

Tort reform saved Texas nursing homes

By George Linial, For the Express-News Published Sunday, September 30, 2018

Fifteen years ago, Texas nursing home care was in a liability insurance crisis that threatened to close some of the state's best facilities.

The frequency of nursing home lawsuits in Texas was the second highest nationally. Half of the nursing homes in the state had gone bare — meaning they carried no liability insurance. Not that they didn't want it. They couldn't find or afford it.

In 2003, the Texas Legislature established a balanced approach to protecting quality care for aging Texans through its tort reform bill. As a result of these changes, Texas nursing homes have spent less on insurance and more on improving quality, hiring and retaining staff, and planning improvements for the care of aging Texans.

Back in 2002, Manor Park, a not-for-profit in West Texas was paying \$150,000 a year for a \$1 million insurance policy. A year later, it was quoted \$465,000 for the same coverage. The board fully realized that the facility was one broken hip away from bankruptcy. This facility was rated highly by state and national agencies, and had a clean record regarding lawsuits. Alan Hale, CEO of Manor Park, says without equivocation, "Texas tort reform saved our organization and the residents that we serve."

A nursing liability insurance report, published at the end of 2017 by AON — a firm that provides risk, retirement and health consulting — offered a snapshot of where Texas compares nationally in lawsuits against nursing homes. According to the report, Texas has 50 percent fewer cases against nursing homes than the national average. Texas has an average of less than one lawsuit per year per facility. As a comparison, Florida had an average of almost three lawsuits per facility. Texas also has the lowest number of litigation awards nationally, at close to \$90,000 per claim. Florida had an average claim of close to \$260,000. The national average is \$223,000 per claim. Texas and Massachusetts have the least amount of funds spent on insurance and lawsuits.

This has allowed homes to spend more on quality. Before reforms, frivolous lawsuits were rampant. Now they are rare.

Seven Acres Jewish Senior Care Services in Houston was facing a similar problem. It was paying \$740,000 annually for a \$1 million policy. Some 217 of the home's 275 residents were on Medicaid. The home was being subsidized through donations. If liability costs weren't reduced, the home would likely go out of business. The reforms passed 15 years ago have allowed Texas nursing homes to keep their doors open and give elderly residents a home.

There have been other benefits of tort reform for elderly Texans. Since 2003, the numbers of geriatricians serving Texas' senior population has grown dramatically. Today, percentage-wise, geriatricians are the fastest growing physician subspecialty in Texas. More geriatricians are needed, but this growth trend is encouraging news. Without these civil justice reforms, Texas nursing homes would be hard-pressed to retain skilled nurses and medical directors or make even modest facility improvements.

Pat Crump, the CEO of the San Antonio area Morningside Ministries, says that before the passage of reforms, nonprofit organizations such as his were randomly targeted by personal injury lawyers, with little or no merit to their claims. Many organizations, faced with rising costs, were forced to scale back their care or go without liability insurance.

Morningside Ministries can now invest resources in programs such as recruiting direct care staff, hiring more nurses, training younger people for careers in long-term care and improving facilities that serve Texas seniors.



A resident at Trinity Care Services enjoys a Valentine's Day carnation in 2004. Until tort reform in 2003, Texas nursing home were threatened with closure because of rising liability insurance costs. Now they can spend more on improving quality of care, and hiring and retaining staff.

George Linial is president/CEO of LeadingAge Texas. LeadingAge Texas was established in 1959 as a Texas not-for-profit corporation. Its purpose is to provide leadership, advocacy, and education for not-for-profit retirement housing and nursing home communities that serve the needs of aging Texans.