SUBJECT: Eliminating competition as medical malpractice rate regulation factor

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Oliveira, Van Arsdale

1 nay — Taylor

1 absent — Thompson

WITNESSES: For — Joseph Annis, Texas Medical Association

Against — Jay Thompson, Medical Protective Company

On — Philip Presley, Texas Department of Insurance; James R. Garven

BACKGROUND: Insurance Code, art. 5.15-1(d) requires that medical malpractice insurance rates must be reasonable and not excessive or inadequate or unfairly discriminatory. No rate may be considered excessive unless the rate is unreasonably high for the coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

DIGEST: HB 1532 would amend Insurance Code, Art. 5.15-1(d) to eliminate the requirements that a reasonable degree of competition must be considered in ratemaking decisions for medical malpractice insurance.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: HB 1532 would remove from the Insurance Code a largely subjective measure for determining rates and bring ratemaking for medical malpractice more in line with other types of insurance. Only one other type of insurance, credit life, takes the degree of competition into consideration when determining whether a rate is appropriate. Instead of looking at competition as a factor in determining whether a company's rates are reasonable and not excessive, the Texas Department of Insurance (TDI) should consider other more objective factors, such as those

established by the 78th Legislature in 2003 requiring that rates be just, fair, reasonable, adequate, not confiscatory, not excessive, and not unfairly discriminatory. In a concentrated market such as medical malpractice, the fact that all companies may be charging excessive rates does not mean that these rates are justified or appropriate.

OPPONENTS SAY:

In a market where there are only three or four competitors, one of which is not subject to rate regulation, TDI should have to continue to consider market competition as a factor in regulating rates. Doctors have several different companies from which to choose in purchasing malpractice insurance, and if they think one company's rates are excessive, they can go to another company. The free market should be allowed to operate. Rates should not be determined based solely on what a government agency determines to be appropriate, but also should take market competition into account. If the handful of companies currently selling malpractice insurance in Texas is not allowed to continue to set their rates based on their company's business decisions, other insurers may not be willing to enter the Texas market.

NOTES:

The companion bill, SB 249 by West, is pending in the Senate State Affairs committee.