

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**ENROLLED**

## **House Bill 4735**

(BY DELEGATES MCCUSKEY, IRELAND, SHAFFER,  
KESSINGER, SOBONYA, SUMMERS AND AZINGER)

[Passed March 7, 2016; in effect ninety days from passage.]



1 AN ACT to amend and reenact §55-7B-2 of the Code of West Virginia, 1931, as amended, relating  
2 to the definition of health care provider, and clarifying that speech-language pathologists  
3 and audiologists are two separate providers.

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

1 That §55-7B-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

**§55-7B-2. Definitions.**

1 (a) "Board" means the State Board of Risk and Insurance Management.

2 (b) "Collateral source" means a source of benefits or advantages for economic loss that  
3 the claimant has received from:

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

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

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

19 (4) Any contractual or voluntary wage continuation plan provided by an employer or  
20 otherwise or any other system intended to provide wages during a period of disability.

21 (c) "Consumer Price Index" means the most recent Consumer Price Index for All  
22 Consumers published by the United States Department of Labor.

23 (d) "Emergency condition" means any acute traumatic injury or acute medical condition  
24 which, according to standardized criteria for triage, involves a significant risk of death or the  
25 precipitation of significant complications or disabilities, impairment of bodily functions or, with  
26 respect to a pregnant woman, a significant risk to the health of the unborn child.

27 (e) "Health care" means:

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

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

36 (3) The process employed by health care providers and health care facilities for the  
37 appointment, employment, contracting, credentialing, privileging and supervision of health care  
38 providers.

39 (f) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted living  
40 facility, residential care community, end-stage renal disease facility, home health agency, child  
41 welfare agency, group residential facility, behavioral health care facility or comprehensive  
42 community mental health center, intellectual/developmental disability center or program, or other  
43 ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia

44 under state or federal law and any state-operated institution or clinic providing health care and  
45 any related entity to the health care facility.

46 (g) "Health care provider" means a person, partnership, corporation, professional limited  
47 liability company, health care facility, entity or institution licensed by, or certified in, this state or  
48 another state, to provide health care or professional health care services, including, but not limited  
49 to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse,  
50 hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist,  
51 chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist,  
52 psychologist, pharmacist, technician, certified nursing assistant, emergency medical service  
53 personnel, emergency medical services authority or agency, any person supervised by or acting  
54 under the direction of a licensed professional, any person taking actions or providing service or  
55 treatment pursuant to or in furtherance of a physician's plan of care, a health care facility's plan  
56 of care, medical diagnosis or treatment; or an officer, employee or agent of a health care provider  
57 acting in the course and scope of the officer's, employee's or agent's employment.

58 (h) "Medical injury" means injury or death to a patient arising or resulting from the rendering  
59 of or failure to render health care.

60 (i) "Medical professional liability" means any liability for damages resulting from the death  
61 or injury of a person for any tort or breach of contract based on health care services rendered, or  
62 which should have been rendered, by a health care provider or health care facility to a patient. It  
63 also means other claims that may be contemporaneous to or related to the alleged tort or breach  
64 of contract or otherwise provided, all in the context of rendering health care services.

65 (j) "Medical professional liability insurance" means a contract of insurance or any  
66 actuarially sound self-funding program that pays for the legal liability of a health care facility or  
67 health care provider arising from a claim of medical professional liability. In order to qualify as  
68 medical professional liability insurance for purposes of this article, a self-funding program for an

69 individual physician must meet the requirements and minimum standards set forth in section  
70 twelve of this article.

71 (k) "Noneconomic loss" means losses, including, but not limited to, pain, suffering, mental  
72 anguish and grief.

73 (l) "Patient" means a natural person who receives or should have received health care  
74 from a licensed health care provider under a contract, expressed or implied.

75 (m) "Plaintiff" means a patient or representative of a patient who brings an action for  
76 medical professional liability under this article.

77 (n) "Related entity" means any corporation, foundation, partnership, joint venture,  
78 professional limited liability company, limited liability company, trust, affiliate or other entity under  
79 common control or ownership, whether directly or indirectly, partially or completely, legally,  
80 beneficially or constructively, with a health care provider or health care facility; or which owns  
81 directly, indirectly, beneficially or constructively any part of a health care provider or health care  
82 facility.

83 (o) "Representative" means the spouse, parent, guardian, trustee, attorney or other legal  
84 agent of another.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2016.

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*Governor*