Wyoming Medical Society

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May 20, 2004

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Dear Title Last:

On behalf of the physician members of the Wyoming Medical Society, thank you for your continued interest and attention to the current medical liability crisis in our state, which is becoming increasingly urgent.

Unfortunately, the seriousness of this problem continues to escalate -- for example, Rock Springs will lose five primary care physicians by the end of this summer. WMS would like to take this opportunity to provide updated information on the current situation. Attached you will find the following items:

1. A proposal from WMS and the Wyoming Hospital Association outlining immediate, short- and long-term solutions that will help maintain patient access to care in local communities.

2. An updated list detailing the impacts on patient access to care as physicians around Wyoming restrict services, relocate, or retire from practice. While most physicians base these decisions on the liability crisis, some leave for unrelated reasons. However, the fact remains that recruitment of new physicians to fill new and existing vacancies is even more difficult in our current liability climate.

3. A graph illustrating the 2004 base rates of the three major companies writing medical liability coverage in Wyoming. It is troubling to note that the lowest available rates were offered by OHIC Insurance Company, which is pulling out of the state this fall. Even if another insurance company enters the Wyoming market, the overriding problem is still affordability, rather than availability.

4. A news piece from Texas documenting the positive effects already being seen after sweeping liability reforms were adopted by Texas voters in September 2003. Ten new medical liability insurers have entered the Texas market since the beginning of 2004, and patients are again able to access specialty care in certain areas of the state.

You may have recently heard or seen communications from individual physicians and others sharing their thoughts on various strategies to draw attention to the medical liability crisis. While we agree with the intensity of their concern, the policy objectives of these individuals may not necessarily reflect the priorities of the WMS.

Thank you for your continued efforts to address the medical liability crisis in Wyoming. WMS welcomes your questions or requests for additional information.

Sincerely,

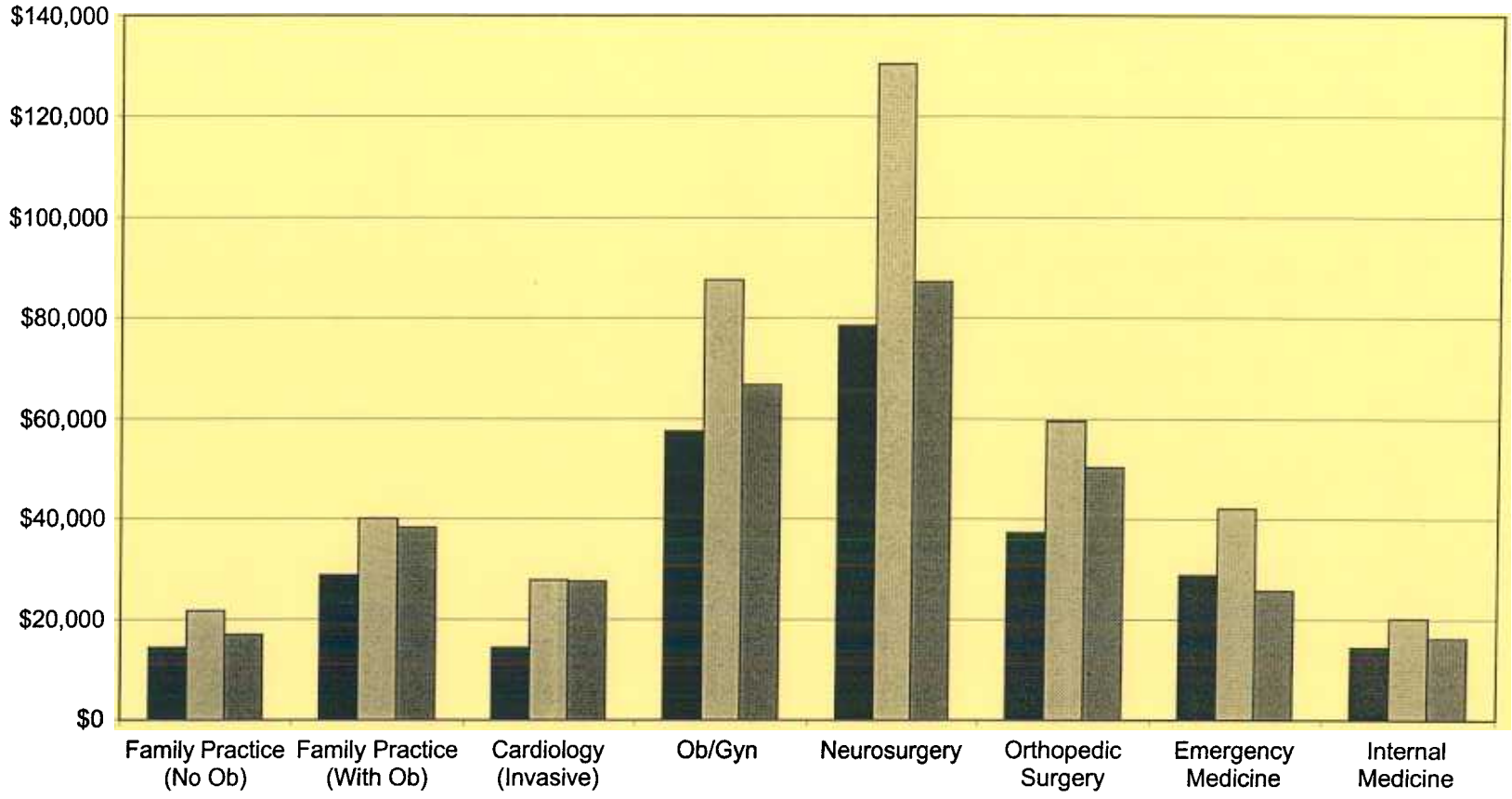
Stephen L. Brown

Stephen Brown, MD
President

Wendy P. Curran

Wendy P. Curran
Executive Director

2004 Wyoming Rates by Company *



SPECIALTY	OHIC	TDC	UMIA
Family Practice (No Ob)	$14,357	$21,631	$16,826
Family Practice (With Ob)	$28,713	$39,958	$38,275
Cardiology (Invasive)	$14,357	$27,789	$27,575
Ob/Gyn	$57,428	$87,527	$66,727
Neurosurgery	$78,484	$130,389	$87,167
Orthopedic Surgery	$37,328	$59,486	$50,258
Emergency Medicine	$28,713	$42,061	$25,603
Internal Medicine	$14,357	$20,029	$16,137

* Filed base rates -- Individual physician rates may be higher.

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WMS & WHA Proposals for Medical Liability Reform

~ May 2004 ~

We are providing our priority issues in several broad categories. As we have previously testified, there is no one, single solution to addressing the complex problem of medical liability. Instead, there are numerous puzzle pieces that, taken together, will begin to provide relief in terms of 1) stabilizing the liability insurance market; 2) moderating or reducing premium costs for physicians, hospitals and other health care providers; 3) slowing the rapid escalation of health care costs, including health insurance; and 4) helping improve patient safety.

In light of today's liability insurance market and the expected impacts of the withdrawal of OHIC Insurance from the state, we believe the first priority area is to explore options that will provide immediate and direct assistance to physicians on the cost of obtaining or maintaining insurance coverage. With the anticipated downgrade of OHIC's Best rating to a C, the issue of purchasing expensive tail coverage becomes critical.

IMMEDIATE ACTIONS

- **Market assistance plan or premium assistance.** Discussion of methods to provide state-funded assistance, on a short-term basis, to physicians facing unaffordable premium costs. A bill introduced in the last session outlined one possible alternative, based on an average regional premium, by specialty, with state assistance provided for the amount of premium paid by Wyoming physicians above that regional average.
- **Assistance with purchase of tail coverage.** The cost of tail coverage or prior acts coverage will be a determining factor in physicians' ability to continue to provide care. We suggest similar discussion of methods to provide state-funded assistance with tail coverage costs.
- **Patient compensation or excess coverage plans.** Similar to the patient compensation fund currently in use in Nebraska, this concept allows a cap only on the amount of physician liability, with excess amounts covered by the state. This concept would provide some effective relief, but ultimately opens the door for what might be unacceptable liability risk to the state.

SHORT-TERM ACTIONS

- **MICRA-based reform package**. It is clear that the most effective efforts to bring about a stable improvement in the insurance market, encourage competition and moderate premium rates are the package of reforms first enacted in California as MICRA. The Commission, the Joint Labor, Health and Social Services Committee and the Wyoming Legislature have already addressed several of those bills. There is ample research, data and state-specific results that document the effectiveness and long-term benefit of these reforms. They include:
  - **Reasonable limits on non-economic damages. HJR 2**
  - **Disclosure of evidence related to collateral sources.**

Periodic payment of future damages when an award exceeds a pre-determined level.
Qualifications of expert witnesses.
Certificate of review (merit). HB 78
Sliding scale limitations on contingency fees.

In addition to these MICRA reforms, we would include provisions for insurance reform as follows:

- **Medical liability insurance claims reporting. HB 131**
- **Components included in SF 62: extension of notice period for cancellation or premium increases; adjust formula used for calculation of tail coverage; mandatory public rate hearing when rate increase requests exceed a certain limit; limitations on individually underwritten rate increases.**

We also support the discussion of quality improvement, patient safety and medical errors reporting options. These areas may require additional study, but discussion should continue. One proposal which is widely supported by Wyoming physicians is the "I'm sorry" legislation which has been implemented in Colorado that provides immunity for physicians to discuss complications or problems with their patients without fear that such comments will be used against them in court. This program has been very successful in reducing the number of incidents that advance to court, and improves communication and quality care.

LONG-TERM ACTIONS

- **Medical Errors Commission.**
- **Special medical courts and similar options.**

There is growing discussion of the need for fundamental change to the current legal system for handling medical liability cases. The current system has many flaws:

- Fewer than one in sixteen patients who are negligently injured are compensated.
- 60-70% of premiums paid by physicians are consumed by overhead.
- Individuals who litigate wait an average of more than 5 years before receiving compensation.
- The result of cases that go to juries is random: the only correlation with payments from cases that go to juries is disability.
- The current system promotes the practice of defensive medicine, the cost of which has been estimated to be $100 billion per year.
- The current system impedes the development of a patient safety system.

Consideration of a concept similar to the medical errors commission proposed by Sen. Scott will help address these problems and create a system that works as it was intended. An alternative might be to have all cases filed reported to an independent board or entity, such as the Board of Medicine, to identify problems or system errors that need to be addressed. There may be other options available that focus on increased patient safety and quality improvement.

Wyoming Medical Society

Wyoming's Medical Liability Crisis: Impacts on Patient Access to Care

~ May 2004 ~

Sweetwater County to Lose Five Primary Care Physicians
Residents of Rock Springs and Green River face a severe loss of primary medical care as five local physicians announce plans to leave the area. Drs. Lo-fu Tan and Nandita Gupta will leave Rock Springs, while Dr. Saurabh Gupta will quit practice in Evanston by the end of the summer. Two Green River physicians, Dr. Christina Riley and Dr. Marilyn Long have also announced their decision to leave by mid-summer.

Laramie Physician Closes Family Practice
Brendan Fitzsimmons, MD will close his family medicine practice in Laramie on May 25. Dr. Fitzsimmons is currently insured by OHIC Insurance Company. He cites the anticipated increase in premium costs through a new company and higher business overhead costs as the reasons for his decision to relocate to Greybull, where his liability insurance will be covered by South Big Horn County Hospital.

Nursing Home Medical Director Is Concerned About Coverage
The medical director for Casper's Shepherd of the Hills nursing home is concerned about his liability insurance coverage. He received notification from The Doctors' Company that the company would not write coverage for medical directors of nursing homes. UMIA has agreed to write coverage -- the new rate is 36% higher, will cover only certain parts of his job responsibilities and limits his work to less than 19 hours per week. Nationwide, the issue of coverage for nursing home medical directors is a growing concern, with more than 21% of physicians who work in nursing homes reporting trouble in obtaining liability insurance last year.

Cody Psychiatrist Will No Longer Accept Child or Adolescent Patients
Scott Pollard, MD of Cody has announced that due to the current liability situation and "particular issues of concern regarding liability for children and adolescents under the age of 18", he will no longer accept new child or adolescent patients.

Big Horn Basin May Lose Two More Primary Care Providers
Michael Prevost, MD of Cody and Ben Lee, MD of Powell, both primary care providers, are leaving their practices. While both physicians indicate that medical liability problems are not the reason for their departures, the loss of two more physicians in the Big Horn Basin and potential difficulty in recruiting new physicians to the state may further impact patients' access to care.

Worland Physicians To Leave Private Practice
On May 29, 2004 Sherilyn Webb, MD, a family practice physician, will close her primary care practice in Worland. Eric Webb, PA-C, who works at the clinic, will also leave practice. The Webbs have provided care in Worland for more than 10 years. And on June 1, 2004, Aaron Jagelski, MD will close his family medicine practice to relocate to Oregon. Dr. Jagelski stopped delivering babies on April 1 because of the high cost of his malpractice insurance. The young family practice physician provided prenatal and obstetrical care in his community for three years and had delivered 33 babies.

Cody Surgeon Feels the Pinch of OHIC's Departure
Bo Johnson, MD, a Cody surgeon who is insured by OHIC, says he expects to see his premium more than double when he obtains insurance from another company. The base rate for general surgeons insured by The Doctors Company (TDC) in Wyoming will be more than $70,000. In comparison, the TDC rates

for general surgeons in neighboring states are $33,400 in Nebraska; $23,200 in South Dakota; $37,200 in Idaho; $38,700 in Montana; $39,000 in North Dakota; and $44,900 in Colorado.

Physician Numbers in Wheatland Dwindling
In February 2004, internal medicine physician John Thalken, MD left his private practice in Wheatland to become an employee of the hospital in Douglas, where his medical liability insurance will be covered.

In spring of 2003, family practice physician Patrick Yost, MD left Wheatland, moved to Cheyenne and joined a physician group that does not provide obstetrical services. And
in November 2002, Ob/Gyn Willard Woods, MD had to give up the obstetrical portion of his practice because he couldn't get liability coverage. He has delivered over 2000 babies in the Wheatland and Douglas areas over the past 23 years. Some pregnant women are faced with driving 70 miles to get obstetrical care.

OHIC Pulls Out of Wyoming
On March 4, 2004, OHIC Insurance Company announced that it would stop renewing Wyoming policies effective October 1, 2004. The move is part of a decision by OHIC to concentrate its business in its home state of Ohio, and involves leaving seven states, including Indiana, Illinois, Kansas, Kentucky, Maryland and Wisconsin. Five of those states have been picked up through an agreement with ProAssurance Corp., but neither Wyoming or Maryland -- both AMA crisis states -- were included in that agreement.

OHIC insures 381 Wyoming physicians, seven hospitals, community mental health centers, and a number of other facilities. While two other insurance companies, The Doctors Company (TDC) and Utah Medical Insurance Association (UMIA), indicate they will write new coverage for Wyoming physicians, the cost of this coverage is expected to be significantly higher, based on the rate categories filed with the Wyoming Insurance Commissioner's office. In some cases, physicians may also have to purchase tail coverage from OHIC at a rate somewhere around 150% of current premium. Some physicians will find the cost of insurance is more than they can afford.

Cheyenne Physician to Leave the State
Cheyenne urologist Stacy Childs, MD will end his practice in Wyoming on May 31, 2004 and move to Colorado, where his liability insurance premiums will be considerably less. Dr. Childs has been a tireless advocate for medical liability reform, serving as Chairman of the WMS Liability Reform Task Force in 2003. He also served the people of the state during his tenure on the Wyoming Health Care Commission.

Casper Physicians Forced to Quit or Limit Practice
Four physicians in the Casper area recently retired from practice due to the medical liability crisis and other factors. Paul Johnson, MD - oncology, James Maddy, MD - internal medicine, Jack Richard, MD - Ob/Gyn and Stuart Ruben, MD - internal medicine, have all left practice since January 1, 2004. Another physician, Jonathan Binder, MD, quit his private primary care practice and now works only in the ER, where his liability insurance is covered by his employer. Steve Webb, MD has also announced that he is closing his family practice office this spring. Yet another Casper physician, David Ellbogen, MD has announced that he will stop offering extended evening office hours in an effort to reduce his medical liability exposure.

Gillette Hit Hard by Ongoing Crisis
Gillette has lost several physicians due to the medical liability crisis and other factors. Since 2001, the community has lost two anesthesiologists, two general surgeons and three obstetrician/ gynecologists. There is now only one general surgeon in northeast Wyoming to provide care for accident victims and other patients needing emergency surgical treatment.

Riverton Physician Leaves Wyoming
In July 2003, Jim Derrisaw, MD, a Riverton anesthesiologist, moved his young family to Ft. Collins, Colorado to practice. Dr. Derrisaw grew up in Cheyenne, graduated from the University of Wyoming, married a native of Encampment, and returned to Wyoming to raise his family and "practice medicine in the state I love." Student loan debt for medical school of more than $100,000, coupled with insurance premiums that had escalated to $52,000 per year, created a burden that his deep Wyoming roots could not overcome. His insurance coverage in Colorado, a state with caps on non-economic damages and other key liability reform measures, has been quoted at a cost of $8,200.

Farmers Insurance Company Pulls Out of Medical Liability Market
In September 2003, Farmers Insurance announced that the company was pulling out of the medical liability market effective January 1, 2004. Farmers covers only hospitals in Wyoming, including Buffalo, Powell, and Afton. In some of those communities, family physicians get their liability coverage, including obstetrics, through the local hospital. The loss of coverage could have significant impacts on the ability of local doctors to maintain coverage for OB care if the hospital's new insurer will not include high-risk obstetrical services in its hospital coverage.

Casper Physician Closes Practice; Cites Cost of Liability Insurance
Thomas Repas, DO closed his practice in Casper at the end of October 2003. Dr. Repas practiced internal medicine since 1997 in a clinic that sees many seniors and Medicare patients. His liability premiums increased from $8000 to more than $30,000 -- costs which cannot be passed on to patients or absorbed in a practice already facing inadequate Medicare reimbursements. Dr. Repas has been a leader in state health activities relating to diabetes education and treatment and served as Chairman of the Wyoming Diabetes Prevention and Control clinical recommendations committee and as Medical Director for the Diabetes Care Center in Casper.

Wyoming Physicians Face Another Round of Premium Increases
The Wyoming Insurance Commissioner approved significant rate increases for most specialties insured by The Doctors' Company for its 2004 rates. Increases were approved by specialty and include the following: Surgery - 25%; Internal medicine - 15%; OB/Gyn - 15%; Pathology - 30%; GYN - 15%; Family Practice (without OB) - 16%; Diagnostic radiology - 28%; Neurosurgery - 25%; Pediatrics - 12%.

The OHIC Insurance Company has filed a request for rate approval with the Insurance Commissioner for a 21.3% across-the-board increase for 2004. It is not known if the Commissioner will approve the rate increase as submitted or authorize a lower adjustment for OHIC.

Laramie Could Lose Specialists from Colorado
In late August 2003, a move by an insurance company to stop Wyoming malpractice coverage for three Colorado-based physicians sent jitters through the Laramie medical community, where one in four doctors is a specialist from Colorado. Up to 14 specialists from Colorado practice part-time in Laramie and all are covered by Denver-based COPIC insurance company. COPIC's hesitation to cover the Wyoming portion of the physicians' practices illustrates the declining liability environment in Wyoming. Many other Wyoming communities depend on physicians from Colorado, Nebraska, Utah & Montana to provide needed specialty care for patients in their hometowns. If out-of-state specialists are forced to give up their Wyoming practice, quality of care will suffer, as patients lose access to specialty medical services in their local communities.

Newcastle Loses OB Services
Three family practice physicians announced that they could no longer provide obstetrical services to local women, citing the increasing cost of liability insurance. The quoted rate to continue OB services was $29,000 per physician, compared to $13,000 without OB -- less than half. The cost of insurance per delivery with the new rates would increase from $400 to $1900, which becomes even more significant when you consider the average payment received per delivery is around $2000.

As of July 1st 2003, pregnant women now face a drive to Custer, South Dakota -- the nearest location -- Rapid City, South Dakota or Gillette to have their babies delivered, distances from 30-90 miles. Hospital staff covering the maternity and delivery department may also lose their jobs.

Cheyenne Ob/Gyn Will Stop Delivering Babies
A Cheyenne Ob/Gyn has decided that he will no longer deliver babies due to the increasing liability crisis in Wyoming. Bert Wagner, MD will give up the obstetrical portion of his practice in spring 2004

Casper Physician Sees Recruiting Difficulties
In testimony to the Wyoming Health Care Commission at its August 2003 meeting, Casper orthopedic surgeon Craig Smith, MD says he has not gotten a single response to any of the more than 30 recruiting letters he sent out over the summer. With two of his partners drawing nearer to retirement, Dr. Smith is becoming increasingly concerned that he won't be able to recruit new physicians to fill future openings.

Liability Insurance for Emergency Medicine Hard to Find
Emergency room doctors are among the specialties being hit the hardest by the liability crisis at the current time. While some hospitals employ ER physicians and are able to continue liability coverage, many Wyoming hospitals contract with ER doctors to staff their emergency rooms. Liability insurance for those physicians has become very difficult to find in any market, and carries a huge pricetag. The Doctors Company is no longer writing any ER coverage. Some Wyoming hospitals report concerns about increased costs for ER contract staffing. The result may have severe consequences on trauma and emergency care around the state.

In summer 2002, Duane Abels, DO came close to having to leave Rawlins after his insurance company would no longer provide coverage for ER services. After a prolonged search, Memorial Hospital of Carbon County was eventually able to find liability insurance at the last minute, but that provides only a temporary solution and does not address the real problem into the future.

Surgical Care Threatened in Jackson
In Jackson, two surgeons were faced with leaving the state after their liability premiums increased dramatically last summer. St. John's Hospital stepped in to assist with the premiums for 2002. James Balliro, MD paid $16,000 for liability insurance the first year he practiced in Wyoming. His rate increased to $164,000 in his second year -- a business cost exceeding $13,000 per month. The hospital has again provided assistance, but it's unclear if the hospital can maintain its support.

Casper OB/Gyn's Future Uncertain
OHIC Insurance Company cancelled liability insurance for Dr. Hugh Depaolo, a Casper Ob/Gyn, in 2002. Dr. Depaolo delivers more than 350 babies each year in the Casper area (30-40%) -- nearly half of them covered by Medicaid. He performs nearly one-half of the gynecological surgery in the area. He was able to find insurance coverage through a secondary market company at a cost of $140,000 per year with an additional $69,000 to purchase tail coverage. His current insurance coverage is good for one year only -- and the costs will again increase substantially. Without his services, many pregnant mothers will find it hard to obtain pre-natal care.

Casper Surgeon Moves Out of State
A Casper area surgeon, Dr. Brook Redd, left Wyoming in May 2003 to begin practice in northwestern Minnesota. After practicing in Casper for more than nine years, Dr. Redd could no longer afford the cost of medical liability insurance in Wyoming. In Minnesota, Dr. Redd's liability insurance will cost him $5000 per year, compared to the $94,000 per year he paid in Wyoming.

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May 6, 2004, 10:11PM

Prop. 12 having healing effect on health care

By STATE REP. JOE NIXON

All across Texas there are signs that passage of Proposition 12 and House Bill 4 are delivering on the promise of healing our health-care delivery system. Just six months have passed since Texans passed Prop. 12, and early indications offered in testimony recently before the House Civil Practices Committee are remarkably positive. The goal of increasing access to health care is being realized.

Both Prop. 12 and its underlying legislation, HB4, were designed to avert a growing crisis in the Texas health-care system. Too many lawsuits against health-care providers were driving up the cost of practicing medicine, resulting in reduced access to health care. Last year, only four medical liability insurers remained in Texas after 13 insurers fled a state they claimed was too litigious. Many higher risk medical specialists, such as neurosurgeons and obstetricians, were leaving Texas or simply ending their practices here because of the high cost of malpractice insurance. In short, too many Texans were at risk of losing access to health care.

But testimony offered recently in a hearing held by the House Civil Practices Committee shows that the healing process for our health-care system has begun. Christus Health, a not-for-profit Catholic health system with hospitals throughout Texas, is projecting a $20 million savings on its liability costs this year. Christus has earmarked these savings for patient services, expanding its already high level of charity care. Christus officials say the $20 million savings is a direct result of recently passed lawsuit reforms.

An OB/GYN group in Fredericksburg announced it would again deliver babies. The three doctors had stopped the obstetrical portion of their practice due to an inability to pay the malpractice premiums for that portion of their medical practice. Expectant mothers in that area of Texas no longer will have to travel to San Antonio for prenatal care and to deliver their babies.

The two neurosurgeons in Bryan will continue their practice in that community. These were the only neurosurgeons in Brazos County. They had already announced their departure, but because of the relief in premium expense, they will stay.

Four new anesthesiologists have agreed to move to Beaumont. Four nursing homes, two in Austin and two in San Antonio, are able to continue to provide a home and health care to 600 elderly Texans.

In short, the lawsuit momentum against health care providers has stopped and the early signs are it is turning around.

The state's largest carrier, Texas Medical Liability Trust, lowered its rates on Jan. 1, by 12 percent and a smaller carrier, Continental Casualty Co., cut its rates by 11.5 percent. The nation's largest physician insurer, The Doctors Co., wants to expand its market share in Texas. Planned rate increases by other carriers have been put on hold.

Essentially, every doctor in Texas is either paying less malpractice premiums today or avoiding the pre-Prop. 12 scheduled increase in premiums. Texas Insurance Commissioner Jose Montemayor stated this was clear evidence of the beginning of a downward trend. Not only have rates begun to stabilize but 10 new insurance carriers have applied to enter the Texas medical liability market. That's additional good news for doctors desperate for rate relief and a reversal of the trend that forced 13 of 17 medical liability underwriters from Texas. New competition will have the effect of driving prices down. With more choices and lower prices, health-care providers will benefit from this healthier and more competitive malpractice insurance market. This has and will continue to translate directly into increased access to health care for Texans.

The president-elect of the Texas Trial Lawyers Association stated it is unlikely that the volume of future lawsuits will ever exceed one-half to two-thirds of pre-reform levels. This is an indication that many past suits should have never been filed at all and that the reforms in HB 4 are working to discourage the filing of non-meritorious lawsuits.

In contrast, Oklahoma doctors are seeing their insurance rates double this year, and despite passing comparatively watered-down reforms in Florida, its physicians are being hit with a 50 percent rate hike. Thankfully, this is not the story in Texas.

In Texas, happily, the early news is very good. The full effects of the reforms passed by the Legislature and approved by the voters have not yet been realized. It is early. The huge spike in the number of suits filed before the reforms became law has not worked its way through the system. Disturbingly, one carrier is trying to bypass the increased regulatory supervision of the Texas insurance commissioner because of a federal law loophole. Continued monitoring is needed to ensure that the enacted legal reforms translate into increased access to health care. Nonetheless, the early signs are that the Texas health-care system is recovering and the prognosis is good. That's good for doctors, hospitals and other health-care providers, and its good news for the people of Texas.

Nixon, R-Houston, sponsored House Bill 4.