

Succeeding Under Florida Tort Reform's Section 768.0427

Article #1 – Overview of the Statute

This is the first of several articles paving the road to success in our industry under Florida Tort Reform's Section 768.0427. That road is laid by a three-tiered response to the statute. First, medical providers must replace pre-FTR new-patient forms. Second, these new forms dovetail into strong motions for protective order filed by medical providers' attorneys in the discovery phase. Third, the first two tiers dovetail into winning evidentiary motions and closing arguments by PI firms in trial.

This introductory article broadly surveys the statute and provides a few critical practice pointers. Subsequent articles in this series will provide deeper analyses of specific statutory subsections and discuss powerful action to be taken under the three-tiered response to Section 768.0427.

Subsection 1 Definitions

"LOP" is defined broadly but requires "a promise of payment . . . from any judgment or settlement."

PRACTICE POINTER 1: Medical providers should (1) create new financial agreements that do not meet the statutory definition of "LOP," (2) exclude the terms "letter of protection," "LOP," "litigation lien," from billing and new-patient documents, and (3) never list the PI firm as a payor, insurer, or guarantor.

Subsection 2 Admissible evidence

- a. For past medical bills paid before trial, the only evidence the jury may consider is the amount of the payment.

PRACTICE POINTER 2: Medical providers should consider avenues (discussed in later articles) to avoid pre-trial payment. This will allow PI firms to present evidence establishing the reasonableness of the bill to the jury.

- b. For past medical bills not paid before trial, the jury may consider:
 - 1. If the patient has commercial health insurance and the bill is submitted to that insurer – the amount the insurer is "obligated to pay."
 - 2. If the patient has any kind of insurance, but the bill is not submitted to that insurer – the amount the insurer "would pay" had the patient used that insurance.
 - 3. If the patient has no health coverage at all or has just Medicare/Medicaid – 120% of the Medicare reimbursement, or if not applicable, then 170% of the Medicaid reimbursement.
 - 4. If the medical provider sells the bill – the purchase price.
 - 5. Any other evidence tending to prove or disprove reasonableness of the bill.

PRACTICE POINTER 3: PI firms should introduce the charged amount and other evidence (discussed in later articles) justifying the bill.

- c. For future medical treatment, the statute is substantially similar to past medical treatment.
- d. Unless the patient is insured by an entity with whom the medical provider has a contract, the patient need not seek bill reductions.
- e. Contracts between medical providers and health insurers are not discoverable or admissible.

Subsection 3 Disclosures required when there is an LOP

When there is an LOP, the patient must disclose the following: (a) the LOP, (b) billing for the patient in the case, (c) if the medical provider sells the bill, the identity of the purchaser and the sales price (d) the identity of the patient's health insurer, (e) the patient's referral source – and if the PI firm is the source, then the referral is admissible and the patient must also disclose the number of referrals between the PI firm and the medical provider, the frequency of such referrals, and the amount of money paid by the PI firm to the medical provider.

PRACTICE POINTER 4: See Practice Pointer 1.

Subsection 4 Damages recoverable for medical treatment

The jury award can never be higher than is justified by the evidence that the jury was permitted to consider in Subsections (1)-(3).