Resolving Malpractice Claims after Tort Reform: Experience in a Self-Insured Texas Public Academic Health System
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Objective. To describe the litigation experience in a state with strict tort reform of a large public university health system that has committed to transparency with patients and families in resolving medical errors.

Data Sources/Study Setting. Secondary data collected from The University of Texas System, which self-insures approximately 6,000 physicians at six health campuses across the state. We obtained internal case management data for all medical malpractice claims closed during 1 year before and 6 recent years following the enactment of state tort reform legislation.

Study Design. We retrospectively reviewed information about malpractice claimants, malpractice claims, and the process and outcome of dispute resolution.

Data Collection/Extraction Methods. We accessed an internal case management database, supplemented by both electronic and paper records compiled by the university’s Office of General Counsel.

Principal Findings. Closed claims dropped from 244 in 2001–2002 to an annual mean of 96 in 2009–2015, closures following lawsuits from 136 in 2001–2002 to an annual mean of 28 in 2009–2015, and paid claims from 60 in 2001 to an annual mean of 20 in 2009–2015. Patterns of resolution suggest efforts by the university to provide some compensation to injured patients in cases that were no longer economically viable for plaintiffs’ lawyers to litigate. The percentage of payments relating to cases in which lawsuits had been filed decreased from 82 percent in 2001–2002 to 47 percent in 2009–2012 and again to 29 percent in 2012–2015, although most paid claimants were represented by attorneys. Unrepresented patients received payment in 13 cases closed in 2009–2012 (22 percent of payments; mean amount $60,566) and in 24 cases closed in 2012–2015 (41 percent of payments; mean amount $109,410). Even after tort reform, however, claims that resulted in payment remained slow to resolve, which was worsened for claimants subject to Medicare secondary payer rules. Strict confidentiality became a more common condition of settlement, although restrictions were subsequently relaxed in order to further transparency and improve patient safety.

Conclusions. Malpractice litigation risk diminished substantially for a public university health system in Texas following legal changes that reduced rights to sue and available damages. Health systems operating in a low-tort environment should work with policy makers, plaintiffs’ attorneys, and patient groups to assist unrepresented patients, facilitate early mediation, limit nondisclosure obligations following settlement, and expedite the resolution of Medicare liens.

Key Words. Medical malpractice, patient safety, dispute resolution, tort reform, error disclosure