

Tort reform the right cure for Texas' doctor shortage 2003 law has made state an attractive place for M.D.s

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Basic economics teaches that imposing higher costs and burdensome regulations on businesses leads to fewer businesses and higher costs for consumers.

The opposite is also true: Lower costs and fewer restrictions in a marketplace will lead to more market participants, greater supply, and lower prices for consumers. Texas' medical malpractice insurance industry provides a clear example of this principle.

In the spring of 2003, the Texas Legislature passed medical liability reforms, subsequently approved by Texans via constitutional amendment.

Prior to the reforms, Texas presented a hostile climate for medical practitioners. Frequent lawsuits against physicians and hospitals and escalating jury awards to plaintiffs drove doctors and insurers from the state, leading to physician shortages and higher costs for both doctors and patients.

Frivolous medical malpractice lawsuits were rampant. Even though 85 percent of these suits failed, doctors paid tens of thousands of dollars to defend against them.

This, of course, was bad for patients, as increased litigation means less time and money on actual patient care.

Between 1996 and 2000, one of four Texas doctors was sued. In the 10 years following 1989, the average medical malpractice verdict skyrocketed from \$472,982 to \$2,048,541. The percentage of such awards attributable to noneconomic damages, which are intangible injuries like pain and suffering, increased from 35.7 percent to 65.6 percent. Between 2000 and 2003, 13 of the

state's 17 medical insurance carriers pulled out of Texas.

Fortunately for doctors and patients, the reforms passed by the Legislature and approved by the voters capped medical malpractice noneconomic jury awards at \$250,000. For death-related cases, economic damages were capped at \$1.6 million. The reforms also created stricter requirements for expert testimony and a tougher negligence standard for emergency medical cases.

Over the past four years, doctors and insurers have returned in droves, premiums are falling, and health care is more available and affordable.

The Pacific Research Institute's "U.S. Tort Liability Index: 2006 Report," an analysis of the tort systems of all 50 states, found that Texas has the best overall tort climate, ranking highest in categories measuring financial losses linked to frivolous lawsuits. Though the study gave the lowest possible marks to Texas in several categories, including the number of counties characterized as "judicial hellholes," the overall tort climate in Texas is increasingly favorable to physicians, insurers and patients.

Pre-reform, medical malpractice rates were rising 15 percent to 20 percent per year; post-reform, rates have fallen almost 40 percent. Texas Medical Liability Trust, the state's largest medical malpractice insurance carrier, has reduced rates the last five years, with a cumulative 31 percent rate reduction and about \$200 million in premium savings.

In May 2003, there were 35,723 in-state medical doctors. Today, there are 6,000

more. The number of doctors is up 52 percent in San Antonio, 51 percent in El Paso and 46 percent in Houston. The backlog of applications at the Texas Board of Medical Examiners exceeds 2,500. Doctors view Texas as an attractive place to practice.

Moreover, at the time of the reforms, much of the state did not have certain specialists. For example, more than 150 counties lacked obstetricians. However, since the passage of Proposition 12, Texas added 195 ob/gyns, 169 orthopedic surgeons, 554 anesthesiologists, 497 emergency medicine physicians, 110 neurologists and 36 neurosurgeons.

Though there is much room for improvement, Texas is showing the rest of the country what happens when doctors are freer to practice their trade and less encumbered by frivolous lawsuits and runaway juries.

Credit the Texas Legislature and Texas voters for making the necessary malpractice changes that have expanded health care and lowered prices.

Unless Texas turns its back on the successes of its reforms, the tort system, and thus the people of Texas, will continue to be healthier by the day.

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