



Alerts

Wisconsin Creates Statutory Presumption That Billing Statements and Invoices Reflect the Reasonable Value of Reasonably Necessary Health Care Services

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Health Care Alert

Under Wisconsin law, the plaintiff in a personal injury action may recover the “reasonable value” of health care services that are “reasonable and necessary.” The most recent state budget, 2009 Wisconsin Act 28 (“the Act”), created new presumptions that billing statements and invoices for health care services reflect this “reasonable value,” and that the services were “reasonable and necessary.” Wis. Stat. § 908.03(6m)(bm). The Act also explicitly precludes the introduction of “collateral source payments,” as evidence of the reasonable value of medical services.

New Presumptions of “Reasonable Value” and “Reasonable Necessity”

The Act creates the presumption that billing statements reflect the “reasonable value” of health care services. It further provides that those services are presumed to be “reasonable” and “necessary.” Previously, expert testimony was required to demonstrate the reasonableness of the amounts charged, or the necessity of the medical services provided, if such issues were disputed. Now, there is a presumption in favor of the plaintiff on these points upon the introduction of medical bills, and it is the defendant’s burden to overcome it with contrary proof. These new presumptions are included in recently revised Wisconsin Civil Jury Instructions 1756 and 1757.

Admissibility of Collateral Source Payments

The Act also limits the manner in which a defendant can challenge the new presumptions. A doctrine known as the “collateral source rule” has long forbidden juries from reducing a plaintiff’s damage award on the basis of payments made by sources other than the defendant, such as insurance companies. The theory behind the doctrine is that a defendant’s responsibilities to pay for damages should not be decreased by reason of a plaintiff’s foresight in buying health insurance. However, information concerning collateral source payments has sometimes been admitted as evidence of the “reasonable value” of services provided. The Act codifies case law holding that defendants are prohibited from introducing such collateral source payments, even for this limited purpose. Wis. Stat. § 908.03(6m)(bm).

However, the Act does not repeal Wis. Stat. § 893.55(7), which provides that evidence of collateral source payments are admissible evidence *in an action to recover damages for medical malpractice*. The Wisconsin Supreme Court has interpreted § 893.55(7) to permit the admission of collateral source payments in medical malpractice cases only for the purpose of assisting the jury in determining the reasonable value of medical services. *Lagerstrom v. Murtle Worth Hospital – Mayo Health System*, 2005 WI 124, 285 Wis. 2d 1, 700 N.W.2d 201. This, of course, stands in direct conflict with the preclusion of such evidence at the newly created Wis. Stat. § 908.03(6m)(bm). In its comments to the newly revised Wisconsin Civil Jury Instruction 1757, the Wisconsin Civil Jury Instructions Committee takes the position that Wis. Stat. § 893.55(7), as a statute specific to medical malpractice, controls over Wis. Stat. § 908.03(6m)(bm), which is a general statute created as a part of the state budget. Thus, only in cases of medical malpractice, collateral source payment evidence may still be admissible for the purposes of rebutting the new presumption that billing statements reflect the reasonable value of reasonably necessary health care services.