Allowing the recovery of future malpractice-related damages

HB 3281 by P. King (Duncan)

DIGEST: HB 3281 would have specified that the limitation on damages for recovery of medical or health care expenses paid or incurred would have applied only to health care liability claims. The limitation would not have applied to future medical or health care expenses.

GOVERNOR'S REASON FOR VETO: "House Bill No. 3281 would reverse Texas' sweeping lawsuit reforms passed in 2003 that reasonably limited the amount of medical bills a plaintiff could recover to the amount actually paid or incurred by the individual or their insurer.

"This bill would permit an individual in a personal injury lawsuit (other than a medical malpractice claim) to recover more money for medical expenses than actually was or will be paid. This would be done by allowing a person to submit bills that are higher than those actually paid to health care providers. For example, if this bill became law, an individual who was billed $20,000 by a hospital, but whose insurance company negotiated the bill down to an actual amount paid of $12,000, could still submit the original $20,000 bill to the jury as if their insurance company actually paid that amount. This would deceive the jury as to the true amount of actual medical damages.

"Our civil justice system holds a defendant accountable for economic damages caused, including medical bills. A person should not be allowed to recover, and a defendant should not be required to pay, an inflated amount of actual medical costs. If a defendant has caused damage in addition to medical expenses, those damages should be addressed and recovered under the rules of our civil justice system, rather than inflating medical bills to cover them.

"Proponents of this bill argue it would reverse the 'collateral source' rule, which prevents defendants from introducing evidence that an insurance company, rather than the individual, paid all or a portion of the medical bills. This is not true. Nothing in Section 41.0105 allows a defendant to introduce this evidence or hinders an individual's ability to recover the amount of the medical bills paid by their insurance company.

"The purpose of damages in a civil lawsuit is to make an injured individual whole by reimbursing the actual amount they have been deprived by the defendant's actions. It should not be used to artificially inflate the recovery amount by claiming economic damages that were never paid and never required to be paid.

"The bill contains a second provision, which correctly restates that Texas' tort reform law does not prevent a person in a lawsuit from recovering damages for future medical bills caused by their injury. On its own, this provision would have been acceptable."

RESPONSE: Rep. Phil King, the bill's author, said: "I'm disappointed that HB 3281 was vetoed. The 'paid or incurred' provision has the unintended effect of giving the liable wrongdoer the benefit of the health insurance premiums paid by the non-liable injured party. It also allows a non-insured injured party (one without health insurance) to recover fully for their injuries while limiting the recovery available to someone who has health insurance. This makes no sense."

Sen. Robert Duncan, the bill's sponsor, had no comment on the veto.

NOTES: HB 3281 was analyzed in Part Two of the May 7 *Daily Floor Report*.