

1 A bill to be entitled
2 An act relating to evidence of damages to prove or
3 rebut medical expenses in personal injury or wrongful
4 death actions; amending s. 768.0427, F.S.; revising
5 provisions relating to evidence that is admissible to
6 demonstrate past and future medical expenses in
7 personal injury and wrongful death actions; providing
8 construction; providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 **Section 1. Subsection (2) of section 768.0427, Florida**
13 **Statutes, is amended to read:**

14 768.0427 Admissibility of evidence to prove or rebut
15 medical expenses in personal injury or wrongful death actions;
16 disclosure of letters of protection; recovery of past and future
17 medical expenses damages.—

18 (2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE
19 EXPENSES.—Evidence offered to prove or rebut the amount of
20 damages for past or future medical treatment or services in a
21 personal injury or wrongful death action shall be ~~is~~ admissible
22 as follows: ~~provided in this subsection.~~

23 (a) Evidence offered to prove the amount of damages for
24 past medical treatment or services that have been satisfied is
25 limited to evidence of the amount actually paid, regardless of

26 the source of payment.

27 (b) Evidence any party may offer ~~offered~~ to prove or rebut
28 the amount necessary to satisfy unpaid charges for incurred
29 medical treatment or services shall include, but is not limited
30 to, the following: ~~evidence as provided in this paragraph.~~

31 1. If the claimant has health care coverage other than
32 Medicare or Medicaid, evidence of the amount which such health
33 care coverage is obligated to pay the health care provider to
34 satisfy the charges for the claimant's incurred medical
35 treatment or services, plus the claimant's share of medical
36 expenses under the insurance contract or regulation.

37 2. If the claimant has health care coverage but obtains
38 treatment under a letter of protection or otherwise does not
39 submit charges for any health care provider's medical treatment
40 or services to health care coverage, evidence of the amount the
41 claimant's health care coverage would pay the health care
42 provider to satisfy the past unpaid medical charges under the
43 insurance contract or regulation, plus the claimant's share of
44 medical expenses under the insurance contract or regulation, had
45 the claimant obtained medical services or treatment pursuant to
46 the health care coverage.

47 3. If the claimant does not have health care coverage or
48 has health care coverage through Medicare or Medicaid, evidence
49 of 120 percent of the Medicare reimbursement rate in effect on
50 the date of the claimant's incurred medical treatment or

51 services, or, if there is no applicable Medicare rate for a
52 service, 170 percent of the applicable state Medicaid rate.

53 4. If the claimant obtains medical treatment or services
54 under a letter of protection and the health care provider
55 subsequently transfers the right to receive payment under the
56 letter of protection to a third party, evidence of the amount
57 the third party paid or agreed to pay the health care provider
58 in exchange for the right to receive payment pursuant to the
59 letter of protection.

60 5. Any evidence of reasonable amounts billed to the
61 claimant for medically necessary treatment or medically
62 necessary services provided to the claimant.

63 (c) Evidence any party may offer ~~offered~~ to prove or rebut
64 the amount of damages for any future medical treatment or
65 services the claimant will receive shall include, but is not
66 limited to, the following: ~~evidence as provided in this~~
67 ~~paragraph.~~

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

74 2. If the claimant does not have health care coverage or
75 has health care coverage through Medicare or Medicaid, or is

76 eligible for such health care coverage, evidence of 120 percent
77 of the Medicare reimbursement rate in effect at the time of
78 trial for the medical treatment or services the claimant will
79 receive, or, if there is no applicable Medicare rate for a
80 service, 170 percent of the applicable state Medicaid rate.

81 3. Any evidence of reasonable future amounts to be billed
82 to the claimant for medically necessary treatment or medically
83 necessary services.

84 (d) This subsection does not impose an affirmative duty
85 upon any party to seek a reduction in billed charges to which
86 the party is not contractually entitled or to offer any specific
87 evidence made admissible by this subsection.

88 (e) Individual contracts between providers and authorized
89 commercial insurers or authorized health maintenance
90 organizations are not subject to discovery or disclosure and are
91 not admissible into evidence.

92 **Section 2.** The amendments made by this act to s.
93 768.0427(2), Florida Statutes, are intended to clarify existing
94 law.

95 **Section 3.** This act shall take effect upon becoming a law.