

Economic Impact of Medical Tort Reform in Texas

Reforms related to **limiting non-economic damages in medical malpractice litigation alone lead to increases of \$55.3 billion in spending per year and more than 223,000 jobs.**

Other positive benefits include an increase in the number of doctors, particularly in rural areas and other regions, which have been facing severe shortages and the **inclusion of almost 430,000 Texans in health plans who would otherwise be uninsured.**

There is evidence that the US tort system is expensive by international standards. The United States spends 2.2% of its Gross Domestic Product (GDP) on direct tort costs. Other advanced countries with viable market economies spend an average of 0.9% of GDP on direct tort costs. Since 1950, tort cost growth has exceeded GDP growth by an average of two to three percentage points.¹
“...the US tort system is expensive by international standards.”

However, the US tort system returns less than 50 cents of every tort-cost dollar to injured claimants and only 22 cents to awards for actual economic losses.²

Over the past 50 years, tort costs in the US have increased more than a hundredfold. In contrast, overall economic production (as measured by GDP) has grown by a factor of 37, and population has grown by a factor of less than two.⁵ The Pacific Research Institute, which provides a more comprehensive and inclusive measure of civil justice costs, estimates that America wastes \$589 billion each year from excessive tort litigation, as of 2006.

Another vulnerable sector is **health care delivery**. Since 1975 (the first year for which insured medical malpractice costs were separately identified), the escalation in medical malpractice litigation costs has outpaced the increase in overall US tort costs. The result has been an enormous rise in insurance premiums for providers, in some cases leading to reductions in the provision of important procedures and practitioners leaving the profession.

Another consequence of this phenomenon is an increase in “defensive

medicine.” Defensive medicine is defined as when “doctors order tests, procedures, or visits, or avoid high-risk patients or procedures, primarily (but not necessarily solely) to reduce their exposure to malpractice liability” and also as administering “precautionary treatments with minimal expected medical benefit out of fear of legal liability.”⁹

Many of these tests are quite costly (in addition to other issues such as patients incurring needless pain or inconvenience). The savings from the elimination of defensive medicine would allow millions of Americans to obtain health insurance. Moreover, the premature deaths and lost productivity due to reduced access to health care from liability-driven rising health care expenditures could be reduced. In addition, the supply of doctors tends to be restricted by the higher risk and costs associated with an excessive system, thus further reducing access to health care.

The Perryman Group has also reached a similar conclusion in several studies.¹¹ The Texas economy benefits from tort reform that enhances the efficiency, fairness, and predictability of the civil justice system.

Effects of 2003 legislation for medical tort reform

Tort reform passed in 2003 included provisions limiting non-economic damages such as pain and suffering in medical malpractice to \$750,000 per claimant. Following enactment of these measures, medical malpractice insurance rates stabilized and many doctors saw substantial rate reductions—some by almost 50%.¹⁶ These decreases represented a much-needed response to a situation that had reached near-crisis proportions.

In the wake of reform, however, physicians have begun to return to the state, and at least 3,000 more physicians are now practicing in Texas. License applications jumped 30% in the past fiscal year compared to the year before. According to the American Medical Association, the increase in the number of doctors raised the state’s ranking in physicians per capita from 48th in 2001 to 42nd in 2005. Still, the latest figures show Texas with 194 patient-care physicians per 100,000 population, far below the District of Columbia, which led the nation with 659. The Texas Medical Board reports licensing 10,878 new physicians since 2003, up from 8,391 in the prior four years. Even when adjusted for other factors such as population growth, the increase is notable and statistically significant.

A recent survey by the Texas Medical Association found a dramatic increase in physicians’ willingness to resume certain procedures they had stopped performing, including obstetrics, neurosurgical, and radiation oncological procedures. According to the vice president of the Dallas County Medical Society, some of the state’s

crippling recruitment problems have started to ease.¹⁸

Since 2003, malpractice insurance rates have decreased an average of 21.3%.¹⁹ Recent information provided to The Perryman Group during the course of this study suggests that premiums are declining even further in 2008. The following table of rates (provided by Texas Medical Liability Trust, the state's largest insurer, to State Representative Joe Nixon) illustrates how insurance rates dropped for various medical specialties in Houston between 2003 and 2007.

Representative Changes in Malpractice Insurance Rates for Physicians in the Houston Area

*Rates for
Physicians in
Houston*

	<i>2003</i>	<i>2007</i>	<i>2007 with 20% renewal dividend</i>
Internal Medicine	\$18,507	\$13,272	\$10,403
Obstetrician	\$56,564	\$41,575	\$32,585
Neurosurgeon	\$103,558	\$76,117	\$59,659

High medical malpractice insurance rates and the litigious environment had been a significant deterrent to physicians practicing in Texas. Reducing these disincentives has substantially alleviated shortages of medical professionals and helped to offset some of the upward pressure on costs.

Impact of 2003 Limits on non-economic damages in Medical malpractice litigation

The second major area of impact measured relates to limits on non-economic damages in medical malpractice litigation embodied in the 2003 reform bill. The quantification of the benefits of this legislation include measures of the

- cost reductions from lower insurance rates;
 - increases in productivity stemming from fewer uninsured receiving inferior or insufficient care;
 - gains from bringing in more doctors and, thus, increasing the amount of health care provided;
 - savings from decreases in the level of “defensive medicine”;
- and
- the multiplier effect of these various direct benefits (see Appendix B for more detail).

The direct stimulus associated with each of these elements is presented in the table below. Detailed discussions of their derivations are given in Appendix B.

The Annual Direct Benefits to Texas Associated with Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation)

Category Annual Direct Benefits

Cost Savings (administrative costs, insurance rate reductions, non-productive expenditures, inefficiency, etc.) \$1,760.1 million
Reductions in Defensive Medicine \$5,348.6 million
Enhanced Productivity from Health Improvements \$7,699.9 million
Workforce Gains for Reduced Uninsured \$180.5 million
Enhanced Health Care from Increases in Number of Physicians \$3,823.3 million

Total gains stemming from the 2003 reforms related to non-economic damages in medical malpractice litigation include an additional \$55.3 billion in annual spending, \$26.1 billion in output, \$16.6 billion in income, and nearly 223,700 jobs. State fiscal revenues also increase by almost \$1.4 billion per annum. Furthermore, these impacts are responsible for about 430,000 individuals having health insurance than would otherwise, a particularly important benefit in that (1) approximately 5.7 million Texans are currently without health coverage, and (2) the state has by far the highest percentage of uninsured citizens in the nation.

The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas

\$6.800
\$16.580
\$26.136
\$55.283
\$0 \$9 \$18 \$27 \$36 \$45 \$54 \$63
Retail Sales
Personal Income
Gross Product
Total Expenditures

Billions of 2007 Dollars

223,659

Permanent

Jobs

Source: The Perryman Group

This segment of the analysis is somewhat parallel to the Pacific Research Institute's study, but it is localized to Texas and utilizes more conservative assumptions regarding variables such as labor force participation rates. In addition, it adds the spillover effect of the savings in health care and other benefits which resonate through the economy, as well as the positive impacts associated with the incremental increase in physicians.