

SUBJECT: Allowing the recovery of future malpractice-related damages

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — B. Cook, P. King, Miller, Raymond, Woolley

0 nays

4 absent — Strama, Madden, Martinez Fischer, Talton

WITNESSES: *(On original version:)*

For — Rep. Dan Gattis; Rep. Larry Phillips; Jim Perdue; *(Registered, but did not testify: Pamela J. Bolton, Texas Watch)*

Against — Charles Bailey, Texas Hospital Association; Mike Hull, Texas Alliance for Patient Access; *(Registered, but did not testify: Will Davis, United Services Automobile Association (USAA); Paula Fernandez, State Farm Insurance; Shelton Green, Texas Association of Business; Jon Opelt, Texas Alliance for Patient Access)*

On — Lee Parsley, Texans for Lawsuit Reform

BACKGROUND: In 2003, the 78th Legislature enacted HB 4 by Nixon, et al., comprehensive medical malpractice and tort liability revisions. Among its provisions, HB 4 amended Civil Practice and Remedies Code, sec. 74.303 to place caps on noneconomic damages but specifically provided that the caps do not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

Economic damages were amended in Civil Practice and Remedies Code, sec. 41.0105 to provide that in addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

Civil Practice and Remedies Code, sec. 74.001 defines “health care liability claim” as a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from

accepted standards of medical care, health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

DIGEST:

CSHB 3281 would amend Civil Practice and Remedies Code, sec. 41.0105 to specify that the limitation on damages for recovery of medical or health care expenses paid or incurred would apply only to a health care liability claim. The limit would not apply to future medical or health care expenses.

The 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, 2007, and would apply only to an action that commenced on or after that date.

**SUPPORTERS
SAY:**

CSHB 3281 would allow claimants to recover future legitimate, out-of-pocket medical expenses that resulted from an injury. It was never the intent of the Legislature to prevent injured parties from recovering future medical or health care expenses when it enacted HB 4 in 2003. By limiting the recovery of medical or health care expenses to malpractice claims, the bill would protect the rights of injured patients while preserving the balance and fairness for all parties that has been accomplished through the tort reform process.

**OPPONENTS
SAY:**

One of the purposes of enacting tort reform in 2003 was to address the malpractice crisis in Texas by limiting health care providers' exposure to risk. This bill would defeat an important purpose of HB 4 by keeping health care providers on the hook for years to come for economic damages from claims for future medical or health care expenses. Health care providers already are not compensated for a the full cost of care they deliver to Medicaid patients and the uninsured, for example. This bill only would exacerbate these financial difficulties.

**OTHER
OPPONENTS
SAY:**

The bill should allow claimants to recover the full cost of damages they incur and not just the portion that comes out of their pockets. Under current law, an injured person can only recover economic damages above and beyond what insurance covers, even though the person may have paid insurance premiums for years. This provides a perverse disincentive not to carry and pay for health insurance.

NOTES: HB 3281 as introduced would have removed the limitation on the recovery of health care expenses paid or incurred by or on behalf of the claimant by repealing sec. sec. 41.0105.