

# 1. Policy Framework for Improving the Liability Environment for Women and Newborns, Maternity Care Providers, and Payers

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

**Problem:** The liability system poorly serves maternity care providers, childbearing women and families, and those who pay for maternity care. Traditional liability reforms have prioritized interests of maternity care providers and insurers (e.g., trying to reduce liability insurance premium levels by limiting access to courts and the size of payouts), but not those of women and newborns and maternity care payers. Even with respect to the narrow aims, compelling evidence about the effectiveness of traditional reforms in maternity care is lacking.

**Report findings:** To meet the needs of all key stakeholder groups, it is important to go beyond the narrow aims of traditional liability reforms. Our review of the impact of the liability environment in maternity care led us to develop a multi-stakeholder framework with seven criteria for a high-functioning liability system in maternity care. Effective policy interventions should:

- Promote safe, high-quality maternity care that is consistent with best evidence and minimizes avoidable harm
- Minimize maternity professionals' liability-associated fear and unhappiness
- Avoid incentives for assurance and avoidance defensive maternity practice
- Foster access to high-value liability insurance policies for all maternity caregivers without restriction or surcharge for care supported by best evidence
- Implement effective measures to address immediate concerns when women and newborns sustain injury, and provide rapid, fair, efficient compensation
- Assist families with responsibility for costly care of infants or women with long-term disabilities in a timely manner and with minimal legal expense
- Minimize the costs associated with the liability system.

**Takeaways:** The *Maternity Care and Liability* report identifies many ways that the current liability system is failing to protect interests of key stakeholder groups. Despite widespread implementation of reforms over many decades, troubling problems persist. Narrow aims, such as reduction of liability insurance premiums, cannot be expected to address the breadth of problems. Needed progress requires a broader vision.

The proposed framework has the potential to move discourse and policy forward. When options for reform are held up to criteria in the proposed framework, many that have been widely implemented do not appear to meet any of the criteria. By contrast, other reforms have the potential to be win-win-win solutions for maternity care providers, childbearing women and families, and those who pay for their care. Promising reforms warrant piloting and evaluation by states, health systems, or other appropriate entities.

The report found that the effectiveness of reforms in maternity care may differ from their impact in medicine overall or in other clinical areas. For example, combined tort reforms or caps on non-economic damages appear to be marginally effective at best in maternity care but more effective in medicine overall and in other clinical areas. To help maternity care stakeholders, the proposed framework should be applied within this clinical area.

\* **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>.

