SUBJECT: Clarifying the standard of proof in lawsuits involving emergency services

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Leach, Farrar, Julie Johnson, Krause, Neave, White

0 nays

3 absent — Y. Davis, Meyer, Smith

WITNESSES: For — Jay Harvey, Texas Trial Lawyers Association; Craig Eiland; (*Registered, but did not testify*: Mandi Hughes, COCW; Will Francis, National Association of Social Workers-Texas Chapter; Ware Wendell, Texas Watch; Susan Gezana)

Against — Raymond Hampton, American College of Obstetricians and Gynecologists, Texas Medical Association; Brian Jackson, Texas Alliance for Patient Access; Heather Owen, Texas College of Emergency Physicians; Sam Roberts, US Acute Care Solutions, LLC; (*Registered, but did not testify*: Gregg Knaupe, Ascension Seton; Timothy Ottinger, Catholic Health Initiatives Texas Division; Bill Kelly, City of Houston Mayor's Office; James Mathis, Houston Methodist Hospital; Lee Loftis, Independent Insurance Agents of Texas; John W. Fainter Jr and George Christian, Texas Civil Justice League; Cesar Lopez, Texas Hospital Association; Bobby Hillert, Texas Orthopaedic Association; Jill Sutton, Texas Osteopathic Medical Association; Bonnie Bruce, Texas Society of Anesthesiologists; Brian Dittmar, Texas Medical Liability Trust)

On — Robert Duncan

BACKGROUND: Civil Practice and Remedies Code sec. 74.153 requires a claimant in a suit involving certain health care liability claims against physicians or health care providers arising from emergency medical care to prove by a preponderance of the evidence that the physician or provider, with willful or wanton negligence, deviated from the care and skill reasonably expected of an ordinarily prudent physician or provider in the same or

similar circumstances.

DIGEST:

HB 2362 would make Civil Practice and Remedies Code sec. 74.153(a), which addresses the standard of proof in cases involving emergency medical care, inapplicable in health care liability claims if the care or treatment that formed the basis of the suit was:

- provided when a patient arrived at a health care institution in stable condition or capable of receiving care or treatment as a nonemergency patient;
- provided after the patient was stabilized or capable of receiving care or treatment as a nonemergency patient;
- provided in an obstetrical unit if the patient arrived at a hospital for care or treatment for a non-obstetric emergency;
- unrelated to the original medical emergency for which the patient initially sought care or treatment; or
- related to an emergency caused wholly or partly by the negligence of any defendant.

The bill would take effect September 1, 2019, and would apply to a cause of action that accrued on or after that date.

SUPPORTERS SAY:

HB 2362 would restore the legislative intent behind Civil Practice and Remedies Code sec. 74.153 by making clear that the heightened standard of proving willful and wanton negligence applied only to emergencies that existed when a patient was brought to the emergency room and did not apply to unrelated emergencies that came about afterwards or to emergencies caused by physician or health care provider. As interpreted by the Texas Supreme Court, the current statute could allow physicians and providers to receive the benefit of this heightened standard when they caused the emergency and make it more difficult for patients to recover compensation for physicians' and providers' negligence.

The bill would not limit the number of emergency rooms or physicians willing to handle emergencies but would make clear that the heightened standard did not apply in the absence of an emergency situation.

OPPONENTS SAY:

HB 2632 could increase litigation on issues regarding whether a patient was stable or whether physician or health care provider contributed to causing an emergency, which could lead physicians and providers to be reluctant to handle emergencies due to fears of increased exposure.

NOTES:

The bill author plans to offer a floor amendment that would change the circumstances in which Civil Practice and Remedies Code sec. 74.153(a), including the requirement to prove willful and wanton negligence, did not apply. The provision would not apply to:

- medical care or treatment provided after the patient was stabilized and receiving medical care or treatment as a nonemergency patient or that was unrelated to the medical emergency; or
- a physician or health care provider whose negligent act or omission proximately caused a stable patient to require emergency medical care.