

May 21, 2009

Why Current Law On “Paid Or Incurred” Is Correct And Should Not Be Changed

Those who seek to change the current law want a plaintiff to be able to recover as damages the full amount of *billed* medical expenses, without regard to what was actually paid or is owed on those medical bills. This violates common sense and the legal concept of economic damages. Economic damages mean “compensatory damages for any pecuniary loss or damage,” and are intended to reimburse a claimant for *actual* economic loss, such as property damage, lost wages, or medical bills actually paid or owed.

Section 41.0105 of the Civil Practice & Remedies Code says: “In addition to any other limitation under law, recovery of medical or health care expenses incurred *is limited to the amount actually paid or incurred by or on behalf of the claimant.*”

This Paid or Incurred provision was enacted in the Omnibus Tort Reform Act of 2003 (HB 4). This provision was in the House Bill as passed by the House, but was limited to medical liability lawsuits. Senator Bill Ratliff, the Senate sponsor, thought the provision should apply to all lawsuits. So the provision was in the bill as passed out of the Senate State Affairs Committee, as passed on the Senate floor, as passed out of conference committee, and as passed on the floor of both legislative chambers in approving the conference report.

The provision allows a plaintiff to recover as economic damages health care expenses as follows:

- All out-of-pocket medical expenses paid by the plaintiff on her own behalf, including the amount paid as a deductible on her insurance policy.
- All medical expenses paid by a third party on behalf of plaintiff, such as hospital bills paid by a health insurance carrier.
- All amounts of a medical provider’s bill that are unpaid and actually owed by or on behalf of the plaintiff.
- All future medical expenses.

Because doctors, hospitals and other medical providers have different rates of payment for various insurance carriers and government agencies, medical providers actually have “sticker price” billing. They bill at rates that they do not expect to collect. Our courts, however, should not be compelled to award damages for these over-charges just because of the peculiarity of modern medical billing.

There simply is no place in the law – or in logic – for phantom damages such as billed amounts for medical services in excess of what is actually paid or owed.