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**HEADLINE:** Lawsuit factors doubted Malpractice study faults tort-debate assertions, but critics dispute data

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**BODY:**

Large medical malpractice verdicts and settlements did not cause the rapid increase in insurance premiums for doctors and hospitals since 1999 in Texas, according to a study to be released today.

The report by law professors at the University of Texas at Austin and elsewhere comes two years after Texas legislators and voters implemented strict caps on malpractice damages and just as Congress is starting consider similar limits.

Proponents of the so-called tort reform say the limits are needed to rein in runaway insurance premiums and health care costs, and they disputed the study's findings.

In 2003, Texas lawmakers approved and voters endorsed a \$250,000 cap on non-economic damages such as pain and suffering in malpractice cases. California and other states have a similar cap.

But the study, which looked at malpractice claims paid out by insurance companies from 1988 to 2002, concludes that premium increases weren't caused by payments to patients or their lawyers.

"The tort system is a steady sea, not a threatening storm, let alone a tidal wave," said David Hyman, a professor of law and medicine at the University of Illinois. "There is just not much going on that could drive these premium increases."

The researchers found that the number of malpractice payments under \$25,000 fell sharply from 1988 to 2002 and the number of payments greater than \$25,000 stayed stable.

Some notable findings include:

\*There were 4.6 paid claims for every 100 practicing Texas physicians in 2000-02, down from 6.4 in 1990-92.

\*Median jury verdicts in trials won by patients were for \$300,593 in 2002, little changed from the 1990s.

\*Total payments to patients in 2002 were \$515 million, or 0.6 percent of health care spending, up from \$414 million, or 0.8 percent in 1990. Both numbers are in 2002 dollars.

Proponents of the cap on malpractice awards said the study didn't fully take into account the increase in jury awards for damages such as pain and suffering.

"They've cooked their data so much, they've cooked the truth," said Jon Opelt, executive director of Texas Alliance for Patient Access, a group that represents medical providers, businesses and insurance companies.

Mr. Opelt and the Texas Medical Association noted that malpractice insurance rates have come down since voters approved Proposition 12 in 2003. Malpractice cases have also fallen by as much as 90 percent in Dallas County and other places, according to trial lawyers.

"Patients across Texas endured unnecessary tests or treatments because their physicians were forced to practice defensive medicine," said Dr. Bohn D. Allen, president of the medical society. "Now we're seeing just the opposite."

A key dispute in the malpractice law debate are claims that are paid nothing. Insurance companies and the study's authors agree that as many as 80 percent of claims filed fit this criteria.

Insurance and other business executives contend that defending those claims has a cost not reflected in the study's analysis.

Dr. Hyman acknowledges that the study was unable to determine what the defense costs of those cases was, but he said they can't have been very high.

Public interest advocates said the study validates their concerns about tort reform.

"Unfortunately, the voters of Texas were given flawed information when they were asked to sacrifice their constitutional rights," said Alex Winslow, executive director of Texas Watch.

The report's authors didn't look at what else could have caused an increase in premiums. Opponents of the award caps have said that insurance companies raised rates to make up for their investment losses.

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