

# SENATE BILL REPORT

## SB 5725

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As Reported By Senate Committee On:  
Judiciary, February 28, 2007

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

**Brief Description:** Making health care providers' billing statements admissible.

**Sponsors:** Senators Franklin, Kline, Weinstein, Fairley and Kohl-Welles.

**Brief History:**

**Committee Activity:** Judiciary: 2/06/07, 2/28/07 [DPS, w/oRec].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5725 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Hargrove, Murray, Roach and Weinstein.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Carrell.

**Staff:** Dawn Noel (786-7472)

**Background:** Under current law governing disclosure of health care information, a health care provider must, upon request and payment of a fee, certify a patient's health care records.

Under common law, to recover health care costs in a personal injury lawsuit, a plaintiff must prove the reasonable value of necessary medical treatment and services. The plaintiff must call medical providers as witnesses to testify that the treatment for injuries suffered and the cost for such treatment were both necessary and reasonable.

Concern exists regarding the fairness of this standard, in that it requires a plaintiff to prove that his or her medical provider acted reasonably. Concern also exists that this standard increases litigation costs.

**Summary of Bill:** In arbitration or court proceedings, the value of services contained in billing statements certified by health care providers is presumed to be reasonable. These billing statements are admissible in evidence to establish that the charges are reasonable and customary in the community. The presumption that the charges are reasonable and customary may be rebutted by a preponderance of the evidence.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** It is clarified that the bill only applies to tort claims, and does not change the burden of proof for any other element of a tort claim other than damages. It is also clarified that billing statements certified for patient treatment are presumed to "reflect," rather than "be," the reasonable value of such treatment.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The purpose of this bill is to reduce demands on health care providers, and make it easier for victims to recover medical costs. It is difficult to get doctors to testify; under this bill, doctors would not have to take the time to testify. If the defense challenges the need for care, an injured person must respond with testimony. Defendants can also have records brought in. This is a way of reducing costs and being efficient, without taking one's rights away. This bill is about how to expeditiously and effectively run our court system.

This bill encourages stipulation on the issue of medical costs. What the bill does not do is shift the presumption regarding whether the defendant's act caused the plaintiff's injury, or whether treatment was reasonable, necessary and related to accident. Only once these points are reached does the presumption kick in that the billing records reflect the reasonable and customary charges, and this presumption is a rebuttable one. This bill is only intended to apply to injury cases and not contract cases.

CON: Health insurers are concerned not only about implications of this bill in the liability arena, but once an amount is determined to be reasonable for services performed, these implications could extend into the contract arena. Health insurers contract with providers for what they consider to be a reasonable amount for the service provided. They are afraid that the value billed would stand, rather than the actual reasonable value, or the amount paid or required to be paid.

This bill shifts the burden of proof that the medical bills submitted are presumed to be reasonable and customary when often that is the biggest dispute between an insurer and a claimant. Health insurers are concerned regarding the burden of proof on whether the medical fees were necessary. They want to ensure that every treatment is reasonable and necessary and connected to the accident at issue. Both parties can already agree to stipulate admission of billing statements if no dispute regarding their contents exists.

Even if the statements reflect the usual, customary and reasonable charges, if such charges are not medically necessary, reimbursement should not be paid. When a dispute exists regarding services delivered and the charges, plaintiffs should bear the burden by bringing in experts. This bill doesn't change the inconvenience to providers by having to come testify; it just says that the defense bears the burden, rather than the plaintiffs, which is an oddity.

**Persons Testifying:** PRO: Senator Franklin, prime sponsor; Marsha Magee, citizen; Larry Shannon, Washington State Trial Lawyers Association.

CON: Nancee Wildermuth, Regence Blue Shield, Aetna, and PacificCare; Anne Bryant, Physicians Insurance; Jean Leonard, State Farm Insurance, Washington Insurers; Mel Sorenson, Property Casualty Insurers, America's Health Insurance Plans, Washington Defense Trial Lawyers.