

SUBJECT: Professional liability insurance for volunteer health care professionals

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Oliveira, Taylor,
Van Arsdale

0 nays

1 absent — Thompson

WITNESSES: For — Fred Orr, Christ's Family Clinic

Against — None

On — Marilyn Hamilton, Texas Department of Insurance

BACKGROUND: A number of charitable organizations operate community clinics that provide basic health care at a free or greatly reduced cost to low-income individuals who otherwise cannot afford it. These clinics often rely on the donated services of health care professionals, many of whom are retired, licensed health care providers who no longer carry basic liability coverage used by practicing health care professionals.

The Charities Immunities Act (Civil Practice and Remedies Code, ch. 84) provides immunity from civil liability to a volunteer health care provider with a charitable organization for any act or omission resulting in death, damage, or injury to a patient if:

- the volunteer commits the act or omission while providing health care services to the patient;
- the volunteer has provided services within the scope of the volunteer's license; and
- the patient or the patient's legal representative signs a written statement acknowledging liability limitations before the volunteer provides health care services.

Insurance Code, art. 5.15-1, concerns professional liability insurance for physicians and health care providers. The article applies to the insurance

rates used by all insurers that write professional liability insurance for physicians or health care providers.

Insurance Code, art. 21.49-4 authorizes the creation of self-insurance trusts by physicians and dentists. It allows the formation of an association to purchase professional liability insurance on behalf of its members and pay claims that arise. The Texas Medical Liability Trust (TMLT), which offers coverage to more than 10,000 physician policyholders in Texas, is the only such trust currently operating.

DIGEST:

CSHB 654 would amend Insurance Code, art. 5.15-1 by adding a new section regarding liability insurance coverage for volunteer health care providers. An insurer could provide professional liability insurance for health care providers for an act or omission resulting in death, damage, or injury to a patient while the person was acting in the course and scope of the person's duties as a volunteer health care provider.

A trust authorized under Insurance Code, art. 21.49-4 also could offer professional liability insurance coverage to a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person was acting in the course and scope of his or her duties. A trust could include volunteer health care providers other than physicians and dentists in its membership.

The Charities Immunities Act still would apply to volunteer health care providers regardless of whether the provider obtained liability insurance authorized under this bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005, and would apply only to a professional liability insurance policy that was delivered, issued, or renewed on or after the 181st day after the bill took effect.

**SUPPORTERS
SAY:**

CSHB 654 is needed to help mitigate the health care and health insurance crisis that faces Texas. It would address the gap that currently exists in liability coverage for retired licensed health care professionals. These retired providers offer invaluable skill and experience to charitable clinics, but many are reluctant to donate their time and services because they are unable to secure medical liability insurance coverage. Although current law already protects retired health care professionals from a certain

amount of liability, insurance still is required to cover legal defense costs rising from claims of medical error or neglect, even if the claims are false or groundless. By allowing these providers, or the charitable organizations for which they work, to purchase affordable coverage, the bill would allow more retired health care professionals voluntarily to use their skills in the service of those less fortunate.

Although current law does not prevent insurers from selling medical liability insurance to volunteer health care providers, policies for retired health care professionals are unaffordable because insurance companies currently do not offer such coverage in sufficient amounts. CSHB 654 could encourage growth in this segment of the liability insurance market by specifically authorizing insurance companies to offer professional liability coverage to volunteer health care providers. In addition, TMLT, the largest and most respected medical liability carrier in Texas, would be well positioned to offer affordable policies to retired physicians.

The emergence of these community clinics is a fairly recent phenomenon, with newer clinics cropping up every day. By encouraging volunteer health care providers to purchase policies, and making insurance companies more aware of the need for such coverage, this bill would help drive the cost of medical liability insurance down for providers.

**OPPONENTS
SAY:**

It is unlikely that CSHB 654 could create a market that would make professional medical liability insurance affordable for volunteer health care providers. Texas law already allows regulated insurance companies to provide medical liability insurance to volunteer providers, but few carriers currently offer such coverage. Even if this bill encouraged more insurers to take this business, it is unlikely that they could offer affordable premiums to many volunteer providers. This is because insurance rate assumptions would be based on judgment, not experience, and the resulting rate base, which determines the price of premiums, likely would be high. If premiums were too expensive, the volunteer provider or the charitable organization likely would not purchase the liability insurance and insurance companies would not offer it, which essentially is the situation that exists today.

Liability insurance through TMLT is available only to physicians and their employees. Although CSHB 654 would allow for a trust to offer coverage to volunteer health care providers not limited to physicians and dentists, the TMLT charter allows insurance coverage for only physicians and their

employees. Allied health care providers, such as nurses, likely would be considered employees of community clinics, not employees of physicians, and thus could not obtain coverage through TMLT. Also, it is unlikely that non-physician volunteer providers could gather the necessary resources to create their own self-insurance trust.

NOTES:

The committee substitute would allow a trust to offer professional liability insurance coverage to volunteer health care providers, including those who were not physicians or dentists.

A related bill, HB 655 by Goolsby, which would require the Joint Underwriting Association to offer liability insurance to volunteer health care providers and includes other provisions identical to HB 654, was reported favorably, as substituted, by the Insurance Committee on March 22 and is on tomorrow's General State Calendar.