

2012 -- H 7559 SUBSTITUTE A AS AMENDED

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LC01337/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--PROCEDURE GENERALLY --
EVIDENCE

Introduced By: Representatives Tarro, Serpa, and Dickinson

Date Introduced: February 15, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 9-19-27 of the General Laws in Chapter 9-19 entitled "Evidence" is
2 hereby amended to read as follows:

3 **9-19-27. Evidence of charges for medical and hospital services and for prescriptions**
4 **and orthopedic appliances -- Evidence required from hospital medical records.** – (a) This
5 section is enacted primarily to relieve physicians and the other medical professionals defined
6 herein who are associated with hospitals and other health care facilities from the hardship and
7 inconvenience of attending court as witnesses, therefore in interpreting this section and the
8 medical records exception to the hearsay rules of evidence in court or other related proceedings,
9 the trial courts of this state shall liberally construe this section to admit what is presumptively
10 reliable medical evidence presented by way of this statutory process without the necessity of
11 calling numerous medical personnel as witnesses.

12 **(b)** In any proceeding commenced in any court, commission, or agency, an itemized bill
13 and reports, whether originating within this state or any other state, including hospital or health
14 care facility, medical records, relating to medical, dental, hospital services, prescriptions, or
15 orthopedic appliances rendered to or prescribed for a person injured, and/or any report of any
16 examination of the injured person, including, but not limited to, hospital medical records and
17 written statements made by the physician or dentist whether contemporaneous with the treatment
18 or not, subscribed and sworn to under the penalties of perjury by the physician, dentist, or

1 authorized agent of the hospital or health care facility rendering the services or by the pharmacist
2 or retailer of orthopedic appliances, shall be admissible as evidence of the fair and reasonable
3 charge for the services and/or the necessity of the services or treatment, the diagnosis of the
4 physician or dentist, the prognosis of the physician or dentist; the opinion of the physician or
5 dentist as to proximate cause of the condition so diagnosed, and the opinion of the physician or
6 dentist as to disability, ~~or~~ incapacity or permanency, if any, proximately resulting from the
7 condition so diagnosed; ~~and, provided~~. Such affidavit may incorporate by reference such other
8 records or written statements as are relied upon by the affiant in reaching the opinions set forth in
9 the affidavit, if of a type reasonably and customarily relied upon by such providers, and which
10 shall thereby provide the necessary foundation for the record relied upon to be independently
11 introduced as an exhibit in accordance with the terms herein.

12 The authorized agent of the hospital or health care facility shall be deemed the proper
13 agent to subscribe and swear to said written statements contained in its medical records as the
14 authorized agent for physicians employed by said hospital or clinic, and rendering treatment to
15 the patient during the course of his or her employment. Said records shall not be deemed
16 inadmissible because the physician so employed by the hospital or health care facility has not
17 subscribed to the affidavit.

18 Provided, further, that written notice of the intention to offer the bill or report as such
19 evidence, together with a copy thereof, has been given to the opposing party or parties, or to his
20 or her or their attorneys, by mailing the notice by certified mail, return receipt requested, not less
21 than ten (10) days before the introduction of the bill or report into evidence, and that an affidavit
22 of the notice and the return receipt is filed with the clerk of the court forthwith after the receipt
23 has been returned. Nothing contained in this section shall be construed to limit the right of any
24 party to the action to summon or depose, at his or her own expense, the physician, dentist,
25 pharmacist, retailer of orthopedic appliances, or agent of the hospital for the purpose of cross
26 examination with respect to the bill, record, and report or to rebut the contents thereof, or for any
27 other purpose, nor to limit the right of any party to the action to summon or depose any other
28 person to testify in respect to the bill, record, and/or report or for any other purpose.

29 The adverse party shall be entitled at the expense of the proponent of the affidavit to a
30 reasonable opportunity for cross-examination, not to exceed one hour at the office of the
31 physician or other expert witness. Additional time for cross-examination shall be at the adverse
32 party's expense. The expert witness fee provided by the proponent of the expert and the
33 additional fee, if required on the part of the adverse party, may be included in the costs of the case
34 payable to the prevailing party. The time and method of the payment or taxing of such costs shall

1 be subject to the order of the trial court.

2 ~~(c)(b)~~ The words "physician", and "dentist" shall not include any person who is not
3 licensed to practice as such under the laws of the jurisdiction within which the services were
4 rendered, but shall include chiropodists, chiropractors, optometrists, osteopaths, physical
5 therapists, psychologists, ~~and other medical~~ paramedics or rescue or emergency medical service
6 personnel or ambulating services and other medical, mental health care or social work personnel
7 licensed to practice under title 5 or under the laws of the jurisdiction within which the services
8 were rendered; provided, that said chiropodists, chiropractors, optometrists, osteopaths, physical
9 therapists, psychologists, and other medical, mental health care, or social work personnel
10 subscribes to said statements designating his or her licensure, and specifying his or her authority
11 to subscribe in said capacity.

12 ~~(d)(e)~~ The word "hospital" shall mean any hospital required to incorporate under title 7,
13 or which is in any way licensed or regulated by the laws of any other state, or by the laws and
14 regulations of the United States, including hospitals of the veterans' administration or similar type
15 institutions, whether incorporated or not.

16 (e) The words "health care facility" includes those entities referred to in subdivision 23-
17 17-2(6) except to the extent that paramedic or rescue or emergency medical service personnel or
18 ambulatory service are excluded.

19 ~~(f)(d)~~ Any party objecting to the admitting into evidence of the affidavit shall file an
20 objection specifying the grounds thereof within ten (10) days of receipt of the affidavit, or said
21 objections are waived.

22 (g) Consistent with federal and state constitutional and statutory guarantees nothing in
23 this section shall be construed so as to limit the right of a defendant in a criminal case to confront
24 and cross examine witnesses.

25 (h) These provisions shall not apply to claims for personal injury or wrongful death filed
26 against a licensed physician, hospital, clinic, health maintenance organization, professional
27 service corporation providing health care services, dentist, or dental hygienist based on
28 professional negligence.

29 SECTION 2. Chapter 9-19 of the General Laws entitled "Evidence" is hereby amended
30 by adding thereto the following section:

31 **9-19-27.2. Evidence of charges required from hospitals for medical records, hospital**
32 **services and for prescriptions and orthopedic appliances - Applicable to claims against**
33 **medical providers. – (a) In any proceeding commenced in any court, commission, or agency, an**
34 **itemized bill and reports, whether originating within this state or any other state, including**

1 hospital medical records, relating to medical, dental, hospital services, prescriptions, or
2 orthopedic appliances rendered to or prescribed for a person injured, and/or any report of any
3 examination of the injured person, including, but not limited to, hospital medical records
4 subscribed and sworn to under the penalties of perjury by the physician, dentist, or authorized
5 agent of the hospital rendering the services or by the pharmacist or retailer of orthopedic
6 appliances, shall be admissible as evidence of the fair and reasonable charge for the services
7 and/or the necessity of the services or treatment, the diagnosis of the physician or dentist, the
8 prognosis of the physician or dentist; the opinion of the physician or dentist as to proximate cause
9 of the condition so diagnosed, and the opinion of the physician or dentist as to disability or
10 incapacity, if any, proximately resulting from the condition so diagnosed; and, provided, further,
11 that written notice of the intention to offer the bill or report as such evidence, together with a
12 copy thereof, has been given to the opposing party or parties, or to his or her or their attorneys, by
13 mailing the notice by certified mail, return receipt requested, not less than ten (10) days before the
14 introduction of the bill or report into evidence, and that an affidavit of the notice and the return
15 receipt is filed with the clerk of the court forthwith after the receipt has been returned. Nothing
16 contained in this section shall be construed to limit the right of any party to the action to summon
17 or depose, at his or her own expense, the physician, dentist, pharmacist, retailer of orthopedic
18 appliances, or agent of the hospital for the purpose of cross examination with respect to the bill,
19 record, and report or to rebut the contents thereof, or for any other purpose, nor to limit the right
20 of any party to the action to summon or depose any other person to testify in respect to the bill,
21 record, and/or report or for any other purpose.

22 (b) The words "physician", and "dentist" shall not include any person who is not licensed
23 to practice as such under the laws of the jurisdiction within which the services were rendered, but
24 shall include chiropodists, chiropractors, optometrists, osteopaths, physical therapists,
25 psychologists, and other medical personnel licensed to practice under title 5 or under the laws of
26 the jurisdiction within which the services were rendered.

27 (c) The word "hospital" shall mean any hospital required to incorporate under title 7, or
28 which is in any way licensed or regulated by the laws of any other state, or by the laws and
29 regulations of the United States, including hospitals of the veterans administration or similar type
30 institutions, whether incorporated or not.

31 (d) Any party objecting to the admitting into evidence of the affidavit shall file an
32 objection specifying the grounds thereof within ten (10) days of receipt of the affidavit, or said
33 objections are waived.

34 (e) These provisions shall only apply to claims for personal injury or wrongful death filed

1 against a licensed physician, hospital, clinic, health maintenance organization, professional
2 service corporation providing health care services, dentist, or dental hygienist based on
3 professional negligence.

4 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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1 This act would set forth separate provisions for the admission of medical affidavits into
2 evidence without the provider being required to testify in court, based on claims of professional
3 negligence against medical providers.

4 This act would take effect upon passage.

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Presented by