By:  Schwertner, et al. S.B. No. 207

(Bonnen, Leach, et al.)

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 subject of the action.

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

(e)  In any civil action in which a claimant seeks recovery of medical or health care expenses, the claimant shall disclose to all parties any formal or informal agreement under which a medical or health care facility or provider 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.  Section 18.001, Civil Practice and Remedies Code, is amended by amending Subsections (b), (e), (e-1), (h), and (i) and adding Subsections (b-1) and (b-2) to read as follows:

(b)  Unless notice of intent to controvert the reasonableness of the amounts charged or the necessity for medical or health care services [~~a controverting affidavit~~] is served as provided by this section, 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)  Except as provided by Section 18.0011, an affidavit served under Subsection (b) has no effect except to prove the authenticity of the medical or health care records described by the affidavit if notice of intent to controvert the reasonableness of the amounts charged or necessity for medical or health care services is served as provided by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 18.0011.  AFFIDAVIT OF HEALTH CARE FACILITY OR PROVIDER. (a) A party may not controvert the reasonableness of the charges for medical or health care services stated in an affidavit served under Section 18.001 by or on behalf of a health care facility or provider if the affidavit states one of the following amounts as reasonable charges for the necessary medical or health care services provided by the facility or provider to the person whose injury or death is the subject of the civil action:

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

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

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

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

(2)  the trial court shall exclude trial testimony by the facility or provider regarding the reasonableness of the facility's or provider's charges or the necessity for the facility's or provider's services unless:

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

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

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

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

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

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

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