

BILL ANALYSIS

Senate Research Center
FFOaja2

S.B. 1555
By: Duncan
Business & Commerce
4/16/2001
As Filed

DIGEST AND PURPOSE

Currently, nursing homes in Texas are experiencing difficulties due to liability insurance rates rising, availability to insurance dwindling and lawsuit settlements becoming more common. As proposed, S.B. 1555 seeks to alleviate some of these problems by limiting the damages that can be awarded to a plaintiff in an action against a nursing home and providing a liability insurance rate rollback for profit and not for profit nursing homes.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance of the State of Texas in SECTION 3.01 (Section 3, Chapter 5O, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. Amends SECTION 1.01 Section 41.008, Civil Practice and Remedies Code, to provide that except as provided by this section, exemplary damages awarded against a defendant may not exceed an amount equal to the greater of two times the amount of economic damages, plus the lesser of an amount equal to any noneconomic damages found by the jury or \$750,000 or \$200,000.

(c) Provides that except as provided by Subsection (d), Subsection (b) does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following certain sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally.

(d) Provides that Subsection (b) applies to a cause of action against a defendant who is a nursing institution certified to provide services to Medicaid recipients in accordance with Chapter 32 (Medical Assistance Program), Human Resources Code, or licensed under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code, and from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, only if the defendant is finally convicted under that section for the conduct that gives rise to the plaintiff's cause of action.

(g) Requires the court, if exemplary damages are awarded under this chapter against a nursing institution certified to provide services to Medicaid recipients in accordance with Chapter 32, Human Resources Code, or licensed under Chapter 242, Health and Safety Code, the court to refer the institution to the Department of Human Services for investigation and enforcement proceedings and sanctions, as appropriate.

SECTION 1.02. Provides that Section 41.008, Civil Practice and Remedies Code, as amended by this article, applies only to an action filed on or after the effective date of this Act. Provides that an action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

ARTICLE 2. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 2.01. Amends Chapter 32B, Human Resources Code, by adding Section 32.053 as follows:

Sec. 32.053. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) Provides that, except as provided by Subsection (b), the following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution.

(b) Provides that a finding described by Subsection (a)(1) or the fact of assessment or payment of a penalty described by Subsection (a)(2) is admissible in a civil action only if:

(1) the finding or the assessment of the monetary penalty has been affirmed by the entry of a final, adjudicated order of the department, following formal appeal, that is not otherwise subject to appeal; and

(2) the finding or fact is otherwise admissible under the Texas Rules of Evidence.

(c) Provides that this section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

SECTION 2.02. Amends, Chapter 242A, Health and Safety Code, by adding Section 242.017 as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS.

(a) Except as provided by Subsection (b), the following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) A finding described by Subsection (a)(1) or the fact of assessment or payment or a penalty described by Subsection (a)(2) is admissible in a civil action only if:

(1) the finding or the assessment of the penalty has been affirmed by the entry of a final, adjudicated order of the department, following formal appeal, that is not otherwise subject to appeal; and

(2) the finding or fact is otherwise admissible under the Texas Rules of Evidence.

(c) Provides that this section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

SECTION 2.03. Repealer: Sections 32.021(i), (j), and (k) (Administration of the Program), Human

Resources Code, are repealed.

SECTION 2.04. (a) Provides that this article is intended to emphasize the lack of admissibility in a civil action of documents relating to a survey, inspection, or investigation conducted with respect to an institution that is licensed under Chapter 242, Health and Safety Code or the licensing of an institution under Chapter 242, Health and Safety Code.

(b) Provides that the change in law made by this article may not be construed to mean that the documents described by Subsection (a) of this section were admissible in civil actions before the effective date of this Act.

ARTICLE 3. RATE ROLLBACK FOR CERTAIN LIABILITY INSURANCE COVERAGE

SECTION 3.01. Amends Chapter 50, Insurance Code, by adding Article 5.132 as follows:

Art. 5.132. TEMPORARY RATE ROLLBACKS FOR CERTAIN LIABILITY INSURANCE

Sec. 1. PURPOSE OF ARTICLE. Provides that the purpose of this article is to ensure that liability insurance rates for nursing institutions will immediately reflect the reduction in risk to insurers writing liability insurance policies for those institutions that will result from legislation enacted by the 77th Legislature, Regular Session, that amended Section 41.008, Civil Practice and Remedies Code, to limit the circumstances in which the cap on exemplary damages under that section will not apply to a judgment against a nursing institution and added Sections 32.053 and 242.017, Human Resources Code, and repealed Sections 32.021(i), (j), and (k), Human Resources Code, to clarify the admissibility of certain documents in a civil action against a nursing institution.

Sec. 2. APPLICABILITY OF ARTICLE. Provides that this article applies to any insurer authorized to engage in business in this state, including a Lloyd's plan, that writes a policy of professional liability insurance for a nursing institution certified to provide services to Medicaid recipients in accordance with Chapter 32, Human Resources Code, or licensed under Chapter 242, Health and Safety Code.

Sec. 3. RATE ROLLBACK. (a) Requires that notwithstanding Chapter 40 of this code, on or before September 1 of each year, the Commissioner of Insurance to hold a rulemaking hearing under Chapter 2001 (Administrative Procedure), Government Code, to determine a percentage of equitable across-the-board reductions in insurance rates required for liability coverage described by Section 2 of this article and adopt those rate reductions by rule.

(b) Requires that the rate reduction adopted under this section to be based on the evidence presented at the hearing required by Subsection (a) of this section. Requires that the rates resulting from the rate reductions adopted under this section to be reasonable, adequate, not unfairly discriminatory, and not excessive.

(c) Provides that a rate reduction adopted under this section applies only to a policy delivered, issued for delivery, or renewed on or after the 90th day after the date the rule establishing the rate reduction is adopted.

(d) Provides that any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section that is appealed or challenged remains in effect during the pendency of the appeal or challenge. Requires an insurer, during the pendency of the appeal or challenge, to use the rate reduction provided in the order being appealed or challenged, and the rate reduction is lawful and valid during the period of the appeal or challenge.

Sec. 4. ADMINISTRATIVE RELIEF. (a) Requires that, except as provided by Subsection (b) of this section, a rate filed for policies described by Section 2 of this article after the adoption of a rate reduction under Section 3 of this article to reflect the rate reduction. The commissioner shall disapprove a rate, subject to the procedures established by Section 7, Article 5.13-2 of this code, if the commissioner finds that the filed rate does not reflect that reduction.

(b) Provides that the commissioner is not required to disapprove a filed rate that reflects less than the full amount of the rate reduction imposed under Section 3 of this article if certain conditions are met.

Sec. 5. DECLARATION OF INAPPLICABILITY TO CERTAIN POLICIES. Requires the commissioner by order to declare this article inapplicable to insurance policies otherwise subject to this article at the time the commissioner finds, based on actuarially credible data, that rates for those policies reflect the actual experience for those policies under the legislation described by Section 1 of this article.

Sec. 6. DURATION OF REDUCTIONS. Provides that, unless the commissioner grants an exemption under Section 4 or 5 of this article, each rate resulting from the reduction required under Section 3 of this article remains in effect until January 1, 2006.

Sec. 7. MODIFICATION. Authorizes the commissioner by bulletin or directive to, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction adopted under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any of the legislation described by Section 1 of this article on which the commissioner based the rate reduction.

Sec. 8. HEARINGS AND ORDERS. Requires that, notwithstanding Chapter 40 of this code, a rulemaking hearing under this article to be held before the commissioner or the commissioner's designee. Provides that the rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 9. RECOMMENDATIONS TO LEGISLATURE. Requires the commissioner to assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and shall report the commissioner's findings and recommendations to the legislature.

SECTION 3.02. (a) Provides that notwithstanding Section 3(a), Article 5.132, Insurance Code, as added by this article, on or before October 1, 2001, the commissioner of insurance by rule to adopt an appropriate rate reduction for insurance policies described by Section 2 of that article. Requires that the rate reduction adopted under this subsection to be developed without consideration of the effect of the legislation described by Section 1, Article 5.132.

(b) Provides that notwithstanding Subsection (a) of this section, if the commissioner of insurance has not adopted rate reductions required by that subsection before January 1, 2002, a 20 percent rate reduction, measured from the base rates in effect on April 1, 2001, applies to each policy described by Section 2, Article 5.132, Insurance Code, as added by this article, delivered, issued for delivery, or renewed on or after January 1, 2002.

(c) Provides that a rate filed under an order of the commissioner of insurance issued before May 1, 2001, is not subject to the rate reduction required by this article before January 1, 2002.

ARTICLE 4. AVAILABILITY OF COVERAGE FROM TEXAS MEDICAL
LIABILITY INSURANCE UNDERWRITING ASSOCIATION

SECTION 4.01. Amends Section 2(6), Article 21.49-3, Insurance Code, to redefine “health care provider.”

SECTION 4.02. Amends Section 3A, Article 21.49-3, Insurance Code, by adding Subsection (c) as follows:

(c) Provides that a for-profit or not-for-profit nursing home not otherwise eligible under this section for coverage from the association is eligible for coverage if the nursing home demonstrates, in accordance with the requirements of the association, that the nursing home made a bona fide effort to obtain coverage from an authorized insurer and was unable to obtain coverage.

SECTION 4.03. Amends Section 4(b)(1), Article 21.49-3, Insurance Code, as follows:

(1) Provides that the rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended, giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner, rather than board, may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail. Provides that for purposes of this article, rates, rating plans, rating rules, rating classifications, territories, and policy forms for for-profit nursing homes are subject to the requirements of Article 5.15-1 of this code to the same extent as not-for-profit nursing homes.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: upon passage or September 1, 2001.