

## FACT SHEET: MEDICAL MALPRACTICE “CAPS” CAN HARM PATIENT SAFETY AND INCREASE HEALTH CARE COSTS

“Caps” on compensation in medical malpractice cases harm not just injured patients and their families. They are also wrecking health care for everyone else. New studies by researchers in the field of medical malpractice confirm that “caps” can lead to more medical errors and *higher* health care costs.

- “[C]aps on damages... have the ulterior consequence of de-incentivizing doctors to behave carefully, as the caps reduce the total potential liability risk on their actions. This relaxation in care might result in a riskier world as doctors-insureds have suboptimal incentives to take due care.”<sup>1</sup>
- Caps on damages, “by lowering the risk of suit for malpractice, also weakens the deterrent effect of risk of suit on physician efforts to avoid malpractice. The best available research suggests imposing caps is associated with a 16% increase in adverse events. ...”<sup>2</sup>
- “State adoption of caps on noneconomic damages in medical malpractice lawsuits predicts higher rates of preventable adverse patient safety events in hospitals”.... There is a “gradual rise in rates for most [Patient Safety Indicators, or] PSIs after [caps passed], consistent with a gradual relaxation of care, or failure to reinforce care standards over time [which] suggests that med mal liability provides ‘general deterrence’ – an incentive to be careful in general – in addition to any ‘specific deterrence’ it may provide for particular actions....”<sup>3</sup>
- “Damages caps have no significant impact on Medicare Part A (hospital) spending, but lead to 4-5% *higher* Medicare Part B (physician) spending.” The reasons may have to do with physicians practicing riskier medicine in “cap” states (noted above). “There is, at the least, no evidence that caps *reduce* healthcare spending.”<sup>4</sup>

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<sup>1</sup> Ronen Avraham and Ariel Porat, “The Dark Side of Insurance,” 19 *Review of Law & Economics* 13 (February 2023), <https://www.degruyter.com/document/doi/10.1515/rle-2022-0054/html>

<sup>2</sup> Jack Needleman, “The California Malpractice Cap on Noneconomic Losses: Unintended Consequences and Arguments for Reform” (May 2022), <https://healthpolicy.ucla.edu/publications/Documents/PDF/2022/CA-Malpractice-Cap-on-Noneconomic-Losses-report-may2022.pdf>

<sup>3</sup> Bernard S. Black and Zenon Zabinski, “The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform,” Northwestern Law and Economics Research Paper No. 13-09, January 21, 2019, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2161362](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2161362)

<sup>4</sup> Bernard S. Black, David A. Hyman and Myungho Paik, “Damage Caps and Defensive Medicine, Revisited,” *J. Health Econ.* (January 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2110656](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2110656) (emphasis in original).