



Physicians Caring for Texans

March 29, 2021

Testimony on SB 207
Senate Committee on State Affairs

Dear Chairman Hughes and committee members:

The Texas Medical Association submits this testimony ON SB 207. As a non-profit organization with over 55,000 physician and medical student members, we have a great interest in this legislation. Our understanding is that SB 207 was introduced to address allegations regarding inflated or “outlier damages” claimed by plaintiffs relating to care provided by health care providers and hospitals in personal injury lawsuits. Specifically, the claim is that some health care providers bill, in lieu of immediate payment, more for services in personal injury lawsuits in exchange for receiving part of an anticipated jury award or settlement. SB 207 is intended to focus on medical and health care expenses incurred but not yet paid by a claimant.

Even assuming this is an issue, as drafted, SB 207 goes beyond addressing alleged issues with “outlier damages” and instead threatens to unfairly burden nonparty physicians with costly discovery disputes that also target irrelevant, proprietary, and other confidential information like private contract and government reimbursement rates and protected health information of nonparty patients. This will likely result in increased discovery disputes, which poses additional costs to litigants, nonparties, and the courts.

When individuals are injured, regardless of cause or fault, it is critical that they have access to quality care. Texas physicians should be focused on providing such care. Their time and resources should not be unfairly wasted when caught between litigant crossfire. Therefore, we have three key asks:

1. Expressly limit the law to only personal injury and wrongful death cases, which appear to be the source of the alleged “outlier damages” concern.
2. Treat amounts actually paid to the physician or health care provider as reasonable except where there is a formal or informal agreement that the physician or health care provider will wholly or partly refund, rebate, or remit any amount of money or give anything of value to the payor, the claimant, or the claimant’s attorney.
3. For unpaid amounts, create an exclusive, limited set of relevant evidence that can be introduced on the issue of reasonableness of the medical or health care expenses. The following limited list, based largely on the arbitration factors in SB 1264 (86R) in existing law, is complete, fair, and helpful on the issue of

reasonableness—importantly, it also protects proprietary, irrelevant nonparty private contract and government reimbursement rate information:

- Circumstances and complexity of claimant’s particular case;
- Physician or health care provider’s level of training, education, and experience;
- Billed charge of the physician or health care provider for the services;
- Amount that would have been paid by cost sharing, a health benefit plan, workers’ comp, employer-provided plan, Medicaid, Medicare, or other person/entity legally obligated to pay for the services at the time they were provided, if applicable;
- Availability of insurance or coverage if available at the time and the patient did not disclose or use it; and
- 80th percentile of all billed charges reported in a benchmarking database (*like Fair Health*) for same or substantially similar services provided in the same geozip.

We look forward to continuing to work with stakeholders on SB 207, and we thank you for your time and consideration. If you have any questions, please do not hesitate to contact Dan Finch, Vice President, Advocacy, by email at dan.finch@texmed.org or by phone at (512) 370-1355.