

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 207
By: Schwertner et al.
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

If an injured person succeeds in the civil justice system in proving that another person's wrongful conduct caused the injurious event, the victim is entitled to recover medical expenses paid or incurred in the past, and in reasonable probability will be incurred in the future, to treat the injury. Given the complex nature of medical billing and payment, current law does not adequately provide for how such medical damages should be determined by the jury.

Current law as interpreted by the Texas Supreme Court provides that a jury should hear about the amount actually paid for medical services by a third party (such as an insurer), not the amount billed by the provider. However, if no third party has paid, often only the provider's billed charges are presented. Weaknesses in current law have created an environment where a plaintiff's lawyers will sometimes work with cooperative healthcare providers who over-diagnose, over-treat, and overbill for the services they provide the plaintiff, turning medical bills into a litigation profit center by avoiding compliance with the "paid or incurred" statute.

S.B. 207 addresses the presentation of past and future medical evidence at trial by proposing to amend the "paid or incurred" statute.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 207 amends current law relating to recovery of medical or health care expenses in civil actions.

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 41.0105, Civil Practice and Remedies Code, as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES.

(a) Creates this subsection from existing text. Provides that in addition to any other limitation under law, recovery of medical or health care expenses in a civil action is determined in accordance with this section, rather than recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

(b) Authorizes a party, in a civil action in which medical or health care expenses are actually paid by the claimant, a health benefit plan, workers' compensation insurance, an employer-provided plan, Medicaid, or Medicare, to introduce in evidence only the amounts actually paid to the medical or health care provider for the services provided to the person whose injury or death is the subject of the action.

(c) Authorizes a party, in a civil action other than an action described by Subsection (b), to introduce evidence that has a tendency to prove the fair and

reasonable value of the necessary medical or health care services provided to the person whose injury or death is the subject of the action.

(d) Authorizes a party, in any civil action, to introduce in evidence the amounts paid to a medical or health care provider for services provided to the person whose injury or death is the subject of the action by a cafeteria plan or health savings account or by any person to satisfy a copayment or deductible.

(e) Requires the claimant, in any civil action in which a claimant seeks recovery of medical or health care expenses, to disclose to all parties any formal or informal agreement under which the medical or health care provider who provided the services may wholly or partly refund, rebate, or remit any amount of money or give anything of value to the claimant or anyone associated with the claimant.

SECTION 2. Amends Section 18.001, Civil Practice and Remedies Code, by amending Subsections (b), (c), (e), (e-1), (h), and (i) and adding Subsection (b-1), as follows:

(b) Provides that, unless notice of intent to controvert the reasonableness of the amounts charged or the necessity for medical services, rather than a controverting affidavit, is served as provided by Section 18.001 (Affidavit Concerning Cost and Necessity of Services), an affidavit complying with this section and stating that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary.

(b-1) Provides that, notwithstanding Subsection (b), the reasonableness of charges and the necessity of services are matters for decision by the finder of fact, and the affidavit described by Subsection (b) has no effect except to prove the authenticity of the medical records described by the affidavit if notice of intent to controvert the reasonableness of the amounts charged or necessity for medical services is served as provided by Section 18.001 (Affidavit Concerning Cost and Necessity of Services).

(c) Requires that the affidavit, among other requirements, include an itemized statement of the service and charge using the current version of the form CMS-1450 or UB-04 or CMS-1500 or HFCA-1500, as applicable.

(e) Requires a party intending to controvert the reasonableness of the amounts charged or necessity for medical services to serve notice of that intent, rather than to controvert a claim reflected by the affidavit to serve a copy of the counteraffidavit, on each other party or the party's attorney of record by the earlier of:

(1) makes no changes to this subdivision;

(2) the date the party serving notice, rather than offering the counteraffidavit, is required to designate expert witnesses under a court order; or

(3) makes a conforming change to this subdivision.

(e-1) Requires that notice of intent to controvert the reasonableness of the amounts charged or necessity for medical services, notwithstanding Subsection (e), if the party offering the affidavit serves a copy of the affidavit under Subsection (d-1) (relating to the requirement that certain actors serve a copy of the affidavit for services provided by that provider on each other party to the case by a certain date), be served on each other party to the case by the later of certain dates. Deletes existing text specifying the affidavit be in evidence and deletes existing text requiring the party offering the counteraffidavit in evidence or the party's attorney to serve a copy of the counteraffidavit.

(h) Provides that if continuing services are provided after a relevant deadline under Section 18.001:

(1) makes no changes to this subdivision; and

(2) a party that served notice under Subsection (e) or (e-1) is authorized to serve notice related to the supplemental affidavit, rather than a party that served a counteraffidavit under Subsection (e) or (e-1) is authorized to supplement the counteraffidavit, on or before the 30th day before the date the trial commences.

(i) Authorizes a deadline under Section 18.001, notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), and (h), rather than notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), (g) (relating to the requirement that a certain actor file written notice with the clerk of the court when serving the counteraffidavit that the actor served a copy of the counteraffidavit in accordance with Section 18.001), and (h), to be altered by all parties to an action by agreement or with leave of the court.

SECTION 3. Repealer: Sections 18.001(f) (relating to certain requirements with which the counteraffidavit must comply) and (g), Civil Practice and Remedies Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: upon passage or September 1, 2021.