

Malpractice Reform Has Worked in Texas
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It's always gratifying when those in other parts of the nation see how successful something is in Texas and try to duplicate it for themselves. Now, President Barack Obama's former budget director, Peter R. Orszag, says maybe the U.S. should give medical malpractice reform a try.

Texas began reforming its system in 2003. It's been a huge success (though Orszag doesn't mention that).

"Most of the costs in the U.S. health-care system are incurred in a small number of expensive cases," he wrote for the Bloomberg news service last week. "The top 25 percent of Medicare beneficiaries ranked by cost, for example, account for 85 percent of total spending. And the expenses in those cases are driven significantly by the recommendations that doctors make to pursue one treatment path and not another."

One of those factors is what we've come to know as "defensive medicine," or steps taken to avoid lawsuits.

"In making these choices, doctors are influenced by various things, including medical-school training, traditions among their peers, financial incentives (which are distorted by fee-for-service payments) and, yes, the medical-malpractice system," Orszag notes. "Improving the criteria for what constitutes appropriate care could significantly change doctors' behavior and also save money..."

Medical malpractice reform is exactly what Texas has done, and it's worked. Previously, the state's civil justice system was "known nationally as one where justice was for sale, and awards too often had little correlation to actual harm," according to the Texas Public Policy Foundation's Bill Peacock.

But the Legislature embarked on a campaign to reform tort (injury) law.

"It's been almost a decade since Texas began taking major steps to restore justice to our system," Peacock says. "In 2003, the Texas Legislature passed comprehensive reforms, including the capping of non-economic damages in medical malpractice cases. Reforms affecting asbestos and silica cases followed in 2005, and have continued up to the present, with 'loser pays' in 2011 being the most recent."

The results have been astonishing.

"According to the Texas Medical Board records, we've picked up 1,271 New York physicians since September 2003, when Texas voters approved the Proposition 12 medical-liability reforms," Peacock reported last year. "Overall, our state has nearly 26,000 more physicians than the 33,000 in practice pre-Prop 12. The vast majority moved from

other states. We have seen \$7 billion of investment in new medical infrastructure and \$1.2 billion of additional charity medical care in the past two years alone while increasing the number of Texans with health insurance by almost 500,000.”

Obama at least considered the idea of including significant tort reform provisions in his health care reform bill. He was hoping to get more doctors on board with the bill.

But in the end, only “tort reform demonstration projects” were funded, to the tune of \$50 million (less than the cost of many single malpractice cases).

But perhaps with Orszag’s encouragement, the Obama administration will reconsider.