

# Does Medical Malpractice Reform Help States Retain Physicians and Does It Matter?

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# Is Liability Crisis Driving Doctors from Plaintiff Friendly States?

- “Americans are beginning to feel the effects of double digit increases in medical malpractice insurance premiums, which are prompting doctors to flee states with the highest premiums, refuse to perform high risk procedures, retire early out of frustration or stage protests such as the one underway in West Virginia”

– Washington Post: January 5, 2003

# Is Liability Crisis Driving Doctors from Plaintiff Friendly States?

- “What the latest GAO report shows is that the threat about access to health care is largely overblown.”

- Washington Post: September 16, 2003

# Is Medical Malpractice Reform the Answer?

- Supporters of Reform: Reform is necessary to bring down malpractice insurance rates in plaintiff-friendly states
- Opponents of Reform: Tort claims are not the culprit behind rising rates
- Theory doesn't provide clear-cut answers

## Theoretical Ambiguity

- Even if insurance rates rise, doctors might be able to pass additional cost through to patients
- If high judgments do not drive insurance price increase, reforms will be ineffective
- Even if reforms lower rates and increase number of doctors, distortions in care decision could lead to welfare losses

## Examine State Experience

- There is substantial variation in the timing and substance of reforms at the state level over the past 20 years
- Examine effect of reforms on doctor location decisions
- Examine effect of reforms on health outcomes
- Unbundle reforms

# Specific Reforms

- Non-Economic Damage Caps
- Total Damage Caps
- Collateral Source Reform
- Abolition of Joint and Several Liability
- Restrictions on Attorney's Fees
- Periodic Payments
- Victims' Funds

# Doctor Location Decision

- AMA data on number of physicians by specialty per 100,000 state residents (1980-1998)
- State-Specialty Fixed Effects
- Year Fixed Effects
- State-Specific Trends
- Other Variables

# Results

- Statistically significant reforms
  - Non-Economic damage caps (non-linear)
    - » +6 doctors/100,000 residents (3% increase)
  - Abolition of joint and several liability
    - » -2 doctors/100,000 residents (1% decrease)
  - Contingency fee restriction
    - » -4 doctors/100,000 residents (2% decrease)
  - Victims' fund
    - » -6 doctors/100,000 residents (3% decrease)
- Insignificant reforms
  - \$250,000 caps; total caps; collateral source reform; periodic payments

# Health Effects

- Optimal tort law induces efficient care ( $MB = MC$ )
- Medical malpractice law might not be optimal
  - Physicians are indemnified for their mistakes
  - Malpractice insurance is not risk rated
  - Poor correlation between negligence and litigation
  - Non-financial costs to litigation
  - Problems with valuing non-economic loss
- Reforms could lower standard of care, generating health losses
- Reforms that attract physicians improve access and continuity of care
- Net effect of reform is ambiguous

# Infant Mortality

- CDC maintains comprehensive data
- Well defined population
- Obstetricians at heart of medical crisis
- Study state-level infant mortality rates by race for 1980-1998
- Control state effects, year effects, and state-specific trends as well as various covariates

## 6-Day Infant Mortality

- Statistically significant reforms for whites:
  - Collateral source reform: +11 deaths/100,000 births (3% increase)
- Statistically significant reforms for blacks:
  - Collateral source reform: +55 deaths/100,000 births (13% increase)
  - Non-Economic damage caps: -70 deaths/100,000 births (16% decrease)

# What is causal mechanism?

- It is not possible to identify where changing level of care comes from:
  - Obstetrician, pediatrician, hospital, etc.
- Previous research suggests that obstetricians do not change behavior when liability risk changes
- Hospital changes?
- External effects?

# Increased Access

- For black population, appears as though caps improve health outcomes through expanded access
  - Caps increase number of doctors in state
  - Improved access and continuity results in better health outcomes
  - While changing care standards affect both races, access appears to be particularly important for black population

# Why No Defensive Medicine?

- Kessler & McClellan (1996) show reform results in less defensive medicine
- Why don't we observe same result?
  - Perhaps this is defensive medicine
  - Perhaps effect differs by health metric
  - Unbundling of reforms
- While our results are useful from positive standpoint, welfare judgments are not possible

# Conclusion

- Some reforms attract doctors; some reforms drive doctors away; and some reforms have no effect
- Reforms do change care levels, but this effect might be offset by increased access in some communities
- Indirect implications for federal reforms
  - State competition no longer occurs under federal regime
  - At the margin, however, effective reforms (e.g., caps set at reasonable inflation-adjusted levels) are likely to increase the supply of physicians