

# Historic Senate Vote Provides Medical Liability Protections

AUSTIN, Texas, April 15, 2015—The U.S. Senate has passed a bill that forbids federal quality-of-care and payment guidelines for Medicare, Medicaid and the Affordable Care Act to be used in medical liability lawsuits. The so-called “doc fix” bill marks the first time Congress has ever passed medical liability protections.

The standard of care language is in a bill that replaces the Medicare payment system for doctors and hospitals with a new payment formula that rewards quality, value and efficiency. Doctors were concerned that these new quality measurements



**Howard Marcus, M.D.**  
*TAPA Chair*

and payment guidelines might be used in a lawsuit to create a presumption of medical negligence.

“This bill eliminates that uncertainty,” said Austin internist, Dr. Howard Marcus.

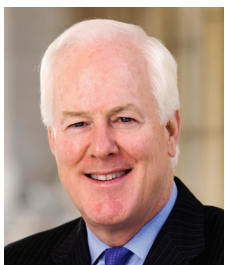
The “doc fix” bill passed the House overwhelmingly last month. It now heads to the president who has expressed his intention to sign it.

“Practice guidelines are one of many sources of valuable information for health care providers. All patients are unique and many patients, especially those with complex health issues, don’t necessarily fit a guideline,” said Marcus, the chairman of Texas Alliance For Patient Access. “There is often more than one possible answer and that is where clinical judgment is required. Practice guidelines should be just that, a guideline and not a rigid, unaltering edict that creates new opportunities to sue.”

Those sentiments are underscored in a 2010 article in the *New England Journal of Medicine* entitled “Medical Malpractice Liability in the Age of Electronic Health Records.” The authors write “Physicians routinely override even relatively simple clinical-decision support protocols .. for clinically appropriate reasons.”

The “doc fix” bill does not change current medical liability laws nor does it alter the way courts determine if an act of medical negligence occurred, said Bob Donohoe, president and CEO of the physician-governed Texas Medical Liability Trust. “It simply preserves the status quo,” he said.

Historically, practice standards for physicians have been governed by the states and medical specialty societies.



**John Cornyn**  
*U.S. Senator  
from Texas*

In casting his vote in favor of the bill, Texas Senator John Cornyn said “This legislation provides our health care professionals with a predictable expectation for reimbursement rates, an idea that only sadly had been a dream for many physicians in Texas and across the country.”

Quotes from lawmakers that played a pivotal role in getting and keeping the standard of care language in HR 2, which passed out of the House on March 26.



**Henry Cuellar**  
*Texas Congressman*

“The passage of today’s legislation will permanently fix the flawed sustainable growth formula and relieve doctors of the fear of undue legal issues,” said Texas Congressman Henry Cuellar.

Rep. Cuellar had introduced similar stand-alone legislation.



**Michael Burgess**  
*Texas Congressman*

“This is the first step toward real, meaningful, entitlement reform, said Texas Congressman Michael Burgess, chief author of the bill.

“I have worked my entire congressional career to address this problem and, after years of uneven progress, we have finally taken this opportunity to do what is right for seniors, providers and the American taxpayer.

“Furthermore, the bill includes important standard of care provisions that protect state liability law and ensures that federal health care standards cannot be used to establish legal action against health care providers.”



**Kevin Brady**  
*Texas Congressman*

“Today we have provided the Senate and White House with the best opportunity to write a new chapter in the history of the American health-care system that focuses on creating stability for those most in need,” said Texas Congressman Kevin Brady, the chairman of the House Ways & Means Health Subcommittee.

*Written and produced by:*



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