So How Much Are Medical Bills Anyway?

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Every day in the handling of our files, we attorneys deal with the question, "So what is this case worth?" To start our evaluation process we try to get a list of all the claimant's "specials," including all the medical bills and lost wages. Once determined we then try to make the educated guess as to what a jury might award above that total amount of specials for the infamous "pain and suffering" and, hence, put a value on the case for settlement. We all know though that through health insurance contracts, Medicare, Medicaid, or other similar payment plans, the entire bill submitted by the health care provider rarely gets paid – in full - to the doctor or hospital. For years we have seen those bills be reduced or written off down to the contracted amount with the health carrier or Medicare. So what then is the true value of the bill that should be considered in evaluating the claimant's injury – the submitted total bill or the reduced paid amount? Well, that question got more interesting in light of Mo. Rev. Stat. §490.715, which allows for argument that the medical bills' total billed may not really be the total value you should use in evaluating your claim.

Missouri Revised Statute §490.715.5 reads as follows in pertinent part:

(1) Parties may introduce evidence of the value of medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party.

(2) In determining the value of the medical treatment rendered, there shall be a *rebuttable presumption* that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the medical treatment rendered. Upon motion of any party, the court may determine, outside the hearing of the jury, the value of the medical treatment rendered based upon additional evidence, including but not limited to:

   a. The medical bills incurred by a party;

b. The amount actually paid for medical treatment rendered to a party;
c. The amount or estimate of the amount of medical bills not paid which such party is obligated to pay to any entity in the event of a recovery.

At least to this writer, the statute could not be clearer. The *rebuttable presumption* of value of the medical treatment to be presented to the jury is the dollar amount of that necessary to satisfy the financial obligation to the health care provider on behalf of the claimant, which represents the reduced amount to which the health care provider agreed to satisfy the claimant's obligation. This is the amount actually paid – not the total amount billed. Absent any evidence presented by plaintiff/claimant that any amount of the medical bills that has not been paid is an obligation of the claimant, which will have to be paid if there is a recovery in the case, then the bills are satisfied and the reduced amount should be considered. Our friends on the plaintiff's bar argue that their clients should not be penalized for having insurance – that if their clients had no insurance then the full amount of the bill could be considered. This isn't fair, they argue.

This is not a situation governed by the collateral source rule, or a reduction of liability to a defendant by argument that someone else other than the claimant paid the bills. This is simply the amount that was accepted by the health care provider to satisfy the claimant's financial obligations. To the contrary, it is the plaintiff's desire to use inflated figures by seeking to use the total billed amount. The purpose of compensation for a tort injury is based upon the ideal that a claimant is not entitled to receive more than he or she has lost as a result of the alleged negligent act. A party should not receive a windfall by way of compensatory damage. The party is simply to be made whole.

Unfortunately, there has not yet been a ruling on this issue by an appellate court in dealing with civil actions; however, the Missouri Supreme Court has addressed this issue with regard to a worker's compensation claim. In *Farmer-Cummings v. Personnel Pool of Platte County,* 110 S. W. 3d 818 (Mo. banc 2003), the Supreme Court held that a claimant was not entitled to compensation for medical expenses for which she had no liability due to write-offs and fee adjustments. The Supreme Court held that to award Farmer-Cummings compensation for medical expenses for which she had no liability would result in a windfall. Seemingly, precisely the same situation would apply in the civil arena. Clearly a claimant is entitled to compensation for those amounts accepted by the health care providers to satisfy the claimant's debt; however, to use the inflated figures would result in wrongful windfalls. At this point, without any appellate guidance, the best you and I can do is argue our point with our adversaries and use the argument for purposes of negotiation. Certainly reducing the total specials of a claimant will reduce the total sum necessary to settle your claim.

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