

SUBJECT: Subrogating personal injury claims to Nueces County Hospital District

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Jackson, Lewis, Bohac, S. Davis, Raymond, Scott, Woolley

0 nays

4 absent — Castro, Hartnett, Madden, Thompson

WITNESSES: For — DeWitt Alsup and Jonny Hipp, Nueces County Hospital District;
(*Registered but did not testify*: Charles Bailey, Texas Hospital Association; John Dahill, Texas Conference of Urban Counties; Chris Yanas, Teaching Hospitals of Texas)

Against — Richard Plezia, Texas Trial Lawyers Association

BACKGROUND: Health and Safety Code, sec. 61.044 allows a county to assume an indigent patient's right of recovery from personal insurance or a patient's personal injury claim when health care services are provided.

Property Code, sec. 55.002 provides that a hospital has a lien on a cause of action of a patient who receives hospital services for injuries caused by the negligence of another person.

DIGEST: HB 2882 would add a provision to the Health and Safety Code stating that the filing of an application for or receipt of health care services provided or paid for by the Nueces County Hospital District constituted an assignment of the applicant's or recipient's right of recovery from

- personal insurance;
- other sources; or
- another person for personal injury caused by the person's negligence or wrong.

A person who applied for or received health care services would be required to inform the Nueces County Hospital District, at the time of application or at any time during eligibility for services, of

- any unsettled tort claim that could affect medical needs;
- any private accident or health insurance coverage that was or could become available; and
- any injury that was caused by the act or failure to act of some other person.

A person would be required to inform the Nueces County Hospital District within 10 days of learning of the insurance coverage, tort claim, or potential cause of action. A person who knowingly and intentionally failed to disclose any of the above would commit a class C misdemeanor. The person also would be subject to denial of services, following an administrative hearing.

The Nueces County Hospital District would have a separate and distinct cause of action. The district could, with the approval of the board of managers, take direct civil action in any court of competent jurisdiction. The district's right of recovery would be limited to the cost of services paid by the district.

A personal injury claim would not be grounds for denying or discontinuing services.

The bill would take effect on September 1, 2011, and would apply only to the filing of an application for or receipt of services on or after the effective date.

**SUPPORTERS
SAY:**

HB 2882 would recover taxpayer money expended on indigent health care services when injuries had been caused by another person's negligence or wrongdoing. The amount recovered would be limited to the cost of services paid by the hospital district, which is based on Medicaid rates.

This remedy is not available to the Nueces County Hospital District under current law because the district owns the hospital but does not operate it. Hospital districts that operate a hospital have a similar remedy.

**OPPONENTS
SAY:**

HB 2882 could lead to the assignment of a cause of action without the patient's knowledge. It would also be too easy for a patient to violate the statute unintentionally. A patient with a personal injury claim could be incapacitated, making it impossible for the patient to know of the tort claim or provide notice to the hospital district.

SB 303 by Nichols would be a better approach to recovering costs because it would not create a misdemeanor for failing to disclose a tort claim or insurance coverage. SB 303 is also a broader bill, applying to all hospital districts and public hospitals rather than only the Nueces County Hospital District.

NOTES:

The companion bill, SB 1221 by Hinojosa, was referred to the Senate State Affairs Committee on March 16.

SB 303 by Nichols, which concerns cost recovery by all hospital districts and public hospitals, was reported favorably, as substituted, by the Senate State Affairs Committee on May 4.