

By: Janek

S.B. No. 1671

A BILL TO BE ENTITLED

AN ACT

relating to health care liability claims against nursing homes.

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

SECTION 1. Section 11.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) Subsections [~~Subsection~~] (a) and (e) of this section do [~~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) 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, 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. 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

1 amount not to exceed \$250,000. With respect to the liability of a
2 nursing home under this subsection, this subsection applies only to
3 a nursing home that, at the time the health care liability claim
4 accrues, maintains the professional liability insurance coverage
5 described by Section 242.0372, Health and Safety Code. Subsection
6 (a) of this section does not apply to a health care liability claim
7 subject to this subsection.

8 SECTION 2. Subchapter O, Medical Liability and Insurance
9 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
10 Statutes), is amended by adding Section 15.02 to read as follows:

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

18 (b) If a contract subject to this section contains an
19 agreement to arbitrate a dispute relating to a health care
20 liability claim, the agreement to arbitrate must be the first
21 article of the contract. The agreement must state:

22 "A dispute between the parties to this contract relating to a
23 health care liability claim, including any claim for treatment,
24 lack of treatment, or other claimed departure from accepted
25 standards of medical care or health care or safety, will be
26 determined by arbitration. A party to this contract may not bring a
27 suit against another party to this contract relating to a health

1 care liability claim, except as Texas law provides for requiring
2 arbitration or judicial review of arbitration proceedings. A party
3 to this contract, by entering into this contract, is giving up the
4 constitutional right to have the dispute decided in a court of law
5 before a jury, and instead is accepting the use of arbitration."

6 (c) The arbitration agreement may include a provision
7 specifying the method of appointment of one or more arbitrators.

8 (d) Immediately before the signature line provided for the
9 person contracting for the nursing home services must appear the
10 following in at least 10-point bold red type:

11 "NOTICE: BY SIGNING THIS CONTRACT YOU AGREE TO SUBMIT
12 ANY ISSUE OF MALPRACTICE IN MEDICAL CARE OR HEALTH CARE
13 TO NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT
14 TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS
15 CONTRACT."

16 (e) The contract may be signed by the resident, except that:

17 (1) if the resident is incapacitated, the contract may
18 be signed by a court-appointed guardian of the resident or by an
19 agent to whom authority to make health care decisions is delegated
20 under a medical power of attorney under Chapter 166, Health and
21 Safety Code; and

22 (2) if the resident is a minor, the contract may be
23 signed by a parent, managing conservator, or court-appointed
24 guardian.

25 (f) The arbitration agreement is applicable to a health care
26 liability claim relating to nursing home services for which the
27 contract was signed that are provided after the contract is signed

1 and before the contract is rescinded. The person who signed the
2 contract as authorized under Subsection (e) of this section may
3 rescind the contract by written notice provided not later than the
4 30th day after the date the contract was signed.

5 (g) Notwithstanding Section 171.002, Civil Practice and
6 Remedies Code, or any other law, Chapter 171, Civil Practice and
7 Remedies Code, applies to an arbitration conducted in accordance
8 with the arbitration agreement.

9 (h) An arbitration agreement that complies with this
10 section is not unconscionable for purposes of Section 171.022,
11 Civil Practice and Remedies Code.

12 SECTION 3. The Medical Liability and Insurance Improvement
13 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is
14 amended by adding Subchapter S to read as follows:

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

16 Sec. 19.01. LIMITATIONS ON ATTORNEY CONTINGENCY FEE
17 AGREEMENTS. (a) In this section, "recovered" means the net sum
18 recovered after deducting any disbursements or costs incurred in
19 connection with prosecution or settlement of the claim. Costs of
20 medical or health care services incurred by the claimant and the
21 attorney's office overhead costs or charges are not deductible
22 disbursements or costs.

23 (b) An attorney may not contract for or collect a
24 contingency fee for representing a person seeking damages in
25 connection with a health care liability claim against a health care
26 provider that is a nursing home licensed under Chapter 242, Health
27 and Safety Code, or that is a physician or health care provider who

1 is providing health care as an employee or contractor of the nursing
2 home, in excess of the following limits:

3 (1) 40 percent of the first \$50,000 recovered;

4 (2) 33.3 percent of the next \$50,000 recovered;

5 (3) 25 percent of the next \$500,000 recovered; and

6 (4) 15 percent of any additional amount recovered.

7 Sec. 19.02. APPLICABILITY. The limitations in Section 19.01
8 of this subchapter apply without regard to whether:

9 (1) the recovery is by settlement, arbitration, or
10 judgment; or

11 (2) the person for whom the recovery is sought is an
12 adult, a minor, or an incapacitated person.

13 SECTION 4. This Act applies only to a cause of action that
14 accrues on or after the effective date of this Act. A cause of
15 action that accrues before the effective date of this Act is
16 governed by the law as it existed immediately before the effective
17 date of this Act, and that law is continued in effect for this
18 purpose.

19 SECTION 5. Section 15.02, Medical Liability and Insurance
20 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
21 Statutes), as added by this Act, applies only to a contract entered
22 into on or after the effective date of this Act. A contract entered
23 into before the effective date of this Act is governed by the law as
24 it existed immediately before the effective date of this Act, and
25 that law is continued in effect for this purpose.

26 SECTION 6. This Act takes effect September 1, 2003.