WEST virginia legislature

2021 regular session

Introduced

House Bill 2762

By Delegates Steele, Foster, Kessinger, Householder, Hardy, D. Kelly, Barnhart, Martin, and D. Jeffries

[Introduced February 25, 2021; Referred to the Committee on Health and Human Resources then the Judiciary]

A BILL to amend and reenact §55-7B-2 of the Code of West Virginia, 1931, relating to medical professional liability, providing for an exemption to actions arising under the chapter for injuries arising from the practice of elective abortion or elective abortion related services except for any care or treatment provided by a health care provider to correct any harm or injury received due to an elective abortion or elective abortion related service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-2. Definitions.

(a) “Board” means the State Board of Risk and Insurance Management.

(b) “Collateral source” means a source of benefits or advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program or insurance which provides payments for medical expenses, disability benefits, including workers’ compensation benefits, or other similar benefits. Benefits payable under the Social Security Act and Medicare are not considered payments from collateral sources except for Social Security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services or provide similar benefits, but excluding any amount that a group, organization, partnership, corporation or health care provider agrees to reduce, discount or write off of a medical bill;

(3) Any group accident, sickness or income disability insurance, any casualty or property insurance, including automobile and homeowners’ insurance, which provides medical benefits, income replacement or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured’s employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability.

(c) “Consumer Price Index” means the most recent Consumer Price Index for All Consumers published by the United States Department of Labor.

(d) “Emergency condition” means any acute traumatic injury or acute medical condition which, according to standardized criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions or, with respect to a pregnant woman, a significant risk to the health of the unborn child.

(e) “Health care” means:

(1) Any act, service or treatment provided under, pursuant to or in the furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis or treatment;

(2) Any act, service or treatment performed or furnished, or which should have been performed or furnished, by any health care provider or person supervised by or acting under the direction of a health care provider or licensed professional for, to or on behalf of a patient during the patient’s medical care, treatment or confinement, including, but not limited to, staffing, medical transport, custodial care or basic care, infection control, positioning, hydration, nutrition and similar patient services; and

(3) The process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging and supervision of health care providers.

(4) Notwithstanding any other law, the provisions in this article shall not apply to the practice of elective abortion or elective abortion related services except for any care or treatment provided by a health care provider to correct any harm or injury received due to an abortion or abortion related service.

(f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility.

(g) “Health care provider” means a person, partnership, corporation, professional limited liability company, health care facility, entity or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse, hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis or treatment; or an officer, employee or agent of a health care provider acting in the course and scope of the officer’s, employee’s or agent’s employment.

(h) “Medical injury” means injury or death to a patient arising or resulting from the rendering of or failure to render health care.

(i) “Medical professional liability” means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. It also means other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided, all in the context of rendering health care services.

(j) “Medical professional liability insurance” means a contract of insurance or any actuarially sound self-funding program that pays for the legal liability of a health care facility or health care provider arising from a claim of medical professional liability. In order to qualify as medical professional liability insurance for purposes of this article, a self-funding program for an individual physician must meet the requirements and minimum standards set forth in section twelve of this article.

(k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental anguish and grief.

(l) “Occurrence” means any and all injuries to a patient arising from health care rendered by a health care facility or a health care provider and includes any continuing, additional or follow-up care provided to that patient for reasons relating to the original health care provided, regardless if the injuries arise during a single date or multiple dates of treatment, single or multiple patient encounters, or a single admission or a series of admissions.

(m) “Patient” means a natural person who receives or should have received health care from a licensed health care provider under a contract, expressed or implied.

(n) “Plaintiff” means a patient or representative of a patient who brings an action for medical professional liability under this article.

(o) “Related entity” means any corporation, foundation, partnership, joint venture, professional limited liability company, limited liability company, trust, affiliate or other entity under common control or ownership, whether directly or indirectly, partially or completely, legally, beneficially or constructively, with a health care provider or health care facility; or which owns directly, indirectly, beneficially or constructively any part of a health care provider or health care facility.

(p) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal agent of another.

NOTE: The purpose of this bill is to exempt from this article any actions arising from the practice of abortion or abortion relates services except for any care or treatment provided by a health care provider to correct any harm or injury received due to an elective abortion or elective abortion related service.

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