

Contrary to what study says, malpractice lawsuits drive costs Jon Opelt, Executive Director, Texas Alliance For Patient Access

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Lately, lawsuit reform critics have concocted a wide range of excuses to explain away the cost of medical malpractice premiums. Their far-fetched theory is that everything but lawsuits and settlements are driving doctors' insurance rates. Presumably, the goal of this misdirection campaign is to derail a national medical liability reform bill now working its way through Congress.

Last week in Austin four law professors rolled out a study that incredulously argued that the collapse of Enron and the disasters at the World Trade Center and in the tsunami-ravaged areas not lawsuits were the root cause for a rise in doctors' rates. The study failed to explain why the number of medical liability carriers had dropped from 17 to four by 2003, why Texas was losing doctors, why almost two-thirds of the counties in Texas had no obstetricians and gynecologists or why almost half the counties in Texas had no pediatricians.

Instead of examining the obvious, the professors used old data. They tweaked this, ignored that, regressed a couple of other things and concluded that Texas lawmakers laid their hands on a problem that didn't need fixing.

Here's the reality:

- High numbers of meritless lawsuits and a few eye-popping awards were causing Texas doctor' insurance rates to skyrocket.
- Good doctors, pushed to the financial brink, were forced to cut back on high-risk and life-saving care.
- From 1995 to 2002, claims against Texas physicians occurred at nearly twice the national average.
- Claims costs more than tripled from 1996 to 2000.

-Six of every seven claims against Texas doctors resulted in no payment being made to the patient but they still resulted in heavy defense costs.

In their study, the law professors fail to account for the hundreds of millions of dollars spent defending suits in which plaintiffs received no money. The study paints a picture of stability, yet insurers of physicians were leaving the state in droves.

From 1999 to 2003, half the state's nonprofit nursing homes couldn't find or afford liability insurance. Hospitals were seeing liability costs go up as much as 50 percent in a single year. Yet the authors offer no explanation as to why this occurred in what they dubbed "a sea of calm."

The fact is, in 1999 there was a noticeable jump in jumbo verdicts laden with noneconomic awards. As this escalation in pain-and-suffering awards continued, the medical liability waters quickly became tumultuous. It was at this time that 13 physician liability carriers went out of business, left the state or began withdrawing from this line of insurance because of large losses.

Here's the clearest indication the law professors' logic is flawed: Eighteen months ago, Texas voters passed Proposition 12, which affirmed lawmakers' authority to set damage caps in health care lawsuits. Since then, access to care is increasing and frivolous claims and lawsuits are down. Physician recruitment is up. Carriers are entering the Texas market. Competition among carriers is increasing, and four of the state's five largest physician insurers have announced rate cuts. The rate cuts have produced \$47 million in savings for doctors desperate for relief.

Indeed, passage of Proposition 12 has produced rate cuts and paved the way for a tremendous growth in the number of doctors serving Texans, especially in the most needed areas. Before the passage of Proposition 12, the ranks of internists, emergency care physicians, orthopedic and neurosurgeons were flat or on the decline. Since then the numbers have grown dramatically to include the addition of 82 obstetricians, 94 internists, 35 neurosurgeons and 475 family practice doctors.

Savings in premiums and litigation costs continue to improve access to care. Hospitals are expanding, equipment is being upgraded and new facilities are being opened in high-risk and high-need areas.

Texas' medical liability reforms are working. That's a fact no amount of home cooking can explain away.

Opelt is the executive director of the Texas Alliance For Patient Access, a coalition of doctors, hospitals, nursing homes, health insurance providers and physician liability insurers.