



## Malpractice Reform Is No ‘Silver Bullet’ For Skyrocketing Healthcare Spending

*Written On September 16, 2010 By [Bob Kraft](#)*

Healthwatch, the healthcare blog of The Hill’s Web site, ran an article this week quoting a local North Texas politician. Representative Michael Burgess is the chairman of the Republican Congressional Healthcare Caucus, and he said that medical liability reform is no cure for the nation’s skyrocketing healthcare spending. That was a surprising statement because Representative Burgess is not only a conservative Republican but is also a physician. The statement certainly runs counter to the normal conservative argument that everything wrong with healthcare today could be solved simply by kicking trial lawyers out of the system.

Of course there were many qualifiers to that statement, and Representative Burgess isn’t really against kicking lawyers out of the system or against limiting how much money can be recovered by those who are injured the most severely. Here are excerpts from the article:

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Rep. Michael Burgess (R-Texas) argued that the cost of malpractice to the healthcare system is “a huge sum of money,” but also conceded that limiting malpractice claims won’t translate into instant healthcare savings.

“Defensive medicine is a learned methodology, and one that cannot be unlearned quickly, and I believe this contributes significantly to the reason why costs do not decrease quickly and steeply immediately after medical liability reforms are passed,” he said in an e-mail. “Our nation’s healthcare system is very complex, and I have never suggested that medical liability reform is a silver bullet.”

The comments swirl around a new report, published this week in the journal *Health Affairs*, estimating the annual cost related to medical liability is \$55.6 billion — or 2.4 percent of the nation’s total healthcare spending.

Many Capitol Hill Republicans, Burgess included, say the findings bolster the case for Congress to limit malpractice claims.

“This study has shown once again that medical liability reform would cut tens of billions of dollars of waste from our healthcare system, which would lower costs and improve access,” John Hart, spokesman for Sen. Tom Coburn (R-Okla.), said in an e-mail.

Still, the researchers behind the study were quick to warn that, while costs related to medical malpractice are significant, reining them in would hardly solve the nation’s healthcare spending problems.

“Physician and insurer groups like to collapse all conversations about cost growth in health care to malpractice reform, while their opponents trivialize the role of defensive

medicine,” Amitabh Chandra, a co-author of the study and professor of public policy at Harvard’s Kennedy School of Government, said in a statement.

“Our study demonstrates that both these simplifications are wrong — the amount of defensive medicine is not trivial, but it’s unlikely to be a source of significant savings.”

Texas is a living example of Chandra’s latter claim.

In 2003, the state enacted a series of malpractice reforms, including limits on non-economic damages (“pain and suffering”) and creation of an independent panel charged with approving lawsuits before they could proceed.

Seven years later, healthcare costs in parts of the state remain sky-high. As Harvard physician Atul Gawande (also one of the researchers behind the recent malpractice study) noted in a much-discussed New Yorker article last year, per capita healthcare spending in the border town of McAllen is second highest in the nation. Only Miami ranks higher.

“Medicare spends three thousand dollars more per person here than the average person earns,” Gawande wrote.

That’s a different scenario than the one envisioned by Republicans during the healthcare debate, when GOP leaders touted an alternative blueprint for reform. Among the most prominent elements of that plan was a provision that “ends the junk lawsuits

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and limits the defensive medicine that drives up health care costs on everyone,” according to one summary.

More recently, Republican leaders have slammed the Democrats’ healthcare reform law for its failure to reduce healthcare spending over the next decade. They’re pushing to repeal most of the law and replace it with more market-friendly reforms, including an overhaul of the tort system — an idea that “wasn’t even seriously considered [during the reform debate],” former Gov. George Pataki (R-N.Y.) told reporters Wednesday during a pro-repeal event in Washington.

Burgess argued this week that cost savings shouldn’t be the only consideration as Congress jousts over whether to overhaul the medical malpractice system. In Texas, he said, limiting claims has led to a host of other benefits.

“In Texas, medical liability reform has attracted thousands of new doctors to the state — over 15,000 since reform passed in 2003. Before reform, doctors were leaving the state,” Burgess said. “Charity care rendered by Texas hospitals has increased by 24 percent, resulting in \$594 million in free care to Texas’ patients.”

All of that, Burgess said, has led to better access for patients in the state. He’s vowing to continue his push “for Texas-style reforms on the national level.”