

SUBJECT: Allowing preliminary determinations regarding health care liability claims

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Jim Perdue, Texas Trial Lawyers Association; (*Registered, but did not testify*: Ware Wendell, Texas Watch)

Against — Brian Jackson, Texas Alliance for Patient Access; (*Registered, but did not testify*: Joe Woods, American Property and Casualty Insurance Association)

BACKGROUND: Civil Practice and Remedies Code sec. 74.351 requires that for a health care liability claim, a claimant must serve, not later than the 120th day after the date each defendant's original answer is filed, on that party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted.

Concerns have been raised that state law governing certain expert reports is ambiguous and has been interpreted differently by different courts, often leaving claimants confused as to whether they are required to serve an expert report.

DIGEST: CSHB 3984 would authorize a court to issue a preliminary determination regarding whether a claim was a health care liability claim for purposes of serving the required expert report for such claims.

A claimant would have to file a motion for the preliminary determination not later than 30 days after the date each defendant's original answer was

filed. If a court did not issue a preliminary determination before the 91st day after the date a claimant filed the motion, the court would be required to issue a preliminary determination that the claim was a health care liability claim for the purposes of the required expert report.

After a court issued the preliminary determination, the claimant would have to serve the required expert report not later than the later of:

- 120 days after the date each defendant's original answer was filed;
- 60 days after the date the court issued the preliminary determination; or
- a date agreed to in writing by the affected parties.

A preliminary determination would be subject to interlocutory appeal by either the claimant or defendant. If on interlocutory appeal, an appellate court reversed the trial court's preliminary determination that a claim was not a health care liability claim, the claimant would have to serve the required expert report not later than 120 days after the date of the appellate court's opinion.

A preliminary determination under the bill would apply only to the issue of whether a claimant was required to serve an expert report under Civil Practice and Remedies Code sec. 74.351.

The bill would take effect September 1, 2021, and would apply only to an action commenced on or after that date.