

West Virginia Legislature Changes Medical Professional Liability Act

Article By:

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During its recent 2015 session, the West Virginia Legislature passed significant tort reform measures impacting Long Term Care (LTC) providers. These measures largely involve changes to the West Virginia Medical Professional Liability Act (MPLA), the law governing suits against health care providers in West Virginia. Paul “Kip” Reese worked during the session as a committee lawyer at the West Virginia Legislature, and was therefore intimately involved in helping the legislators analyze and write many of the changes to the MPLA. If you have any questions about any of the changes, or the legislative process in general, Kip can provide a unique perspective.

Some of the most significant changes to the MPLA for LTC providers are as follows:

- Expands the definition of “health care provider” so that it includes virtually any employee, agent or officer of the nursing home, including administrators, officers of “upstream” corporate entities, dietary staff and CNAs;
- Expands the definition of “health care” to specifically include such things as “custodial care or basic care,” turning/positioning, hydration, staffing, credentialing, and nutrition. This should help to eliminate any argument by plaintiffs that certain acts performed by nursing homes are not “health care” and therefore not governed by the damage caps and other limitations of the MPLA. Virtually any activity performed by a nursing home in connection with patient care is now governed by the MPLA and its non-economic damage caps;
- Specifically includes “upstream corporate” entities who own or control nursing homes within the framework of the MPLA and the damage caps;
- Places limitations on how state surveys, audits, and “F-tags” can be used against nursing homes as evidence at trial;
- Places a hard “ceiling” on the inflation adjustment to non-economic damage caps; and
- Creates a rebuttable presumption that staffing was appropriate where a nursing home complies with state minimum staffing requirements.

These changes are clearly helpful to LTC providers in West Virginia, but they apply only to actions filed after July 1, 2015. You may see a sudden increase in suit filings prior to July 1 by plaintiffs who are attempting to avoid these new provisions.

[Please see the attached summary](#) of the MPLA changes for more information, as well as the

attached [full text of Senate Bill 6](#), which contains the verbatim changes to the MPLA.

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National Law Review, Volume V, Number 94

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