

# Texas Supreme Court clarifies periodic payment provision for future medical bills

With few guidelines, the judicial application of Texas' periodic payment statute has varied widely.

On April 22, 2022, the Texas Supreme Court provided much-needed clarity addressing the expenditure of future medical costs in a case styled *Columbia Valley Health Care System L.P v. Andrade*. A final and corrected opinion was issued following the denial for rehearing on November 18, 2022.

The periodic payment statute is one of the core elements of Texas' 2003 medical liability reform package. Rather than ordering a lump sum payment for future medical costs, the law permits the court to structure a series of payments over an extended period if the anticipated future medical costs meet or exceed \$100,000.

The purpose of this provision is to assure that claimants are made whole for their economic losses while protecting defendants from paying for damages that are never incurred.



In *Andrade*, the high court reversed the trial court, holding it erred in how it structured the periodic payment of future medical bills.

The facts in *Andrade* involve an infant who developed cerebral palsy due to an umbilical cord wrapped around its neck during birth. The plaintiffs sued the hospital, alleging negligence by the nursing staff. The jury awarded more than \$10.2 million in damages, of which only \$62,000 was for previous medical care.

Over \$9 million of the award was for future damages before the infant turned 18. Another \$1.2 million was awarded for future damages after the infant turned 18. The hospital argued that future damages should be paid in the future when the costs are actually incurred. The trial judge refused the hospital's request.

Instead, the trial court ordered that \$604,000 per year be paid to the plaintiff in each of the first five years and that more than \$7 million be paid immediately into a special needs trust that would revert to the parents in the event the infant died.

The hospital objected because those future damages had not been and might never be incurred and that if they were never incurred, the money should revert to the hospital under the statute. Their objection was overruled.

The Corpus Christi Court of Appeals found no error in the trial court's judgment.

The hospital then appealed the case to the Texas Supreme Court, which ultimately ruled that trial courts cannot arbitrarily require immediate payment of all future damages to evade the statute's purpose.

The Justices concluded that the trial court abused its discretion in structuring some future periodic payments over 5 years since it contradicted the jury's findings that the minor would likely live to 18 years. Additionally, should the minor die, all sums paid into the special needs trust should revert to the defendant, not the parents.

"As the award stands, the trial court pointed to no evidence in the record to justify why any amount should be extracted from the periodic-payment amounts and made payable as a lump sum," the opinion states.

Brent Cooper, an attorney representing Texas Alliance Patient Access, says the high court's decision is helpful to health care defendants.

"The court ruled that damages for future medical bills should be paid in a structure of future payments that conforms to the evidence presented to the jury at trial. The Andrade ruling puts parameters around the trial court's decision, requiring the trial court to follow the statute's dictates. More importantly, it makes the trial court's decision reviewable by a higher court should the trial court fail to follow the statute," Cooper said.

He said that uncertainty remains about when attorney's fees on future medical expenses should be paid.

Attorney fee agreements between plaintiffs and their lawyers generally state that the attorney receives a percentage of the "recovery." Should that amount be paid when the judgment is rendered, or the future payment is actually received? The Supreme Court has not given a definitive ruling but said that payment of attorney fees could be a factor taken into consideration by trial courts when determining the amount of future payments and the amount of immediately paid damages.