

- SUBJECT:** Charitable immunity for volunteer health care providers
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — B. Cook, Strama, P. King, Raymond, Talton
0 nays
4 absent — Madden, Martinez Fischer, Miller, Woolley
- WITNESSES:** For — Mary Hennigan, Texas Occupational Therapy Association; Tim Weitz, Texas Physical Therapy Association
Against — None
- BACKGROUND:** The Charitable Immunity and Liability Act (CILA) was established by the 70th Legislature in 1987 to limit the damages that can be recovered from charitable organizations in civil suits arising out of their charitable activities. It also provides that a charity's volunteers and employees are immune from civil liability for actions taken on behalf of the charity.
- In 1999, the 76th Legislature enacted SB 215 by Duncan, which added it CILA provisions pertaining to specified volunteer health care providers. A direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if the volunteer is providing health care services in the scope of his or her practice. Before the volunteer provides health care services, the patient or the person responsible for the patient must sign a written statement acknowledging that the patient is not receiving compensated care and limitations exist on the recovery of damages from the volunteer.
- DIGEST:** HB 2005 would add practicing and retired physical and occupational therapists and their assistants to the list of volunteer health care providers exempted from liability under CILA.
- The bill would take effect September 1, 2007, and apply only to a cause of action occurring on or after this date.

**SUPPORTERS
SAY:**

HB 2005 would extend to physical and occupational therapists and their assistants liability protections already granted to other health care professionals, including doctors, nurses, dentists, podiatrists, pharmacists, and optometrists.

More than 5.5 million Texans, or 24 percent of the total population, are uninsured. One means of dealing with the uninsured population's health care needs is through volunteer health care provided by charitable organizations or new volunteer provider health networks. Recruitment and retention of certain health care volunteers is difficult because of concerns that professional liability insurance will not cover volunteer acts. Also, many retired professionals with free time and a lifetime's experience in health care hesitate to offer their volunteer services without specific legal protection from liability.

Extending immunity to physical and occupational therapists would ensure that patients could receive a full continuum of care through charitable organizations and volunteer provider health networks. This also would cause less hesitation among therapists in deciding whether or not to volunteer following catastrophic events such as Hurricane Rita or Katrina when their services are in greatest need.

Patients would not incur greater risk in receiving care from volunteer physical and occupational therapists because the immunity to liability would be limited to services provided within their scope of practice. These health care professionals still would be subject to penalties and sanctions imposed on practices or conduct prohibited under their respective licensing acts.

**OPPONENTS
SAY:**

Expanding immunity to medical professionals, including to physical and occupational therapists, could be dangerous, because it absolves practitioners from personal responsibility for their actions. A good health care practitioner who is providing competent care should not be concerned about liability. Most people who desire and have the time to volunteer do so already, relying on existing liability protections granted to charitable organizations and public entities. If a practitioner has concerns about his or her ability to provide quality care, then a patient is better off not receiving services from that individual.

Physical and occupational therapists do not need additional liability protection. Unlike doctors and nurses, the scope of their practice does not

deal with emergency care, so therapists do not have to practice under the added pressure of making snap decisions in emergency circumstances that can lead to mistakes.

NOTES:

The identical companion bill, SB 954 by Duncan, has been referred to the Senate State Affairs Committee.