Opting out for contract liability: a proposal for medical malpractice system in China

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Increasing protests and violent incidents against health workers have been observed in Chinese hospitals, attributed largely to malfunction of dispute resolution mechanisms (DRMs) for medical malpractice, including litigation, arbitration and mediation. In 2010, there are over 17,000 violence incidences in Chinese hospitals and over 70% of public hospitals have suffered from violent incidences. A tort reform recently has been initiated and an informal and non-judicial "people's mediation" has been employed to reduce the costs for the patient to settle malpractice disputes. However, current DRMs are not very credible since subversion of justice is expected by patients.

In this paper, we propose an alternative malpractice system in which contract liability will play the central role. In this system, patients can opt out from the default tort liability regime to contract over liability with insurers ex ante. An insurer can selectively contract with service providers who are willing to accept terms for both liability and reimbursement. Different liability regimes including strict liability, negligence and no-fault could be offered by insurers. An insurer has incentive to offer contracts with higher credibility to attract enrollees in a competitive health insurance market. One option is to offer a contract with strict liability or no-fault scheme. For a contract with strict liability or no-fault scheme, no fault of the provider is required to be proven and the authentication is not required.

A theoretical model is built in this paper to compare social welfare, before and after the contract liability regime is allowed. We show that if contract liability is allowed, either strict liability or no-fault scheme can be offered in equilibrium. Different from the literature proposing contract liability in U.S. context, this paper shows that social welfare can be increased by improving credibility of the malpractice system, even when patients have homogeneous preferences towards risk.

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