

Tort Reform Update: Missouri Changes Rules for Recovery of Medical Bills as Damages

July 18, 2017

On July 5, 2017, Missouri Governor Eric Greitens signed into law Senate Bill 31. This tort reform measure prescribes new evidentiary rules for plaintiffs who seek to recover as damages the medical bills they incurred as a result of an injury. Under the new law, plaintiffs may only introduce into evidence the "actual cost" of their medical care, rather than the amount charged or billed for that care.

The bill passed with significant majorities in both the Missouri House and Senate, with 62 percent and 67 percent of legislators voting, respectively, in favor. The bill becomes law on August 28, 2017, and replaces an existing statute (RSMo § 490.715) enacted as part of tort reform in 2005 under then Governor Matt Blunt. The former statute had flaws which the new statute may resolve.

More specifically, *Deck v. Teasley*, 322 S.W.3d 536 (Mo. 2010) interpreted the existing section 490.715 as prescribing a presumption that the value of medical treatment provided was the amount paid to, accepted by, or owed to the health care provider. However, the presumption could be rebutted with substantial evidence that another value was more appropriate. After *Deck*, jurors heard evidence of the presumed value for medical treatment (e.g., the amount actually paid for health care) and the evidence rebutting the presumption (e.g., the amount billed, but not paid or owed). Thus, jurors could glean, based on the often significant disparity between these two amounts, that someone other than the plaintiff (e.g., an insurer) was responsible for the difference.

The Supreme Court's ruling in *Deck* also led to additional litigation as to the evidence necessary to rebut the presumption in section 490.715. See *Saulsberry v. U.S. Toy Co., Inc.*, 473 S.W.3d 131 (Mo. Ct. App. 2015). For example, disputes about the value of medical treatment often required parties to retain experts. Litigants also engaged in motion practice, hearings, and additional discovery to determine whether there was sufficient evidence to rebut the presumption in section 490.715. The need for additional information about medical bills burdened health care providers who received subpoenas, were examined in depositions, or completed affidavits to supply evidence about the value of medical treatment.

The new section 490.715 attempts to streamline the evidentiary requirements for recovery of medical bills by eliminating the presumption from the statute and replacing it with an "actual cost" standard. More specifically, Missouri law now defines the "actual cost of the medical care or treatment" as follows:



[The] sum of money not to exceed the dollar amounts paid by or on behalf of a plaintiff or a patient whose care is at issue plus any remaining dollar amount necessary to satisfy the financial obligation for medical care or treatment by a health care provider after adjustment for any contractual discounts, price reduction, or write-off by any person or entity.

In short, Missouri has significantly altered the evidentiary standard for proving the value of medical treatment rendered to an injured party. The new law appears to be sufficiently clear that medical bills evidence will be the amount actually paid or owed, and not the originally billed amount, or any write-offs, discounts or adjustments to the bill as a result of contracts with insurers or government programs. Further, the new law eliminates the need for evidence establishing that the full amount billed or charged represents the true value of the medical treatment, and thus may lessen some of the burdens discussed above.

Finally, it remains uncertain how the new law will affect trial strategy. Formerly, there was a benefit to the plaintiff to offer evidence of the full, as-charged amount for medical treatment because such evidence could support an argument about the severity of an injury. Now, however, a plaintiff may only use the new "actual cost" standard. As such, a plaintiff may consider omitting claims for medical damages because the jury will only hear evidence of the actual costs, which could cause jurors to award fewer damages if they believe that the lower medical costs indicate a less severe (and thus, less compensable) injury.

If you have any questions about this alert, please contact your Lathrop Gage attorney or the attorney listed above.