

Are Common Approaches to Tort Reform Effective?

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Liability Reform Options

Conventional Tort Reform

Limitations on Access to Courts

- Statute of limitations / repose
- Screening panels

Modification of Liability Rules

- Joint and several liability rules

Damages Reform

- Caps
- Attorney fee limits
- Collateral source rules
- Periodic payment

System Reform

Alternative Mechanisms for Resolving Disputes

- Early offer & settlement
- Medical courts
- Private contracts

Alternatives to Negligence

- “No-fault” administrative system
- Pre-designated compensable events

Relocation of Legal Responsibility

- Enterprise liability



Evaluating the Effects of Reforms

- Descriptive analyses comparing states are not reliable
- Methodological pitfalls:
 - Inadequate control for confounding variables
 - Failure to adjust for population change, inflation, and other potential drivers of differences
 - Inappropriate comparison groups
 - Grouping different kinds of caps together



Results of Controlled Studies of the Impact of Tort Reforms

	Decrease in Claims Payouts?		Decrease in Claim Frequency?		Decrease in Premiums?		Increase in Physician Supply?	
	Yes	No	Yes	No	Yes	No	Yes	No
Joint-and- Several Liability Reform	No studies	Blackmon & Zeckhauser 1991; Viscusi et al. 1993; Avraham 2007; <i>Waters et al. 2007</i>	No studies	No studies	Blackmon & Zeckhauser 1991; Viscusi et al. 1993; Danzon et al. 2004	<i>Thorpe 2004</i>	No studies	Klick & Stratmann 2005; <i>Yang et al. 2008</i>
Statute of Limitations/ Repose	<i>Danzon 1984</i>	<i>Sloan et al. 1989;</i> <i>Zuckerman et al. 1990;</i> Blackmon & Zeckhauser 1991; <i>Waters et al. 2007</i>	<i>Danzon 1986;</i> <i>Zuckerman et al. 1990</i>	<i>Danzon 1984</i>	<i>Zuckerman et al. 1990</i>	Sloan 1985; Blackmon & Zeckhauser 1991	No studies	No studies
Attorney Contingency Fee Limit	No studies	<i>Danzon 1984, 1986;</i> <i>Sloan et al. 1989;</i> <i>Zuckerman et al. 1990;</i> Blackmon & Zeckhauser 1991	No studies	<i>Zuckerman et al. 1990</i>	No studies	Sloan 1985; <i>Zuckerman et al. 1990;</i> Blackmon & Zeckhauser 1991; <i>Thorpe 2004</i>	No studies	Klick & Stratmann 2005; <i>Yang et al. 2008</i>

Results of Controlled Studies of the Impact of Tort Reforms



	Decrease in Claims Payouts?		Decrease in Claim Frequency?		Decrease in Premiums?		Increase in Physician Supply?	
	Yes	No	Yes	No	Yes	No	Yes	No
Collateral Source Offset	<i>Danzon 1984, 1986</i>	<i>Sloan et al. 1989; Zuckerman et al. 1990; Blackmon & Zeckhauser 1991; Avraham 2007; Waters et al. 2007</i>	<i>Danzon 1986</i>	<i>Zuckerman et al. 1990</i>	No studies	<i>Sloan 1985; Zuckerman et al. 1990; Blackmon & Zeckhauser 1991; Danzon et al. 2004; Thorpe 2004</i>	No studies	<i>Klick & Stratmann 2005; Yang et al. 2008</i>
Pretrial Screening Panels	No studies	<i>Danzon 1984, 1986; Sloan et al. 1989; Zuckerman et al. 1990; Waters et al. 2007</i>	No studies	<i>Danzon 1984, 1986; Zuckerman et al. 1990</i>	<i>Sloan 1985</i>	<i>Zuckerman et al. 1990</i>	No studies	<i>Yang et al. 2008</i>
Periodic Payment	<i>Avraham 2007</i>	<i>Danzon 1984; Sloan et al. 1989; Blackmon & Zeckhauser 1991*</i>	No studies	<i>Danzon 1984</i>	No studies	<i>Blackmon & Zeckhauser 1991</i>	No studies	<i>Klick & Stratmann 2005; Yang et al. 2008</i>

Results of Controlled Studies of the Impact of Damages Caps



Caps on Non-Economic Damages (and total)

Punitive Caps

Caps and other reforms

Lower Premiums?

Yes

Zuckerman, et al. (1990, *NE and E*)

Bhat (2001, *NE and E*)

Thorpe (2004)

Danzon et al. (2004, $\leq \$500K$)

Kilgore et al. (2006, $\leq \$250K$)

No

Sloan et al. (1985; *all caps*)

Zuckerman, et al. (1990, *NE only*)

Bhat (2001, *NE only*)

Danzon et al. (2004, $\geq \$500K$; *cap on total*)

Kilgore et al (2004, $\geq \$250K$)

Thorpe (2004)

Higher Physician Supply?

Yes

Encinosa and Hellinger (2005, *size matters*)

Matsa (2008, *rural docs*)

No

Yang et al. (2008; *OBGYNs*)

Matsa (2008, *avg doc*)

Kessler et al. (2005; *specialty matters*)



Results of Controlled Studies of the Impact of Damages Caps

Lower Rates of **Defensive Medicine?**

Yes

No

Caps on Non-Economic Damages (and total)

Currie and MacLeod (2008, docs take less care, do more non-high risk proc, more complications)

Caps on Punitives

Currie and MacLeod (2008, similar results)

Caps and other reforms

Kessler & McClellan (2002, small effects--cardiac conditions only)

CBO (2004); Sloan and Shadle (2009; elderly patients)

Also weak evidence of more high-risk procedures



Results of Controlled Studies of the Impact of Damages Caps

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	Lower Rates of Defensive Medicine ?		Lower Health Insurance Premiums ?		Higher Rates of Health Care Coverage ?	
	Yes	No	Yes	No	Yes	No
Caps on Non-Economic Damages (and total)		Currie and MacLeod (2008, docs take less care, do more non-high risk proc, more complications)	Avraham et al (2009, 1-2% decrease for ER-spons PPO plans, no impact on HMO prem)	Morrissey et al. (2007, ER sponsored insurance)	Avraham and Schazzenbach (2007, for price-sensitive buyers; total damages)	Avraham and Schazzenbach (2007, NE)
Caps on Punitives		Currie and MacLeod (2008, similar results)				Avraham and Schazzenbach (2007)
Caps and other reforms	Kessler & McClellan (2002, small effects--cardiac conditions only)	CBO (2004); Sloan and Shadle (2009; elderly patients)	Avraham et al (2009, 2.3% decrease for ER-spons PPO plans; no impact on HMO prem)			



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