

HOUSE BILL REPORT

SSB 5028

As Reported by House Committee On:
Judiciary

Title: An act relating to the legal presumption from certification of medical records.

Brief Description: Establishing the legal presumption of reasonable value from the certification of health care records.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Franklin and Regala).

Brief History:

Committee Activity:

Judiciary: 2/21/02, 2/22/02 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- In a personal injury lawsuit, a certified health care billing statement is presumed to reflect the usual and customary charge for health care treatment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Lantz, Chair; Hurst, Vice Chair; Dickerson, Jarrett, Lovick and Lysen.

Minority Report: Do not pass. Signed by 3 members: Representatives Carrell, Ranking Minority Member; Boldt and Esser.

Staff: Bill Perry (786-7123).

Background:

Under the state's law governing the disclosure of health care information, a health care provider must, upon proper request and payment of a fee, certify a patient's health care records. A request for certified records may be made by a patient, and under some circumstances by others. Such requests need not be, but may be made as part of the discovery process in a lawsuit.

In a personal injury lawsuit, an injured claimant not only bears the burden of demonstrating the defendant's responsibility for the injury, but also bears the burden of proving damages. Those damages often include the cost of past and future medical treatments required by the claimant's injury. The measure of such costs is the amount that is "usual and customary" in the community in which the treatment was provided.

Summary of Amended Bill:

A presumption is created in personal injury lawsuits regarding certified billing statements of a health care provider.

A health care provider's certification of its billing statement creates the presumption that the amount shown on the statement is the usual and customary value of treatment in the community. The presumption may be overcome by a preponderance of evidence. The presumption does not shift the burden of proof that the health care treatment was for health conditions proximately caused by another's fault.

A health care provider's certification of its billing statement creates the presumption that the statement is the reasonable value of the treatment provided.

A certified billing statement is admissible to establish the "usual and customary" charges for treatment in a community.

The presumption that charges are "reasonable and customary" may be rebutted by a preponderance of the evidence.

The presumption does not shift the burden of proof that the treatment was for conditions proximately caused by the fault of another.

Amended Bill Compared to Substitute Bill:

The amendment clarifies that the presumption created by the bill applies only in lawsuits for damages for personal injuries. The amendment also makes uniform and consistent use of the phrase "usual and customary" with regard to billing charges and the value of treatment, and removes references to "reasonable" charges and values.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will reduce harassment of the medical profession and will facilitate the introduction of evidence about which there is rarely any dispute anyway. Doctors should spend their time treating patients, not testifying needlessly about billing statements. The current system can result in several medical professionals being deposed or being called to testify about billing statements in a single case. Often, the cost of taking testimony about a health care charge will be more than the health care charge itself. The bill will reduce these unnecessary costs, but will not deny any party the right to challenge a billing statement.

The plaintiff should show causation, fault and necessity of medical treatment in establishing his or her case, but once having done that, he or she should be able to show the amount of medical treatment cost by submitting the billing statement, and then the defendant should bear the burden of disputing the amount.

Testimony Against: The bill's use of the term "reasonable" creates an unfair presumption regarding a billing statement.

The defendant should not bear the burden of disproving what the plaintiff should have to prove. The amount actually paid by the plaintiff, not the amount charged is the proper measure of damages.

Medical professionals are often called to testify for multiple reasons in a lawsuit, not just to establish the amount of charges. And in cases where the amount charged on the billing statement is questionable, witnesses will be called anyway. Therefore, the bill will not have much impact on the costs of these suits.

Under court rules, parties can and do now stipulate to billing amounts without having to call witnesses.

Testified: (In support) James Leggett, Leggett and Kram; and Larry Shannon, Washington State Trial Lawyers Association.

(Opposed) Jean Leonard, State Farm Insurance, Alliance of American Insurance, and Washington Insurers; Anne Bryant, Physicians Insurance; and Mel Sorensen, National Association of Independent Insurers and Allstate Insurance Company.