



Liability Limits in Texas Fail to Curb Medical Costs

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Acknowledgments

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Supporters of limiting health providers' liability have touted Texas' medical malpractice experiment as the solution for improving national health care. For example, Minnesota Rep. Michele Bachmann held up Texas as a successful liability "pilot program" in an address in September, stating, "The state of Texas did a wonderful job of lawsuit reform and actually saw medical costs come down. We know it works."¹

Others have echoed Bachmann's claim. Rep. Lamar Smith (R-Texas) and 11 other members of the House of Representatives cited Texas in a recent report that claimed positive effects of limiting liability.² Sen. Jon Kyl (R-Ariz.) struck a similar theme in the "findings" of a proposed amendment to Senate health insurance legislation that he filed this month.³

But most of the claims touting positive effects of the Texas law – which took effect in September 2003 and included a \$250,000 per defendant liability cap – are flatly contradicted by the data.

By the measures commonly used to evaluate health care – such as cost, the uninsured rate, and access to care – Texas has regressed since its liability law took effect. Collectively, these measures show that Texas has one of the worst health care systems in the United States. Moreover, since 2003 Texas has either failed to improve or grown even worse compared to other states on almost every measure.

Since the liability laws took effect:

- The cost of health care in Texas (measured by per patient Medicare reimbursements) has increased at nearly double the national average;
- spending increases for diagnostic testing (measured by per patient Medicare reimbursements) have far exceeded the national average;
- the state's uninsured rate has increased, remaining the highest in the country;
- the cost of health insurance in the state has more than doubled;
- growth in the number of doctors per capita has slowed; and
- the number of doctors per capita in underserved rural areas has declined.

The only improvement in Texas since 2003 has been a decline in doctors' liability insurance premiums. But payments by liability insurers on behalf of doctors have dropped far more than doctors' premiums. This suggests that insurers are pocketing more of the savings than they are passing to doctors.

There is no evidence that any of the savings has been passed on to patients or taxpayers more generally. The data suggest that Texas liability "reform" is just a giveaway to liability insurers and, to a lesser extent, doctors.

¹ Michele Bachmann, Value Voters Summit, Washington, D.C., Sept. 18, 2009.

² H.R. Rep. No. 111-341, 111th Cong., at 8 (Nov. 18, 2009).

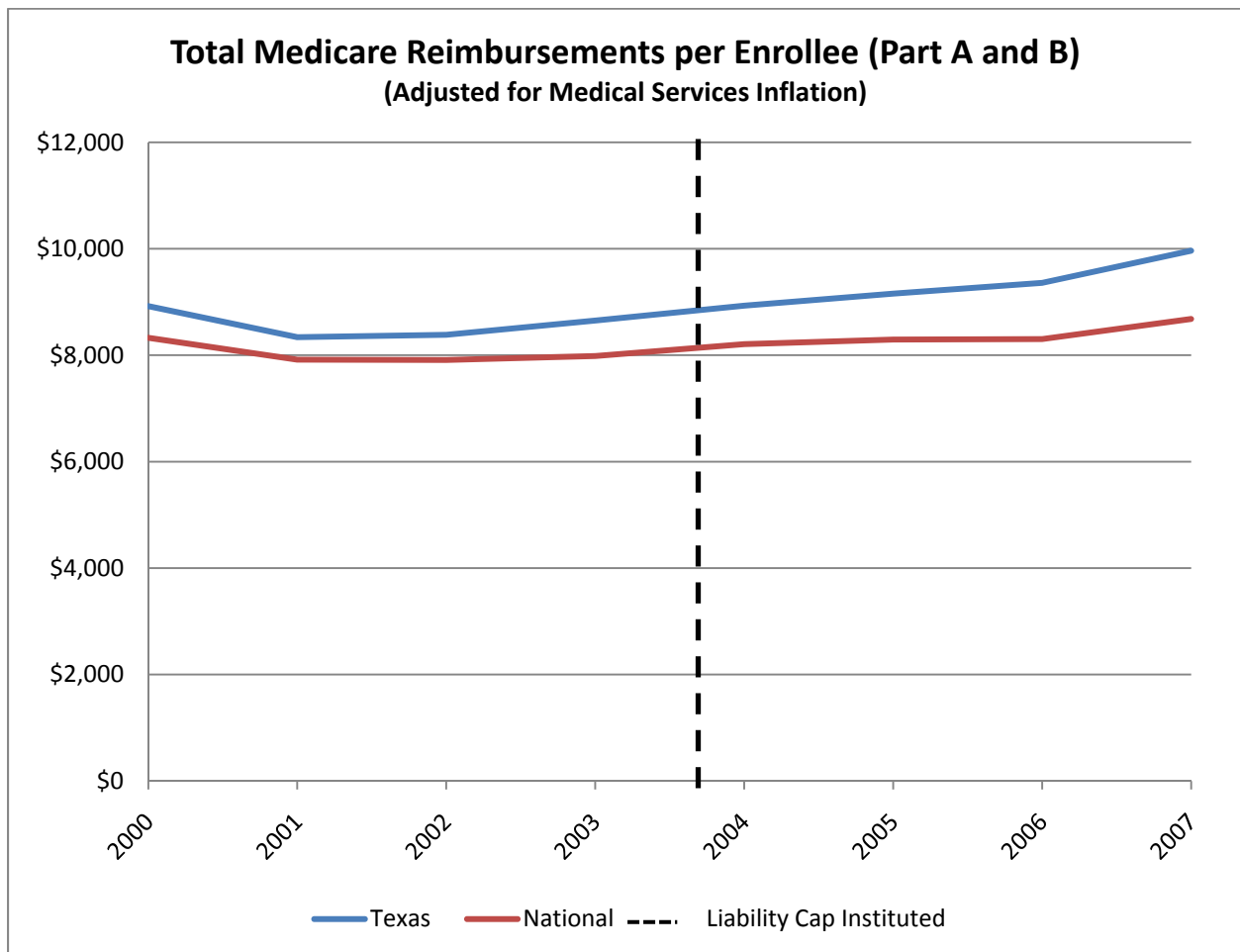
³ S.Amdt. 3097, to be proposed to S.Amdt. 2786 to H.R.3590, 111th Cong. (submitted Dec. 9, 2009).

Texas' Health Care Costs Have Grown at Twice the National Average Since 2003

In her address to the “Value Voters Summit” in September, Bachmann called on her audience to “trust but verify” her claim that health care costs in Texas have fallen.

In fact, health care costs are rising in Texas, and much faster than elsewhere. Per patient Medicare spending in Texas has risen at nearly twice the national average – 15.1 percent vs. 8.7 percent – in the four years since the liability law was instituted. In contrast, in the four years before the law’s enactment, per patient Medicare care spending in Texas actually declined,⁴ adjusted for medical services inflation.

Texas’ Medicare reimbursement rates in 2007 (the most recent year for which such data are available) ranked second highest in the country. In 2003, before the purported cost savings from limiting liability, Texas’ ranked only 10th highest.⁵



Source: Dartmouth Atlas of Health Care, "Selected Medicare reimbursement measures."

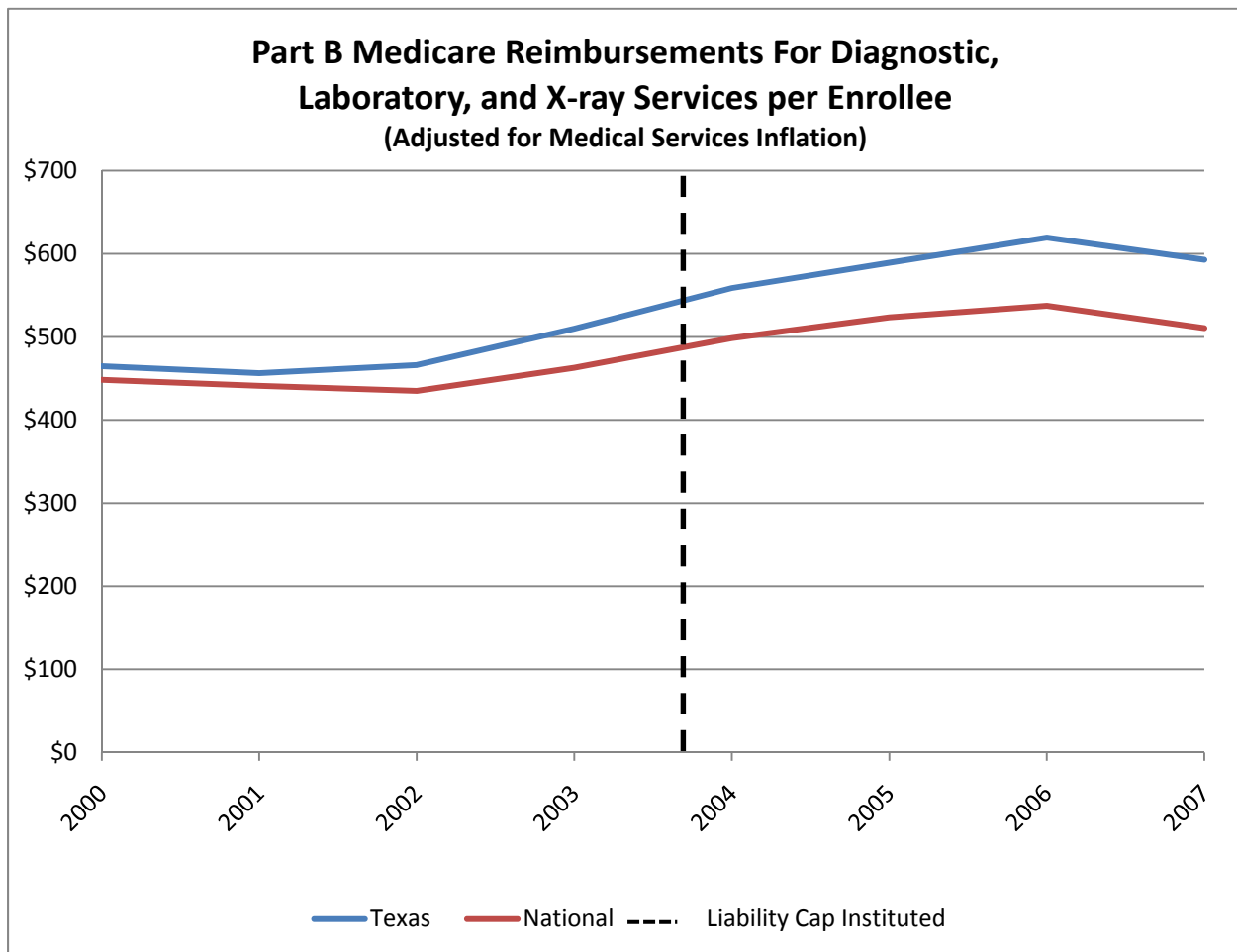
⁴ Dartmouth Atlas of Health Care, "Selected Medicare reimbursement measures."

⁵ *Ibid.*

Texas' Testing Costs Have Risen Faster Than the National Average Since 2003

Liability opponents argue that steep increases in diagnostic testing are caused by fear of litigation, a phenomenon they call “defensive medicine.” But since 2004, the increase in testing expenditures in Texas has outpaced the national average by more than 50 percent, adjusted for medical services inflation. Medicare reimbursements for diagnostic, lab, and X-ray services in Texas grew by 16 percent from 2003 to 2007 compared to a national average of 10 percent over the same time period.⁶

This increase occurred despite a dramatic decline in medical liability payments. From 2003 to 2007, the most recent year for which testing expenditure data are available, the value of malpractice payments in Texas fell by two-thirds (from \$239.7 million to \$87.2 million), according to the National Practitioner Data Bank. During this time, Texas climbed from 9th to 7th among states with the highest per capita testing expenditures.⁷



Source: Dartmouth Atlas of Health Care, "Selected Medicare reimbursement measures."

⁶ *Ibid.*

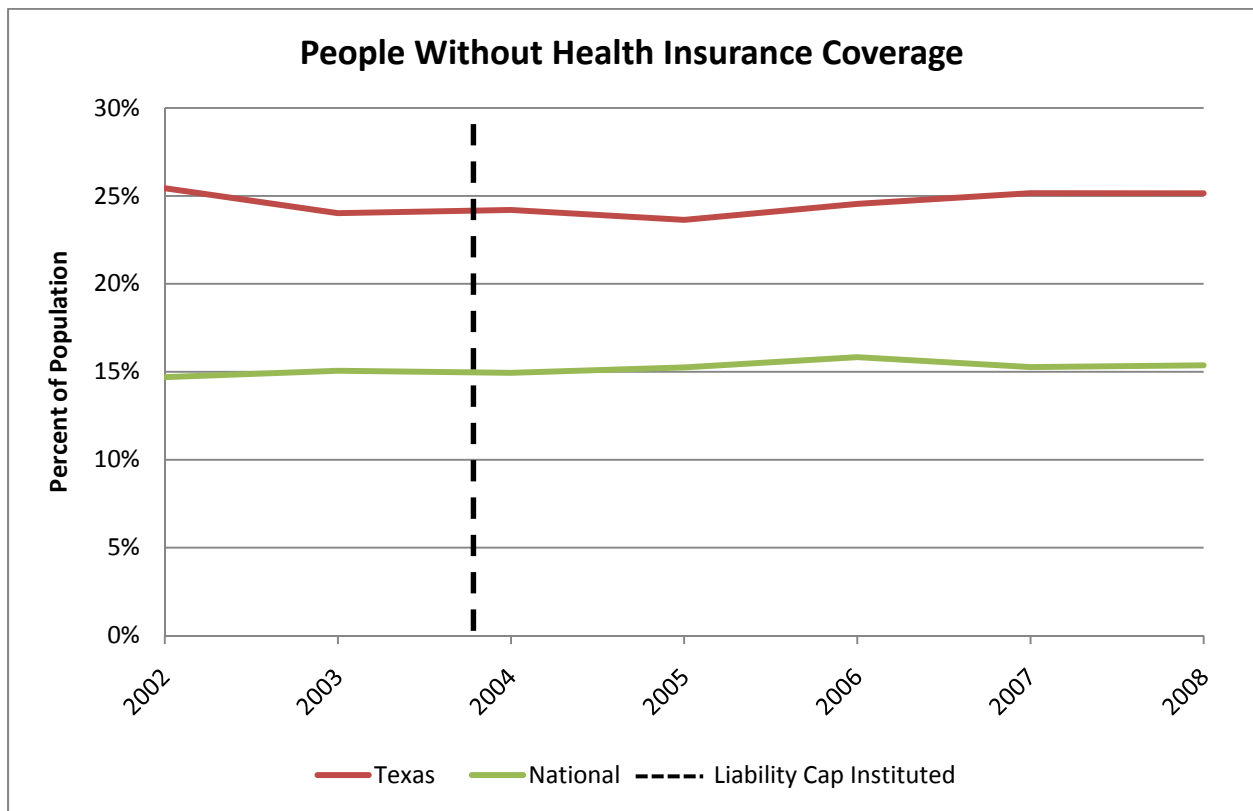
⁷ *Ibid.*

Percentage of Uninsured in Texas Remains Highest in Country

In his medical liability amendment, Sen. Kyl included a “finding” that “[b]ecause the Texas reforms led to more affordable health insurance premiums, more than 400,000 additional Texans are covered by health insurance than if reform had not passed.”⁸

This claim relies on an extraordinarily pessimistic view of Texas’ ability to provide health insurance to its population. Even with the “additional” 400,000 insured that Kyl attributes to liability limitations, the uninsured rate in Texas remains the worst in the United States. Further, the percentage of uninsured people in Texas has increased since the liability limitations took effect.

In 2003, Texas had a 24.0 percent uninsured rate, higher than any other state, according to Census figures.⁹ In 2008, four years after the state’s liability caps took effect, that rate rose to 25.1 percent, still the highest in the country. The uninsured rate in Texas is 10 percentage points higher than the national average and has risen faster than the national average since the liability law was enacted.



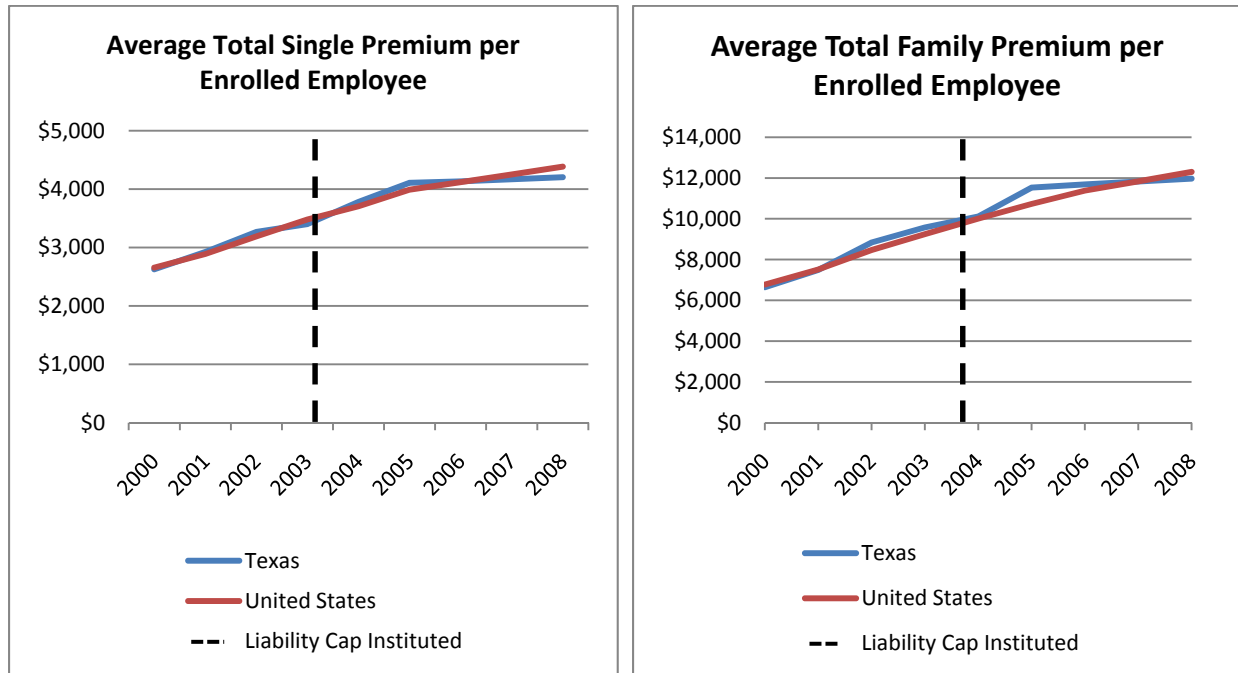
U.S. Census Bureau, Annual Social and Economic Supplement, Health Insurance section

⁸ S.Amdt. 3097, to be proposed to S.Amdt. 2786 to H.R.3590, 111th Cong. (submitted Dec. 9, 2009).

⁹ U.S. Census Bureau, Annual Social and Economic Supplement, Health Insurance section. Available at www.census.gov/hhes/www/hlthins/hlthins.html

Health Insurance Premiums Soaring

In contrast to claims that health insurance has become “more affordable” in Texas since 2003,¹⁰ premiums in Texas have increased by 114 percent for individuals and 144 percent for families. Health insurance premiums in Texas grew at about the same rate as the national average from 2003 to 2008 (120 percent for individuals and 148 percent for families), and Texas occupied the same rank – 33rd highest premiums – at the beginning and end of the period.



Source: Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey. Note: Because MEPS' 2007 data is not available, the 2007 data points on the graphs above represent the mean of the 2006 and 2008 data points.

Access to Care in Texas Remains a Crisis

Liability opponents credit the Texas law with luring droves of new physicians to the state. For example, Kyl claims, “Because of the Texas reforms, Texas saw an overall growth rate of 31 percent in the number of new physicians.”¹¹

In fact, the overall population of physicians in Texas has grown at a far slower rate than Kyl claims. But even the increase Texas has seen can mostly be explained by growth in the state’s population. The state’s per capita physician population increased by only 0.4 percent from 2003 to 2009 – which is far less than the 8 percent per capita increase during the equivalent period of time leading up to the law, from 1997 to 2003.¹²

¹⁰ S.Amdt. 3097, to be proposed to S.Amdt. 2786 to H.R.3590, 111th Cong. (submitted Dec. 9, 2009).

¹¹ S.Amdt. 3097, to be proposed to S.Amdt. 2786 to H.R.3590, 111th Cong. (submitted Dec. 9, 2009).

¹² Texas Department of State Health Services.

Number of Physicians in Texas

Year	Texas Population	Direct Patient Care (DPC) Physicians Population	Number of DPCs per 100,000 Population
1997	19,307,387	28,007	145.1
1998	19,649,800	28,778	146.5
1999	19,995,428	30,348	151.8
2000	20,344,798	31,769	156.2
2001	20,698,441	32,281	156.0
2002	21,056,712	33,094	157.2
2003	21,828,569	34,432	157.7
2004	22,549,142	34,904	154.8
2005	23,002,555	35,811	155.7
2006	23,464,827	36,450	155.3
2007	23,728,510	37,177	156.7
2008	24,178,180	38,387	158.8
2009	24,873,773	39,374	158.3

Source: Texas Department of State Health Services

In addition, the shortage of doctors in rural Texas – for which litigation is often blamed – grew slightly worse after the liability restrictions were enacted. From 2003 to 2009, the per capita population of doctors in non-metropolitan areas declined by 0.8 percent. In 2003, 152 counties in Texas lacked a gynecologist, obstetrician or an obstetrics/gynecologist specialist, according to the Texas Department of State Health Services. By 2007, that figure had risen to 153 counties.

Number of Physicians in Non-Metropolitan Counties in Texas

Year	Direct Patient Care Physicians per 100,000 Population
1997	80.7
1998	81.0
1999	85.1
2000	87.3
2001	86.6
2002	88.1
2003	86.2
2004	85.6
2005	85.0
2006	83.3
2007	84.4
2008	85.7
2009	85.5

Source: Texas Department of State Health Services

The American College of Emergency Physicians gave Texas an “F” for access to emergency medical care in 2009. The group wrote:

The state has the highest rates of uninsured children and adults (21.2 and 25.8 percent, respectively), and ranks among the lowest states regarding access to all types of providers. Texas needs an additional 664.4 primary care providers and 139.4 mental health providers (full time equivalents) to serve the state’s growing population. In addition, the state ranks among the worst 10 on numbers of orthopedists and hand surgeon specialists (7.3 per 100,000 people), emergency physicians (8.2 per 100,000), and registered nurses (674.4 per 100,000). Texas also faces a serious lack of physicians who accept Medicare (2.5 per 100 beneficiaries).¹³

Reductions in Malpractice Cases a Windfall to Doctors and Insurance Companies

Kyl claims that doctors have seen a 27 percent reduction in liability insurance rates since the Texas law was instituted.¹⁴ But medical malpractice payments on behalf of Texas doctors are down 67 percent. This suggests that insurance companies have reaped most of the benefit from limited liability, doling out a smaller portion of their winnings to doctors. In contrast, patients and taxpayers appear to have been left out entirely.

Malpractice Payments on Behalf of Texas Doctors, 1991-2008

Year	Number of Payments	Average	Total Value
1991	964	\$162,171	\$156,333,350
1992	1,009	\$180,878	\$182,505,550
1993	978	\$154,024	\$150,635,600
1994	1,038	\$148,065	\$153,691,050
1995	996	\$146,829	\$146,241,800
1996	1,061	\$185,438	\$196,750,050
1997	861	\$165,057	\$142,114,250
1998	920	\$177,635	\$163,423,800
1999	973	\$206,184	\$200,616,600
2000	1,080	\$188,660	\$203,752,350
2001	1,131	\$270,733	\$306,198,550
2002	1,041	\$221,966	\$231,066,300
2003	1,067	\$224,652	\$239,703,200
2004	1,077	\$233,858	\$251,865,300
2005	1,017	\$182,953	\$186,063,000
2006	628	\$169,884	\$106,687,250
2007	538	\$162,265	\$87,298,750
2008	464	\$170,362	\$79,048,000

Source: National Practitioner Data Bank

¹³ American College of Emergency Physicians, “The National Report Card on the State of Emergency Medicine,” 2009 Edition, page 12. Available at <http://www.emreportcard.org/uploadedFiles/ACEP-ReportCard-10-22-08.pdf.pdf>

¹⁴ S.Amdt. 3097, to be proposed to S.Amdt. 2786 to H.R.3590, 111th Cong. (submitted Dec. 9, 2009).

Appendix

People Without Health Insurance Coverage

Year	Texas	National
2002	25.4%	14.7%
2003	24.0%	15.1%
2004	24.2%	14.9%
2005	23.6%	15.3%
2006	24.5%	15.8%
2007	25.2%	15.3%
2008	25.1%	15.4%

U.S. Census Bureau, Annual Social and Economic Supplement, Health Insurance section

Total Medicare Reimbursements per Enrollee (Part A and B) (Adjusted for Medical Services Inflation)

Year	Texas	National
1992	\$6,890	\$6,970
1993	\$7,114	\$6,968
1994	\$7,984	\$7,381
1995	\$8,829	\$7,699
1996	\$9,356	\$7,977
1997	\$9,956	\$8,258
1998	\$10,014	\$8,757
1999	\$9,537	\$8,723
2000	\$8,923	\$8,326
2001	\$8,340	\$7,915
2002	\$8,385	\$7,910
2003	\$8,653	\$7,984
2004	\$8,931	\$8,207
2005	\$9,157	\$8,293
2006	\$9,361	\$8,304
2007	\$9,962	\$8,682

Source: Dartmouth Atlas of Health Care, "Selected Medicare reimbursement measures."

**Part B Medicare Reimbursements for Diagnostic,
Laboratory, and X-ray Services per Enrollee
(Adjusted for Medical Services Inflation)**

Year	Texas	National
1992	\$449	\$429
1993	\$428	\$409
1994	\$417	\$415
1995	\$399	\$412
1996	\$377	\$382
1997	\$365	\$368
1998	\$422	\$424
1999	\$438	\$424
2000	\$468	\$448
2001	\$456	\$441
2002	\$466	\$435
2003	\$510	\$463
2004	\$559	\$499
2005	\$589	\$523
2006	\$620	\$537
2007	\$593	\$511

Source: Dartmouth Atlas of Health Care,
"Selected Medicare reimbursement
measures."

**Average Total Single Premium per Enrolled
Employee at Private-Sector Establishments
That Offer Health Insurance**

Year	Texas	United States
2000	\$2,627	\$2,655
2001	\$2,925	\$2,889
2002	\$3,268	\$3,189
2003	\$3,400	\$3,481
2004	\$3,781	\$3,705
2005	\$4,108	\$3,991
2006	\$4,133	\$4,118
2008	\$4,205	\$4,386

Source: AHRQ MEPS

**Average Total Family Premium per Enrolled
Employee at Private-Sector Establishments
That Offer Health Insurance**

Year	Texas	United States
2000	\$6,638	\$6,772
2001	\$7,486	\$7,509
2002	\$8,837	\$8,469
2003	\$9,575	\$9,249
2004	\$10,110	\$10,006
2005	\$11,533	\$10,728
2006	\$11,690	\$11,381
2008	\$11,967	\$12,298

Source: AHRQ MEPS