

Lawsuits against doctors decline

By Alan Johnson
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Malpractice cases, payouts down since 2003 Ohio law

Ohio's tort-reform law is having a dramatic impact on medical malpractice cases in the state, with closed claims dropping 41 percent between 2005 and 2010, and average payments declining 38 percent over that period.

The Ohio Department of Insurance annual report also shows more than 3 of 4 closed claims resulted in no payment.

Depending on your point of view, that's either good news or "justice reduced," as Columbus lawyer Gerry Leeseberg puts it.

The legal fight over curbing lawsuits and settlements in medical malpractice cases reached a tipping point in 2003 when the General Assembly passed and Gov. Bob Taft signed Senate Bill 281. The law capped non-economic damages, commonly known as "pain and suffering," at \$500,000 per occurrence. Other changes followed.

The results are clear in the 2010 annual report: Closed claims dropped to 2,988, the lowest level since the state began keeping records in 2005, and total payments dropped to \$175million, more than \$100million lower than five years earlier.

In addition, doctors' medical malpractice rates have dropped more than 26 percent, according to Tim Maglione, of the Ohio State Medical Association.

"It's not only good news and a good trend, but it is proof that tort reform accomplished what it set out to do — slow the growth of what we thought were runaway lawsuits and to stabilize the market for physicians."

Taft and GOP lawmakers responded to complaints from physicians that malpractice claims, and the resulting skyrocketing cost of malpractice insurance premiums, were forcing them out of business, or at least out of the state.

Maglione said more changes still are needed, including reducing the volume of claims. "There are a lot of lawsuits still today being filed that should never be commenced."

The numbers have also gone down, Maglione said, because doctors and hospitals are working harder to improve safety and cut down on mistakes. "The best error is the one that never happens."

Leeseberg sees the statistics in a very different light.

He is supportive of one change, which requires attorneys filing malpractice lawsuits to submit an "affidavit of merit" from a qualified medical practitioner attesting that there are grounds to make a legitimate claim. Beyond that, however, Leeseberg says lawmakers have conspired with the medical association and insurance companies to make it more difficult for Ohioans to file legitimate medical complaints.

"We have turned away people with legitimate malpractice claims. No matter how outrageous and catastrophic their injuries, the payment is capped. It's justice delayed and justice reduced."

There is no cap on claims for medical bills and loss of income, but the \$500,000 cap on "pain and suffering" makes it impractical to pursue some cases, Leeseberg said.

He blamed a "massive public relations campaign to foster the notion there are frivolous lawsuits, that the system has run amok, that lawyers are parasites, that these cases increase the cost of health care in the eyes of the public. None of which is true."

The total cost of medical malpractice claims, Leeseberg said, is less than 1 percent of the total health-care bill. He said that does not include the cost of malpractice insurance.

Maglione responded: "There is absolutely nothing in the law that closes the courthouse door to anyone that has a legitimate medical liability claim."

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Fewer cases, lower settlements

The decline in medical malpractice cases and settlements following passage of tort-reform legislation in 2003:



CLOSED-CLAIM YEAR	PAYMENTS		DEFENSE EXPENSES	
	TOTAL IN MILLIONS	AVERAGE	TOTAL IN MILLIONS	AVERAGE
2005	\$281.8	\$269,374	\$113.2	\$24,443
2006	\$228.7	\$288,080	\$88.1	\$25,672
2007	\$235.5	\$315,635	\$103.0	\$35,603
2008	\$205.6	\$252,522	\$112.7	\$42,249
2009	\$258.4	\$322,158	\$107.7	\$39,350
2010	\$175.1	\$231,353	\$70.0	\$29,424
All years	\$1.4 billion	\$279,295	\$594.7	\$31,735

Source: Ohio Department of Insurance

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