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LONG TERM CARE & SENIOR LIVING BLOG

Significant Changes Ahead for Missouri Litigators – Part I

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Recent actions by both the Missouri Senate and Missouri House of Representatives regarding the admissibility of evidence in civil actions would substantially change the litigation of medical negligence cases. In this article I discuss the proposed changes to RSMo § 490.715 related to the admissibility of evidence of the cost of medical care; commonly referred to as the "collateral source rule."

On February 2, the House passed and sent to the Senate HB 95. HB 95 modifies § 490.715, precluding the admission into evidence of the amount an injured party was billed for medical care that is alleged to have been caused by the defendant, but only if the amount billed was discounted or if the amount billed was satisfied by an amount less than the amount billed.

That same day, the Senate passed SB 31, allowing the introduction into evidence of the "actual cost" of the medical care rendered to an allegedly injured party. "Actual cost" is defined as the dollar amount paid by or on behalf of the injured party, plus any balance owed, after adjustment or reduction. SB 31 expressly repeals the 2005 amendment to § 490.715, removing the rebuttable presumption that the "value" of such medical treatment was the amount paid in satisfaction of the financial obligation to the provider.

There are differences in the bills that will need to be resolved by conference committee or otherwise before an amendment to § 490.715 could be sent to Gov. Greitens. Most significantly, HB 95 precludes the admission of the amount charged, while SB 31 permits the introduction into evidence of the "actual cost" of the medical care rendered to an allegedly injured party. Both bills are functionally the same, limiting the amount an injured party can claim as damages to the amount paid to satisfy an obligation to the party's health care provider.

Even though the purpose of the bills is uniform, these differences will need to be resolved so that as the language of any bill signed into law will be critical. HB 95, in my opinion, more clearly states the intent of the legislature, although the definition of "actual cost" in SB 31 would be helpful in preparing and arguing future motions should this become law.

The Missouri Legislature had much the same, if not exactly the same, intent when it amended § 490.715 in 2005. With that amendment, the legislature created a "rebuttable presumption" that the "value" of medical expense damages was the amount "necessary to satisfy the financial obligation to the health care provider." The law went on to identify factors that trial courts were to use to determine whether the presumption applied. When put into practice, trial courts typically allowed the parties to introduce to the jury *both* the amount billed by the provider *and* the amount paid to satisfy the obligation to that provider, especially after the Missouri Supreme Court's 2010 decision in *Deck v. Teasley*, overturning a trial court's limitation of damages to only the amount paid.

In light of the Missouri Supreme Court's opinion in *Deck*, and the practice of trial courts throughout Missouri allowing the admission of competing evidence regarding the amount of medical expenses, the Missouri Legislature is attempting to more clearly codify its intent to strictly limit an allegedly injured party's recovery of medical expenses to the actual amount paid to the provider. Being a politically charged issue, it will be interesting the see the development of a final bill. Even with Republican super-majorities in the House and Senate and a Republican Governor, all presumably friendly to tort-reform, the Missouri Association of Trial Attorneys (MATA) and other similar interest groups may have an impact on the final product. Medical negligence practitioners on both sides need to watch closely, as any amendment to § 490.715 will have a substantial effect on their cases.