

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 6**

4 (By Senators Ferns, Boley, Carmichael, Gaunch, Leonhardt, Mullins, Nohe, Trump, Blair,
5 Plymale, Stollings, Cole (Mr. President) and Takubo)

6 _____
7 [Originating in the Committee on the Judiciary;

8 reported January 28, 2015.]
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11
12 A BILL to repeal §55-7B-1 of the Code of West Virginia, 1931, as amended; to amend and reenact
13 §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-7B-11 of said
14 code; and to amend said code by adding thereto two new sections, designated §55-7B-7a and
15 §55-7B-9d, all relating to medical professional liability; adding provisions to control increase
16 in cost of liability insurance and to maintain access to affordable health care services for
17 West Virginians; providing mechanism to increase limitation on civil damages in medical
18 malpractice cases to account for inflation by linking increases to the Consumer Price Index;
19 adding provisions limiting admissibility and use of certain information; and requiring
20 adjustment of verdicts for past medical expenses.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §55-7B-1 of the Code of West Virginia, 1931, as amended, be repealed; that §55-7B-2,
23 §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-7B-11 of said code be amended and

1 reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a
2 and §55-7B-9d, all to read as follows:

3 **ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

4 **§55-7B-2. Definitions.**

5 (a) “Board” means the State Board of Risk and Insurance Management.

6 (b) “Collateral source” means a source of benefits or advantages for economic loss that the
7 claimant has received from:

8 (1) Any federal or state act, public program or insurance which provides payments for
9 medical expenses, disability benefits, including workers’ compensation benefits, or other similar
10 benefits. Benefits payable under the Social Security Act are not considered payments from collateral
11 sources except for Social Security disability benefits directly attributable to the medical injury in
12 question;

13 (2) Any contract or agreement of any group, organization, partnership or corporation to
14 provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy
15 or other health care services or provide similar benefits, but excluding any amount that a group,
16 organization, partnership, corporation or health care provider agrees to reduce, discount or write off
17 of a medical bill;

18 (3) Any group accident, sickness or income disability insurance, any casualty or property
19 insurance (including automobile and homeowners’ insurance) which provides medical benefits,
20 income replacement or disability coverage, or any other similar insurance benefits, except life
21 insurance, to the extent that someone other than the insured, including the insured's employer, has
22 paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

23 (4) Any contractual or voluntary wage continuation plan provided by an employer or

1 otherwise or any other system intended to provide wages during a period of disability.

2 (c) “Consumer Price Index” means the most recent Consumer Price Index for All Consumers
3 published by the United States Department of Labor.

4 (d) “Emergency condition” means any acute traumatic injury or acute medical condition
5 which, according to standardized criteria for triage, involves a significant risk of death or the
6 precipitation of significant complications or disabilities, impairment of bodily functions or, with
7 respect to a pregnant woman, a significant risk to the health of the unborn child.

8 (e) “Health care” means:

9 (1) Any act, service or treatment provided under, pursuant to or in the furtherance of a
10 physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment;

11 (2) Any act, service or treatment performed or furnished, or which should have been
12 performed or furnished, by any health care provider or person supervised by or acting under the
13 direction of a health care provider or licensed professional for, to or on behalf of a patient during the
14 patient's medical care, treatment or confinement, including, but not limited to, staffing, medical
15 transport, custodial care or basic care, infection control, positioning, hydration, nutrition and similar
16 patient services; and

17 (3) The process employed by health care providers and health care facilities for the
18 appointment, employment, contracting, credentialing, privileging and supervision of health care
19 providers.

20 (f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, ~~or~~ assisted
21 living facility, ~~including personal care home~~, residential care community, ~~and residential board and~~
22 ~~care home~~, ~~or~~ end-stage renal disease facility, home health agency, child welfare agency, group
23 residential facility, behavioral health care facility or comprehensive community mental ~~health/mental~~

1 ~~retardation center, in and licensed~~ health center intellectual/developmental disability center or
2 program, or other ambulatory health care facility, in and licensed, regulated or certified by the State
3 of West Virginia under state or federal law and any state-operated institution or clinic providing
4 health care and any related entity to the health care facility.

5 (g) “Health care provider” means a person, partnership, corporation, professional limited
6 liability company, health care facility, entity or institution licensed by, or certified in, this state or
7 another state, to provide health care or professional health care services, including, but not limited
8 to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse,
9 hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist,
10 chiropractor, physical therapist, ~~psychologist,~~ speech therapist, occupational therapist, psychologist,
11 pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency
12 medical services authority or agency, any person supervised by or acting under the direction of a
13 licensed professional, any person taking actions or providing service or treatment pursuant to or in
14 furtherance of a physician's plan of care, a health care facility's plan of care, medical diagnosis or
15 treatment; or an officer, employee or agent ~~thereof~~ of a health care provider acting in the course and
16 scope of ~~such~~ the officer's, employee's or agent's employment.

17 (h) “Medical injury” means injury or death to a patient arising or resulting from the rendering
18 of or failure to render health care.

19 (i) “Medical professional liability” means any liability for damages resulting from the death
20 or injury of a person for any tort or breach of contract based on health care services rendered, or
21 which should have been rendered, by a health care provider or health care facility to a patient. It also
22 means other claims that may be contemporaneous to or related to the alleged tort or breach of
23 contract or otherwise provided in the context of rendering health care services.

1 (j) “Medical professional liability insurance” means a contract of insurance or any actuarially
2 sound self-funding program that pays for the legal liability of a health care facility or health care
3 provider arising from a claim of medical professional liability. In order to qualify as medical
4 professional liability insurance for purposes of this article, a self-funding program for an individual
5 physician must meet the requirements and minimum standards set forth in section twelve of this
6 article.

7 (k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental
8 anguish and grief.

9 (l) “Patient” means a natural person who receives or should have received health care from
10 a licensed health care provider under a contract, expressed or implied.

11 (m) “Plaintiff” means a patient or representative of a patient who brings an action for medical
12 professional liability under this article.

13 (n) “Related entity” means any corporation, foundation, partnership, joint venture,
14 professional limited liability company, limited liability company, trust, affiliate or other entity under
15 common control or ownership, whether directly or indirectly, partially or completely, legally,
16 beneficially or constructively, with a health care provider or health care facility; or which owns
17 directly, indirectly, beneficially or constructively any part of a health care provider or health care
18 facility.

19 ~~(n)~~ (o) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal
20 agent of another.

21 **§55-7B-7. Testimony of expert witness on standard of care.**

22 (a) The applicable standard of care and a defendant's failure to meet the standard of care, if
23 at issue, shall be established in medical professional liability cases by the plaintiff by testimony of

1 one or more knowledgeable, competent expert witnesses if required by the court. ~~Expert testimony~~
2 ~~may only be admitted in evidence~~ A proposed expert witness may only be found competent to testify
3 if the foundation ~~therefor~~ for his or her testimony is first laid establishing that: (1) The opinion is
4 actually held by the expert witness; (2) the opinion can be testified to with reasonable medical
5 probability; (3) the expert witness possesses professional knowledge and expertise coupled with
6 knowledge of the applicable standard of care to which his or her expert opinion testimony is
7 addressed; (4) the expert witness' opinion is grounded on a scientifically valid and properly applied
8 methodology; (5) the expert witness maintains a current license to practice medicine with the
9 appropriate licensing authority of any state of the United States: *Provided*, That the expert witness'
10 license has not been revoked or suspended in the past year in any state; and ~~(5)~~ (6) the expert witness
11 is engaged or qualified in a medical field in which the practitioner has experience and/or training in
12 diagnosing or treating injuries or conditions similar to those of the patient. If the witness meets all
13 of these qualifications and devoted, at the time of the medical injury, sixty percent of his or her
14 professional time annually to the active clinical practice in his or her medical field or specialty, or
15 to teaching in his or her medical field or speciality in an accredited university, there shall be a
16 rebuttable presumption that the witness is qualified as an expert. The parties shall have the
17 opportunity to impeach any witness' qualifications as an expert. Financial records of an expert
18 witness are not discoverable or relevant to prove the amount of time the expert witness spends in
19 active practice or teaching in his or her medical field unless good cause can be shown to the court.

20 (b) Nothing contained in this section ~~may be construed to limit~~ limits a trial court's discretion
21 to determine the competency or lack of competency of a witness on a ground not specifically
22 enumerated in this section.

23 **§55-7B-7a. Admissibility and use of certain information.**

1 (a) In an action brought, there is a rebuttable presumption that the following information may
2 not be introduced unless it applies specifically to the injured person or it involves substantially
3 similar conduct that occurred within one year of the particular incident involved:

4 (1) A state or federal survey, audit, review or other report of a health care provider or health
5 care facility;

6 (2) Disciplinary actions against a health care provider's license, registration or certification;

7 (3) An accreditation report of a health care provider or health care facility; and

8 (4) An assessment of a civil or criminal penalty.

9 (b) In any action brought, if the health care facility or health care provider demonstrates
10 compliance with the minimum staffing requirements under state law, the health care facility or health
11 care provider is entitled to a rebuttable presumption that appropriate staffing was provided.

12 (c) Information under this section may only be introduced in a proceeding if it is otherwise
13 admissible under the West Virginia Rules of Evidence.

14 **§55-7B-8. Limit on liability for noneconomic loss.**

15 (a) In any professional liability action brought against a health care provider pursuant to this
16 article, the maximum amount recoverable as compensatory damages for noneconomic loss ~~shall~~ may
17 not exceed \$250,000 ~~per~~ for each occurrence, regardless of the number of plaintiffs or the number
18 of defendants or, in the case of wrongful death, regardless of the number of distributees, except as
19 provided in subsection (b) of this section.

20 (b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the
21 limitation described in subsection (a) of this section, but not in excess of \$500,000 for each
22 occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of
23 wrongful death, regardless of the number of distributees, where the damages for noneconomic losses

1 suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical
2 deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental
3 functional injury that permanently prevents the injured person from being able to independently care
4 for himself or herself and perform life-sustaining activities.

5 (c) On January 1, 2004, and in each year thereafter, the limitation for compensatory damages
6 contained in subsections (a) and (b) of this section shall increase to account for inflation by an
7 amount equal to the Consumer Price Index published by the United States Department of Labor, not
8 to exceed one hundred fifty percent of the amounts specified in said subsections. ~~(b) and (c)~~

9 (d) The limitations on noneconomic damages contained in subsections (a), (b), (c) and (e)
10 of this section are not available to any defendant in an action pursuant to this article which does not
11 have medical professional liability insurance in the aggregate amount of at least \$1 million ~~per~~ for
12 each occurrence covering the medical injury which is the subject of the action.

13 (e) If subsection (a) or (b) of this section, as enacted during the 2003 regular session of the
14 Legislature, or the application thereof to any person or circumstance, is found by a court of law to
15 be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for
16 noneconomic loss in a professional liability action brought against a health care provider under this
17 article shall thereafter not exceed \$1 million.

18 **§55-7B-9. Several liability.**

19 (a) In the trial of a medical professional liability action under this article involving multiple
20 defendants, the trier of fact shall report its findings on a form provided by the court which contains
21 each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties
22 to the action, the jury shall be instructed to answer special interrogatories, or the court, acting
23 without a jury, shall make findings as to:

- 1 (1) The total amount of compensatory damages recoverable by the plaintiff;
- 2 (2) The portion of the damages that represents damages for noneconomic loss;
- 3 (3) The portion of the damages that represents damages for each category of economic loss;
- 4 (4) The percentage of fault, if any, attributable to each plaintiff; and
- 5 (5) The percentage of fault, if any, attributable to each of the defendants.

6 (b) In assessing percentages of fault, the trier of fact shall consider only the fault of the parties
7 in the litigation at the time the verdict is rendered and ~~shall~~ may not consider the fault of any other
8 person who has settled a claim with the plaintiff arising out of the same medical injury: *Provided,*
9 That, upon the creation of the Patient Injury Compensation Fund provided for in article twelve-c,
10 chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any
11 amount of economic damages awarded by the trier of fact which the plaintiff has been unable to
12 collect, the trier of fact shall, in assessing percentages of fault, consider the fault of all alleged
13 parties, including the fault of any person who has settled a claim with the plaintiff arising out of the
14 same medical injury.

15 (c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of
16 several, but not joint, liability against each defendant in accordance with the percentage of fault
17 attributed to the defendant by the trier of fact.

18 (d) To determine the amount of judgment to be entered against each defendant, the court shall
19 first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted
20 verdict by the amount of any preverdict settlement arising out of the same medical injury. The court
21 shall then, with regard to each defendant, multiply the total amount of damages remaining, with
22 interest, by the percentage of fault attributed to each defendant by the trier of fact. The resulting
23 amount of damages, together with any post-judgment interest accrued, shall be the maximum

1 recoverable against the defendant.

2 (e) Upon the creation of the Patient Injury Compensation Fund provided for in article twelve-
3 c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any
4 amount of economic damages awarded by the trier of fact which the plaintiff has been unable to
5 collect, the court shall, in determining the amount of judgment to be entered against each defendant,
6 first multiply the total amount of damages, with interest, recoverable by the plaintiff by the
7 percentage of each defendant's fault and that amount, together with any post-judgment interest
8 accrued, is the maximum recoverable against said defendant. Prior to the court's entry of the final
9 judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the
10 total jury verdict by any amounts received by a plaintiff in settlement of the action. When any
11 defendant's percentage of the verdict exceeds the remaining amounts due plaintiff after the
12 mandatory reductions, each defendant shall be liable only for the defendant's pro rata share of the
13 remainder of the verdict as calculated by the court from the remaining defendants to the action. The
14 plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered
15 reductions.

16 (f) Nothing in this section is meant to eliminate or diminish any defenses or immunities
17 which exist as of the effective date of this section, except as expressly noted in this section.

18 (g) Nothing in this article is meant to preclude a health care provider from being held
19 responsible for the portion of fault attributed by the trier of fact to any person acting as the health
20 care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable
21 to the health care provider under claims of vicarious liability. A health care provider may not be held
22 vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the
23 alleged agent does not maintain professional liability insurance covering the medical injury which

1 is the subject of the action in the aggregate amount of at least \$1 million for each occurrence.

2 **§55-7B-9a. Reduction in compensatory damages for economic losses for payments from**
3 **collateral sources for the same injury.**

4 (a) In any action arising after the effective date of this section, a defendant who has been
5 found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or
6 other economic losses may present to the court, after the trier of fact has rendered a verdict, but
7 before entry of judgment, evidence of payments the plaintiff has received for the same injury from
8 collateral sources.

9 (b) In ~~any~~ a hearing held pursuant to subsection (a) of this section, the defendant may present
10 evidence of future payments from collateral sources if the court determines that:

11 (1) There is a preexisting contractual or statutory obligation on the collateral source to pay
12 the benefits;

13 (2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses
14 the trier of fact has determined the plaintiff will incur in the future; and

15 (3) The amount of the future expenses is readily reducible to a sum certain.

16 (c) In ~~the~~ a hearing held pursuant to subsection (a) of this section, the plaintiff may present
17 evidence of the value of payments or contributions he or she has made to secure the right to the
18 benefits paid by the collateral source.

19 (d) After hearing the evidence presented by the parties, the court shall make the following
20 findings of fact:

21 (1) The total amount of damages for economic loss found by the trier of fact;

22 (2) The total amount of damages for each category of economic loss found by the trier of fact;

23 (3) The total amount of allowable collateral source payments received or to be received by

1 the plaintiff for the medical injury which was the subject of the verdict in each category of economic
2 loss; and

3 (4) The total amount of any premiums or contributions paid by the plaintiff in exchange for
4 the collateral source payments in each category of economic loss found by the trier of fact.

5 (e) The court shall subtract the total premiums the plaintiff was found to have paid in each
6 category of economic loss from the total collateral source benefits the plaintiff received with regard
7 to that category of economic loss to arrive at the net amount of collateral source payments.

8 (f) The court shall then subtract the net amount of collateral source payments received or to
9 be received by the plaintiff in each category of economic loss from the total amount of damages
10 awarded the plaintiff by the trier of fact for that category of economic loss to arrive at the adjusted
11 verdict.

12 (g) The court ~~shall~~ may not reduce the verdict rendered by the trier of fact in any category of
13 economic loss to reflect:

14 (1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to
15 recover from the plaintiff through subrogation, lien or reimbursement;

16 (2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a
17 collateral source in a category of economic loss;

18 (3) The proceeds of any individual disability or income replacement insurance paid for
19 entirely by the plaintiff;

20 (4) The assets of the plaintiff or the members of the plaintiff's immediate family; or

21 (5) A settlement between the plaintiff and another tortfeasor.

22 (h) After determining the amount of the adjusted verdict, the court shall enter judgment in
23 accordance with the provisions of section nine of this article.

1 **§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is**
2 **admitted to a designated trauma center; exceptions; emergency rules.**

3 (a) In any action brought under this article for injury to or death of a patient as a result of
4 health care services or assistance rendered in good faith and necessitated by an emergency condition
5 for which the patient enters a health care facility designated by the Office of Emergency Medical
6 Services as a trauma center, including health care services or assistance rendered in good faith by
7 a licensed ~~EMS~~ emergency medical services authority or agency, certified emergency medical
8 service personnel or an employee of a licensed ~~EMS~~ emergency medical services authority or
9 agency, the total amount of civil damages recoverable shall may not exceed \$500,000 for each
10 occurrence, exclusive of interest computed from the date of judgment, and regardless of the number
11 of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number
12 of distributees.

13 (b) The limitation of liability in subsection (a) of this section also applies to any act or
14 omission of a health care provider in rendering continued care or assistance in the event that surgery
15 is required as a result of the emergency condition within a reasonable time after the patient's
16 condition is stabilized.

17 (c) The limitation on liability provided under subsection (a) of this section does not apply to
18 any act or omission in rendering care or assistance which:

19 (1) Occurs after the patient's condition is stabilized and the patient is capable of receiving
20 medical treatment as a nonemergency patient; or

21 (2) Is unrelated to the original emergency condition.

22 (d) In the event that: (1) A physician provides follow-up care to a patient to whom the
23 physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical

1 condition arises during the course of the follow-up care that is directly related to the original
2 emergency condition for which care or assistance was rendered pursuant to said subsection, there is
3 rebuttable presumption that the medical condition was the result of the original emergency condition
4 and that the limitation on liability provided by said subsection applies with respect to that medical
5 condition.

6 (e) There is a rebuttable presumption that a medical condition which arises in the course of
7 follow-up care provided by the designated trauma center health care provider who rendered good
8 faith care or assistance for the original emergency condition is directly related to the original
9 emergency condition where the follow-up care is provided within a reasonable time after the
10 patient's admission to the designated trauma center.

11 (f) The limitation on liability provided under subsection (a) of this section does not apply
12 where health care or assistance for the emergency condition is rendered:

13 (1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

14 (2) In clear violation of established written protocols for triage and emergency health care
15 procedures developed by the Office of Emergency Medical Services in accordance with subsection
16 (e) of this section. In the event that the Office of Emergency Medical Services has not developed a
17 written triage or emergency medical protocol by the effective date of this section, the limitation on
18 liability provided under subsection (a) of this section does not apply where health care or assistance
19 is rendered under this section in violation of nationally recognized standards for triage and
20 emergency health care procedures.

21 (g) The Office of Emergency Medical Services shall, prior to the effective date of this
22 section, develop a written protocol specifying recognized and accepted standards for triage and
23 emergency health care procedures for treatment of emergency conditions necessitating admission

1 of the patient to a designated trauma center.

2 (h) In its discretion, the Office of Emergency Medical Services may grant provisional trauma
3 center status for a period of up to one year to a health care facility applying for designated trauma
4 center status. A facility given provisional trauma center status is eligible for the limitation on
5 liability provided in subsection (a) of this section. If, at the end of the provisional period, the facility
6 has not been approved by the Office of Emergency Medical Services as a designated trauma center,
7 the facility ~~will~~ is no longer ~~be~~ eligible for the limitation on liability provided in subsection (a) of
8 this section.

9 (i) The Commissioner of the Bureau for Public Health may grant an applicant for designated
10 trauma center status a one-time only extension of provisional trauma center status, upon submission
11 by the facility of a written request for extension, accompanied by a detailed explanation and plan of
12 action to fulfill the requirements for a designated trauma center. If, at the end of the six-month
13 period, the facility has not been approved by the Office of Emergency Medical Services as a
14 designated trauma center, the facility ~~will~~ no longer ~~have~~ has the protection of the limitation on
15 liability provided in subsection (a) of this section.

16 (j) If the Office of Emergency Medical Services determines that a health care facility no
17 longer meets the requirements for a designated trauma center, it shall revoke the designation, at
18 which time the limitation on liability established by subsection (a) of this section ~~shall cease~~ ceases
19 to apply to that health care facility for services or treatment rendered thereafter.

20 (k) The Legislature hereby finds that an emergency exists compelling promulgation of an
21 emergency rule, consistent with the provisions of this section, governing the criteria for designation
22 of a facility as a trauma center or provisional trauma center and implementation of a statewide
23 trauma/emergency care system. The Legislature therefore directs the Secretary of the Department

1 of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the
2 criteria for designation of a facility as a trauma center or provisional trauma center in accordance
3 with nationally accepted and recognized standards and governing the implementation of a statewide
4 trauma/emergency care system. The rules governing the statewide trauma/emergency care system
5 shall include, but not be limited to:

6 (1) System design, organizational structure and operation, including integration with the
7 existing emergency medical services system;

8 (2) Regulation of facility designation, categorization and credentialing, including the
9 establishment and collection of reasonable fees for designation; and

10 (3) System accountability, including medical review and audit to assure system quality. Any
11 medical review committees established to assure system quality shall include all levels of care,
12 including emergency medical service providers, and both the review committees and the providers
13 shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

14 (1) On January 1, 2016, and in each year after that, the limitation for civil damages contained
15 in subsection (a) of this section shall increase to account for inflation by an amount equal to the
16 Consumer Price Index published by the United States Department of Labor, not to exceed one
17 hundred fifty percent of said subsection.

18 **§55-7B-9d. Adjustment of verdict for past medical expenses.**

19 A verdict for past medical expenses is limited to:

20 (1) The total amount of past medical expenses paid by or on behalf of the plaintiff; and

21 (2) The total amount of past medical expenses incurred but not paid by or on behalf of the
22 plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

23 **§55-7B-11. Severability.**

1 (a) If any provision of this article as enacted during the First Extraordinary Session of the
2 Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature,
3 1986, in Senate Bill 714, or as enacted during the regular session of the Legislature, 2015, or the
4 application thereof to any person or circumstance is held invalid, ~~such~~ the ~~invalidity shall~~ does not
5 affect other provisions or applications of this article, and to this end, the provisions of this article are
6 declared to be severable.

7 (b) If any provision of the amendments to section five of this article, any provision of ~~new~~
8 section six-d of this article or any provision of the amendments to section eleven, article six, chapter
9 fifty-six of this code as provided in House Bill 601, enacted during the Sixth Extraordinary Session
10 of the Legislature, 2001, is held invalid, or the application thereof to any person is held invalid, then,
11 notwithstanding any other provision of law, every other provision of said House Bill 601 shall be
12 deemed invalid and of no further force and effect.

13 (c) If any provision of the amendments to section six or ten of this article or any provision
14 of ~~new~~ section six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the
15 Sixth Extraordinary Session of the Legislature, 2001, is held invalid, ~~such~~ the ~~invalidity shall~~ does
16 not affect other provisions or applications of this article, and to this end, such provisions are deemed
17 severable.