FJRI Opposes PCS for HB 1553 and Amending the Accuracy in Damages Statute

An injured party may recover the cost of past and future medical care—including hospital bills, diagnostic tests, and physician visits—as damages in personal injury and wrongful death actions. Prior to 2023, juries typically heard evidence of only the "billed" amounts or "sticker prices" for a claimant's medical treatment, figures that often far exceeded the amounts that insurers or claimants would pay for such treatment. The process was further complicated by letters of protection ("LOPs"), under which medical providers agreed to defer collection of bills in exchange for a right to payment from any litigation recovery. LOPs frequently reflected inflated charges, bearing little relation to the actual value or cost of care. Additionally, the common-law collateral source rule restricted challenges to the reasonableness of claimed medical expenses. Collectively, these practices obscured the true cost of medical care, resulting in damages awards in personal injury and wrongful death litigation that were frequently disconnected from the economic realities of healthcare.

In 2023, the Florida Legislature remedied the lack of transparency in medical damages in personal injury and wrongful death litigation by enacting section 768.0427, Florida Statutes. This statute addresses the types of evidence admissible to establish medical expense damages and ensures that all parties have access to the information necessary to challenge the reasonableness of claimed medical expenses.

Since section 768.0427 was enacted, trial courts have been tasked with its interpretation. While this process initially led to some varied rulings, a distinct judicial consensus has begun to emerge. The prevailing interpretation adopted by a majority of trial courts is that the statute places the burden on the plaintiff to produce the specific evidence outlined within it to recover damages for unpaid medical expenses.

This growing coalescence in case law demonstrates that the judiciary is effectively clarifying the statute's practical application. Therefore, the legislative changes proposed in PCS for HB 1553 are unnecessary. Amending the law at this juncture would disrupt the current trajectory toward a settled interpretation and risk introducing fresh ambiguity where clarity is already being achieved through judicial review.

Section 768.0427, Florida Statutes

Section 768.0427, Florida Statutes, brought transparency to medical expense damages in personal injury and wrongful death actions by identifying evidence admissible to prove such damages and by requiring certain disclosures about the use of LOPs which often were used to shield the true cost of medical care and inflate damages.

Subsection (2) of the statute specifically outlines the evidence admissible to prove medical expenses, divided into three categories: (1) medical expenses that have already been satisfied

(often called "past paid medicals"); (2) medical expenses that have been incurred but not yet satisfied (often referred to as "past unpaid medicals" and represented by an LOP in which a claimant promised to pay a health care provider out of the proceeds of a lawsuit); and (3) future medical expenses. Subsection (2) provides the evidence admissible to prove such damages as follows:

Subsection (2)(a): Past paid medical expenses. Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied (i.e., paid) is limited to evidence of the amount actually paid, regardless of the source of payment. § 768.0427(2)(a), Fla. Stat.

Subsection (2)(b): Past unpaid medical expenses. For medical expenses already incurred but not yet satisfied, the statute outlines certain evidence that may be offered to prove the amount necessary to satisfy these unpaid charges, including but not limited to the following:

- If the claimant has health care coverage other than Medicare or Medicaid, evidence offered to prove the amount necessary to satisfy an unpaid charge includes what amount health care coverage would be obligated to pay for that treatment or service, plus the claimant's share of medical expenses.

- If the claimant has health care coverage but obtains treatment under an LOP or otherwise does not submit their treatment to their health care coverage, evidence of the amount health care coverage would be obligated to pay for that past unpaid medical charge, plus the claimant's share of expenses.

- If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, evidence of 120 percent of the Medicare reimbursement rate in effect on the date of the incurred treatment or service, or if there is no applicable Medicare rate, 170 percent of the appliable state Medicaid rate.

- If the claimant obtains medical treatment or services under an LOP and the health care provider subsequently transfers the right to receive payment under the LOP to a third party, evidence of the amount the third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection.

- Finally, there is a catchall: evidence of reasonable amounts billed to the claimant for medically necessary treatment or services provided to the claimant.

§ 768.0427(2)(b)1.-5., Fla. Stat.

Thus, a key effect of the statute is that it incentivizes the use of health care coverage. With the Affordable Care Act, everyone should have health care coverage[1] when seeking medical

[1] *See* IRS, Affordable Care Act (ACA) tax provisions, https://www.irs.gov/affordable-care-act ("The law requires you and your dependents to have health care coverage.").

treatment or services. Section 768.0427 provides absolute clarity and certainty for all parties when such coverage is available or used: medical expense damages are limited to what health care coverage paid, or would pay, for such treatment or services.

Subsection (2)(c): Future medical expenses. Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive shall include, but is not limited to, the following:

- If the claimant has health care coverage other than Medicare or Medicaid, or is eligible for any such health care coverage, evidence of the amount for which the future charges of health care providers could be satisfied if submitted to such health care coverage, plus the claimant's share of medical expenses under the insurance contract or regulation.

- If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, or is eligible for such health care coverage, evidence of 120 percent of the Medicare reimbursement rate in effect at the time of trial for the medical treatment or services the claimant will receive, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.

- Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or services.

Like subsection (2)(b), subsection (2)(c) similarly incentivizes the use of health care coverage to provide certainty as to what damages will be available for future medical expenses.

Subsection (3): LOPs. Another key provision of the statute concerns LOPs. Before section 748.0427, LOPs presented special challenges to the determination of "reasonable" medical damages. LOPs are contracts wherein a plaintiff's medical provider agrees to suspend efforts to collect past medical bills in exchange for a right to payment from any recovery made by the plaintiff in litigation. Thus, LOPs represent an amount for a past medical expense that remains unpaid. The ability to discover critical evidence necessary to challenge the reasonableness of LOPs was additionally hampered by the Florida Supreme Court's 2017 decision *Worley v. Central Florida Young Men's Christian Association*,[2] where the Court restricted the ability of defendants to inquire through discovery about the referral relationships that might exist between plaintiffs' counsel and treating physicians and factoring companies—the relationships which give rise to LOPs.

Subsection (3) of section 768.0427 addresses these concerns. Under the statute, in a personal injury or wrongful death action, as a condition precedent to asserting a claim for medical expenses for treatment rendered under an LOP, the claimant must disclose a copy of the LOP, billings for the claimant's medical expenses, whether the claimant had health care coverage at the time of treatment, and whether the claimant was referred for treatment under an LOP, among other

[2] 228 So. 3d 18 (Fla. 2017).

things. The latter provision is meant to address *Worley* and expressly provides that such information is discoverable notwithstanding any attorney-client privilege.

Section 768.0427 Makes Its Way through the Courts

Several Florida trial courts have had the opportunity to interpret section 768.0427 since the statute's enactment in March 2023.[3] Many orders concerned whether the new law should apply to lawsuits filed before the law went into effect, with the question turning on whether the statute is procedural (and thus may apply retroactively) or substantive (and thus may not apply retroactively).[4] A few decisions have determined that the failure to disclose an LOP required dismissal of an action for failure to meet a condition precedent to suit under subsection (3) of the law.[5]

When it comes to the statute's evidentiary provisions, subsection (2)(a) has been uniformly interpreted to mean what it says: that the evidence admissible to prove past, paid medical expenses is limited to the amount actually paid for those expenses. To the extent there is any divergence in decisions, that divergence concerns the evidence admissible to prove medical expenses incurred but not yet satisfied or to be incurred in the future under section 768.0427(2)(b) and (c).

Some courts have interpreted section 768.0427(2)(b) and (c) as imposing a burden of production on the plaintiff; in other words, that the plaintiff is obligated to produce the evidence identified in the statute to the extent the plaintiff wishes to recover either unpaid past medical expenses or future medical expenses. For instance, the trial court in *Brewster v. Petroski-Moore* ruled that the language "shall include" in subsection (2)(b) means that the admissible evidence shall include the evidence listed in the statute, which in the case of a plaintiff without health care coverage meant evidence of 120 percent of the Medicare reimbursement rate, or if none is applicable, 170 percent of the applicable state Medicaid rate.[6] The court reasoned that the "effect of the literal language is to place a burden of production of evidence of the prescribed multiple of Medicare or Medicaid rates on the plaintiff seeking uncovered medical expenses as damages."

In *Calderon v. O'Connor*, the court read the Legislature's use of the word "shall" in subsection (2) to "establish the necessary evidence required to establish entitlement to recover reasonable medical bills in the past and into the future."[7] In *Calderon*, because the plaintiff had health care coverage but failed to present evidence of what his health care coverage would have

[3] The attached appendix catalogues these trial court orders.
[4] *See, e.g.*, Order on Defendants' Motion in Limine on House Bill 837, *Steiger v. Murali*, Case No. 2023-CA-482 (Fla. 2d Cir. Ct. Nov. 20, 2024); Order Granting Defendant's Motion to Continue Trial, *Hollingsworth v. Muntz*, Case No. 21-CA-07113 (Fla. 13th Cir. Ct. June 14, 2023).
[5] *See* Order of Dismissal Based on Granting Defendant's Motion to Dismiss, *Ziegler v. Burlington Coat Factory Warehouse Corp.*, Case No. 2024-013188-CA-01 (Fla. 11th Cir. Ct. Mar. 18, 2025); Omnibus Order, *Vega v. Burlington Stores, Inc.*, Case No. 24-60755-CIV-COHN/VALLE (S.D. Fla. Aug. 27, 2024).
[6] Order on Motions in Limine Regarding Medical Expenses, *Brewster v. Petroski-Moore*, Case No. 2023CA002412 (Fla. 2d Cir. Ct. Feb. 13, 2025).
[7] Order Granting Defendant's Motion in Limine Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services, Case No. 23-CA-014278 (Fla. 13th Cir. Ct. Feb. 25, 2025).

paid for the medical treatment at issue, the plaintiff was precluded from introducing evidence of past and future medical expenses. Other courts have ruled similarly.[8]

Other trial courts have viewed section 768.0427(2)(b) and (c) as not imposing a burden of production on any party but as simply outlining the types of evidence that *may* be admitted over contrary rules like the collateral source rule. For instance, the trial court in *Beyenka v. Pyle* reviewed the statute and applied it as a traditional rule of evidence, establishing not a burden of proof but simply "mark[ing] the boundaries of evidence that a factfinder is permitted to consider in deciding whether a party has or has not satisfied its burden of proof."[9] These courts have ruled that the statute does not limit evidence of unpaid past and future medical expenses, but instead lists a menu of options of evidence that are admissible when proving these types of damages.[10] In effect, the statute simply overturns the collateral source rule, allowing admission of health care coverage and Medicare and Medicaid rates in certain circumstances.

No district court of appeal has ruled on an appeal concerning one of these orders yet, but it is highly likely one will in the coming months. However, the majority of trial courts to have interpreted these provisions have come to the correct conclusion that they impose a burden on the plaintiff to introduce the evidence outlined in statute.

Courts Are Well-Equipped to Resolve Any Lingering Questions of Statutory Interpretation

As shown above, numerous Florida trial courts have now had the opportunity to interpret and apply section 768.0427. Although some divergence has emerged regarding the meaning of certain portions of the statute, it is highly likely that a district court of appeal will agree with the prevailing view that the statute imposes a burden on the plaintiff. Once issued, that decision will

---

[8] *See, e.g.*, Order on Defendant Publix Super Markets, Inc.'s Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services, *Martinez v. Publix Super Mkts., Inc.*, Case No. 2024-003131-CA-01 (Fla. 11th Cir. Ct. May 20, 2025) ("Since Plaintiff has failed to present the items that the statute states must be included with the unpaid bills to comply with the requirements governing admissibility of evidence to prove medical expenses in a personal injury action pursuant to Florida Statutes 768.0427, Plaintiff is prohibited from submitting her unpaid medical bills as evidence at trial."); Order Granting Defendants' Motion in Limine Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services, *Wimes-Campbell v. Delconte*, Case No. 31 2024-CA-000008AXXXVB (Fla. 19th Cir. Ct. July 9, 2025) ("[F]or unpaid and future medical expenses, Plaintiff must offer evidence that includes the amount the health care coverage is obligated to pay or would have paid, plus the claimant's share under the insurance contract or regulation, if the charges were submitted (as set forth in Section 768.0427(2)(b)1.-4. and (c)1.-2.").

[9] Order Denying Defendant's Motions Regarding Section 768.0427(2), Florida Statutes, Case No. 2023-CA-009204 (Fla. 4th Cir. Ct. Apr. 21, 2025).

[10] *See, e.g.*, Order Denying Defendants' Motion in Limine Regarding Past Medical Bills and Defendants' Motion to Strike Plaintiff's Life Care Plan, *Hourihan v. Mona*, Case No. 16-2023-CA-010388-AXXX (Fla. 4th Cir. Ct. Aug. 1, 2025) ("The reasonable interpretation of [subsections (2)(b) and (2)(c)] is that they identify evidence that is admissible, as well as the conditions under which the listed evidence is admissible, without imposing a burden on any party to introduce the listed evidence. . . . If the legislature intended [otherwise], it needed to do so clearly."); Order Denying Defendants' Second Motion in Limine Regarding Admissible Medical Expense, *Perez v. Winn*, Case No. 2024-CA-493 (Fla. 8th Cir. Ct. June 11, 2025) (ruling similarly); Order Denying Defendant's Motion in Limine on Medical Expenses, *Sledge v. McCabe*, No. 2023-CA-015665 (Fla. 15th Cir. Ct. May 15, 2025) (ruling similarly).

establish binding precedent for all state trial courts, unless and until the issue is revisited by another district court of appeal or the Florida Supreme Court. In Florida's judicial system, district court of appeal decisions constitute the law of the state unless overruled by the Supreme Court, and, absent conflicting appellate decisions, are binding on all trial courts.[11]

Given this established appellate process, it is best to allow the courts to address section 768.0427 before considering legislative amendment. Judicial interpretation provides the benefit of reasoned analysis based on actual cases and factual scenarios, fostering consistency and predictability in the law. Premature legislative intervention risks disrupting the development of a coherent body of case law and may inadvertently create new uncertainties. By permitting the courts to fully and finally interpret the statute, the Legislature can later act if needed with the benefit of judicial guidance, ensuring that any future amendments are both necessary and well-informed.

For all these reasons, the Florida Justice Reform Institute opposes legislation that would open section 768.0427 for amendment as PCS for HB 1553 proposes to do.

[11] *Weiman v. McHaffie*, 470 So. 2d 682, 684 (Fla. 1985) ("District court decisions represent the law of Florida unless and until they are overruled by th[e Florida Supreme] Court." (internal quotation marks omitted)); *Va. Ins. Reciprocal v. Walker*, 765 So. 2d 229, 233 (Fla. 1st DCA 2000) ("Unless there are conflicting decisions in the district courts of appeal, a district court decision is binding on all of the trial courts in Florida."), *approved*, 842 So. 2d 804 (Fla. 2003).