

PROBLEM: ARTIFICIALLY INFLATED MEDICAL BILLS FEED NUCLEAR VERDICTS

What's happening: Personal injury lawyers are collaborating with healthcare providers to inflate the medical bills presented to prove an injury and establish damages in lawsuits.

How it works: The attorneys have built networks of healthcare providers who agree to work on a contingency fee, over-diagnosing, over-treating and over-billing the lawyers' clients with the understanding that they will be paid from the lawsuit's settlement or judgment. The more the providers inflate the value of the case, the more money they make at the end.

- The providers bill tens of thousands for their services at rates far above the market price. Even if the patient has health insurance, the bills are never submitted for payment.
- At the end of the litigation, the plaintiff's lawyer gets his contingency fee, settles up with the healthcare providers in a private transaction, and the client gets the leftovers.

Why it's deceptive: These providers have created two different classes of patients, charging significantly more to treat personal injury patients than those who pay through insurance.

- In addition to increasing the damages awarded at trial to reimburse the plaintiff for healthcare expenses, juries also tend to award more for noneconomic damages—such as pain and suffering and mental anguish—when medical bills are high, further increasing the overall value of the lawsuit.

SOLUTION: MEDICAL BILL TRANSPARENCY

Juries deserve to know the true cost of medical services provided to plaintiffs, and personal injury patients deserve to know what their healthcare providers are charging to treat them. Texas should end the practice of inflating medical bills in personal injury cases by:

- Requiring the disclosure of agreements between plaintiff's lawyers and healthcare providers.
- If the plaintiff had health insurance but didn't use it, limiting evidence about medical bills to the amount the insurer would have paid.
- If the plaintiff is uninsured, tying medical bills to real-world payments made every day in Texas by private insurers—as reflected in the All-Payers Claims Database housed by the University of Texas Health Science Center—so juries aren't misled, and personal injury patients aren't billed at higher rates than those who aren't involved in lawsuits.

PROBLEM: PLAINTIFF'S LAWYERS REGULARLY ABUSE NONECONOMIC DAMAGES

What's happening: Unlike economic damages that can be quantified—like medical bills or lost wages—noneconomic damages cannot, making it easy for plaintiff's lawyers to exploit juries to award massive amounts of noneconomic damages.

How it works: Personal injury lawyers do two things to maximize noneconomic damages in lawsuits:

- Artificially inflate medical bills to convince the jury the plaintiff's injury is more serious than it really is.
- Use a trial strategy they call the "Reptile Theory" to convince jurors the defendant is a danger to society who deserves to be punished.
 - To distract the jury from who was actually at fault in the lawsuit, plaintiff's lawyers focus the trial on past conduct by the defendant that has nothing to do with how the plaintiff was injured, but can be manipulated to paint the defendant as a bad actor that deserves to be punished.
 - Because the jurors aren't properly instructed, the lawyer encourages the jury to award pain and suffering and mental anguish damages to punish the defendant.

Why it's deceptive: Texas law allows juries to punish bad actors through *punitive damages*, not noneconomic damages, which are intended only to compensate the plaintiff. But the threshold for awarding punitive damages is high, which is why plaintiff's attorneys prefer to rack up noneconomic damages instead.

SOLUTION: IMPLEMENT A FAIR AND CONSISTENT WAY TO AWARD NONECONOMIC DAMAGES

Texans are entitled to be fully compensated for their injuries, both quantifiable and unquantifiable. Texas can create a consistent mechanism for doing so by:

- Giving jurors understandable definitions of pain and suffering and mental anguish and clear instructions that those damages should be based on the plaintiff's injury—not the defendant's conduct—and cannot be used to punish a defendant.
 - If a plaintiff wants to punish a defendant, it should be under a claim for punitive damages.
- Requiring unanimous jury decisions about the amount of noneconomic damages.
- Allowing defendants to request a reduction of the jury's award after trial and requiring trial judges to explain unusually high awards.
- Capping noneconomic damages—like Texas did in medical liability cases in 2003—and as many other states have done.



PROBLEM: AMENDMENT TO CMV STATUTE INCONSISTENT WITH LONGSTANDING LAW

What's happening: A late amendment to 2021's HB 19 has diverged from longstanding Texas law, limiting the utility of HB 19.

Tell me more: The "Admission Rule" is a decades old law that allows companies to admit their responsibility for their employees' actions in personal injury lawsuits, simplifying the case *and ensuring the plaintiff receives a full recovery*.

- Despite being recognized in the common law by courts for decades, the Admission Rule was never codified, and Texas judges began ignoring it.
- **2021's HB 19 sought to codify the Admission Rule, but the amendment made the statute inconsistent with how the Rule had been used in Texas courts for years.**

How it works: In litigation, a company can agree to accept liability for its employee's actions that led to an injury and, ultimately, a lawsuit. This does two things:

- Guarantees the company will be responsible for paying damages related to the plaintiff's injury.
- Moots the plaintiff's need to pursue negligent entrustment and similar direct negligence claims against the company to obtain a full recovery.
 - These claims focus on the company's past actions, not the employee's actions that led to the collision.
- The idea is that once a company accepts liability for its employee's actions, the focus of the trial should shift to determining who was at fault for the collision and whether damages should be awarded—not on company policies that have nothing to do with causing the collision.
- If the company does not accept liability for its employee's actions, then the Admission Rule does not apply and the plaintiff may pursue direct negligence claims against the company to ensure a full recovery.

Why it's deceptive: Plaintiff's attorneys like to pursue direct negligence claims because they distract the jury from who was actually at fault in the lawsuit and because they can be used to paint the company defendant as a bad actor by focusing on things that have nothing to do with how the plaintiff was injured. When judges ignore the Admission Rule, it's both a departure from longstanding Texas law and a distraction for the jury.

SOLUTION: REMOVE THE AMENDMENT TO HB 19

The Legislature can ensure the Admission Rule is appropriately codified and that HB 19 works as intended by removing the amendment.