The IMPACT of the AFFORDABLE CARE ACT on LIABILITY INSURANCE

Liability insurance companies reimburse tens of billions of dollars each year for medical care related to auto accidents, medical malpractice, workplace injuries, and more. How might the new health care policies affect their costs?

The liability insurance industry plays a critical role in the U.S. health care system. In 2008, for example, property and casualty insurers paid out $30 billion in injury payments, while workers' compensation programs paid $29 billion in medical claims. The Patient Protection and Affordable Care Act (ACA) will increase health insurance coverage and may promote significant changes in the organization, delivery, and financing of health care. It stands to reason that these changes could affect health-related liability claims and payouts. Ultimately, any cost changes experienced by insurance companies could be passed on to consumers through changes in premiums and coverage options.

RAND researchers conducted one of the first systematic empirical explorations of the ACA's potential impacts on costs for liability and related lines of insurance, including auto, workers' compensation, medical malpractice, and general liability. The team examined how the ACA might operate across different liability lines and how effects might vary across states given existing laws, population demographics, and other factors.

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EFFECTS OF THE ACA MAY DEVELOP THROUGH FIVE MAIN CHANNELS

The law could affect liability and related lines of insurance in five main ways.

To effectively navigate the future, liability insurers and policymakers will need to continue to monitor ACA implementation and trends.

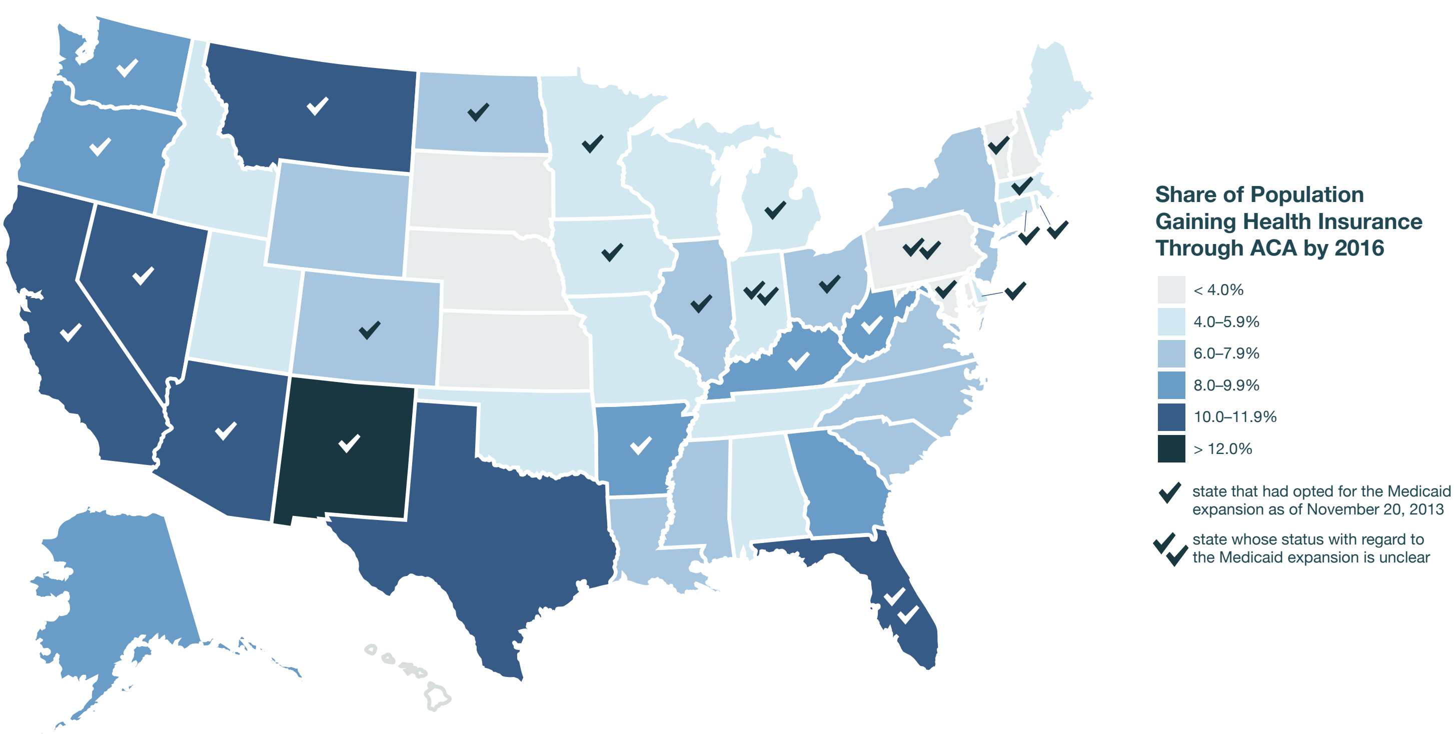
1 **INDIVIDUAL SUBSTITUTION EFFECT.** Uninsured patients have always been able to use liability coverage to obtain treatment for health problems unrelated to a new injury resulting from an accident. An uninsured individual may also incur higher treatment costs for health problems related to an accident if lack of access to care leaves him or her with more-fragile health. Upon gaining health insurance under the ACA, a newly insured patient could have some of those health problems treated using normal health insurance, and liability payouts would therefore fall.

2 **COLLATERAL SOURCE EFFECT.** Under the collateral source rule, payments received by injured plaintiffs from collateral sources, such as health insurance, are not taken into account in determining the payment required from a tortfeasor or his or her insurer. For states that limit this rule, however, payments from health insurers can serve to offset payments that might have previously been the responsibility of the liability insurer. An increase in health insurance coverage could therefore shift some costs away from liability insurers and toward health insurers through this channel.

3 **PROVIDER TREATMENT EFFECT.** Providers have been shown to give more care to patients with health insurance than to those without when they are unsure whether they will be compensated for care provided in the latter case. This additional care could potentially increase liability claims proportionally in cases in which the health insurer is initially the payer at the time of care provision and liability claims are filed only later.

4 **DIRECT FEE EFFECT.** Most liability insurers base rates for medical services on either Medicare or private rates. Medicare hospital rates are reduced under the ACA, and evidence suggests that such rate reductions are likely to spill over into private rates. Thus, liability insurers' reimbursement rates for medical care would be expected to decrease, reducing overall payouts. This could affect liability markets in which liability insurers pay for medical care either directly or after the fact, including the medical portion of workers' compensation, both first- and third-party auto insurance, and general liability.

5 **MEDICAL MALPRACTICE VOLUME EFFECT.** To sue a medical provider for malpractice, a plaintiff must have contacts and care episodes involving that medical provider. Insured individuals are known to have more contact with physicians, making more visits, receiving more procedures, and so on. Individuals who gain insurance will thus likely increase their likelihood of filing medical malpractice claims because they receive more treatment.



THE ACA IS UNLIKELY TO DRAMATICALLY AFFECT LIABILITY COSTS IN THE NEAR TERM

Although there is considerable uncertainty surrounding these estimates, as of now, the best available evidence suggests that impacts arising through these five channels will be modest. The table below summarizes the estimated range of effects across states by market as of 2016, when the ACA is expected to be in full force. Most expected impacts are relatively small in percentage terms because they are relevant for only a fraction of the U.S. population (those gaining insurance coverage) or because the underlying behavioral changes from the ACA are relatively small (e.g., shifts in provider fees). The full research report has more-detailed information for each line and state.

Potential Changes in Liability Claim Costs, Across States

ACA Impact Mechanism	Auto (first-party)	Auto (third-party)	Workers' Compensation	Medical Malpractice
Individual substitution effect (%)	–0.1 to –1.6%	0 to –0.8%	–0.1 to –1.2%	n/a
Collateral source effect (%)	n/a	0 to –3.8%	n/a	0 to –3.0%
Provider treatment effect (%)	n/a	0 to 2.0%	n/a	n/a
Direct fee effect (%)	–0.7 to –0.8%	–0.7%	–0.8 to –1.7%	n/a
Medical malpractice volume effect (%)	n/a	n/a	n/a	0.4 to 7.8%

NOTE: Percentages are rounded to the nearest 0.1%, and dollar figures are rounded to the nearest $10 million. These figures are estimates with a wide degree of uncertainty that is impossible to quantify and do not necessarily imply the level of precision to which they are reported. The ranges reported represent the states with the largest and the smallest percentage effect. n/a = not applicable.

EXPECTED SHORT-RUN IMPACT, HOLDING OTHER FACTORS CONSTANT

WORKERS' COMPENSATION PROGRAMS ↓

Modest cost reduction on average, with some variation across states.

TRENDS TO MONITOR

Do ACOs and other payment reforms effectively constrain treatment cost growth?

MEDICAL-PROFESSIONAL LIABILITY ↑

Cost increase, with appreciable variation across states

TRENDS TO MONITOR

Does claim frequency rise more quickly than would be expected based on coverage expansion? Are courts accepting of new causes of action based on ACA provisions?

FIRST-PARTY AUTO ↓

Modest cost reduction, with moderate variation across states

TRENDS TO MONITOR

Are states adopting legislated fee schedules? Is there movement away from no-fault coverage?

THIRD-PARTY AUTO ↓

Small to moderate cost reduction, with wide variation across states

TRENDS TO MONITOR

Is there a change in subrogation intensity (e.g., Medicaid)?

ALL MARKETS, GENERAL ↓

Small overall reduction

TRENDS TO MONITOR

Do insurance coverage expansions play out as expected?

Longer-Run Effects of the ACA Could Be Larger, but Are More Uncertain

TORT LAW COULD CHANGE. If health insurance ultimately becomes nearly universally available as a result of the ACA, the rationale for some features of current tort law may be undermined. For example, state-level workers' compensation systems were developed largely during a period in which health insurance was uncommon among the American public. If most of the population has private health insurance that can provide treatment immediately following an injury, this rationale for the existence of workers' compensation may no longer apply.

THERE MAY BE NEW PRICING SCHEMES FOR MEDICAL SERVICES. The ACA includes various provisions designed to foster the spread of accountable care organizations (ACOs), groups of providers who associate in order to provide the complete spectrum of care for a given patient population. Because the ACO model of care is relatively new, many questions remain regarding how ACOs will integrate with liability insurers. More generally, the rise of ACOs could encourage a shift toward global payment models that affect how medical services are priced for insurers.

MEDICAID MAY SEEK A BIGGER PIECE OF THE LIABILITY PIE. The increase in the share of the population covered through Medicaid and shifts over time in the fraction of Medicaid costs borne by states could lead states to look for cost savings in Medicaid. In recent years, Medicare has sought to save money by more aggressively pursuing subrogation, against liability awards, and Medicaid might follow suit.

PEOPLE MAY BE HEALTHIER AND LIVE LONGER. Health care expansion could improve more people's chances of living healthier and longer lives. Liability insurers could see a decrease in costs because healthier people generally require less care in recovering from an injury. On the other hand, an increase in longevity could increase costs for some lines. An increase in the percentage of drivers who are over age 70, for example, might raise auto insurers' costs.

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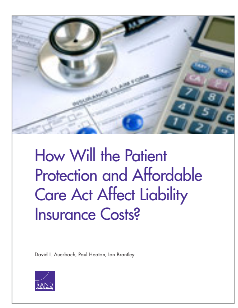

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