

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 726

By Senator Azinger

[Introduced February 20, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §55-7-32; and to amend and reenact §57-5-4j of said code, all relating to
 3 preventing compensatory damage awards for medical expenses from including sums that
 4 the claimant has not and will not pay for medical services or treatment except in specified
 5 cases.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-32. Damages for medical services or treatment received; abrogation of common law rule; limitation of damages.

1 (a) The Legislature hereby declares that the purpose of this section is to abrogate the
 2 common law collateral source rule in determining the sums recoverable by injured persons as
 3 damages for medical expenses and to prevent compensatory damage awards for the value of
 4 necessary and reasonable medical services or treatment from exceeding the sums accepted by
 5 the health care provider for treating the injured party. The Legislature further declares that the
 6 decision of the Supreme Court of Appeals of West Virginia in Kenney v. Liston, Case No. 13-0427
 7 (W. Va. June 4, 2014), and any other decision of the Supreme Court of West Virginia inconsistent
 8 with this legislation, is contrary to the Legislature’s intent and is superseded by the enactment of
 9 this section.

10 (b) Definitions:

11 (1) "Health care provider" includes all hospitals, institutions, laboratories, doctors,
 12 physicians, optometrists, chiropractors, dentists, nurses, therapists and any other medical or
 13 health care facility, professionals or persons who diagnose, evaluate, treat, or otherwise deliver
 14 medical services or treatment to a plaintiff.

15 (2) "Medical care plan" means any medical care insurance, health care insurance, health

16 benefit plan, employer-provided health care plan or medical insurance, workers' compensation
17 insurance, Medicaid, Medicare, other public or government-sponsored health care insurance or
18 benefit program, or other similar source available to pay for services provided to the injured person
19 at the time or after the medical services or treatment were provided.

20 (3) "Medical services or treatment" means any actions taken by a health care provider to
21 observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage,
22 combat or care for a plaintiff's injury, condition, disease or disorder, or symptoms of a plaintiff's
23 injury, condition disease or disorder. The term includes any equipment, facilities, medicines,
24 drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care
25 provider or consumed by a plaintiff at a health care provider's direction.

26 (c) Except as provided in paragraph (d) of this section, in any action by any person or a
27 legal representative to recover damages resulting from death or injury to a person, the damages
28 that may be recovered for the reasonable value of any necessary and reasonable medical
29 services or treatment shall not exceed:

30 (1) Sums actually paid by or on behalf of the injured person to the health care providers
31 who rendered the necessary and reasonable medical services or treatment to the injured person;

32 (2) Sums actually necessary to satisfy charges that have been incurred and at the time of
33 trial are still owing and payable to health care providers for reasonable and necessary medical
34 services or treatment rendered to the injured person; and

35 (3) Sums actually necessary to provide for any future necessary and reasonable medical
36 services or treatment for the injured person.

37 (d) In any action by any person or a legal representative to recover damages resulting from
38 death or injury to a person in which the claimant files in court a stipulation stating that the claimant
39 does not seek and will not accept recovery of total damages in an amount exceeding \$20,000, the
40 damages that may be recovered for the reasonable value of any necessary and reasonable
41 medical services or treatment shall be the amount determined by the finder of fact, so long as the

42 total award does not exceed \$20,000.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-4j. Hospital records; evidence of reasonableness of medical expenses.

1 (a) Proof that medical, hospital and doctor bills were paid or incurred because of any an
2 illness, disease or injury shall be is prima facie evidence that such the bills so paid or incurred were
3 necessary and reasonable. Proof that any health care provider's bills were incurred but resolved in
4 whole or in part by way of contractual discount, reduction, disallowance, gift or write-off and not
5 paid may not be used to establish the necessity or reasonableness of medical expenses.

6 (b) Except for actions in which the claimant meets the requirements of §55-7-32 of this
7 code, evidence to establish the reasonable value of medical service or treatment shall not include
8 any reference to amounts that exceed the sums actually paid by or on behalf of the injured party,
9 regardless of the source of payment, to satisfy the financial obligation for medical services or
10 treatment that the injured party received, and evidence of the sums actually necessary to satisfy
11 the financial obligation for medical services or treatment rendered to the injured party that have
12 been incurred but not yet satisfied. This evidence shall not include any reference to amounts that
13 exceed the sum for which the unpaid charges could be satisfied if submitted to any medical care
14 plan covering the injured party or for which the injured party is eligible, regardless of whether the
15 incurred but not yet satisfied charges have been or will be submitted to the injured party's medical
16 care plan. If the injured party is not covered by any medical care plan and is not eligible for any
17 medical care plan, evidence of the reasonable value of medical services or treatment incurred but
18 not yet satisfied shall not include any reference to amounts that exceed the Medicare
19 reimbursement rate in effect at the time the injured party's services or treatment occurred for the
20 specific medical services or treatment rendered to the injured party.

21 (c) Except for actions in which the claimant meets the requirements of §55-7-32 of this

22 code, evidence to establish the reasonable value of any future medical service or treatment of the
23 injured party shall not include any reference to amounts that exceed the sums actually necessary
24 to satisfy the financial obligation for any reasonable and necessary future medical services or
25 treatment. This evidence shall not include any reference to amounts that exceed the sums for
26 which the future charges of health care providers could be satisfied if submitted to any medical
27 care plan covering the injured party or any medical care plan for which the injured person is
28 eligible. If the injured person is not covered by any medical care plan and is not eligible for any
29 medical care plan, evidence of the reasonable present value of any future reasonable and
30 necessary medical or health care or treatment shall not include any reference to amounts that
31 exceed the Medicare reimbursement rate in effect at the time of trial for the reasonable and
32 necessary future medical services or treatment of the injured party.

NOTE: The purpose of this bill is to prevent compensatory damage awards for medical expenses from including sums that the claimant has not and will not pay for medical care or treatment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.