

## 8. Substantive Solutions for Preventing and Responding to Injury in Maternity Care

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

**Problem:** Tort reforms, the traditional strategies for improving the medical liability system, have narrow aims (e.g., limiting access of plaintiffs to courts and reducing payouts for injury), and do not prioritize needs and interests of childbearing women and newborns and maternity care payers and purchasers. Empirical studies have consistently found that they do not alleviate liability stressors of maternity care providers or offer other potential benefits in maternity care (see fact sheet 6). Strategies that address the needs and interests of all core stakeholder groups are required.

**Report findings:** The report held 25 improvement strategies up to a multi-stakeholder framework (see fact sheet 1) of seven aims for a high-functioning liability system in maternity care. Six strategies to prevent injury and four strategies to respond to injury or claims of injury have demonstrated or plausible effectiveness across multiple aims.

Promising strategies for preventing injury, in order of ratings across the seven aims, are:

- rigorous clinical quality improvement programs
- enterprise liability — liability located exclusively or partially in organizations that provide care
- leveraging improvement through health care, accreditation, credentialing, and other processes
- shared decision making between women and maternity care providers
- aligning legal standards for care and for admission of evidence with best evidence
- regulating the coverage of liability insurance policies.

Promising strategies for addressing injury, in order of ratings across the seven aims, are:

- programs of disclosure, empathy, apology, and offer of compensation as warranted
- specialized health courts for handling medical malpractice claims
- administrative compensation systems as a replacement for the tort system
- high-low award limit agreements between plaintiffs and defendants.

These strategies have potential to offer benefits to clinicians, women and newborns, and payers. The highest-rated prevention and redress strategies do not require statutory or regulatory action or new major infrastructure and can proceed with strong leadership. Rigorous quality improvement programs have a growing, impressive body of evidence in maternity care, with benefits for all major stakeholder groups (see fact sheet 9). Evaluations of disclosure and apology programs in maternity care are not yet available, but this strategy has shown significant promise in health care overall.

**Takeaways:** Tort reforms, which have traditionally enjoyed strong clinician and policy maker support, have narrow aims and lack compelling support in maternity care. However, numerous strategies do offer potential for multi-stakeholder improvement. These warrant piloting, evaluation, refinement, and spread as appropriate.

\* **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>.

