



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 764

**Assembly Substitute
Amendment 1**

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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 764 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 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 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:

1. The amount provided from collateral sources to compensate the claimant for injury or death resulting from the medical malpractice; and
2. The amount that the claimant is obligated to reimburse the collateral sources for such compensation.

The bill then requires the court to subtract 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 would apply to medical malpractice acts or omissions that occur on or after the effective date of the bill.

Assembly Substitute Amendment 1 to the bill makes the following changes to the bill:

- While the bill refers to collateral source payments as compensation for bodily injury or death, the substitute amendment deletes the references to death. Thus, the amended bill's provisions refer only to collateral source payments as compensation for bodily injury.
- The substitute amendment changes item 2., above, to refer to the claimant's legal obligation to pay the collateral source through subrogation or by reimbursement. The bill referred only to reimbursement in item 2., above. (This change makes the amended bill internally consistent as the proposed change to s. 893.55 (7), Stats., refers to the person's obligations of both subrogation or reimbursement.)

Legislative History

Assembly Substitute Amendment 1 to the bill was offered by the Assembly Committee on Insurance which then recommended adoption of the amendment on a vote of Ayes, 9; Noes, 6. The committee recommended the bill, as amended, for passage on a vote of Ayes, 9; Noes, 6.

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