physicians, and that MLPs can be an effective tool for care management in certain situations.

This report discusses the rationale underlying the development of MLPs and broadly outlines MLP structure and operation. This report describes how MLPs can improve patient health by addressing unmet legal and social needs that physicians generally do not have the time, resources, or expertise to adequately address and resolve, and discusses why MLP involvement need not place undue administrative burdens on participating physicians. This report also examines liability concerns associated with physician involvement in MLPs and concludes that those concerns need not discourage interested physicians from exploring the possibility of MLP participation.

The Board of Trustees recommends that Resolution 7 (I-09) be adopted and that the remainder of this report be filed.

REPORT OF THE BOARD OF TRUSTEES

B of T Report 15-A-10

Subject: Medical-Legal Partnerships to Improve Health and Well-Being (Resolution 7, I-09)

Presented by: Rebecca J. Patchin, MD, Chair

Referred to: Reference Committee B (Julie A. Komarow, MD, Chair)

BACKGROUND

At the 2009 Interim Meeting, the House of Delegates referred Resolution 007, "Medical-Legal Partnerships to Improve Health and Well-Being." The resolution was introduced by the American Academy of Pediatrics and asks that the AMA encourage physicians, allied health professionals, hospitals, and community-based health centers to develop medical-legal partnerships (MLPs) to help identify and resolve diverse legal issues that affect patients' health and well-being. The resolution also asked the AMA to work with key stakeholder organizations such as the American Academy of Pediatrics, the American Bar Association (ABA), the Legal Services Corporation and the federation to: (a) educate physicians on the impact of unmet legal needs on the health of patients; (b) provide physicians with information on screening for such unmet legal needs in their patients; and (c) provide physicians, hospitals and health-centers with information on establishing a Medical-Legal Partnership.

Testimony at the 2009 Interim Meeting both supported and opposed Resolution 7. Testimony against adoption of the resolution was based on concerns regarding undue burdens that MLP participation might impose on physicians and questioned whether a patient's unmet legal needs are a physician's responsibility. Testimony in favor of Resolution 7's adoption pointed to the success of the approximately 180 existing MLPs, stressed that Resolution 7 was not intended to place any undue burden on physicians, and that MLPs can be an effective tool for care management in certain situations.

DISCUSSION

Medical Legal Partnerships incorporate lawyers, physicians, and health care providers into an interdisciplinary team to improve patient health

Underscoring the Medical-Legal Partnership (MLP) concept is an understanding that human health is not solely dependent on pathology and medical treatment. Instead, human health can be affected by social factors and unmet legal needs. MLPs combine physicians, health care providers such as nurses, social workers, and one or more attorneys into an interdisciplinary team that can proactively address unmet social and legal needs. MLPs recognize that while physicians are committed patient advocates, there are practical limits to the scope of physicians' advocacy efforts. For example, physicians typically do not have the time to navigate the bureaucratic complexities that can unintentionally hinder low-income or vulnerable patients' ability to receive benefits from public programs like Medicaid or Supplemental Security Income. In addition, physicians generally

have the time to understand and enforce regulatory regimes intended to protect consumer safety, e.g., statutes and regulations protecting tenants' rights. Although social workers can help address some of the unmet social and legal needs that affect patient health, social workers may lack the training or qualifications needed to engage in the type of legal advocacy that is often necessary to enforce existing laws or obtain available public benefits. Lawyers, on the other hand, are specifically trained in legal advocacy and can open doors that would often remain closed to non-lawyer members of the health care team. They may be able to hold institutions such as agencies, landlords, and schools accountable under the law for their behavior to the benefit of patients and their families.

Because physicians are often in a unique position to identify environmental issues affecting patient health, MLPs frequently enable lawyers to intervene on behalf of patients before an unmet legal or environmental need reaches crisis levels. Some MLPs consist of one attorney while others have a staff of two or more. The attorney may be a hospital staff attorney, an attorney at a legal services office, or an attorney practicing in a law firm volunteering his or her services to the MLP and its patients. Studies indicate that MLPs have resulted in a number of patient benefits, including but not limited to, increased awareness and use of free legal services, greater access to public program benefits, reductions in hospitalizations, and improvement in patient health and well-being.[1]

The Boston Medical Center MLP and the National Center for Medical-Legal Partnership

The Boston Medical Center (BMC) formed the first MLP in 1993, the Medical-Legal Partnership for Children (MLPC). The MLPC served the health care and unmet legal and social needs of pediatric patients living in poverty conditions. Since the MLPC's inception, physicians and attorneys in other communities across the country have developed MLPs to assist low-income and vulnerable patients following the MLPC's example. In January 2009, BMC founded the National Center for Medical Legal Partnership, which provides assistance to individuals and organizations seeking to develop MLPs. According to the National Center for Medical-Legal Partnership's Web site, MLPs are now serving low-income or vulnerable populations at over 180 hospitals and health centers in the United States and Canada.[2] Although the MLPC focused on pediatrics, additional MLPs have been formed that center on internal medicine, family medicine, oncology, infectious disease, and geriatrics.[3] The National Center for Medical-Legal Partnership has a number of resources that can assist those interested exploring the possibility of developing, or participating in, a MLP.[4]

MLP-related education efforts

In recognition of the benefits of MLP-related advocacy, a number of medical schools and residency programs incorporate MLP-related advocacy issues into their curricula. According to the Journal of Graduate Medical Education, MLP-related curricula, e.g., describing a physician's role in advocating for housing and public benefits for patients, have been incorporated into 29 residency programs in the U.S.[5] Sixty nine percent (69%) of these residency programs were pediatric residency programs, fourteen percent (14%) were in family medicine, seven percent (7%) were in internal medicine programs, and ten percent (10%) were in other specialties.[6] Twenty-five (25) medical schools participate in MLPs, with seventeen percent (17%) having a dedicated MLP course and twenty percent (20%) offering an MLP course as an elective.[7] Some medical schools and law schools are beginning to offer joint MLP courses.

Training, screening, and referral

In an MLP, MLP lawyers educate physicians, medical students, residents, health care providers, social workers, and other members of the treatment team to screen patients to identify any unmet legal or social factors that may be negatively affecting patient health. The screening process need not be time consuming, as MLPs have developed tools that are specifically designed to facilitate screening. Such screening tools can be accessed on the Web site of the National Center for Medical-Legal Partnership.[8] Once an unmet need has been identified, the physician may refer the patient to the MLP for resolution, where appropriate.

The referral process can be simple. Physicians referring patients to MLPs could simply provide patients with MLP contact information and then leave it to the patient to make the contact. This type of referral would not appear to require a patient consent or authorization, since the referral is simply in the form of a discussion between the patient and the patient's physician. However, a more effective referral process would involve the referring physician providing the MLP with the patient's name, contact information, and possible unmet legal or social needs so that the MLP attorney and others can follow up with the patient. This type of referral would generally require a HIPAA compliant authorization, as examined in more detail below in the liability discussion.

Examples and issues the MLPs may address

MLPs can provide practical and invaluable assistance to patients facing significant unmet needs. For example, a pediatrician participating in BMC's MLP prescribed an expensive formula supplement to a child who was failing to thrive. When the mother's insurer denied coverage for the supplements, an MLP attorney assisted the pediatrician in drafting a successful appeal letter that led the insurer to reverse its decision.[9] Another case involved a three-year old patient, who had repeatedly visited a hospital emergency department due to recurrent pneumonia. The child's mother believed that the recurrent episodes were related to the presence of mice in the building in which the child and mother lived, and repeatedly asked the building manager to exterminate the mice. On each occasion, the building manager said that there were not sufficient funds in the budget to pay for an exterminator. During a hospital visit, a physician who had been trained to identify environmental causes of health issues learned about the mice infestation referred the mother to an MLP attorney. The attorney informed the building manager that by law the manager was obligated to exterminate the mice, regardless of whether or not extermination costs had been factored into the budget. As a result of the lawyer's intervention, the building receives regular extermination treatments, the mouse problem has been resolved, and the child's health has significantly improved.

The previous examples illustrate just some of the unmet legal and social needs affecting patient health that MLPs can resolve. Speaking more broadly, MLPs can address a wide range of issues, including the following:

- Substandard housing conditions, such as mold in an asthmatic patient's apartment that the patient's landlord refuses to remove;

- Eligibility for health insurance coverage, whether through private or government programs like Medicaid or Medicare;

- Eligibility for employment benefits, like those provided under the Family and Medical Leave Act, to allow a family member to care for a sick loved one;

- Eligibility for income supports, such as Temporary Aid to Needy Families, Social Security Income benefits, or food stamps;

- Domestic violence, e.g., to provide for the physical safety of women and children;

- Family law, e.g., to arrange for guardianships, custody, and child support to stabilize a patient's living situation;

- Advance planning to ensure continuity in health care decision-making, e.g., through the use of living wills or durable powers of attorney for health care; and

- Special education, e.g., to secure appropriate education for chronically sick or disabled children.[10]

PHYSICIAN LIABILITY CONCERNS

Physician liability related to participation in an MLP could arise in two ways. First, liability could stem from state or federal laws relating to the disclosure of confidential patient health information. Second, liability could potentially arise through the referral by the physician to the MLP. However, it should be noted that neither the National Center for Medical Legal Partnership nor the American Bar Association were aware of a single lawsuit filed against a physician in conjunction with the physician's participation in an MLP.

The Health Insurance Portability and Accountability Act of 1996 and state privacy laws

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy Rule adopted pursuant to HIPAA impose significant requirements on "covered entities" with respect to "protected health information" (PHI). The Privacy Rule defined PHI as all information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral and identifies a patient or for which there is a reasonable basis to believe it can be used to identify a patient.[11] Under HIPAA, a physician is a covered entity if he or she transmits health information in electronic form in connection with health transactions, e.g., by submitting claims to payors electronically. If a physician falls within HIPAA's definition of "covered entity," the physician must obtain a patient's "authorization" in order to use or disclose protected health information PHI, unless the use or disclosure is for purposes of "treatment," "payment," or "health care operations." If the referral process involves the physician providing an MLP with the patient's name or contract information, that provision of information constitutes a disclosure of PHI that would not be for the purposes of treatment, payment, or health care operations. Consequently, the physician could not provide the MLP with patient contact information unless the patient had signed a HIPAA compliant authorization permitting the physician to do so. Physicians should also be aware that it may be necessary to enter into HIPAA business associate agreements with entities providing legal services before physicians make referrals to those entities.

A valid HIPAA compliant authorization must:

(1) identify the individual whose PHI is to be used or disclosed, and be signed and dated by that individual;

(2) identify the party receiving the disclosure of PHI, e.g., applicable MLP members, including the MLP attorney;

(3) identify the person(s) who provide the disclosure of PHI, in this case the patient's physician;

(4) contain a description of the PHI to be disclosed, e.g., the information required by the MLP attorney to meet the patient's unmet legal need;

(5) contain a description of the purpose of the disclosure, e.g., to obtain the legal services of the MLP attorney; and

(6) the authorization's expiration date or condition upon which the authorization terminates, e.g., when all of the MLP attorney's services have been provided.

In addition to requirements (1) through (6), an authorization must contain: (a) a statement that notifies the individual of his or her right to revoke the authorization; (b) a statement that treatment may not be conditioned on signing the authorization; and (c) an explanation that once the PHI is disclosed to the recipient, it may no longer be protected from redisclosure.

Regardless of whether or not a physician must be HIPAA compliant, physicians providing patient information to an MLP as part of the referral process must also ensure that the provision of that information comports with any applicable state privacy requirements. Most, if not all states, have specific laws designed to protect the confidentiality of patient health care information. These laws may require the referring physician to obtain a specific patient authorization or consent prior to providing an MLP with the patient's contact information, even if HIPAA's requirements do not apply to the physician. The physician will also need to be cognizant of any specific state privacy laws if HIPAA applies, because HIPAA does not preempt state privacy protections that are *more stringent* than protections imposed by HIPAA and the Privacy Rule.[12] Consequently, in a state with more stringent privacy protections than HIPAA, a patient consent or authorization to disclose patient contact information to an MLP as part of the referral process would likely have to comport with both HIPAA and the specific state requirements.

The fact that a patient should sign a HIPAA compliant authorization specifically allowing the referring physician to provide the patient's contact information to the MLP need not impose a significant administrative burden on the physician. Physicians who must be HIPAA compliant will likely already be obtaining HIPAA authorizations as part of their patient intake processes. These authorizations could be modified to include language specifically permitting referral to an MLP for advocacy purposes. Alternatively, the referring physician could offer the patient the opportunity to execute such an authorization at the time that the physician discusses with the patient the possibility of referral to the MLP. In either case, development of MLP-specific HIPAA authorizations need not be an onerous task, particularly since at this time MLPs which are affiliated with hospital and health centers are often willing to develop such authorizations on behalf of physicians.

Referral liability

A second area of potential liability for the referring physician could arise in connection with the referral itself. However, because physicians are not attorneys, the potential for such liability is extremely remote, and physicians should be insulated from any such liability if the physician obtains in writing a patient consent to make the referral to the MLP via a referral consent form. Generally speaking, the referral consent form should contain the following four elements: (1) the name of the individual making the referral (e.g., the referring physician); (2) the consent of the patient to be referred to the MLP for the evaluation and handling of specified legal services; (3) an

acknowledgment that the physician is not an attorney, and has no responsibility for any legal advice or other act or omission by the MLP attorney and, in those states where appropriate, a release of liability for the referral to the MLP, and (4) the date and signature of the patient. Physicians should contact their professional liability carriers for information about specific state laws.

CONCLUSION

Unmet social and legal needs can have a significant effect on patient health, as well as medical conditions themselves. MLPs are designed to identify and resolve these unmet legal and social needs by joining attorneys with other members of the patient's treatment team. MLPs have been established as an effective means of improving patient health by addressing unmet needs that physicians practicing without legal collaboration typically would not be able to address.

RECOMMENDATIONS

The AMA Board of Trustees recommends the following recommendations be adopted in lieu of Resolution 7 (I-09) and that the remainder of this report be filed:

1. The American Medical Association should encourage physicians to develop medical-legal partnerships (MLPs) to help identify and resolve diverse legal issues that affect patients' health and well-being. (Directive to Take Action)

2. The AMA should work with physician groups and other key stakeholder organizations such as the American Bar Association and the Legal Services Corporation to: (a) educate physicians on the impact of unmet legal needs on the health of patients; (b) provide physicians with information on screening for such unmet legal needs in their patients; and (c) provide physicians, hospitals and health-centers with information on establishing a Medical-Legal Partnership. (Directive to Take Action)

FISCAL NOTE: Less than $1,000 to implement