



# PATIENT JUSTICE

## Patients Are Better Off in States Without Barriers to Justice

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### Executive Summary

In state after state, patients continue to be told that the silver bullet for improving healthcare is to enact severe and arbitrary limits on patient access to the legal system. The argument made by insurance and medical industry lobbyists is that, in essence, allowing the epidemic of medical errors to go unchecked by legal accountability will improve the quality of healthcare.<sup>1</sup>

We set out to test this theory and determine if so-called tort “reform” corresponds to improvements in the healthcare system. Our investigation shows the opposite to be the case. Using data collected for a comprehensive state-by-state evaluation of healthcare by the non-profit, nonpartisan Commonwealth Fund,<sup>2</sup> we have determined that states without caps on medical malpractice lawsuits tend to have *better* healthcare than those with these arbitrary limits.<sup>3</sup>

**According to our analysis, states with limits on patient access to the legal system have worse overall healthcare on the Commonwealth Fund’s composite measurement than those without arbitrary legal restrictions.** In a ranking of all 50 states plus the District of Columbia, the average rank of overall state health system performance for those states without caps on medical liability damages is higher at 21.3 than those with arbitrary limits, which have an average rank of 28.9. This demonstrates that patients in states without limits on their access to the legal system are better off than those with such barriers.

Moreover, states with caps more often rank among the worst in the Commonwealth Fund’s healthcare measures. For instance, 69% of states with the poorest overall health system performance (bottom quarter), 79% of states with the worst access to care, and 84% of states with

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<sup>1</sup> This claim has been made by numerous special interests that advocate for severe and arbitrary limits on patient access to the courts, including the American Tort Reform Association ([http://www.atra.org/wrap/files.cgi/7964\\_howworks.html](http://www.atra.org/wrap/files.cgi/7964_howworks.html)), Pacific Research Institute ([http://www.pacificresearch.org/publications/id.2932/pub\\_detail.asp](http://www.pacificresearch.org/publications/id.2932/pub_detail.asp)), and Texans for Lawsuit Reform (<http://www.tortreform.com/node/1>).

<sup>2</sup> The Commonwealth Fund, “Aiming Higher: Results from a State Scorecard on Health System Performance,” June 2007. See [http://www.commonwealthfund.org/usr\\_doc/StateScorecard.pdf?section=4039](http://www.commonwealthfund.org/usr_doc/StateScorecard.pdf?section=4039).

<sup>3</sup> The 20 states (plus the District of Columbia) without caps are: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Iowa, Kentucky, Maine, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, and Wyoming.

The 30 states with caps are: Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

the poorest quality of care have limits on patient access to the courts. Evidence from this study shows that the proposition that so-called tort “reform” is achieving its touted goal of improving patient care is highly dubious. Patients fare worse in states with limits on access to their legal accountability system.

**This data demonstrates the falsity of a major component used by special interests who desire to immunize wrongdoers from accountability by stripping patients of their legal rights.** According to this analysis, Americans are much more likely to obtain better quality and access to healthcare and are significantly more likely to have health insurance in states that do not restrict the ability of injured patients to hold negligent doctors and hospitals accountable.

## Methodology

Using healthcare rankings developed by The Commonwealth Fund, a non-profit healthcare research foundation, this report compares states that have imposed limitations on patient access to the civil justice system through arbitrary limits on medical malpractice cases with those that have not. The Commonwealth Fund rankings measure overall health system performance, access to healthcare, and quality of healthcare by dividing all 50 states plus the District of Columbia into quartiles based on each state’s performance. According to the Commonwealth Fund, performance is measured in “access, quality, avoidable hospital use and costs, equity, and healthy lives.”<sup>4</sup> Texas Watch utilized the Commonwealth Fund’s measures as a benchmark to compare states with caps on medical liability damages with those that do not impose these arbitrary limitations.

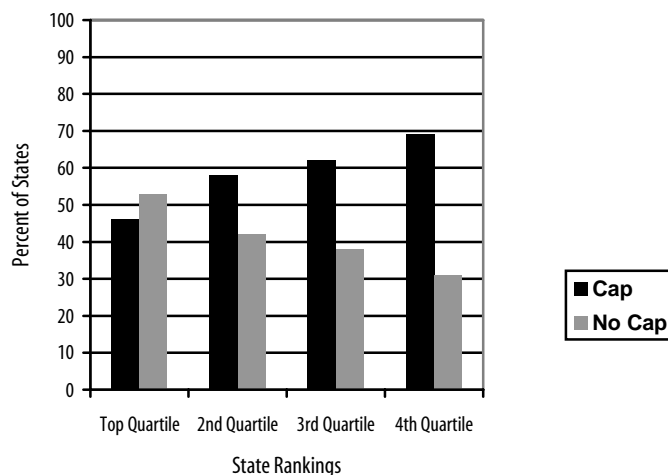
## Results

### *Overall Health System Performance*

When the Commonwealth Fund rankings of states are combined with information about which states have limits on physician and hospital accountability, it becomes clear that states without limits typically ranked higher. The difference is particularly clear among states that provide the poorest healthcare (those in the bottom quartile), where 69% of the states have caps on medical liability damages. This trend continues across the states in the overall health system performance rankings, as states with caps comprise an increasing percentage as the overall performance worsens, while states without caps comprise a decreasing percentage.

Texas, which has been applauded by special interests pushing a corporate immunity agenda across the country, is ranked 49<sup>th</sup> among states in overall health system performance.

**Overall Health System Performance**

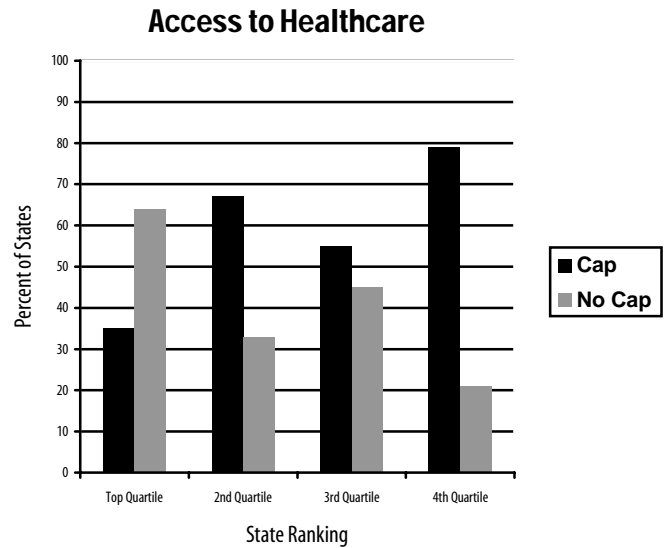


<sup>4</sup> See Footnote 2 at pg. 3.

### *Access to Healthcare*

The Commonwealth Fund report also ranks states according to access to healthcare. The report concludes that “access to health care is the foundation and hallmark of a high performance health system, [and] the foremost factor in determining whether people have access to care...is having insurance.”<sup>5</sup> For numerous years, Texas has ranked at or near the bottom of states for percent of residents covered by health insurance,<sup>6</sup> and in the Commonwealth’s assessment of access, Texas ranks dead last yet again.

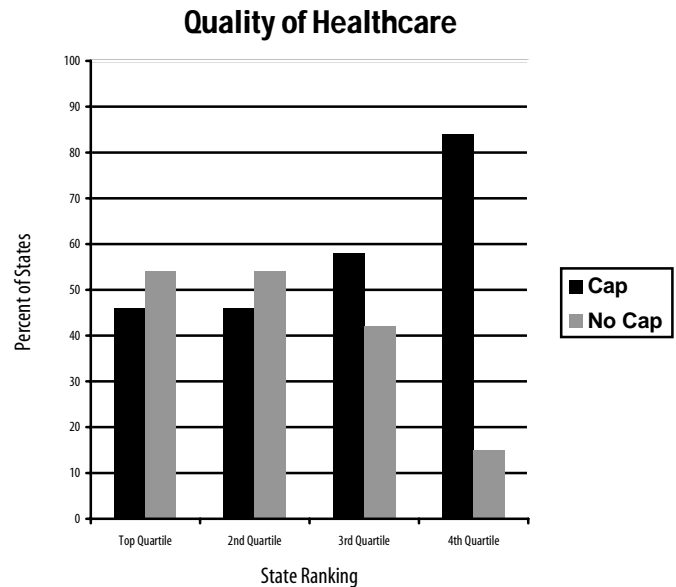
In the access rankings, states with caps comprise a mere 36% in the top quartile while they represent a whopping 79% of states in the bottom quartile. The report further subdivides the access rankings to indicate which states have the highest percentages of insured adults and insured children. In both of these categories, states with caps comprise an astounding 85% in the bottom quartile – meaning that states with caps are significantly more likely than states without caps to have high percentages of uninsured adults and children.



### *Quality of Healthcare*

The Commonwealth Fund uses numerous factors to measure health care quality, including adult preventative care, child mental health care, and hospital quality. Of states with the highest quality of healthcare (those in the 1<sup>st</sup> tier), only 46% have caps, while of states with the poorest quality of healthcare (those in the 4<sup>th</sup> tier), 84% - nearly twice as many – have caps.

This clearly indicates that states with caps fare worse in terms of quality in the healthcare arena, directly contradicting assertions that caps on medical malpractice claims lead to improved healthcare.



### **Conclusion**

This analysis clearly demonstrates that assertions by special interests that stripping patients of their legal rights will lead to better care is groundless. Advocates of restricting patient rights simply

<sup>5</sup> See footnote 2 at pg. 18.

<sup>6</sup> U.S. Census Bureau, “Household Income Rises, Poverty Rates Decline, Number of Uninsured Up,” August 28, 2007. See [http://www.census.gov/Press-Release/www/releases/archives/income\\_wealth/010583.html](http://www.census.gov/Press-Release/www/releases/archives/income_wealth/010583.html).

cannot get around the simple fact that patients are better off in states that do not limit the legal rights of patients.

While a number of factors go into determining the quality of care that patients receive, we believe that holding negligent doctors and careless hospitals accountable goes a long way toward improving overall patient care.

Rather than relying on flimsy conclusions made by insurance-backed interest groups and industry lobbyists, we encourage lawmakers in states across the nation to address the epidemic of medical errors by strengthening patient safety standards and ensuring fair and open access to the legal system.

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### **About Texas Watch**

Founded in 1998, Texas Watch is a citizens group based in Austin, Texas, which is dedicated to open access to the legal system for all Texans, fair markets for consumers, and strong accountability measures for wrongdoers. With 10,000 citizen members, Texas Watch actively advocates for real insurance and legal reforms that strengthen protections for families, patients, consumers, workers, and small business owners. To learn more about Texas Watch, visit [www.TexasWatch.org](http://www.TexasWatch.org).

## Appendix

### Table 1 Information

#### Overall Health System Performance

- Top Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 53%
- Second Quartile
  - Cap: 7/12 = 58%
  - No Cap: 5/12 = 42%
- Third Quartile
  - Cap: 8/13 = 62%
  - No Cap: 5/13 = 38%
- Fourth Quartile
  - Cap: 9/13 = 69%
  - No Cap: 4/13 = 31%

### Table 2 Information

#### Access to Healthcare

- Top Quartile
  - Cap: 5/14 = 35%
  - No Cap: 9/14 = 64%
- Second Quartile
  - Cap: 8/12 = 67%
  - No Cap: 4/12 = 33%
- Third Quartile
  - Cap: 6/11 = 55%
  - No Cap: 5/11 = 45%
- Fourth Quartile
  - Cap: 11/14 = 79%
  - No Cap: 3/14 = 21%

### Table 3 Information

#### Quality of Healthcare

- Top Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 54%
- Second Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 54%
- Third Quartile
  - Cap: 7/12 = 58%
  - No Cap: 5/12 = 42%
- Fourth Quartile
  - Cap: 11/13 = 84%
  - No Cap: 2/13 = 15%