

New Laws Protect Volunteer Physicians

Good news for Project Access Dallas and other charity clinics

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At the end of May 2005, House Bills 654 and 655 became Texas law. These laws help extend insurance liability coverage for volunteer healthcare providers who serve charitable organizations. This legislation may significantly expand the capacities of community and faith-based health clinics in the Metroplex.

HB 654 stipulates that an insurer may make available professional liability insurance covering a volunteer healthcare provider for an act or omission resulting in death, damage, or injury to a patient while the person is acting in the course of his duties as a volunteer healthcare provider.

HB 655 enables the Joint Underwriters Association in the Texas Department of Insurance to make available medical liability insurance or appropriate healthcare liability insurance covering a person against any loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence in rendering or the failure to render professional service while acting in the scope of the person's duties as a volunteer healthcare provider. Any volunteer healthcare provider who is serving as a direct service volunteer of a recognized charitable organization, as defined, is eligible to obtain liability insurance.

These laws help address the healthcare crisis in Texas, exacerbated by the growing number of uninsured citizens. Community and faith-based health clinics are emerging as valuable components of the healthcare safety net. These facilities offer basic healthcare services for free or at greatly reduced costs, provided by physicians and other healthcare professionals who donate their services. These new laws have the potential to expand the number of physicians who volunteer by tapping the large reservoir of retired physicians who do not carry medical malpractice insurance and who often decline to donate their services out of concern for liability issues. As the uninsured population grows exponentially, the need for health care grows proportionally.

Importantly, this legislation uses existing statutes, the Charitable Immunities Act (Tex.Civ.Prac.& Rem.Code 84.003) and sections in the Insurance Code to provide an insurance facility. By using the Charitable Immunities Act as a foundation, affordable malpractice insurance should be available soon to volunteers and charitable community health clinics.

Background on Development of these Laws

Central Dallas Ministries collaborated with Preston Road Church of Christ to develop a novel faith-based health clinic for domestic workers who are employed in the Park Cities. The church's interest in providing an affordable, convenient healthcare clinic for these workers presumed the participa-

tion of practicing and retired physicians who live in the Park Cities. Early in the development of this project, it became clear that the retired physicians were resistant to volunteering in the clinic because of malpractice liability concerns. The state's Charitable Immunity Law was not a strong enough incentive to attract these retired physicians who long since had stopped purchasing malpractice insurance. Additionally, the absence of case law testing the strength of the presumed immunity conferred by the Charitable Immunity Law also made retired physicians wary of volunteering.

In light of this, the Institute for Faith Health Research, a subsidiary of Central Dallas Ministries, asked Fred Orr, one of its advisory board members and a former state representative, to investigate a strategy to strengthen the Charitable Immunity Law through amendment or development of legislation that could provide inexpensive malpractice coverage to retired (but still licensed) physicians and other health professionals. In Summer 2003, the IFHR-Dallas introduced a "legislative fix" using this existing law.

According to Mr Orr, "In the development of our clinic (Preston Road Church of Christ), it became clear that retired docs were a resource for our clinic but that until we could devise a plan to protect them, the resource was benign. Accordingly, I began the legislative fix resulting in these bills. I did not want to create new law; therefore, used existing law, ie, "Charitable Immunities Act," and the Joint Underwriters Association inside the State Insurance Department to establish an insurance vehicle designed for the healthcare professional donating services to and through a recognized charity."

IFHR-Dallas also commends State Rep Tony Goolsby (R-Dallas) for his foresight and willingness to author this legislation.

TRACY CASTO
DCMS DIRECTOR OF PUBLIC AFFAIRS

Gov Rick Perry signed House Bill 2680 in a ceremony at the Texas Capitol on July 14. Authored by Rep Dan Branch (R-Dallas), the law enables the creation of an affordable malpractice insurance defense policy for retired healthcare providers that eliminates the threat of nuisance lawsuits and empowers providers to volunteer in charity clinics. The measure also requires healthcare licensing entities to create emeritus licenses with reduced fees and requirements for retired providers. Senate Health and Human Services Committee Chairman Jane Nelson (R-Lewisville) sponsored the bill in the Senate.

"Retired healthcare providers offer an excellent staffing resource for charity care clinics," Rep Branch said. "Harnessing this workforce will reduce the strain on Texas' healthcare system and give capable practitioners increased opportunities to serve."

Rep Branch introduced HB 2680 in response to Texas' growing struggle to meet its indigent healthcare needs despite record levels of health and human services spending. Recognizing that services to uninsured populations often are provided through costly, inefficient means such as emergency room visits, he desired to help non-profit and faith-based organizations fill the gap. The law instructs the Joint Underwriters Association, a quasi-governmental insurer of last resort overseen by the Texas Department of Insurance, to create a defense malpractice insurance policy for health providers.

"With limited resources, government can only do so much," Rep Branch commented. "We must lean on private and charitable sources in order to meet the growing demand for care. Fortunately, charity healthcare clinics are becoming more and more prevalent."

Approximately 12 charity clinics operate in Dallas County, many of which are interconnected through Project Access Dallas, a partnership of the Dallas County Medical Society and Health Texas Provider Network's Volunteers in Medicine that matches volunteer physicians with uninsured patients.

"Our retired healthcare professionals can freely donate their services in third world countries, yet they sometimes find it difficult to donate services to the needy here in our own state," Sen Nelson said. "The goal of this legislation is to make it easier for retired practitioners to perform charitable care in Texas."

Rep Branch's father, Dr Charles L. Branch Sr, a retired San Antonio neurosurgeon, travels to Nigeria on an annual medical mission. He is restricted from volunteering in his home state, however, because of the risk of nuisance lawsuits, despite charitable immunity. Other retired providers are discouraged from volunteering because they are required to pay the same fees as active practitioners.

"We must continue to make it easier for willing, capable healthcare providers to donate their valuable time and skills in Texas," said Dr W. Scott Sager, director of Christ's Family Ministries at Preston Road Church of Christ in Dallas. "By providing affordable licensing fees and increased protection against malpractice lawsuits, HB 2680 is a critical step to reaching our goal of caring for the uninsured." DMJ



From left: Paul Swegler, Dr Hugh Lamensdorf, Sen Jane Nelson, Dr Donald Blum, Dr Charles Branch, Gov Rick Perry, Dr Robert Gunby, Rep Dan Branch, and Dr Scott Sager.



PROJECT ACCESS DALLAS

Compassionate Care for Our Community's Uninsured

Mark your calendars to attend the inaugural "Celebration Access Dallas" event at 6:30 pm Friday, September 9, at the Belo Mansion, 2101 Ross Ave, Dallas

At the event, awards will be given to the PAD Physician Volunteer of the Year, PAD Hospital Partner of the Year, and the PAD Corporate Partner of the Year. Also, we will announce the pledges that have been received for the PAD Year 5 Budget, which begins October 1, 2005.

Dr Patch Adams, renowned medical doctor, clown, social activist, and subject of the blockbuster film "Patch Adams," portrayed by Robin Williams, will be the keynote speaker for this event honoring our volunteers and patients. Dr Adams has devoted 30 years to revolutionizing America's healthcare system, a system he describes as expensive and elitist. Twelve years before the movie "Patch Adams," Dr. Adams opened a home-based family medical practice in West Virginia. Since then, he has treated more than 15,000 people without payment, malpractice insurance, or formal treatment facilities.