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## **Report casts doubt on malpractice damage caps**

### **Associated Press**

AUSTIN -- Large medical malpractice verdicts and settlements were not to blame for a rapid increase in insurance premiums for Texas doctors and hospitals, 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 lawmakers and voters approved strict caps on malpractice damages. Congress now is considering similar limits.

Supporters of the caps say they are needed to rein in runaway insurance premiums and health care costs. They are disputing the study's findings.

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

The study, which looked at malpractice claims paid out by insurance companies from 1988 to 2002, concluded 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 study 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.

It also found that median jury verdicts in trials won by patients were for \$300,593 in 2002, about the same as in the 1990s.

And 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 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, which represents medical providers, businesses and insurance companies.

Opelt and the Texas Medical Association pointed out that malpractice insurance rates have come down since voters approved the caps. Malpractice cases also have fallen by as much as 90 percent in Dallas County and elsewhere, trial lawyers said.

Public interest advocates said the study validates their concerns about the caps.

"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 study's authors did not look at what else could have caused the increase in premiums. The cap's opponents have speculated that insurance companies were trying to make up for investment losses