

BILL ANALYSIS

S.B. 207
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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 that were paid or incurred in the past and that 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 these medical damages should be determined by a jury. Instead the law provides that a jury should hear about the amount actually paid for medical services by a third party, such as an insurer, and not the amount billed by the provider. However, if no third party has paid, often only the provider's billed charges are presented. This has created an environment where a plaintiff's lawyers will sometimes work with cooperative healthcare providers who overdiagnose, overtreat, 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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 207 amends the Civil Practice and Remedies Code to remove the limitation on the recovery of medical or health care expenses in civil actions to the amount actually paid or incurred by or on behalf of the claimant and to instead provide for the recovery of those expenses in civil actions to be determined by the introduction of specified evidence as follows:

- 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, 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;
- in any other civil action, 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; and
- in any civil action for recovery of medical or health care expenses, 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.

The bill requires the claimant in any civil action for recovery of medical or health care expenses to 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.

S.B. 207 replaces the requirement for a party in an applicable civil action intending to controvert a claim reflected by the affidavit regarding the reasonableness of amounts charged or the necessity for medical or health care services to serve a counteraffidavit with a requirement for that party to serve notice of intent to controvert the reasonableness of such amounts or the necessity for such services. The bill establishes that if such notice of intent is served, the affidavit has no effect except to prove the authenticity of the medical or health care records described by the affidavit, except as provided by the following prohibition.

S.B. 207 prohibits a party in a civil action other than an action on a sworn account from controverting the reasonableness of the charges for medical or health care services stated in an affidavit served 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 action:

- 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
- amounts that, on the date the service was provided, do not exceed 150 percent of the maximum allowable reimbursement for each service provided as determined by the commissioner of workers' compensation.

S.B. 207 establishes that the following applies if such an affidavit includes a statement that the facility or provider does not intend to appear at trial to testify regarding the reasonableness of their charges or the necessity for their services:

- a party may not seek to obtain through any pretrial discovery procedure information from the facility or provider about the reasonableness of the charges or the necessity for the services; and
- the trial court must exclude trial testimony by the facility or provider regarding the reasonableness of the charges or the necessity for the services unless the court finds there is good cause to allow the testimony, the testimony will not unfairly surprise or unfairly prejudice any party to the action, and 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.

The bill restricts the use of such an affidavit and the statement made in the affidavit to the civil action in which the affidavit is served.

S.B. 207 repeals Sections 18.001(f) and (g), Civil Practice and Remedies Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.