



# Chapter 18.001

## Affidavits

### History 101

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## What was the Statute for Anyway?

- ▶ Procedural
- ▶ Enacted by the Legislature as a cost-effective way to prove up past medical bills.
- ▶ 18.001 eliminated the cost and need to call an expert to testify as to the reasonableness and necessity of medical expenses.
- ▶ Affidavit versus live testimony.
- ▶ Forces live testimony.
- ▶ What happened?

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## Became a Game

- ▶ Adjusters want it
- ▶ Courts dismiss them
- ▶ Adjusters do not understand
- ▶ What now?

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## What Changed HB 1693?

- ▶ 1. Deadlines
- ▶ 2. Supplementation
- ▶ 3. Notice
- ▶ 4. Causation?

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Plaintiff must prove the expenses were necessary to treat, reasonable in amount, and expenses were paid and incurred.

### CPRC 18.001

- ▶ Eliminated the cost and need to call an expert live to testify.
- ▶ Done through an affidavit.
- ▶ Can be controverted by affidavit.
- ▶ Controverting affidavit negates the effect of the initial affidavit and forces the proponent to call expert testimony (or by other means) and operates to increase litigation cost.
- ▶ If not controverted, supports finding of fact and bars conflicting evidence.
- ▶ Does NOT conclusively establish amount of damages as a matter of law.
- ▶ Not limited to medical services, covers "services" generally.

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## DEADLINES

### ▶ Offering party –

- ▶ Must serve copy of the affidavit on the other party by the earlier of:
  - ▶ 90 days after the date the defendant files an answer;
  - ▶ The date the offering party must designate any expert witness under a court order; or
  - ▶ The date the offering party must designate any expert witness as required by the TRCP.

### ▶ IF.....

- ▶ If services are provided for the first time by a provider after the date the defendant files an answer, the party offering the affidavit for services provided by that provider must serve copy of the affidavit on the other party by the earlier of:
  - ▶ The date the offering party must designate any expert witness under a court order; or
  - ▶ The date the offering party must designate any expert witness as required by the TRCP.

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