What is a medical malpractice crisis, and are we in one?

- A medical malpractice crisis is a period of volatility in the malpractice insurance market characterized by above-average increases in premiums, contractions in the supply of insurance and deterioration in the financial health of insurance carriers. In a crisis, medical specialties at high risk for claims, such as obstetrics and orthopedic surgery, experience the largest premium increases.

- Many states are now in their fifth straight year of malpractice crisis. Today as in prior years, the situation varies by state (Figure 1).

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**Figure 1. Average liability premiums for OBGYNs in select “crisis” and “non-crisis” states, 1993 to 2002**

![Graph showing average liability premiums for OBGYNs in select “crisis” and “non-crisis” states, 1993 to 2002.](image)

Source: Weighted average premiums based on author calculations from data reported in the Medical Liability Monitor Annual Rate Survey. All amounts in 2003 dollars.

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SUMMARY OF KEY FINDINGS

- Over the last 30 years there have been three periods of rapidly rising malpractice premiums.

- In response, states have adopted a range of tort reforms. Among the most common are caps on noneconomic damages, which limit awards in more than half the states.

- Caps on noneconomic damages reduce average award size by 20 to 30 percent. They also constrain premium growth and increase physician supply, but the effects are modest in size. Additionally, caps disproportionately burden the most severely injured patients.

- Other reforms have had little impact. Joint-and-several liability reform does constrain the growth of insurance premiums, and some studies suggest that shorter statutes of limitations/repose have an effect on claims frequency and premiums.

- Recent signs suggest that premium growth has leveled off, but premium volatility is a recurring problem. Over the last 30 years there have been three periods of rapidly rising premiums, each sparking policy-maker concerns about affordability and accessibility of coverage and the effectiveness of policy solutions.

- Stakeholder groups disagree on whether the crisis affects access to care, but there is agreement that insurance has become less affordable and available.

State policy-makers have implemented a range of reforms in response to these crises, but their effectiveness is not well understood. This policy brief summarizes the results of research on the impact of these reforms on premium growth, claims frequency, award size and physician supply.