

CHAPTER 915

S.B. No. 1410

AN ACT

relating to state indemnification of and liability insurance premiums for certain health care claims.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 5.15–4, Insurance Code, is amended to read as follows:

Art. 5.15–4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS

Sec. 1. DEFINITIONS. In this article, “charity care or services,” “eligible *health care liability* [~~medical malpractice~~] claim,” “health care professional,” “health center,” “*health clinic*,” “insurer,” “*health care liability* [~~medical malpractice~~] claim,” and “patient encounter” have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional, [~~or~~] health center, *or health clinic* is entitled to a premium discount for medical professional liability insurance coverage if the professional, [~~or~~] center, *or health clinic* meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The *Texas Department* [~~State Board~~] of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional, [~~or~~] health center, *or health clinic* covered by this section. Each insurer shall file proposed premium discounts and any loss and statistical data required by *department* [~~board~~] rule. The insurer has the burden of demonstrating to the *department* [~~board~~], by a preponderance of the evidence, that the proposed premium discount is adequate to reflect the reduction in the insurer’s liability exposure based on the state’s indemnification of the first \$100,000 or \$25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional, [~~or~~] health center, *or health clinic*. The information required to be filed with the *Texas Department*

[State Board] of Insurance under this section is public information and shall be made available to the public on written request.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. (a) A health care professional is entitled to a premium discount for medical professional liability insurance coverage if:

(1) the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(2) the health care professional completes 15 hours of continuing education during the *calendar year in which the policy is in effect* [~~term of the policy~~] on patient safety and risk reduction subjects related to the health care professional's practice that are sponsored, approved, endorsed, or accredited by the *Texas Department* [State Board] of Insurance *or the health care professional's licensing or certifying agency*, an "insurer" as defined in this Act, or state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

(b) A health center is entitled to a premium discount for [~~medical~~] professional liability coverage if the health center adopts a quality assurance program.

(c) *A health clinic or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code, is entitled to a premium discount for professional liability coverage if the health clinic or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code, provides at least 10 percent or more of charity care or services and adopts a quality assurance program.*

(d) The *Texas Department* [State Board] of Insurance may adopt rules governing health center or health clinic quality assurance programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional, [~~or~~] health center, or health clinic that desires a premium discount for medical professional liability insurance coverage shall submit to the insurer, at the time coverage is applied for, a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional, [~~or~~] health center, or health clinic desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide for each policy for which a discount is requested necessary information to determine the eligibility of the health care professional, [~~or~~] health center, or health clinic and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional, [~~or~~] health center, or health clinic to which the insurer has provided a discount under this article to determine if the health care professional, [~~or~~] health center, or health clinic provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional, [~~or~~] health center, or health clinic was eligible for the premium discount. If a health care professional, [~~or~~] health center, or health clinic denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional, [~~or~~] health center, or health clinic did not provide charity care or services *as required under Section 4 of this article* [~~in 10 percent or more of the health care professional's or health center's patient encounters~~], the insurer may charge the health care professional, [~~or~~] health center, or health clinic an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional, [~~or~~] health center, or health clinic had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional, [~~or~~] health center, or health clinic that has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional, [~~or~~] health center, or health clinic had not received the premium discount plus interest at the legal rate for the

unpaid premium prior to 30 days before the expiration of the policy year, the health care professional, ~~or~~ health center, or health clinic will not be subject to the penalty provided in Subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew ~~medical~~ professional liability insurance coverage solely on the basis that the covered health care professional, ~~or~~ health center, or health clinic is eligible for a premium discount under this article except for the following reasons:

- (1) fraud or misrepresentation in obtaining coverage;
- (2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional, ~~or~~ health center, or health clinic who files the appropriate verified application or statement under this article will be entitled to a premium discount as approved by the department ~~board~~ under Section 3 of this article. When consent to rate is used, a health care professional, ~~or~~ health center, or health clinic will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Sec. 8. AUTHORITY OF TEXAS DEPARTMENT ~~[STATE BOARD]~~ OF INSURANCE. The Texas Department ~~[State Board]~~ of Insurance shall administer this article and shall adopt necessary rules, forms, endorsements, and procedures to carry out this article.

Sec. 9. EXPIRATION. Unless continued in existence this article expires September 1, 1997 [1995].

SECTION 2. Sections 110.001 through 110.003 and 110.005 through 110.007, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional or health clinic under:

- (A) Chapter 31, 32, 35, or 61, Health and Safety Code;
- (B) the Medicaid program under Chapter 32, Human Resources Code;
- (C) a contract with a migrant, community, or homeless health center that receives funds under 42 U.S.C. Section 254b, 254c, or 256; ~~or~~
- (D) Subchapter B, Chapter 311, Health and Safety Code, or 42 U.S.C. Section 1395dd, to the extent the professional or the hospital in which the care or services are provided is not compensated;

(E) an approved family practice residency training program established under Subchapter I, Chapter 66, Education Code, to the extent the professional is not compensated for the services;

(F) an indigent health care program of a hospital district created under the authority of Article IX, Sections 4 through 11, of the Texas Constitution; or

(G) a county correctional institution to inmates who are in custody of such county correctional institution operated by such county or under contract with such county.

(2) "Eligible health care liability ~~medical malpractice~~ claim" means a health care liability ~~medical~~ claim as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) against a health care professional or health clinic that ~~who~~ renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional or health clinic during the policy year in which the claim was made, a claim ~~or~~ against a health center, or a claim against a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; [œ]

(C) a person recognized by the Board of Medical Examiners as a physician assistant;
or

(D) a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code.

(4) "Health center" means a federally qualified health center, as that term is defined by 42 U.S.C. Section 1396d.

(5) "Health clinic" means a clinic or other facility providing health care in conjunction with an approved family residency practice program.

(6) "Insurer" means an insurance company chartered to write or admitted to write and writing health care liability or medical professional liability insurance in this state, the Texas Medical Liability Insurance Underwriting Association (Article 21.49-3, Insurance Code), any self-insurance trust created under Article 21.49-4, Insurance Code, for the purpose of providing health care liability or medical professional liability insurance, or a purchasing group domiciled, registered, and writing health care liability or medical professional liability insurance for health centers in this state. The term "insurer" includes [does not include] an institution of higher education that provides health care liability or medical professional liability coverage under Chapter 59, Education Code.

(7) "Health Care Liability [(6) "Medical malpractice] claim" means a claim or action against a health care professional, [œ] health center, or health clinic for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract [alleging one or more negligent acts or omissions in the diagnosis, care, or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles].

(8) [(7)] "Patient encounter" means an occasion on which a health care professional, health center, or health clinic renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a health care liability cause of action against a health care professional, [œ] health center, or health clinic based on conduct described in Section 110.003, the state shall indemnify the health care professional, [œ] health center, or health clinic for actual damages adjudged against the health care professional, [œ] health center, or health clinic or which the health care professional, [œ] health center, or health clinic becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible health care liability [medical malpractice] claim against a health care professional, [œ] health center, or health clinic in the course and scope of providing professional health care.

(b) The state is [not] liable for indemnification in a case unless the jury or, if a jury is waived, the trial judge in a cause of action against a health care professional, health center, or health clinic returns a verdict and judgment against the applicable defendant finding that such person or entity committed gross negligence or an intentional act found to be a proximate cause of the damages of the plaintiff [for an intentional act or an act of gross negligence].

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional, [œ] health center, or health clinic against whom the cause of action is asserted:

(1) is covered under a valid professional health care liability or medical liability insurance policy that is issued by an insurer and that provides coverage for the health care liability [medical malpractice] claim that is the subject of the claim or action with a policy limit of not less than \$100,000 per occurrence and \$300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of ~~[any written notice of said medical malpractice claim and]~~ any summons or citation *in a health care liability claim* served on the health care professional, ~~[or] health center, or health clinic,~~ which ~~[written notice,] summons[,]~~ or citation shall be delivered to the attorney general not later than the 60th ~~[45th]~~ day after the receipt thereof by the health care professional, ~~[or] health center, or health clinic.~~ *However, subsequent notification of such summons or citation shall not be a basis for denial of a claim for indemnification unless the attorney general proves by clear and convincing evidence that such delay would unduly prejudice the state's ability to evaluate the reasonableness of the settlement offer or agreement. No such claim may be asserted by the state unless, within 10 days of the receipt of such late notification by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court in Travis County, Texas) a pleading setting forth the reasons why the state's ability to evaluate the reasonableness of the settlement offer or agreement has been prejudiced.*

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional, ~~[or] health center, or health clinic~~ that is the subject of an eligible *health care liability* ~~[malpractice]~~ claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, ~~[or] health center, or health clinic,~~ all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional, ~~[or] health center, or health clinic~~ regarding settlement.

(b) If a settlement agreement is reached between the health care professional, ~~[or] health center, or health clinic~~ and a claimant, the insurer for the health care professional, ~~[or] health center, or health clinic~~ shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why ~~[the court should find that]~~ the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated *and any other reason why the state should not be liable for indemnification under this chapter* based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove *by clear and convincing evidence* that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated *or any other reason why the state should not be liable for indemnification under this chapter* based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated *or that there are other reasons why the state should not be liable for indemnification under this chapter* based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the state to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the attorney general files an objection under Subsection (b), the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the state while the objection of the attorney general is pending adjudication.

(d) If a suit involving an eligible *health care liability* ~~[medical malpractice]~~ claim is imminently scheduled for jury trial *or alternative dispute resolution, or if the defendant*

seeking indemnity is subject to a time limit under the Stowers Doctrine or other applicable law to respond to a settlement proposal, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional, ~~or~~ health center, or health clinic and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) ~~regarding the reasonableness of the settlement amount~~ shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible *health care liability* ~~medical malpractice~~ claim. The insurer for the health care professional, ~~or~~ health center, or health clinic shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible *health care liability* ~~medical malpractice~~ claim by settlement or judgment, funds shall be paid by the comptroller on vouchers that shall be promptly prepared, verified, and signed by the attorney general.

Sec. 110.007. EXPIRATION. Unless continued in existence, this chapter expires September 1, 1997 ~~1995~~.

SECTION 3. (a) Section 2 of this Act applies to any cause of action or claim for indemnification which was filed before or after the effective date of this Act.

(b) Section 1 of this Act applies only to professional liability or health care liability insurance policies delivered, issued for delivery, or renewed on or after January 1, 1994. Policies delivered, issued for delivery, or renewed before January 1, 1994, are governed by the law that existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 18, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 29, 1993, by a viva-voce vote; passed the House, with amendments, on May 25, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.