Impact of Healthcare Reform on Medical Professional Liability Exposures?

• Should reduce medical incidents.

• Healthcare industry participants’ will likely face increased liability exposure on medical incidents that occur in the wake of “reform.”
• PPACA does not include any significant protections for the healthcare industry against liability for medical malpractice.

• ERISA and its narrow exclusive remedies will apply less frequently.
• PPACA has spurred widespread integration in the healthcare industry, including the proliferation of ACOs.

• New relationships and new facts will likely lead to GREATER EXPOSURE under TRADITIONAL medical malpractice and managed care liability theories.
  - more factual arguments to impose direct liability;
  - easier to impose vicarious liability.
Direct corporate liability thru negligence or other wrongful acts in:

- provider selection, contracting and credentialing
- quality assurance
- design and/or implementation of financial incentive arrangements
- selection and/or imposition of clinical practice guidelines
- design and/or maintenance of electronic health records systems
- breach of contractual obligation or warranty to provide quality care and to be "accountable" for quality and cost of care
Vicarious liability for malpractice of others:

- more employment of physicians
- more facts to tag healthcare facilities, ACOs, MCOs and health insurers with liability for the conduct of independent contractor physicians.
- moving from DISCLAIMING responsibility for acts of independent contractors towards ASSUMING ACCOUNTABILITY for the quality and cost of care across the care continuum (e.g. Medicare Shared Savings ACO)
Recent shock verdicts against United Health in *Meyer, et al. v. United Health* -- may be a harbinger of increased liability exposure in the wake of reform, particularly as respects provider credentialing and quality assurance.