



HOW DO YOU TRADE A MARKET THAT'S UP ONE DAY AND DOWN THE NEXT?
Learn how to trade volatility indexes by reading "Measuring Investor Fear – the VIX®"
Randy Frederick
Director of Trading & Derivatives, Charles Schwab
[READ ARTICLE](#)
TALK TO CHUCK
charles SCHWAB
Read the [Options Risk Disclosure Document](#).

[Print](#) [Close](#)**INVESTORS.com**

POWERED BY INVESTOR'S BUSINESS DAILY™

[IBD EDITORIALS](#)

Save On Medical Costs The Texas Way

By JOE NIXON

Posted 10/16/2009 07:54 PM ET

The Obama administration wants to spend \$25 million to figure out best practices in tort reform. A better idea would be to save the money and just adopt what Texas did six years ago to solve its medical malpractice lawsuit overabundance.

Tort reform is a term commonly used by the media, people at town hall meetings and now President Obama, but it is not clear whether everyone is referring to the same thing. Tort reform means eliminating frivolous lawsuits against physicians and hospitals.

The Texas Legislature in 2003 adopted sweeping changes to its civil justice system that significantly altered when, where and how many lawsuits could be filed. In the medical malpractice area, those reforms were basically threefold.

First, to sustain a lawsuit against the medical care provider, an expert report was required within 120 days of filing the suit stating that the doctor being sued committed a medical error that caused injuries.

Prior to 2003, such reports were left to the discretion of the judge handling the case. The Legislature made it mandatory and defined an expert to be someone actually practicing medicine in the same field as the doctor being sued, or a similar field.

The effect of this simple reform has been to discourage many frivolous lawsuits. Previously, a litigant could simply bring a lawsuit without any medical evidence to support the suit. Doctors were then forced to defend themselves in court at an average cost of more than \$50,000 per suit. With one in five doctors being sued each year, the expense of frivolous suits was staggering.

Second, noneconomic damages were capped to control arbitrary awards on pain and suffering or loss of consortium. Though 30 states now have a cap on noneconomic damages, noneconomic damages now make up more than two-thirds of jury verdicts.

The Texas cap only applies to those damages that are not capable of an objective value, letting claimants still receive full compensation for out-of-pocket expenses, medical expenses, lost income and future expenses.

The combination of prohibiting doctors and health care providers from being exposed to unlimited and arbitrary awards, and requiring an actual medical report at the outset, have cut the number of medical malpractice lawsuits in Texas in half.

The third significant tort reform was to prohibit the introduction into evidence of phantom damages. The Texas rule of evidence, which previously allowed for the recovery of "reasonable and necessary" medical expenses, was being misused. The actual expenses were often much less than the billed charges, in the same way that no one pays the manufacturer's suggested retail price of an automobile.

Accordingly, the legislature changed the law to require that the damages are to be the actual expenses "paid or incurred" by the claimant. With the elimination of phantom damages, the law now requires the actual cost associated with any medical mistake be reimbursed.

These common-sense reforms have led to a massive increase in the accessibility of health care in Texas, huge growth in the capital infrastructure of hospitals and clinics, hundreds of millions of dollars more each year in charity care and Texas' adding more than 16,000 new doctors in just six years.

And in reducing the actual number of suits to those in which claims are meritorious — a recent Harvard study concluded that up to 85% of all lawsuits brought against medical providers were frivolous — we have created a more equitable system of justice.

So when people speak of tort reform, know that the effective reforms they should be talking about include expert reports, a cap on noneconomic damages and truth in expenses. These common-sense reforms are what have helped Texas bring fairness to its civil justice system.

President Obama, save our money. Follow Texas' lead.

- Nixon, an attorney, served six terms in the Texas House of Representatives, where he chaired the Committee on Civil Practices his last two terms. Considered the architect of Texas' medical malpractice reforms, he is now a senior fellow at the Texas Public Policy Foundation.

© 2009 Investor's Business Daily, Inc. All rights reserved. Investor's Business Daily, IBD and CAN SLIM and their corresponding logos are registered trademarks of Data Analysis Inc. [Copyright and Trademark Notice](#) | [Privacy Statement Terms](#) | [Conditions of Use](#)