

# Regulation

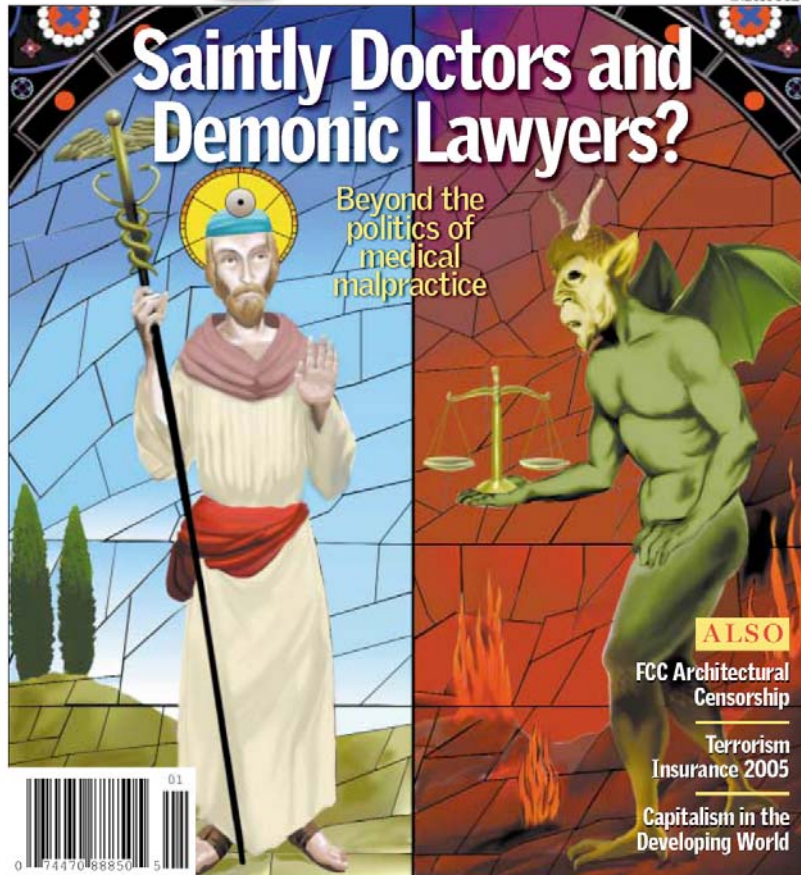
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THE CATO REVIEW OF BUSINESS AND GOVERNMENT

CATO  
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## Saintly Doctors and Demonic Lawyers?

Beyond the  
politics of  
medical  
malpractice



ALSO

FCC Architectural  
Censorship

Terrorism  
Insurance 2005

Capitalism in the  
Developing World

THE MEDICAL  
MALPRACTICE  
MYTH: WHERE DO  
WE GO FROM  
HERE?

David A. Hyman  
University of Illinois

**“Everyone is entitled to their own opinion, but not their own facts.”**

**Senator Daniel Patrick Moynihan**

# Rounding Up the Usual Suspects

Doctors/Insurers:

More Claims: Greedy Plaintiffs/Trial Lawyers

More \$/Claim: Run-away juries

Lawyers:

Price-fixing insurance companies/Bad doctors

Politicians:

Pick a side, depending on your party

Academics:

Insurance Cycle, but lots of work to be done on patient safety/quality

**The malpractice reform debate is highly polarized, but that the most profound disagreement is not between health care providers and the plaintiffs bar. The principal conflict is between the major political stakeholders on one side, and the academic community on the other. The former group understands the central question to be the desirability of enacting MICRA-style measures to discourage lawsuits and limit recoveries, with a \$250,000 cap on non-economic damages as its centerpiece. The latter group is essentially unanimous in its opinion that traditional “tort reform” offers incomplete solutions to only a subset of critical problems.**

**William M. Sage, Understanding the First Malpractice Crisis of the 21<sup>st</sup> Century (2004)**

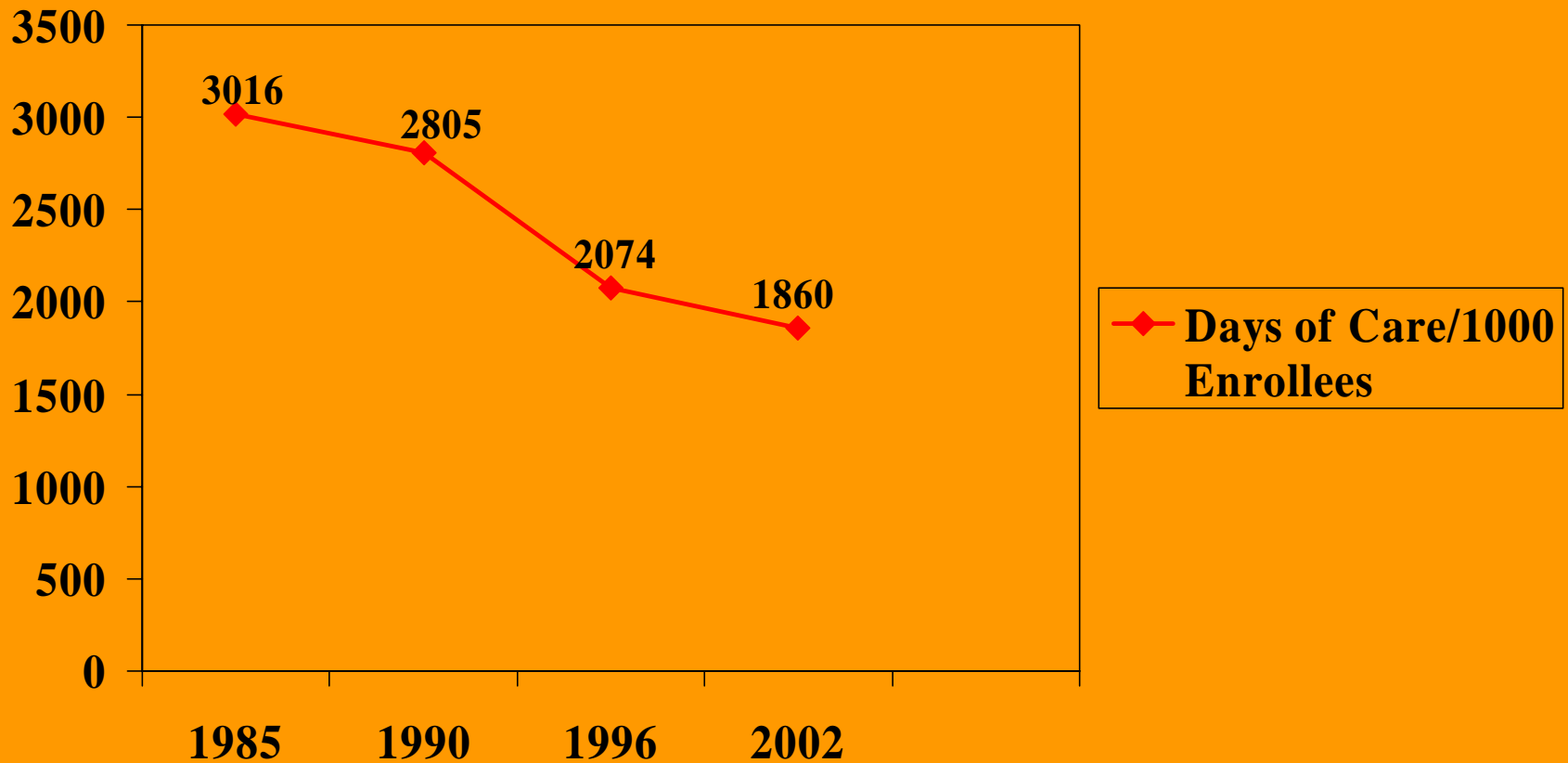
# Complications I

- Observational Study (Lancet/DePaul)
- Defensive Medicine
  - Assurance v. avoidance
- Framing of Crisis (Access)
  - “No neurosurgeon south of Springfield”
  - “Family physicians will no longer deliver babies”
  - Straw that breaks the camel’s back – bad doc v. no doc
- Loss Prevention
- Behavioral Economics of Fixing the Insurance Cycle

# Complications II

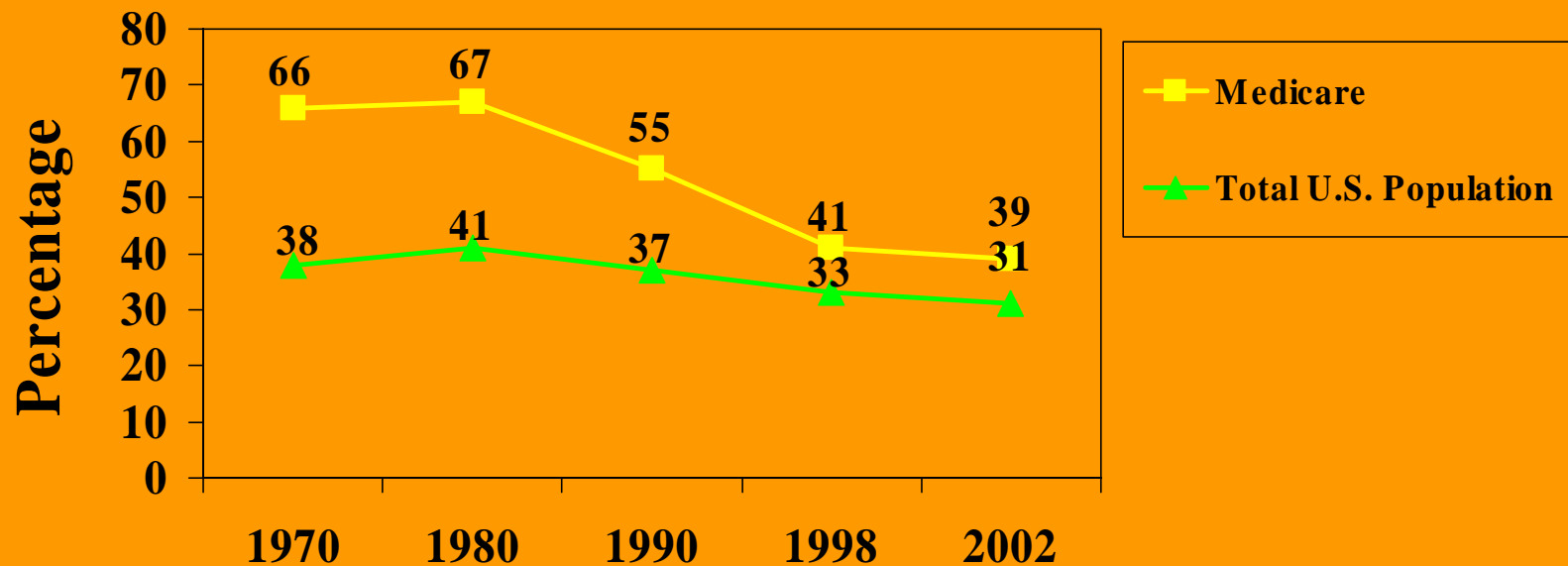
- Patient Protection and Healthcare Responsibility Act (PPHRA)
  - Useful response to chutzpah defense
  - Verdict v. payment
  - Public health department?
  - Enterprise insurance, with hospital as organizing entity
    - Unbundling of inpatient services

# Medicare Hospital Utilization: 1985-2002



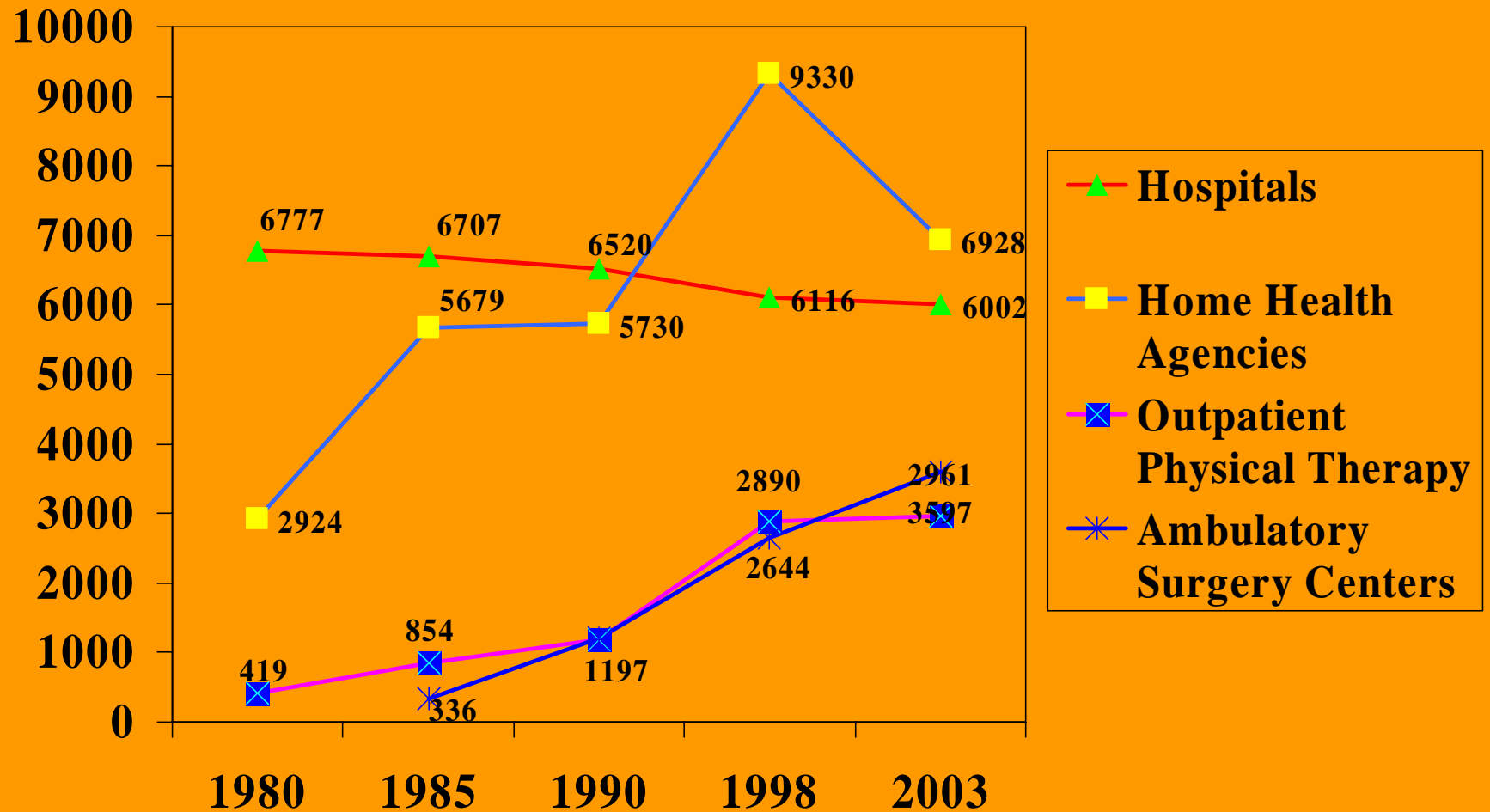
Source: 1999 and 2002 HCFA Data Compendium

# 1970-2002 U.S. Health Care Spending: % Spent on Inpatient Treatment



Source: 1999 and 2002 HCFA Data Compendium; Levit et. al. 21 Health Affairs 172 (2002); Smith et al, 24 Health Affairs 185 (2005)

# Inpatient and Outpatient Medicare Providers: 1980-2003



Source: 1999 HCFA Data Compendium

# Complications II

- Patient Protection and Healthcare Responsibility Act (PPHRA)
  - Useful response to chutzpah defense
  - Verdict v. payment
  - Public health department?
  - Enterprise insurance, with hospital as organizing entity
    - Unbundling of inpatient services
    - Specialty hospitals
    - Monopoly power problems
    - If people don't want to go to the ballpark. . .

# GETTING THERE FROM HERE

- Translational Issues
  - Politics (and Allies) Matter
  - Acronyms Matter (PPHRA???)
- Consider Complementary Strategies

