

# The Effects of Tort Reform in Texas

Resulting in fewer lawsuits, smaller payouts, and significantly lower malpractice premiums, tort reform has benefited the physicians of this state.

BY CATHERINE GREAVES

In June 2003, Governor Rick Perry signed a bill into law that would significantly change the landscape for medical malpractice litigation in Texas. House bill (HB) 4—commonly referred to as “tort reform”—was enacted to curtail frivolous lawsuits, limit runaway jury awards, and reduce malpractice liability insurance premiums. To achieve these goals, HB 4 placed a cap of \$250,000 on the non-economic damages that could be recovered against physicians and other licensed health care providers. It also applied a separate cap of \$250,000 individually or \$500,000 in total to claims against health care facilities.<sup>1</sup> Additional reforms included higher standards of proof of negligence in emergency care cases; the requirement for the filing of an expert report, including a report by a practicing physician if the defendant is a physician; and the application of a cap by claimant, rather than defendant, in a wrongful death action.<sup>2-4</sup>

## A SIGNIFICANT DROP IN LAWSUITS, PAYOUTS, AND PREMIUMS

Taken in total, not only have the restrictions in HB 4 greatly limited the number of medical malpractice liability claims filed in Texas, but they have also reduced the payout of those claims that are actually filed and decided. According to data from the Texas Department of Insurance, medical malpractice claims fell by nearly two-thirds between 2003 and 2011, and the average payout of \$199,000 represents a 22% decline over the same time period.<sup>5</sup> Interestingly, the average payout is below the statutory cap.

For physicians, the decline in both the number and the value of medical malpractice claims has been extremely beneficial. The cost of medical malpractice

---

“Although tort reform has clearly helped the physicians in Texas, its benefits to the ordinary citizen are less clear.”

---

insurance has decreased sharply and continues to drop. In its 2012 Annual Report (the latest available), Texas Medical Liability Trust, the state’s largest malpractice carrier, reported that it had reduced malpractice premiums for 9 consecutive years.<sup>6</sup> According to the Texas Medical Association, the state’s doctors have seen, on average, an almost 50% reduction in the cost of their malpractice insurance. This decrease has translated to savings of \$1.9 billion in reduced premiums, if both rate cuts and dividends paid are included.<sup>7</sup> Furthermore, new carriers have entered the marketplace. Four rate-regulated carriers now offer their product lines to Texas physicians, and 38 risk-retention groups, captives, surplus lines, and other unregulated insurers have begun operating in the state.<sup>7</sup>

In a climate of declining payment rates and increasing operating expenses, the benefit of these significant savings cannot be underestimated. For many physicians, the costs of operating a practice are rising at a rate that outstrips increases in reimbursement. For example, according to a report by the Medicare Payment Advisory Committee, from 2002 to 2012, the Medicare fee-for-service rates rose 9%, while the cost of operating a practice, as measured by the Medicare Economic Index, increased 27%.<sup>8</sup> In addition, both

when and how Medicare's sustainable growth rate formula will be fixed remain uncertain. Thus, although cost savings are always welcome, for some physicians, relief from the imbalance produced by rising costs and decreasing reimbursement rates may mean the difference between staying open or closing shop.

### TORT REFORM MAY NOT HAVE BENEFITED ALL

Although tort reform has clearly helped the physicians in Texas, its benefits to the ordinary citizen are less clear. Proponents have claimed that tort reform is responsible for bringing a multitude of new physicians to the state. They also claim that many Texas counties now have specialists, such as obstetricians and orthopedists, who were absent in rural areas before tort reform.<sup>7</sup> These assertions have been called into question. Critics have cited other reasons, such as Texas' population growth, as the most significant factor in the influx of physicians.<sup>9</sup> Additionally, the long-term effects of tort reform on the recruitment of specialists to rural counties are mixed: although some counties have experienced gains, others have had difficulty retaining these specialists or have had the number of specialized physicians decrease.<sup>10,11</sup> Texas continues to lag far behind other states in the number of physicians providing active patient care per population, and tort reform has not translated into decreased health insurance costs or more Texans with health insurance.<sup>12,13</sup>

### CONCLUSION

Despite the political rhetoric and lack of consensus on its total benefit, there can be little doubt that tort reform has benefitted Texas physicians. By decreasing the number and cost of malpractice claims, HB 4 has lowered medical malpractice premiums significantly, which, in turn, has reduced the cost of operating a medical practice. This has allowed some practices to stay afloat and others to purchase new equipment or recruit new associates. ■

*Catherine Greaves is senior counsel at Cox Smith in Austin, Texas. Ms. Greaves may be reached at (512) 703-6319; cgreaves@coxsmith.com.*



1. Tex. Civ. Prac. & Rem. Code, §74.301(a) – (c).

2. Tex. Civ. Prac. & Rem. Code, §74.153.

3. Tex. Civ. Prac. & Rem. Code, §74.401.

4. Tex. Civ. Prac. & Rem. Code, §74.303(a).

5. 10 years of tort reform in Texas bring fewer suits, lower payments. September 3, 2013. *Insurance Journal*. <http://www.insurancejournal.com/news/southcentral/2013/09/03/303718.htm>. Accessed April 9, 2014.

6. Texas Medical Liability Trust. Annual Report 2012. <http://bit.ly/1juH4Ts>. Accessed April 9, 2014.

7. Proposition 12 produces healthy benefits. Texas Medical Association website. [www.texmed.org/template.aspx?id=5238](http://www.texmed.org/template.aspx?id=5238). Updated August 28, 2013. Accessed April 9, 2014.

8. Lowes R. Rates continue to fall behind practice expenses. *Medscape Medical News*. [http://www.medscape.com/viewarticle/810242\\_print](http://www.medscape.com/viewarticle/810242_print).

9. Silver C, Hyman DA, Black BS. The impact of the 2003 Texas medical malpractice damages cap on physician supply and insurer payouts: separating fact from rhetoric. Fall 2008. Texas Advocate. Social Science Research Network website. <http://ssrn.com/abstract=1139190>. Accessed April 9, 2014.

10. Greenberg J. Rick Perry says Texas added 21,000 doctors because of tort reform. August 25, 2011. *PolitiFact.com* website. <http://bit.ly/1mYcsxe>. Accessed April 9, 2014.

11. Nelson B. Texas-sized tort reform. *The Hospitalist*. March 2010. <http://bit.ly/1n4JBom>. Accessed April 9, 2014.

12. Center for Workforce Studies. 2011 *State Physician Workforce Data Book*. Washington, DC: Association of American Medical Colleges; November 2011. <https://www.aamc.org/download/263512/data/statedata2011.pdf>. Accessed April 16, 2014.

13. Sherman C. Texas gov. touts effects of tort reform on doctors. *Modern Healthcare*. September 10, 2013. <http://bit.ly/1n4JzN9>. Accessed April 9, 2014.