

BILL ANALYSIS

Senate Research Center
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S.B. 1671
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DIGEST AND PURPOSE

Professional and general liability insurance rates for nursing homes have escalated between 1998 and 2002. A July 2002 malpractice insurance rate survey conducted by the Medical Liability Monitor indicates that 19 states have capped non-economic damages in medical malpractice suits. As proposed, S.B. 1671 amends state law by adopting liability reforms, including limits on non-economic damages for nursing homes carrying liability insurance, limits on attorney contingency fees, and binding arbitration for future disputes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), by amending Subsection (b) and adding Subsection (e), as follows:

(b) Includes Subsection (e) of this section as a subsection that does 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.

(e) Provides that this subsection applies only to an action on a health care liability claim in which final judgment is rendered against a health care provider that is a nursing home licensed under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code, or a physician or health care provider who is providing health care as an employee or contractor of the nursing home. Provides that in an action subject to this subsection, the limit of civil liability of the health care provider or physician for all past and future noneconomic losses recoverable by or on behalf of any injured person or the injured person's estate, including past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, and any other nonpecuniary damage, is limited to an amount not to exceed \$250,000. Provides that with respect to the liability of a nursing home under this subsection, this subsection applies only to a nursing home that, at the time the health care liability claim accrues, maintains the professional liability insurance coverage described by Section 242.0372 (Liability Insurance Coverage), Health and Safety Code. Provides that Subsection (a) of this section does not apply to a health care liability claim subject to this subsection.

SECTION 2. Amends Subchapter O, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), by adding Section 15.02, as follows:

Sec. 15.02. NURSING HOMES. (a) Provides that this section applies only to a contract for services to be provided by a health care provider that is a nursing home licensed under Chapter 242, Health and Safety Code, or that is a physician or health care provider who is providing health care as an employee or contractor of the nursing home. Provides that Section 15.01 of this Act does not apply to a contract subject to this section.

(b) Requires the agreement to arbitrate to be the first article of the contract, if a contract subject to this section contains an agreement to arbitrate a dispute relating to a health care liability claim. Provides specific language to be stated in the agreement.

(c) Authorizes the arbitration agreement to include a provision specifying the method of appointment of one or more arbitrators.

(d) Requires that immediately before the signature line provided for the person contracting for the nursing home services a specific statement appear, in at least 10-point bold red type.

(e) Authorizes the contract to be signed by the resident, except under certain conditions.

(f) Provides that the arbitration agreement is applicable to a health care liability claim relating to nursing home services for which the contract was signed that are provided after the contract is signed and before the contract is rescinded. Authorizes the person who signed the contract as authorized under Subsection (e) of this section to rescind the contract by written notice provided not later than the 30th day after the date the contract was signed.

(g) Provides that, notwithstanding Section 171.002 (Scope of Chapter), Civil Practice and Remedies Code, or any other law, Chapter 171 (General Arbitration), Civil Practice and Remedies Code, applies to an arbitration conducted in accordance with the arbitration agreement.

(h) Provides that an arbitration agreement that complies with this section is not unconscionable for purposes of Section 171.022 (Unconscionable Agreements Unenforceable), Civil Practice and Remedies Code.

SECTION 3. Amends the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.) by adding Subchapter S, as follows:

SUBCHAPTER S. ATTORNEY'S FEES IN CLAIMS AGAINST NURSING HOMES

Sec. 19.01. LIMITATIONS ON ATTORNEY CONTINGENCY FEE AGREEMENTS.

(a) Provides that in this section, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Provides that costs of medical or health care services incurred by the claimant and the attorney's office overhead costs or charges are not deductible disbursements or costs.

(b) Prohibits an attorney from contracting for or collecting a contingency fee for representing a person seeking damages in connection with a health care liability claim against a health care provider that is a nursing home licensed under Chapter 242, Health and Safety Code, or that is a physician or health care provider who is providing health care as an employee or contractor of the nursing home, in excess of certain limits.

Sec. 19.02. APPLICABILITY. Provides that the limitations in Section 19.01 of this subchapter apply without regard to whether the recovery is by settlement, arbitration, or judgment or the person for whom the recovery is sought is an adult, a minor, or an incapacitated person.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2003.