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The Forgotten Third: Liability Insurance And The Medical Malpractice Crisis

Author: William M. Sage | AUTHORS INFO & AFFILIATIONS

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Abstract

Although the most visible manifestations of medical malpractice involve patient safety and the legal process, the availability and affordability of liability insurance largely determine the direction of medical malpractice policy. Scientific and industrial developments since the first modern malpractice crisis in the 1970s reveal major problems with the structure and regulation of liability insurance. Comprehensive reforms that approach medical malpractice insurance as a health policy problem are needed, and the Medicare program may have a major role to play.

Topics:
Medical malpractice | Liability | Insurance claims | Health care providers | Premiums | Physicians | Systems of care | Physician payment | Government programs and policies | Markets

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NOTES

1.

Many reports have been issued looking at malpractice insurance as a business line but with limited attention to the impact of changes in the health care system. See, for example, E.Nordman, D. Cermak, and K. McDaniel, “Medical Malpractice Insurance Report: A Study of Market Conditions and Potential Solutions to the Recent Crisis,” Draft Report presented to the National Association of Insurance Commissioners’ Property and Casualty (C) Committee, 5 May 2004, www.naic.org/models_papers/papers/insurance/med_mal_rpt_clean.pdf (10 May 2004);

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U.S. General Accounting Office, *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates,* Pub. no. GAO-03-702 (Washington: U.S. Government Printing Office, 2003)

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; and Conning and Company, *Medical Malpractice Insurance: A Prescription for Chaos* (Hartford, Conn.: Conning and Company, 2001).

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The last book-length analysis of medical liability insurance was rooted in the 1980s crisis. F.A.Sloan, R.R. Bovbjerg, and P.B. Githens, *Insuring Medical Malpractice* (New York: Oxford University Press, 1991).

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W.M.Sage, “Reputation, Malpractice Liability, and Medical Error,” in *Accountability: Patient Safety and Policy Reform,* ed. V.A. Sharpe (Washington: Georgetown University Press, October 2004), 159–183.

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R.R.Bovbjerg and A. Bartow, “Understanding Pennsylvania’s Medical Malpractice Crisis: Facts about Liability Insurance, the Legal System, and

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