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S.B. No. 207

A BILL TO BE ENTITLED

AN ACT

relating to recovery of medical or health care expenses in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 41.0105, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. (a) In addition to any other limitation under law, recovery of medical or health care expenses in a civil action ~~[incurred]~~ is determined in accordance with this section ~~[limited to the amount actually paid or incurred by or on behalf of the claimant].~~

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

(c) In a civil action other than an action described by Subsection (b), a party may introduce evidence that has a tendency to prove the reasonable value of the necessary medical or health care services provided to the person whose injury or death is the

1 subject of the action.

2 (d) In any civil action in which a claimant seeks recovery
3 of medical or health care expenses, a party may introduce in
4 evidence the amounts paid to a medical or health care facility or
5 provider for services provided to the person whose injury or death
6 is the subject of the action from a cafeteria plan or health savings
7 account or by any person to satisfy a copayment or deductible.

8 (e) In any civil action in which a claimant seeks recovery
9 of medical or health care expenses, the claimant shall disclose to
10 all parties any formal or informal agreement under which a medical
11 or health care facility or provider may wholly or partly refund,
12 rebate, or remit any amount of money or give anything of value to
13 the claimant or anyone associated with the claimant.

14 SECTION 2. Section 18.001, Civil Practice and Remedies
15 Code, is amended by amending Subsections (b), (e), (e-1), (h), and
16 (i) and adding Subsections (b-1) and (b-2) to read as follows:

17 (b) Unless notice of intent to controvert the
18 reasonableness of the amounts charged or the necessity for medical
19 or health care services [~~a controverting affidavit~~] is served as
20 provided by this section, an affidavit complying with this section
21 and stating that the amount a person charged for a service was
22 reasonable at the time and place that the service was provided and
23 that the service was necessary is sufficient evidence to support a
24 finding of fact by judge or jury that the amount charged was
25 reasonable or that the service was necessary.

26 (b-1) Except as provided by Section 18.0011, an affidavit
27 served under Subsection (b) has no effect except to prove the

1 authenticity of the medical or health care records described by the
2 affidavit if notice of intent to controvert the reasonableness of
3 the amounts charged or necessity for medical or health care
4 services is served as provided by this section.

5 (b-2) An [The] affidavit served under Subsection (b) is not
6 evidence of and does not support a finding of the causation element
7 of the cause of action that is the basis for the civil action.

8 (e) A party intending to controvert the reasonableness of
9 the amounts charged or necessity for medical or health care
10 services [~~a claim reflected by the affidavit~~] must serve notice of
11 that intent [~~a copy of the counteraffidavit~~] on each other party or
12 the party's attorney of record by the earlier of:

13 (1) 120 days after the date the defendant files its
14 answer;

15 (2) the date the party serving notice [~~offering the~~
16 ~~counteraffidavit~~] must designate expert witnesses under a court
17 order; or

18 (3) the date the party serving notice [~~offering the~~
19 ~~counteraffidavit~~] must designate any expert witness as required by
20 the Texas Rules of Civil Procedure.

21 (e-1) Notwithstanding Subsection (e), if the party offering
22 the affidavit [~~in evidence~~] serves a copy of the affidavit under
23 Subsection (d-1), notice of intent to controvert the reasonableness
24 of the amounts charged or necessity for medical or health care
25 services must be served [~~the party offering the counteraffidavit in~~
26 ~~evidence or the party's attorney must serve a copy of the~~
27 ~~counteraffidavit~~] on each other party to the case by the later of:

1 (1) 30 days after service of the affidavit on the party
2 -serving notice [~~offering the counteraffidavit in evidence~~];

3 (2) the date the party -serving notice [~~offering the~~
4 ~~counteraffidavit~~] must designate any expert witness under a court
5 order; or

6 (3) the date the party -serving notice [~~offering the~~
7 ~~counteraffidavit in evidence~~] must designate any expert witness as
8 required by the Texas Rules of Civil Procedure.

9 (h) If continuing services are provided after a relevant
10 deadline under this section:

11 (1) a party may supplement an affidavit served by the
12 party under Subsection (d) or (d-1) on or before the 60th day before
13 the date the trial commences; and

14 (2) a party that served notice [~~a counteraffidavit~~]
15 under Subsection (e) or (e-1) may serve notice related to the
16 supplemental affidavit [~~supplement the counteraffidavit~~] on or
17 before the 30th day before the date the trial commences.

18 (i) Notwithstanding Subsections (d), (d-1), (d-2), (e),
19 (e-1), [~~(g)~~] and (h), a deadline under this section may be altered
20 by all parties to an action by agreement or with leave of the court.

21 SECTION 3. Subchapter A, Chapter 18, Civil Practice and
22 Remedies Code, is amended by adding Section 18.0011 to read as
23 follows:

24 Sec. 18.0011. AFFIDAVIT OF HEALTH CARE FACILITY OR
25 PROVIDER. (a) A party may not controvert the reasonableness of the
26 charges for medical or health care services stated in an affidavit
27 served under Section 18.001 by or on behalf of a health care

1 facility or provider if the affidavit states one of the following
2 amounts as reasonable charges for the necessary medical or health
3 care services provided by the facility or provider to the person
4 whose injury or death is the subject of the civil action:

5 (1) amounts actually received by the facility or
6 provider from or on behalf of the claimant, including amounts
7 received from a health benefit plan, workers' compensation
8 insurance, an employer-provided plan, Medicaid, Medicare, or
9 another insurer or governmental payor, for each medical or health
10 care service provided by the facility or provider; or

11 (2) amounts that, on the date the service was
12 provided, do not exceed 150 percent of the maximum allowable
13 reimbursement for each medical or health care service provided as
14 determined by the commissioner of workers' compensation in
15 accordance with Section 413.011, Labor Code.

16 (b) If an affidavit served by a health care facility or
17 provider under Section 18.001 complies with Subsection (a) and
18 includes a statement that the facility or provider does not intend
19 to appear at trial to testify regarding the reasonableness of the
20 facility's or provider's charges or the necessity for the facility's
21 or provider's services, then:

22 (1) a party may not seek to obtain through any pretrial
23 discovery procedure information from the facility or provider about
24 the reasonableness of the facility's or provider's charges or the
25 necessity for the facility's or provider's services; and

26 (2) the trial court shall exclude trial testimony by
27 the facility or provider regarding the reasonableness of the

1 facility's or provider's charges or the necessity for the facility's
2 or provider's services unless:

3 (A) the court finds there is good cause to allow
4 the testimony;

5 (B) the testimony will not unfairly surprise or
6 unfairly prejudice any party to the civil action; and

7 (C) a party opposing admission of the testimony
8 into evidence is given a reasonable opportunity to develop and
9 present evidence relevant to the testimony to be offered by the
10 facility or provider.

11 (c) An affidavit served by a health care facility or
12 provider under Subsection (a) and the statements made in the
13 affidavit may be used only in the civil action in which the
14 affidavit is served and not in other actions or for other purposes.

15 SECTION 4. Sections 18.001(f) and (g), Civil Practice and
16 Remedies Code, are repealed.

17 SECTION 5. The changes in law made by this Act apply only to
18 an action commenced on or after the effective date of this Act. An
19 action commenced before the effective date of this Act is governed
20 by the law applicable to the action immediately before the
21 effective date of this Act, and that law is continued in effect for
22 that purpose.

23 SECTION 6. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2021.