



Legislative Update

Highlights from the 2015 Texas Legislative Session

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Resources

- Bill text, history, analysis: Texas Legislature Online
 - <http://www.capitol.state.tx.us/Home.aspx>
- List of bills passed, vetoed with links to TLO:
 - <http://txlege.texastribune.org/84/bills/new-laws/>

Health Care

HB 1403

Health Care Liability Claims

HB 1403

- CPRC 74.001(a)(13) - "Health care liability claim" means:
 - "a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract."
- Legislature's response to *Texas West Oaks Hosp., LP v. Williams*, 371 S.W.3d 171 (Tex. 2012)
 - Supreme court held that employee's claims against hospital employer were health care liability claims

HB 1403

- New CPRC 74.001(a)(13) - "Health care liability claim":
 - "The term does not include a cause of action described by Section 406.033(a) or 408.001(b), Labor Code, against an employer by an employee or the employee 's surviving spouse or heir."
- Tex. Labor Code s. 406.033(a) – allows employee suits against non-subscribing employers; s. 408.001(b) – allows employee spouses/heir to seeks exemplary damages for intentional acts, gross negligence of employer

HB 1403

- HB1403 would exclude actions filed under the Texas Workers' Compensation Act (TWCA) by employees who were not covered by workers' compensation insurance for damages and exemplary damages for personal injury or death that occurred in the course and scope of employment from the definition of a "health care liability claim"
- Failed Committee Substitute: Attempted to add that an expert report "must address at least one theory of direct liability asserted against each physician or health care provider against whom a theory of direct liability is asserted."

HB 1779

Disclosure of Confidential Patient Records

HB 1779

- Amends Occupations Code s. 159.002-003
 - Occupations Code generally provides that communications b/w physician and patient are privileged
 - Ambiguity as to when a physician's office is required to release medical records under a court subpoena or order when the patient is not a party to the case
 - Hospitals may release records under any subpoena when the patient is a party to the case. If the patient is not a party to the case, a hospital does not disclose the information unless there is a court order
 - HB 1779 brings the same clarity that hospitals enjoy to physician offices by aligning the Occupations Code with the Health and Safety Code, which governs hospitals

HB 1779

- Amends Occupations Code s. 159.002-003
 - Section 159.002 generally prohibits disclosure of physician/patient communications
 - HB 1779 adds that (with exceptions), a communication or record that is otherwise confidential and privileged may be disclosed/released by physician without patient's authorization if the disclosure is related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under TRCPs, CCP, or CPRC ch. 121

HB 1779

- HB 1779 clarifies exceptions to privilege of confidentiality where records concern a patient not a party to the proceeding:
 - Prior statute: allowed disclosure: “to a court or a party to an action under a court order or court subpoena”
 - HB 1779: allows disclosure “to a court or a party to an action under a court order”
 - This is the provision intended to protect non-party patient records/communications

HB 1945

Provision of Direct Primary Care

HB 1945

- Amends Occupations Code Chapter 163 to add Subchapter F “Direct Primary Care”
- Codifies innovative model for delivering and purchasing health care services – patients have unlimited access to physician for flat fee
- Seeks to improve access to direct primary care by providing arrangements outside the scope of state insurance regulation

HB 1945

- Adds definitions
 - “Direct fee” – fee charged by physician to patient for primary medical care services, includes fee in any form, including
 - Monthly retainer
 - Membership fee
 - Subscription fee
 - Fee paid under medical service agreement
 - Fee for service, visit, or episode of care

HB 1945

- Definitions:
 - “Direct primary care” means primary medical care service provided by physician in return for payment in accordance with direct fee
 - “Medical services agreement” means signed written agreement under which physician agrees to provide direct primary care services for patient in exchange for direct fee for set period of time
 - “Physician” includes PA or PLLC owned entirely by individual licensed to practice medicine
 - “Primary medical service” means routine or general health care services, is patient’s main source for regular health care services, and includes preventing disease, screening, diagnosing, treating acute or chronic conditions, providing broad spectrum of preventive and curative health care over a period of time

HB 1945

- Does not apply to workers' comp insurance coverage s. 401.011 Labor Code
- Direct primary care is not insurance, physician providing care not an insurer or HMO, and physician not subject to regulation by TDI
- Medical services agreement not health or accident insurance or coverage under Title 8, Insurance Code, and not subject to regulation by TDI
- Physician may not bill insurer or HMO for direct primary care paid under medical services agreement

HB 1945

- TDI, health insurer or HMO, or health care provider may not prohibit, interfere with, initiate legal or admin proceeding against or impose fine or penalty against:
 - Physician solely because provides direct primary care
 - Person solely because pays direct fee for direct primary care
- Physician providing direct primary care shall provide written or electronic notice to patient that medical services agreement for direct primary care is not insurance, prior to entering into agreement
- Effective May 28, 2015

HR 574

Operation of Certain Managed Care Plans

HB 574

- Amends Chapters 843, 1301 Insurance Code
- Addresses insurance carrier intimidation of physicians into referring patients to only in-network providers
- Prevents “de-listing” of physician and allows physician to serve patients by occasionally referring to out-of-network provider
- Does not apply to CHIPS or Medicaid
- HMO may not terminate participation of physician or provider solely because informs an enrollee of full range of physicians and providers available to enrollee, including out-of-network providers

HB 574

- HMO or insurer may not, as condition of contract with physician, dentist, or provider, attempt to prohibit or prevent discussion of info regarding available facilities in- and out-of-network
- HMO or insurer may not, as condition of payment, require physician, dentist, or provider to provide notification form to current, prospective, or former patient stating provider is out-of-network, if form contains additional information intended or required to be presented in a manner intended to intimidate the patient
- Insurer may not terminate or threaten to terminate insured's participation in preferred provider benefit plan solely because insured uses out-of-network provider
- Insurer may not prohibit communications with insured about availability of out-of-network provider
- Effective September 1, 2015

Insurance

SB 1060

Rules for Public Adjusters and Property Claims

SB 1060

- Addressing concerns over hail damage lawsuits, public adjusters that funnel claims to lawyers, which result in increased homeowners' premiums and claim costs.
- First, cannot be a public insurance adjuster ("PIA") unless licensed by TDI

- PIAs may not enter into contract with insured and collect commission without intent to actually perform services customarily provided by licensed PIA
- PIAs may not participate in the repair of damaged property that is subject of claim
- PIAs may not accept money from or have financial interest in any firm handling repairs
- PIAs may not solicit for attorneys or enter contract to refer insured to attorney

- PIAs may not advance money to any insured
- PIAs may not pay referral fee to any non-PIA in exchange for referring insured to PIA
- PIAs may not accept any money from attorney, appraiser, contractor, etc. in exchange for referral
- Takes effect 9-1-2015.

SB 876

Changes to Licensing of Insurance Agents and Adjusters

SB 876

- TDI processes 23 types of individual licenses and 22 types of business entity licenses
- Seen unprecedented 60% increase in license applications in last decade
- SB 876 contains changes to help TDI timely and accurately process license requests while still providing quality customer service

- Lengthy bill – will hit the highlights
- Extends license period to two years
- If person has multiple licenses, all expire on earliest expiration date of licenses held
- Changes continuing education requirement from 15 hours/year to 24 hours/license period (two years)
- Failure to complete CE precludes renewal unless cured within 90 days of exp. date and pay fine (up to \$500)

- Specifies required adjuster CE program content
- Sets out specs for transition from non-resident to resident licensee
 - Including proof of good standing and submission of fingerprints
- Adds exemption from CE for license holder who has held designation for not less than 30 years (CPCU, CIC, ARM, CRM)
- TDI can allow agent, insurer, HMO to appoint more than 500 temporary license holders if meet standards

HB 1733

Insurance Requirements –
Uber/Lyft, etc.

HB 1733

- Emergence of transportation network companies (“TNCs” e.g., Uber, Lyft) exposed gaps in auto policies
 - Personal insurance typically doesn’t cover accidents while driver is transporting passengers for \$\$
 - HB 1733 requires TNC drivers to carry primary auto insurance covering use of the vehicle while transporting TNC passengers for compensation
 - Insurance must be active while TNC driver logged on to TNC’s digital network and while transporting passengers
 - Driver, TNC or combination of the two could subscribe to the policy so long as the driver is covered

HB 1733

- Insurance Requirements:
 - While TNC driver logged on to the TNC network:
 - \$50k for injury or death coverage for each person in an incident; \$100k for injury or death coverage per incident; \$25k for property damage coverage per incident
 - While TNC driver carrying a passenger:
 - Minimum total aggregate limit of liability of \$1M for death, bodily injury, and property damage per incident
 - If TNC driver's coverage lapses or is insufficient, the TNC is required to provide the coverage

HB 1733

- TNC disclosures:
 - Before accepting a ride, TNC must disclose to drivers in writing the insurance provided by the TNC and that personal insurance may not cover incidents occurring while TNC driver is logged on to network or engaged in prearranged rides
 - Must assist insurers in claim investigations: must provide precise times the TNC driver logged into and out of TNC network

HB 1733

- Carriers:
 - May exclude from coverage under personal auto policy any incident occurring while driver logged in to TNC network or carrying TNC passengers
 - May provide coverage for TNC drivers in policy or a rider
 - Insurers excluding TNC activities would not have duty to defend or indemnify a claim arising from an excluded event
 - Insurers defending or indemnifying claims against TNC have right of contribution against an insurer providing personal coverage to driver
- Effective: Sept. 1, 2015

SB 956

Delivery of Personal Auto
and Residential Property
Insurance Policies

SB 956

- Applies to insurer writing personal auto and residential property insurance; also TWIA, FAIR Plan Ass'n, & Texas Auto Ins. Plan Ass'n
- Insurer must deliver policy to insured or to agent for delivery to insured:
 - Policy longer than 30 days – not later than 30th day after eff. date
 - Policy longer than 10 but less than 31 days – not later than 10th day after eff. date

- Policy less than 10 days – within policy period
- For renewals of policy – insurer must deliver to insured or to agent for delivery to insured:
 - Not later than 15th day after date insurer or agent receives written request from insured for copy of policy
- Applies to policies delivered, issued for delivery, or renewed after 9-1-2015

SB 653

Increased Burial Benefit
Under Worker's Compensation

SB 653

- If employee death results from compensable injury, insurer shall pay to person who incurred costs of burial the lesser of:
 - Actual costs incurred for reasonable burial expenses, or
 - \$10,000
- Increased from \$6,000
- Applies to claim for burial benefits based on a compensable injury that occurs on or after 9-1-2015

SB 188/189

Insurance & Customer Inquiries

SB 188

- Amends Insurance Code
 - Prior legislation protects holders of a homeowners insurance policy who call and ask a question about their policy and coverage:
 - Ins. Code s. 544.553: Insurers may not: (1) use an underwriting guideline based solely on whether a “consumer inquiry” has been made by or on behalf of the applicant or insured; (2) charge a rate that is different from the rate charged to other individuals for the same coverage or increase a rate charged to an insured based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured
 - Due to complexity of Insurance Code, a large percentage of the market was not included in the legislation; SB 188 closes loophole

SB 188

- Amends Ins. Code s. 544.552:
 - subchapter applies to a standard fire, homeowners, or farm and ranch owners insurance policy, including such policies written by:
 - (1) a farm mutual insurance company;
 - (2) a county mutual insurance company;
 - (3) a Lloyd's plan; and
 - (4) a reciprocal or interinsurance exchange
- Effective Sept. 1, 2015

SB 189

- Amends Insurance Code
 - concerns that insurance companies writing automobile insurance may be raising rates or canceling policies for policyholders who ask questions regarding coverage.
 - Again based on prior legislation that addressed this issue with regard to homeowners insurance:
 - Ins. Code s. 544.553

SB 189

- SB 189 amends Ins. Code s. 544.552:
 - This subchapter applies only to:(1) standard fire, homeowners, or farm and ranch owners insurance policy; or (2) a personal automobile insurance policy, including a policy written by a county mutual insurance company
- SB 189 amends Ins. Code s. 1953.051:
 - A rating plan regarding the writing of personal auto insurance may not:
 - (1) assign a rate consequence solely to: a consumer inquiry made by an applicant or insured, or a claim filed by an insured under a personal auto policy that is not paid or payable under the policy;
 - (2) otherwise cause premiums for personal auto insurance to be increased solely because of an inquiry or claim described by Subdivision (1)

Civil Practice/Procedure

SB 735

Discovery of Net Worth
Information in Claim for
Exemplary Damages

SB 735

- Amends Civil Practice & Remedies Code s. 41.001
 - Clarifies the Use of Net Worth to Determine the Amount of Exemplary Damages
 - Adds definition of “net worth”
 - “Net worth” means the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court

SB 735

- Amends Civil Practice & Remedies Code to add section 41.0115
 - Authorizes trial court, on motion of party, after notice and hearing, to authorize discovery of evidence of D's net worth if the court finds in written order that P has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages
 - Discretionary: "a trial court may . . ."
 - Authorizes evidence submitted to TC in support of or opposition to motion to be in form of affidavit or response to discovery

SB 735

- Section 41.0115
 - Limits order to least burdensome method available to obtain info
 - Limits information to be considered by reviewing court to that submitted to TC
 - TC shall presume that requesting party has had adequate time for discovery of facts relating to exemplary damages to allow D to move for no-evidence SJ on claim for exemplary damages
- Applies to an action filed on or after Sept. 1, 2015

HB 1492

Asbestos and Silica Claims

HB 1492

- Purpose: to bring greater transparency to asbestos and silica litigation, to ensure damages are fairly divided among wrongdoers, to protect solvent businesses against double-dipping, and to ensure that resources (including trust funds) are available for future victims.
- Relates to trusts created by bankrupt defendants for payment of asbestos and silica claims

- A claimant who has filed a lawsuit for asbestos/silica injury must now make a claim against each trust that claimant believes may owe damages:
 - Not later than 150th day before trial in lawsuit, or
 - By court-ordered date if trial set to commence on or before 1-31-2016
- Can request exemption if cost to file trust claim will exceed anticipated recovery
 - Court decides this issue

- Claimant then must provide notice of the trust claim and produce the supporting documentation to each party in the lawsuit
 - By stated deadlines (before trial)
 - Duty to supplement if additional trust claims made
 - Notice/production applies whether claim is for injury resulting in cancer or other injury.
- Failure to make trust claims and provide notice/documents means lawsuit will not be allowed to go to trial

HB 2747

Jury Requirements

HB 2747

- Amends Government Code s. 62.102
 - Current petit juror requirements:
 - Citizen of Texas and county where jury service occurring;
 - New requirements:
 - U.S. citizen
 - Texas resident
 - Resident of county in which person is to serve as juror
 - Concern about the potential to summon a person for jury service when that person is no longer a resident of the summoning county
 - seeks to remedy this situation by having potential jurors correctly note their county of residence by eliminating the word “citizen” and instead using the term “resident” and then requiring the juror be a United States Citizen to ensure citizenship status

Civil Defenses/Liability

SB 627

New Defenses to Libel Actions

SB 627

- Purpose: to codify a common-law privilege protecting journalists from libel lawsuits when reporting third-party allegations
- Truth is a defense to a libel claim for a journalist who accurately reports allegations made by a third party regarding a matter of public concern
- In addition to any other available defense
- Took effect immediately upon passage, 5-28-15

HB 2390

Civil Liability – Employee Wellness Programs

HB 2390

- Adds Ch. 142A to Civil Practice & Remedies Code
 - concern that some employers will be discouraged from implementing employee wellness programs for fear of litigation. To encourage businesses in Texas to develop and promote employee wellness programs, HB 2390 seeks to address these litigation concerns
 - Ch. 142A:
 - “employee wellness program”: program established by an employer that provides an incentive to an employee that promotes wellness or a healthy lifestyle

HB 2390

- Limits employer liability: civil action may not be brought against an employer for establishing, maintaining, or requiring participation in an employee wellness program unless:
 - It discriminates on the basis of a prior medical condition, gender, age, or income level; or
 - The cause of action is based on intentional or reckless conduct

HB 1040

Sports Official Liability

HB 1040

- Background:
 - An official was involved in a collision with a coach that was in the restricted area on the sideline. The coach was severely injured.
 - School district's workers compensation insurance carrier filed a multi-million dollar lawsuit against not only the official involved in the accident, but also all officials on the field.
- HB1040 adds Ch. 94 to CPRC:
 - A "sports official" engaged in an "athletic competition" not liable for civil damages related to any act, error, or omission that results from a risk inherent in the nature of the competitive activity in which the claimant chose to participate unless the act, error, or omission constitutes (1) gross negligence, or (2) wanton, willful or intentional misconduct

HB 1040

- Whether a risk is inherent in the nature of a competitive activity depends upon:
 - (1) the nature of the sport in question; (2) the conduct that is generally accepted in the sport; and (3) whether harm occurred during the pursuit of the purposes of the competition
- Mere violation of the rules of play of an athletic competition or failing to call a penalty, missing a call, or failing to enforce competition rules cannot in itself form the basis for liability
- Sponsoring organization cannot be held liable for an act, error, or omission of a sports official absent any new, independent, and separate act, error, or omission of the sponsoring organization that gave rise to the harm

Other Session Tidbits

- HCR 105: official hashtag of Texas is #Texas
- HCR 106: official hashtag of Texas Tourism is #TexasToDo
- HCR 35: official hat of Texas is the Cowboy Hat
- HCR 78: official nickname of Texas is "the Lone Star State"
- HCR 122: official state crustacean of Texas is the Texas Gulf Shrimp
- SCR 41: Official Grape capital is Terry County

- HCR 70: Authorizes monument at state Capitol Complex honoring Texans who served during the Global War on Terror
- HB 978: Designation of Route 66 Historic Corridor
- HCR 77: Official Vaquero Capital of Texas is Jim Hogg County
- HCR 76: Official Strawberry Capital of Texas is Poteet
- HCR 69: Official Butterfly Capital of Texas is Jasper
- HCR 65: Official Pollinator is Western Honey Bee
- HCR 62: Official Classic Car Capital is Nacona
- HCR 43: Official Wedding Capital is Dripping Springs

Specialty License Plates

- HB 1364: Recipients of Defense Meritorious Service Medal
- SB 193: Recipients of Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal
- HB 1128: Recipients of Combat Action Badge, Medal, or Ribbon
- HB 923: 36th Infantry Division
- HB 830: Image of the Alamo with "Remember"
- HB 315: With Words "In God We Trust"
- HB 742: Texas Medical Center
- HB 4099: K9s4COPS
- HB 3610: Texas Juneteenth

Special Days and Dates

- SB 1522: designates fourth Saturday in July as National Day of the Cowboy
- HB 194: designates last Sunday in September as Gold Star Mother's Day – for moms whose children died while serving in military
- HCR 130: May 26 is National John Wayne Day



The End

Thank you!