

Better Care, Thanks to Tort Reform

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Thanks to the passage of lawsuit reforms, medical care is now more readily available in many Texas communities. For many patients, this change has been life-altering; for some, life-saving.

George Rodriguez walks today thanks to tort reform. Newly established Corpus Christi neurosurgeon Matthew Alexander urgently operated on Rodriguez' spinal abscess, relieving the pressure on his spinal cord and sparing him life in a wheelchair. Without the state's lawsuit reforms, Dr. Alexander wouldn't have relocated to Texas and Mr. Rodriguez would have been deprived access to emergency neurosurgery in Corpus Christi.

Cancer survivor Ruby Collins credits newly minted Brownwood urologist Daniel Alstatt with saving her life. Dr. Alstatt says he wouldn't have moved there were it not for tort reform.

Andrya Burciaga of McAllen, a complex patient with diabetes and hypertension, is a first-time mother, thanks in part to the expertise of obstetrician/fertility specialist Dr. Javier Cardenas. Again, if not for the passage of the reforms, Dr. Cardenas says he absolutely would not have returned to his hometown to practice medicine nor taken problem pregnancies such as Ms. Burciaga's. Because of reforms, more patients across Texas are getting the care they need when they need it.

Eight years ago, Texas was in the throes of an epidemic of lawsuit abuse. High numbers of meritless lawsuits, combined with excessive awards, caused doctors' medical liability rates to double within just four years. Non-profit nursing homes saw their rates jump 900 percent within that same time frame, while hospitals saw liability costs increase as much as 5 percent in one year. Roughly one in four doctors was sued every year, while the vast majority of these suits and claims were closed without payment.

Good doctors, pushed to the financial brink, stopped taking emergency calls out of fear it would make them vulnerable to a lawsuit. Thirteen physician liability carriers left the state. Some 9,000 physicians were non-renewed by their carrier, putting them in jeopardy of losing their hospital privileges. The number of newly licensed Texas physicians fell to its lowest level in a decade. In 2004, Texas experienced the greatest decline in direct patient care physicians per capita in twenty years.

In response to this crisis, the Texas Alliance for Patient Access supported and the Legislature passed sweeping medical lawsuit reforms in 2003. The lynchpin of the reforms was a cap on "pain and suffering" awards. This cap struck a balance: It assured those injured by a medical mishap that they would be reasonably compensated while allowing conscientious doctors to find affordable liability coverage so that they could continue to serve their patients.

Since then, liability rates have plummeted nearly 50 percent, and good doctors have flocked to Texas in record numbers. Nursing homes and hospitals are again fully operational.

Today, many counties that lacked an orthopedic surgeon, an emergency medicine physician or a cardiologist now have one. The number of obstetricians practicing in rural Texas has grown four times faster than the state's rural population. For the first time in memory, the Christus Health System - with hospitals, long-term care facilities, and clinics in more than 60 Texas cities - has no openings for obstetricians. (Disclosure: Christus Health System is a corporate supporter of The Texas Tribune.)

Twenty-nine counties that saw a net loss of physicians pre-reform registered a net gain post-reform. Those “losers turned gainers” include Potter and Jefferson counties, which lost 26 and 15 doctors, respectively. All of these new physicians translate into 6 million more doctor visits annually for Texans who are sick or injured.

Since 2007, Texas has consistently licensed 60 percent more new doctors each year than occurred in the years predating tort reform. According to the most current data from the Department of Health and Human Services (2003-2008), Texas ranks 10th nationally in percentage growth of patient care physicians per capita, up from 23rd just five years earlier.

This physician growth is driven by something other than population. Survey after survey confirms that doctors new to Texas cite our liability climate as important in their decision to practice here. By any objective measurement, the accelerated growth of new doctors, in-state active doctors, high-risk specialists and doctors who provide direct patient care per capita all exceed pre-reform levels.

Nothing in the law prohibits lawyers from taking cases. Patients harmed due to medical negligence can still collect fair compensation. Only the non-economic damages are capped and that at \$250,000 to \$750,000, depending upon the variety of defendants in the suit. That means no cap on damages for lost wages or past, present and future medical costs.

Trial lawyers will argue that they can't afford to take cases now that there is a “pain and suffering” cap of \$250,000. And yet claims data from the Texas Department of Insurance reveal that since 1993, on average 500 cases are settled each year against doctors for \$250,000 or less.

More doctors delivering more care are good for patients.

Dr. Howard Marcus, an internist at Austin Regional Clinic, is the chairman of Texas Alliance For Patient Access, a statewide coalition of health care providers that supported the passage of the state's 2003 medical liability reforms.