

- SUBJECT:** Professional liability insurance for volunteer health care professionals
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Seaman, Isett, Eiland, B. Keffer, Oliveira, Taylor, Van Arsdale  
0 nays  
1 absent — Thompson
- WITNESSES:** For — Fred Orr, Christ’s Family Clinic  
Against — None  
On — Marilyn Hamilton, Texas Department of Insurance
- BACKGROUND:** A number of charitable organizations operate community clinics that provide basic health care at a free or greatly reduced cost to low-income individuals who otherwise cannot afford it. These clinics often rely on the donated services of health care professionals, many of whom are retired, licensed health care providers who no longer carry basic liability coverage used by practicing health care professionals.
- The Charities Immunities Act (Civil Practice and Remedies Code, ch. 84) provides immunity from civil liability to a volunteer health care provider with a charitable organization for any act or omission resulting in death, damage, or injury to a patient if:
- the volunteer commits the act or omission while providing health care services to the patient;
  - the volunteer has provided services within the scope of the volunteer's license; and
  - the patient or the patient’s legal representative signs a written statement acknowledging liability limitations before the volunteer provides health care services.
- The Texas Medical Liability Insurance Underwriting Association Act (Insurance Code, art. 21.49-3) established the Joint Underwriting

Association (JUA) to insure physicians and other eligible health care providers who cannot obtain insurance in the voluntary market. The JUA provides medical liability insurance on a self-supporting basis, serving as a residual market that writes policies for risks that other insurers will not cover. Physicians may apply for coverage through the JUA if they can prove that two insurers in the voluntary market rejected their applications. A "rejection" occurs when applicant is accepted in the voluntary market at a rate higher than the rates charged by the JUA.

Insurance Code, art. 21.49-4 authorizes the creation of self-insurance trusts by physicians and dentists. It allows the formation of an association to purchase professional liability insurance on behalf of its members and pay claims that arise. The Texas Medical Liability Trust (TMLT), which offers coverage to more than 10,000 physician policyholders in Texas, is the only trust to have emerged from this statute.

DIGEST:

CSHB 655 would amend Insurance Code art. 21.49-3 by adding language regarding liability insurance coverage for volunteer health care providers. The JUA would have to make available liability insurance to a volunteer health care provider against any loss, damage, or expense from a claim arising out of the death or injury of a patient as the result of negligence in rendering, or the failure to render, professional service while acting in the course and scope of the provider's duties as a volunteer health care provider. A volunteer health care provider would be subject to the same provisions of the article as other providers eligible to obtain liability coverage from the JUA.

A trust authorized under Insurance Code, art. 21.49-4 could offer professional liability insurance coverage to a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person was acting in the course and scope of his or her duties. A trust could include volunteer health care providers other than physicians and dentists in its membership.

The Charities Immunities Act still would apply to volunteer health care providers regardless of whether the provider obtained liability insurance authorized under this bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005, and would apply only to a professional liability

insurance policy that was delivered, issued, or renewed on or after the 181st day after the bill took effect.

**SUPPORTERS  
SAY:**

CSHB 654 is needed to help mitigate the health care and health insurance crisis that faces Texas. It would address the gap that currently exists in liability coverage for retired licensed health care professionals. These retired providers offer invaluable skill and experience to charitable clinics, but many are reluctant to donate their time and services because they are unable to secure medical liability insurance coverage. Although current law already protects retired health care professionals from a certain amount of liability, insurance still is required to cover legal defense costs rising from claims of medical error or neglect, even if the claims are false or groundless. By allowing these providers, or the charitable organizations for which they work, to purchase affordable coverage, the bill would allow more retired health care professionals voluntarily to use their skills in the service of those less fortunate.

Although liability insurance policies for voluntary health care providers currently are uncommon, CSHB 655 could encourage growth in this segment of the market by specifically requiring JUA to offer professional liability coverage to volunteer providers. It is likely that coverage obtained through the JUA would be more affordable than commercial policies for volunteer health care providers or the charitable organizations that employ them. In addition, TMLT, the largest and most respected medical liability carrier in Texas, would be well positioned to offer affordable policies to retired health care physicians.

**OPPONENTS  
SAY:**

Even though the JUA is the insurer of last resort, there is no guarantee that it could offer affordable liability coverage. Because liability insurance for volunteer health care providers represents virtually a new line of business, rates would be set based on judgment, rather than experience, which could lead to costly premiums. Although medical liability insurance provided by the JUA likely would be cheaper and more reasonable than insurance offered by a regulated insurance company, the premiums for insurance might still be unaffordable for volunteer health care providers or the charitable organizations that employ them.

Liability insurance through TMLT is available only to physicians and their employees. Although CSHB 655 would allow for a trust to offer coverage to volunteer health care providers not limited to physicians and dentists, the TMLT charter allows insurance coverage for only physicians and their

employees. Allied health care providers, such as nurses, likely would be considered employees of community clinics, not employees of physicians, and thus could not obtain coverage through TMLT. Also, it is unlikely that non-physician volunteer providers could gather the necessary resources to create their own self-insurance trust.

NOTES:

The committee substitute would allow a trust to offer professional liability insurance coverage to volunteer health care providers, including those who were not physicians or dentists.

A related bill, HB 654 by Goolsby, which would allow insurers to make available liability insurance for volunteer health care providers and includes other provisions identical to HB 655, passed the House on second reading yesterday.