



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Assembly Bill 1072

**Assembly Substitute
Amendment 1, as Amended by
Assembly Amendment 1 to
Assembly Substitute
Amendment 1**

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CURRENT LAW

Current statutes provide that, in a medical malpractice case, evidence of any compensation for bodily injury received by a plaintiff from a source other than the defendant (that is, from a collateral source) to compensate the claimant for injury is admissible in court. [s. 893.55 (7), Stats.] The Wisconsin Supreme Court recently held that if such evidence is admitted, then the injured party's obligations of subrogation or reimbursement to the collateral source (often a health insurer, an employer's self-funded health care plan, or a governmental plan providing health care coverage such as Medicare) also must be allowed as evidence. The court further held that evidence of collateral source payments for medical services could *not* be used to reduce the damage award for medical services in a medical malpractice case, even though that evidence could be used to determine the reasonable value of medical services.

2005 ASSEMBLY BILL 1072, AS AMENDED BY THE ASSEMBLY

2005 Assembly Bill 1072, as amended by Assembly Substitute Amendment 1, as amended by Assembly Amendment 1 to Assembly Substitute Amendment 1 (the amended bill), would codify the court's holding that the injured party's obligations of subrogation or reimbursement to the collateral source for its payments is admissible evidence in a medical malpractice case.

However, the amended bill would overturn the court's holding which prohibits a reduction in the amount of a medical malpractice damage award based on evidence of a collateral source payment. Specifically, the amended bill provides that if medical malpractice did occur, the finder of fact (the jury in a jury trial; the judge in a bench trial) must determine both of the following:

1. The reasonable value of services for which any payment was provided from collateral sources to compensate the claimant for injury resulting from the malpractice. (The substitute amendment referred to the “amount that was provided” from collateral sources to compensate the claimant for injury resulting from the medical malpractice. Assembly Amendment 1 to the substitute amendment changed this to “reasonable value.”)

2. The amount that the claimant is obligated to pay the collateral sources for such compensation either through subrogation or by reimbursement.

The amended bill then allows the finder of fact to subtract “some or all” of the amount determined under item 2. from the amount determined under item 1. and then reduce the amount of damages awarded in the medical malpractice case by that difference. The bill does not require the finder of fact to make this reduction.

The amended bill would apply to medical malpractice acts or omissions that occur on or after the effective date of the bill.

Legislative History

Assembly Substitute Amendment 1 to the bill was offered by the Assembly Committee on Insurance which then recommended adoption of the substitute amendment on a vote of Ayes, 13; Noes, 1. The committee recommended the bill, as amended, for passage on a vote of Ayes, 9; Noes, 5.

Representative Gielow offered Assembly Amendment 1 to the substitute amendment. The Assembly adopted both amendments by voice vote. The Assembly then passed the bill, as amended, on a vote of Ayes, 59; Noes, 36; Paired, 2.

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