

By: \_\_\_\_\_

\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to recovery of medical or health care expenses in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 41.0105, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. (a) In addition to any other limitation under law, recovery of medical or health care expenses in a civil action will be determined in accordance with this section [~~incurred is limited to the amount actually paid or incurred by or on behalf of the claimant~~].

(b) In any action in which medical or health care expenses were actually paid by the claimant, a health benefit plan, workers' compensation insurance, an employer-provided plan, Medicaid, or Medicare, a party may introduce in evidence only the amounts actually paid to the medical or health care provider for the services provided to the person whose injury or death is the subject of the action.

(c) In an action not described in Subsection (b), a party

may introduce evidence that has a tendency to prove the fair and reasonable value of the necessary medical or health care services provided to the person whose injury or death is the subject of the action.

(d) In any circumstance, a party may introduce in evidence the amounts paid to a medical or health care provider for services provided to the person whose injury or death is the subject of the action by a cafeteria plan or health savings account, or by any person to satisfy a copayment or deductible.

(e) In an action to which this section applies, the claimant must disclose to all parties any formal or informal agreement under which the medical or health care provider may wholly or partly refund, rebate, or remit any amount of money or give anything of value to the claimant or anyone associated with the claimant.

SECTION 2. Section 18.001, Civil Practice and Remedies Code, is amended by amending Subsections (b), (c), (e), (e-1), (h), and (j), and adding Subsection (b)(1) to read as follows:

(b) Unless a notice of intent to controvert the reasonableness of the amounts charged or necessity for medical services [~~controverting affidavit~~] is served as provided by this section, an affidavit complying with this section and stating that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service

was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary. The affidavit is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.

(b-1) Notwithstanding Subsection (b), the reasonableness of charges and the necessity of services are matters for decision by the finder of fact, and the affidavit allowed by Subsection (b) has no effect in the action except to prove the authenticity of the medical records, if a notice of intent to controvert the reasonableness of the amounts charged or necessity for medical services is served as provided by this section.

(c) The affidavit must:

(1) be taken before an officer with authority to administer oaths;

(2) be made by:

(A) the person who provided the service; or

(B) the person in charge of records showing the service provided and charge made; and

(3) include an itemized statement of the service and charge using the currently operative form CMS-1450 (UB-04) or CMS-1500 (HFCA-1500), as applicable.

(e) A party intending to controvert the reasonableness of

the amounts charged or necessity for medical services [~~a claim reflected by the affidavit~~] must serve the notice [~~a copy of the counteraffidavit~~] on each other party or the party's attorney of record by the earlier of:

(1) 120 days after the date the defendant files its answer;

(2) the date the party servicing [~~offering~~] the notice [~~counteraffidavit~~] must designate expert witnesses under a court order; or

(3) the date the party servicing [~~offering~~] the notice [~~counteraffidavit~~] must designate any expert witness as required by the Texas Rules of Civil Procedure.

(e-1) Notwithstanding Subsection (e), if the party offering the affidavit [~~in evidence~~] serves a copy of the affidavit under Subsection (d-1), a notice of intent to controvert the reasonableness of the amounts charged or necessity for medical services must be served [~~the party offering the counteraffidavit in evidence or the party's attorney must serve a copy of the counteraffidavit~~] on each other party to the case by the later of:

(1) 30 days after service of the affidavit on the party servicing [~~offering~~] the notice [~~counteraffidavit in evidence~~];

(2) the date the party servicing [~~offering~~] the notice [~~counteraffidavit~~] must designate any expert witness under a court

order; or

(3) the date the party servicing [~~offering~~] the notice [~~counteraffidavit in evidence~~] must designate any expert witness as required by the Texas Rules of Civil Procedure.

(h) If continuing services are provided after a relevant deadline under this section:

(1) a party may supplement an affidavit served by the party under Subsection (d) or (d-1) on or before the 60th day before the date the trial commences; and

(2) a party that served a notice [~~counteraffidavit~~] under Subsection (e) or (e-1) may serve a notice related to the supplemental affidavit [~~supplement the counteraffidavit~~] on or before the 30th day before the date the trial commences.

(j) Notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), [~~(g)~~] and (h), a deadline under this section may be altered by all parties to an action by agreement or with leave of the court.

SECTION 3. Sections 18.001(f) and (g), are repealed.

SECTION 4. Section 41.0105, Civil Practice and Remedies Code, as amended by this Act, applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of

this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.