

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 465

BY SENATORS TAKUBO, STOLLINGS AND MARONEY

[Introduced February 28, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating
 2 to medical professional liability; allowing for admissibility of letter of merit in actions against
 3 health care providers; and allowing testimony in a judicial proceeding or by deposition upon
 4 issuing a letter of merit.

Be it enacted by the Legislature of West Virginia:

1 That §55-7B-6 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

1 (a) Notwithstanding any other provision of this code, no person may file a medical
 2 professional liability action against any health care provider without complying with the provisions
 3 of this section.

4 (b) At least thirty days prior to the filing of a medical professional liability action against a
 5 health care provider, the claimant shall serve by certified mail, return receipt requested, a notice
 6 of claim on each health care provider the claimant will join in litigation. The notice of claim shall
 7 include a statement of the theory or theories of liability upon which a cause of action may be
 8 based, and a list of all health care providers and health care facilities to whom notices of claim
 9 are being sent, together with a screening certificate of merit. The screening certificate of merit
 10 shall be executed under oath by a health care provider qualified as an expert under the West
 11 Virginia rules of evidence and shall state with particularity: (1) The expert's familiarity with the
 12 applicable standard of care in issue; (2) the expert's qualifications; (3) the expert's opinion as to
 13 how the applicable standard of care was breached; and (4) the expert's opinion as to how the
 14 breach of the applicable standard of care resulted in injury or death. A separate screening
 15 certificate of merit must be provided for each health care provider against whom a claim is
 16 asserted. The person signing the screening certificate of merit shall may have no financial interest

17 in the underlying claim, but may participate as an expert witness in any judicial proceeding and
18 may be called upon by any party to a judicial proceeding to testify or give a deposition regarding
19 the statements of opinions made in and other contents of the screening certificate of merit.
20 Nothing in this subsection ~~may be construed to limit~~ limits the application of rule 15 of the rules of
21 civil procedure.

22 (c) Notwithstanding any provision of this code, if a claimant or his or her counsel, believes
23 that no screening certificate of merit is necessary because the cause of action is based upon a
24 well-established legal theory of liability which does not require expert testimony supporting a
25 breach of the applicable standard of care, the claimant or his or her counsel, shall file a statement
26 specifically setting forth the basis of the alleged liability of the health care provider in lieu of a
27 screening certificate of merit.

28 (d) If a claimant or his or her counsel has insufficient time to obtain a screening certificate
29 of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply
30 with the provisions of subsection (b) of this section except that the claimant or his or her counsel
31 shall furnish the health care provider with a statement of intent to provide a screening certificate
32 of merit within sixty days of the date the health care provider receives the notice of claim.

33 (e) Any health care provider who receives a notice of claim pursuant to the provisions of
34 this section may respond, in writing, to the claimant or his or her counsel within thirty days of
35 receipt of the claim or within thirty days of receipt of the screening certificate of merit if the claimant
36 is proceeding pursuant to the provisions of subsection (d) of this section. The response may state
37 that the health care provider has a bona fide defense and the name of the health care provider's
38 counsel, if any.

39 (f) Upon receipt of the notice of claim or of the screening certificate of merit, if the claimant
40 is proceeding pursuant to the provisions of subsection (d) of this section, the health care provider

41 is entitled to prelitigation mediation before a qualified mediator upon written demand to the
42 claimant.

43 (g) If the health care provider demands mediation pursuant to the provisions of subsection
44 (f) of this section, the mediation shall be concluded within forty-five days of the date of the written
45 demand. The mediation shall otherwise be conducted pursuant to rule 25 of the trial court rules,
46 unless portions of the rule are clearly not applicable to a mediation conducted prior to the filing of
47 a complaint or unless the Supreme Court of Appeals promulgates rules governing mediation prior
48 to the filing of a complaint. If mediation is conducted, the claimant may depose the health care
49 provider before mediation or take the testimony of the health care provider during the mediation.

50 (h) Except as otherwise provided in this subsection, any statute of limitations applicable
51 to a cause of action against a health care provider upon whom notice was served for alleged
52 medical professional liability shall be tolled from the date of mail of a notice of claim to thirty days
53 following receipt of a response to the notice of claim, thirty days from the date a response to the
54 notice of claim would be due, or thirty days from the receipt by the claimant of written notice from
55 the mediator that the mediation has not resulted in a settlement of the alleged claim and that
56 mediation is concluded, whichever last occurs. If a claimant has sent a notice of claim relating to
57 any injury or death to more than one health care provider, any one of whom has demanded
58 mediation, then the statute of limitations shall be tolled with respect to, and only with respect to,
59 those health care providers to whom the claimant sent a notice of claim to thirty days from the
60 receipt of the claimant of written notice from the mediator that the mediation has not resulted in a
61 settlement of the alleged claim and that mediation is concluded.

62 (i) Notwithstanding any other provision of this code, a notice of claim, a health care
63 provider's response to any notice claim, ~~a screening certificate of merit~~ and the results of any
64 mediation conducted pursuant to the provisions of this section are confidential and are not

- 65 admissible as evidence in any court proceeding unless the court, upon hearing, determines that
66 failure to disclose the contents would cause a miscarriage of justice

NOTE: The purpose of this bill is relating to medical professional liability; allows for the admissibility of a letter of merit in actions against health care providers; and allows testimony in a judicial proceeding or by deposition upon issuing a letter of merit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.