



Accuracy in Damages

We support HB 1199 by Rep. Metz and SB 1240 by Sen. Richter that ensures the evidence the jury sees reflects the amount the health care provider was actually paid for his or her treatment of the claimant. We also support reform that allows a defendant to provide a jury with evidence of unnecessary medical treatments.

Issue/Background

The greatest element of economic damages in a personal injury lawsuit is often the cost of medical treatment. In Florida, generally only the *billed* amount of medical treatment is admissible as evidence in trials. This is due to Section 768.76, Florida Statutes, which prohibits the introduction of evidence regarding payments for medical treatment made by collateral sources such as private health insurers.

The Problems

In Florida, there are three main problems that prevent accuracy in damages.

Billed Charges versus Paid Charges

Anyone who's gone to the doctor wouldn't be surprised to hear that the amount a medical provider bills for services is usually more – sometimes much more – than the amount the provider is actually willing to accept in payment.

But in Florida, generally the jury only sees the amount billed when determining damages. While judges can reduce or set-off the award based on amounts paid by other sources like health insurance, problems still exist.

First, using billed charges hides from the jury exactly how much the claimant has actually been damaged. Unfortunately, the inflated amount creates a false impression that misleads juries as they determine total damages. Second, because the jury awards damages for future medical care after seeing those inflated past costs, the future care award is oftentimes inflated as well. Here, though, the judge is not allowed to reduce the award for bills not yet paid.

Letters of Protection

A Letter of Protection is an agreement between the claimant's lawyer and the medical provider, where the provider agrees not to collect until the lawsuit is over, so the "paid" amount the provider would have accepted is not available to the judge for consideration.

Since judges are not allowed to reduce an award for medical bills not yet paid, a Letter of Protection hides these bills from the judge's reach, inflating the total damages.

The Solution

Since the claimant owes a treating medical provider only what was actually paid, the claimant's compensation for those damages should be the same, rather than amounts that no one paid or ever will pay.

To achieve that result, the legislation directs that:

- Juries see the amounts medical care providers actually accepted to provide care, whether from the claimant, private health insurance, or a government program like Medicare and Medicaid. Other than any

outstanding copays or deductibles, any difference between the billed and paid amounts is not admissible or recoverable. In the case of a lien or claim of subrogation, the amount of the lien or subrogation claim plus the copay or deductible is the maximum amount recoverable and admissible.

- When there is a medical bill not yet paid, including as a result of a Letter of Protection, either party may present to the jury evidence of:
 - amounts the provider routinely accepts as payment from governmental or commercial insurance payors for identical or substantially similar medical or health care services;
 - amounts billed by the provider for the services provided to the claimant, including those amounts billed under an agreement between the provider and the claimant or the claimant's representative; and
 - amounts the provider received in compensation, if any, for the sale of the agreement between the provider and the claimant or the claimant's representative under which the medical or health care services were provided to the claimant.