Malpractice and Tort Reform

- Healthcare costs 17% of GDP
- Liability related costs estimated to account for 2%-3% of health care spending; ~50 billion per year
- A tort is generally defined as a civil wrong which causes an injury, for which a victim may seek damages
- Tort law is the body of law related to tort
- Medical malpractice law or negligence law is one subset of tort law
Malpractice and Tort Reform

• The basic purposes of tort law are:
  1) to preserve peace between individuals by providing a substitute for retaliation
  2) to deter future wrongdoing
  3) to indemnify the injured party
• Tort reform refers to proposed changes in the civil justice system that aim to reduce the ability of victims to bring litigation or to reduce damages they can receive.
• California MICRA (Medical Injury Compensation Reform Act) law was the first in the US – 1976
• Texas tort reform law passed in 2003 – total cap of $750,000 on noneconomic damages and cap on physician liability at $250,000
General Expectations of Tort Reform

• Decrease in malpractice related costs for hospitals and insurance companies
• Decrease in ‘Defensive Medicine’
• Decrease in healthcare expenditures (Medicare spending per beneficiary)
• Increase in access to medical care
• Increase in quality and patient safety outcomes
• Increase in physician and patient satisfaction
Studies on Impact of Tort Reform

- State laws related to tort reform decreased healthcare expenditures by 3-4% based on data from 28 states (Hellinger and Encinosa, American Journal of Public Health 2006;96(8))

- In an academic medical center in San Antonio, during 1992-2004, 40 lawsuits /100,000 procedures resulting in $595,000/year legal costs vs. 2004-2011, 8 lawsuits/100,000 procedures resulting in $515/year. (Stewart et al. J Am Coll Surgeons 2011; 212)

- Same group from San Antonio reported increase in complaints to Texas Medical Board after Tort Reform and also an increase in physicians migrating to Texas (J Gastrointest Surg 2013;17)
Did Liability Claims in TX and LA Change Because of Tort Reform or Quality Improvement or Both?

- The Impact of Tort Reform and Quality Improvements on Medical Liability Claims: A Tale of 2 States
  - Kenneth D. Illingworth, MD, Steven H. Shaha, PhD, Tony H. Tzeng, BS, Michael S. Sinha, MD, JD, and Khaled J. Saleh, MD, MSc, FRCS(C), MHCM
- American Journal of Medical Quality 2015, Vol. 30(3) 263–270
  - Southern Illinois University School of Medicine, Springfield, IL
  - University of Utah, Salt Lake City, UT
  - Allscripts, Chicago, IL
  - Griffin Hospital, Derby, CT
Setting and Context

- A multihospital organization with hospitals in Texas and Louisiana
- Ongoing quality improvement in hospitals in both states
- Tort reform implemented in Texas in 2003
- 18 hospitals in TX of 48-420 bed size vs. 9 hospitals in LA of 33-390 bed size
- Study period 2000-2006; 27 quarters (81 months)
Study Design

• Retrospective Observational
• Measures:
  • Number of medical liability claims per hospital per state per month (averaged every quarter)
  • Mean percent adherence to 22 quality measures reportable to the CMS per hospital per state per quarter (7 measures related to Acute Myocardial Infarction care, 4 Heart Failure, 6 Community-Acquired Pneumonia, and 5 Surgical process measures)
• Linear and Curvilinear Regression Analysis Done between the two trends in each state and between states
Results

Note: Quarter 4 is the First Quarter of 2001

Claims dropped sharply in Texas after Tort reform was passed in 2003
Claims dropped more smoothly in Louisiana beginning 2004
Performance with CMS quality measures increased in both states over the study period; reached >90% around late 2003/ early 2004
Conclusions

• Decrease in medical liability claims associated with improved quality, and independent of tort reform
Secular Effects

- Hospitals in both states under one leadership umbrella
- Hospital Inpatient Quality Reporting was mandated by CMS in 2003 (0.4 percent reduction in 2003; increased to 2.0 percent in 2005)
- Public Reporting on Hospital Compare website was begun in 2005
Strengths of Study

• Leveraged a ‘natural experiment’
• Explained participants, data, outcomes and results
• Statistical methods appropriate
Limitations of Study

- Clinical Outcomes not measured (e.g., surgical site infections, deep venous thromboses, post-operative mortality) – may have more impact on liability claims than adherence to process measures (CMS performance measures)
- Net operating margins mentioned, but no numeric data stated
- Potential secular effects not discussed (other than organizational effects)
Conclusions, implications and future directions

• Although tort reform has a role to play, improving adherence to recommended practices and improving quality will reduce liability.
• Healthcare systems need to focus and invest in quality improvement. If expected improvements not occurring, diagnostic investigations need to be undertaken and issues addressed based on organizational diagnosis(es).
• Do we need more transparency on data on liability claims and legal costs? (Along with price transparency?) We already have increasing service transparency...