

Proposition 12 offers thoughtful compromise to healing health care

Texas is facing a medical liability crisis that threatens the ability of many patients to get the care they need. Some regions of the state are affected more than others. But every county in Texas is facing serious medical problems brought on by excess litigation.

Large numbers of lawsuits that are ultimately dismissed and a few excessively high damage awards have contributed to increasing difficulty for doctors, nurses, clinics, hospitals and nursing homes to afford insurance. Higher liability insurance costs mean higher health care costs for patients and, in many cases, fewer medical services.

In many areas, doctors are restricting their practices and steering clear of high-risk patients because of lawsuit concerns; Emergency room services for head injuries, childbirth and trauma involving small children are in shorter supply because they are considered higher risk.

During the just-completed legislative session, lawmakers thoroughly and thoughtfully set out to address this problem. The Senate State Affairs Committee, which I chair, heard 61 hours of testimony involving more than 400 witnesses and every conceivable point of view. Most of the testimony focused on the

medical liability issues threatening our state's health care system. The situation in some locations and with some critical specialties can be frightening.

Forty percent of Texas' counties have no licensed birthing doctor or gynecologist. Many expectant mothers, especially in rural Texas, are getting little or no prenatal care.

Half of the nonprofit nursing homes in Texas have no liability insurance. It's not that they don't want coverage, but that they just can't afford it. These homes are just one unfortunate accident away from bankruptcy.

Herein lies the problem: It is unfair not to have available insurance funds to reasonably-compensate patients or their families who have truly been harmed. Likewise, it is unfair to perpetuate a system that permits lawsuits with little or no merit making insurance unaffordable and health care more expensive and less accessible.

Because some individuals have been able to collect unreasonable levels of noneconomic damage awards, the rest of us are left with medical services



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that cost more and are less accessible. That cannot be good public policy. A proper balance had to be found; a balance that ensured lower insurance premiums for doctors and hospitals, reasonable compensation for injured patients and greater access to health care for all Texans.

In the end, lawmakers chose to cap a portion of damage awards in health care lawsuits. The cap applies only to noneconomic damages, or those damages awarded for subjective issues, such as pain and suffering, mental anguish or loss of companionship. Where negligence is proven, injured patients are still entitled to receive all of their economic damages for past and future lost wages, medical bills, custodial care and prejudgment interest.

Even with these caps in place, those negligently harmed can potentially still collect multi-million dollar judgments where such damages are justified. In cases of extreme negligence, the victim may receive punitive damages as well.

Our legislative remedy, which has been signed into

law by the governor, features a \$750,000 cumulative cap on noneconomic damages. It was passed with strong support from Democrats and Republicans. This is a compromise reached after many hours of deliberations, and I believe it is fair for Texas.

This cap allows people injured by medical malpractice to be fairly compensated, but still provides incentives for insurers to lower their rates. Without a cap, these liability costs will continue to rise and Texans will continue to see the cost of their medical services rise.

Without a cap, we will continue to see doctors leaving their practices or steering clear of high-risk procedures because they cannot afford malpractice insurance.

The Legislature has done its part, but the job is not done. This solution to the medical care crisis must be put in place immediately. To do so it must be approved by Texas' voters. There will be those who will attempt to stall these reforms in court by challenging their constitutionality. In order that such challenges not delay implementation, uncertainty must be put to rest by approval of Proposition 12 on Sept. 13.

I encourage Texas voters to vote for Proposition 12 on Sept. 13.