

7. Interventions that are Unlikely to Foster Substantive Liability Solutions in Maternity Care

Fact Sheet for Stakeholders from *Maternity Care and Liability Report* *

Problem: A high-functioning liability system in maternity care would meet the needs of clinicians, women and newborns, and payers. It is important to understand which strategies for improvement have been shown, or are likely, to do this, and which are not.

Report findings: The *Maternity Care and Liability* report held 25 strategies that have been proposed and, in many cases, implemented to address persistent liability problems up to a multi-stakeholder framework (see fact sheet 1) for a high-functioning liability system. Fifteen strategies were found to have overly narrow aims and lacked evidence of meaningful effectiveness in maternity care. These included tort reforms collectively and eight specific tort reforms, which, with one exception, have been evaluated in the context of maternity services:

- attorney fee limits restricting the portion of awards that compensate lawyers
- caps on non-economic damages, providing a compensation ceiling for harms that cannot be monetized
- collateral source rule, to prevent a plaintiff from “double-dipping” from multiple sources of compensation
- expert witness rule, to impose standards for expert witnesses
- joint and several liability rule, to limit the defendants who can be named as having had responsibility for harm
- periodic payment of awards, spreading out over time payments to plaintiffs for damages
- pretrial screening, to judge whether claims of plaintiffs are meritorious
- statute of limitations, to limit the time after possible injury when a claim can be filed.

Five liability insurance reforms have limited evidence and limited plausible impact across the seven aims. They are:

- joint underwriting associations, to increase access to liability insurance
- liability insurance investment *and* rate regulation, to keep insurance companies solvent and stabilize rates
- liability insurance premium subsidy, to encourage continued provision of maternity care
- patient compensation funds, to limit the liability levels of traditional policies.

Joint underwriting associations may, if evaluated, be shown to play an important role in access to liability insurance for midwives and birth centers. The single premium subsidy program reported for maternity care was ineffective in retaining maternity care providers. In addition, there is as yet little support for the “tort alternative” strategies of arbitration and mediation in medical liability generally and none in maternity care, though mediation may have a role in combination with some promising strategies (see fact sheet 8).

Takeaways: The reform strategies described above have limited aims. When evaluated in maternity care, impact has been modest at best. Strategies that have been shown to meet or would likely meet the needs of multiple stakeholders are good candidates for implementation and evaluation in states, health plans, or other appropriate entities (see fact sheet 8).

* **Learn more:** Sakala C, Yang YT, Corry MP. *Maternity Care and Liability: Pressing Problems, Substantive Solutions*. New York: Childbirth Connection, January 2013. Available at <http://transform.childbirthconnection.org/reports/liability/>. See also open access “Maternity Care and Liability” articles in *Women’s Health Issues* 2013;23(1) at <http://www.whijournal.com/issues>.

