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MALPRACTICE BRIEF

By Chantel DePaepe, MPH, AANP Research Specialist and Rejon Pelham AANP Research Associate

In 1986, the U.S. Congress passed the Health Care Quality Improvement Act, establishing the National Practitioner Data Bank (NPDB) (HRSA, 2023). The NPDB collects information on adverse actions related to licensed health care providers and medical malpractice payments. This federal registry aids in reducing health care fraud and promoting quality health care. Information on nurse practitioners (NP), physician assistants (PA), physicians and other providers have been reported to this registry since 1990. When individuals or organizations make a malpractice claim or lawsuit against a health care provider, they must report that payment to the NPDB (Illich, 2006).

Most research on malpractice utilizes data from the NPDB. Some research includes NPs; however, NPs are sometimes grouped with other advanced practice nurses (Myers et al., 2021). Other studies focus on malpractice claims involving physicians (Myers et al., 2019; Whang et al., 2013). Additionally, the majority of research on this topic focused on malpractice claims and payments that occurred before 2018 (Brock et al., 2017; Hooker et al., 2009; Sweeny et al., 2017; Selway, 2011). A few studies explored malpractice claims by state, practice setting and specific malpractice allegations (Selway, 2011; Markowitz & Smith, 2023). Overall, studies have found that malpractice claims have increased at a slower rate for NPs compared to other health care professionals (Miller, 2012; Miller, 2013).

As the number of NPs licensed in the U.S. continues to grow, it is vital to continue reviewing the malpractice data, which is why this research brief will focus on malpractice payment trends from 2019 to 2021 for NPs, PAs and physicians using information from the NPDB. Information on the total number of each provider type was obtained from the Health Resources and Services Administration's (HRSA) Area Health Resource File (AHRF).

METHODS

The NPDB public use data file was downloaded on May 24, 2023, and contained data from September 1990 through June 2022. For analytical purposes, the year the report was originally processed was utilized as a reasonable substitute for the year of judgment or settlement, since reports must be made to NPDB within 30 days of payment. Only malpractice payments were analyzed for this report. Medical doctors (MDs) were classified as allopathic physicians and osteopathic doctors (DOs) were categorized as osteopathic physicians. All physician residents were

excluded from this analysis. NPs included only individuals designated as an NP and PAs were limited to those reporting as PAs. The total number of each type of provider was obtained from the HRSA's AHRF files for 2019-2020, 2020-2021 and 2021-2022, and each year was downloaded on May 24, 2023. The AHRF receives count information from the American Medical Association for allopathic and osteopathic physicians and obtains data for NPs and PAs that originated from the Centers for Medicare and Medicaid Services National Provider Identifier file (HRSA, n.d.). Only active federal and nonfederal providers were used for the rate denominators.

RESULTS

In 2021, the last year the AHRF included data on all provider types, only 3.0% of all malpractice claim payments were made by NPs, while 2.3% were made by PAs, 6.6% by DOs and 64.6% by MDs. The remaining claims were paid by a combination of more than 80 different health care professionals, such as dentists, podiatrists, registered nurses and licensed clinical social workers. Furthermore, fewer than 1 in 1,000 NPs paid a malpractice claim in that same year compared to slightly more than one in 1,000 PAs, about 8 in 1,000 DOs and 6 in 1,000 MDs. Between 2019 and 2021, these rates have shown minimal variation for NPs and PAs, see Table 1.

TABLE 1. MALPRACTICE PAYMENT RATE BY PROFESSION AND YEAR, 2019-2021

YEAR	MDS	DOS	PAS	NPS
2019	0.82	1.04	0.16	0.10
2020	0.68	0.84	0.13	0.08
2021	0.60	0.76	0.13	0.08

DISCUSSION

This brief explored trends in malpractice payments. Results from this analysis highlight that MDs and DOs experienced sizable decreases in the rate of malpractice payments between 2019 and 2021, whereas NPs and PAs experienced a less dramatic reduction. A pivotal finding of this analysis is that NPs were less likely to pay a malpractice claim in 2019, 2020 and 2021, as compared to MDs, DOs and PAs. These findings are consistent with other studies that examined malpractice claims before 2019. One study found that from 2005 to 2014, physicians had the highest rate of malpractice reports as compared to that of PAs and NPs (Brock et al., 2017). Another study analyzed 2008-2013 malpractice claims and found that the claim rate for NPs and PAs was lower than the claim rate for physicians (Miller, 2013). Additionally, a study conducted from 1990 to 2012 observed that NPs and PAs had fewer reported malpractice cases to

the NPDB as compared to physicians (Miller, 2012). An analysis examining malpractice payment claims from 2014 to 2018 concluded that NPs were less likely to pay a malpractice claim in 2018 than MDs, DOs and PAs (Tracy, 2020). Lastly, a study with claims data concluded that payout cases for NPs, DOs and MDs decreased between 2016-2019 (Markowitz & Smith, 2023).

There may be several reasons for the decrease in malpractice claims across all provider types between 2019 and 2021. The COVID-19 pandemic, which caused elective surgeries and procedures, certain practice settings and courthouses to temporarily suspend services, likely contributed to decreases in claims. Delays in health care services and staff shortages during this time might influence malpractice claims for the next several years. Additionally, the decline in paid claims could be due to state tort reform laws, which limit the amount of malpractice payments that can be made within that state (Hellinger & Encinosa, 2006). Most states implemented these laws in the 1980s and 1990s; however, some states implemented these laws in the 2000s. Lastly, organizations and health care professionals have produced practice guidelines to educate health care providers about liability and malpractice. These educational resources might influence how providers document and conduct health care services.

LIMITATIONS

Specific limitations must be considered. This brief did not analyze the data for specific malpractice allegations and the amount of malpractice payments by provider type.

CONCLUSIONS

For the last several decades, research has continued to generate evidence on the safety and quality of NP-provided care across practice settings and patient populations. Examining malpractice payment claims supports these findings, because NPs are least likely to have a malpractice claim and claim resulting in an award of payment, as compared to other providers.

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