87R1087 BRG-D

By:  Johnson S.B. No. 232

A BILL TO BE ENTITLED

AN ACT

relating to service of expert reports for health care liability claims.

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

SECTION 1.  Sections 74.351(a) and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a)  In a health care liability claim, a claimant shall, not later than the 120th day after the date each defendant's original answer is filed or a later date required under Section 74.353, serve on that party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the later of the 21st day after the date the report is served or the 21st day after the date the defendant's answer is filed, failing which all objections are waived.

(c)  If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the applicable [~~120-day~~] deadline has passed, then the 30-day extension shall run from the date the plaintiff first received the notice.

SECTION 2.  Subchapter H, Chapter 74, Civil Practice and Remedies Code, is amended by adding Section 74.353 to read as follows:

Sec. 74.353.  PRELIMINARY DETERMINATION FOR EXPERT REPORT REQUIREMENT. (a) On motion of a claimant filed not later than 30 days after the date each defendant's original answer is filed, a court may issue a preliminary determination regarding whether a claim made by the claimant is a health care liability claim for the purposes of Section 74.351.

(b)  If a court determines under Subsection (a) that a claim is a health care liability claim for purposes of Section 74.351, the claimant shall serve an expert report as required by Section 74.351 not later than the later of:

(1)  120 days after the date each defendant's original answer is filed;

(2)  60 days after the date the court issues the preliminary determination under Subsection (a); or

(3)  a date agreed to in writing by the affected parties.

(c)  A preliminary determination under this section:

(1)  applies only to the issue of whether a claimant is required to serve an expert report under Section 74.351; and

(2)  is not subject to interlocutory appeal.

SECTION 3.  The change in law made by this Act applies 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 as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.