IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO.: **2023-CA-009204**
DIVISION: **CV-F**

CHERYL A. BEYENKA,
Plaintiff,

vs.

JEAN PYLE,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTIONS REGARDING SECTION 768.0427(2), FLORIDA STATUTES

Defendant filed three motions regarding section 768.0427(2), Florida Statutes (2024).[1] This Court held a hearing on November 12, 2024. This Court received supplemental briefing and held a second hearing on March 6, 2025.

The parties' arguments present three issues. ***First***, whether the statute limits evidence of unpaid past and future medical expenses. ***Second***, whether the statute creates a burden of production. ***Third***, applying the statute to the facts of this case, whether Defendant may introduce evidence of Medicare and Medicaid rates. This Court addresses each issue in turn. Preliminarily, however, this Court sets forth some background principles.

Background principles

"In interpreting a statute, [a court's] task is to give effect to the words that the legislature has employed in the statutory text." *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022).

[1] "Defendants motion in limine regarding section 768.0427," filed March 7, 2024 (Doc. 52); "Defendants tenth motion in limine regarding past and future (unpaid) billing and letters of protection," filed August 21, 2024 (Doc. 107); and "Motion to strike life care plan and Dr. Tinker," filed September 17, 2024 (Doc. 123).

Moreover, "if a word [in a statute] is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." *Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) (alteration omitted) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)).

Here, the title and prefatory clause to subsection (2) states: "*ADMISSIBLE EVIDENCE* OF MEDICAL TREATMENT OR SERVICE EXPENSES.—Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection." § 768.0427(2), Fla. Stat. (emphasis added). The phrase used in subsection (2)—"is admissible"—and its opposite phrases—"is inadmissible" and "is not admissible"—bring lots of old soil with them.

These phrases are used throughout the statutory and common-law rules of evidence. *See, e.g.,* Ch. 90, Fla. Stat. Evidentiary rules of inclusion state that evidence "is admissible." *See, e.g.*, § 90.402, Fla. Stat. ("All relevant evidence *is admissible*, except as provided by law." (emphasis added)). On the other hand, evidentiary rules of exclusion state that evidence "is inadmissible." *See, e.g.,* § 90.409, Fla. Stat. ("Evidence of furnishing, or offering or promising to pay, medical or hospital expenses or other damages occasioned by an injury or accident *is inadmissible* to prove liability for the injury or accident." (emphasis added)).

Most rules of evidence—though perhaps originating in the common law—today have been codified, either in Chapter 90 or elsewhere. *See, e.g.,* § 766.102(5), Fla. Stat. (rules of evidence for expert testimony in medical malpractice cases). But some rules of evidence—like the collateral source rule—are found only in the common law. *See, e.g., Joerg v. State Farm Mut. Auto. Ins.*, 176 So. 3d 1247, 1249 (Fla. 2015) ("As an evidentiary rule, payments from collateral source benefits are *not admissible* because such evidence may confuse the jury with respect to both

liability and damages." (emphasis added)). As discussed *infra* § II, subsection (2) repeals the evidentiary collateral-source rule, but only insofar as the statutory conditions are satisfied.

Section 768.0427(2) is just one more rule of evidence that must be interpreted against the background of all the rules of evidence that have preceded it—many of which are still in effect—as well in the context of the old soil of the word "admissible." *See, e.g., Wagner v. Orange County*, 960 So. 2d 785, 791 (Fla. 5th DCA 2007) ("The legislature is presumed to know existing law when it enacts a statute.").

The word "admissible" has never been used in the law to establish a *burden of proof.* Instead, the old soil establishes that "admissible" and "inadmissible" mark 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. *See Admissible*, *Black's Law Dictionary* (12th ed. 2024) ("Capable of being legally admitted; allowable; permissible <admissible evidence>"). Finally—both before and after the enactment of section 768.0427(2)—the burden of establishing a piece of evidence's admissibility lies with the party seeking to admit the evidence. *See, e.g., T.D.W. v. State*, 137 So. 3d 574, 577 (Fla. 4th DCA 2014) ("As the proponent of the evidence, the State had the burden of establishing its admissibility."); *Butler v. State*, 970 So. 2d 919, 921 (Fla. 1st DCA 2007) (imposing the burden on "the proponent of the evidence" to admit evidence under the business-record exception to the hearsay rule).

With these background principles in mind, this Court now addresses the parties' arguments.

I. Section 768.0427(2) does <u>not</u> limit evidence of unpaid past and future medical expenses.

Defendant argues that section 768.0427(2) limits the evidence that may be admitted to prove unpaid past and future medical expenses. This Court disagrees. As explained below, although section 768.0427(2) limits evidence of *paid* medical expenses, it does not limit evidence of *unpaid* past or future medical expenses.

The only limitation in the statutory text is in subsection (2)(a) concerning "satisfied" (i.e., paid) medical expenses. Specifically, subsection (2)(a) states: "Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied *is limited* to evidence of the amount actually paid, regardless of the source of payment." § 768.0427(2)(a), Fla. Stat. (emphasis added).

Subsection (2)(b) governs unpaid medical expenses. Unlike subsection (2)(a), subsection (2)(b) does not limit the evidence that may be admitted. Instead, subsection (2)(b) states: "Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but *is not limited to*, evidence as provided in this paragraph." *Id.* § 768.0427(2)(b) (emphasis added).

Subsection (2)(c) governs future medical expenses. Like subsection (2)(b), subsection (2)(c) does not limit the evidence that may be admitted. Instead, subsection (2)(c) states: "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*, evidence as provided in this paragraph." *Id.* § 768.0427(2)(c) (emphasis added).

"[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally." *USAA Cas. Ins. v. Emergency Physicians, Inc.*, 393 So. 3d 257, 261 (Fla. 5th DCA 2024) (citation omitted). Here, the legislature used different language—"is limited to" for paid medical expenses in subsection (2)(a) and "shall include, but is not limited to" for unpaid past and future medical expenses in subsections (2)(b) and (2)(c). This indicates that the statute does <u>not</u> limit evidence of unpaid past and future medical expenses.

Further, it is well settled that "[t]he verb *to include* introduces examples, not an exhaustive list." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132 (2012); *accord White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 783 (Fla. 2017) ("Commonly, the term 'include' suggests that a list is non-exhaustive . . . ."). "When words of common usage are included in a statute, we construe them 'in the plain and ordinary sense' because we presume that the Legislature knows and intends the plain and obvious meaning of the words it used." *White*, 226 So. 3d at 781. Although the mere use of the word "include" is sufficient to convey a non-exhaustive list, adding the phrase "but is not limited to" further emphasizes the point. *See id.* at 783.

Finally, even if subsections (2)(b) and (2)(c) did not use the phrase "shall include, but is not limited to," the statute still would not limit evidence for unpaid past and future medical expenses. This is because the last category under subsection (2)(b) is a catch-all that renders admissible "*[a]ny evidence* of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant." § 768.0427(2)(b)5., Fla. Stat. (emphasis added). Likewise, the last category under subsection (2)(c) is a catch-all that renders admissible "*[a]ny evidence* of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services." *Id.* § 768.0427(2)(c)3. (emphasis added).

Accordingly, even if subsections (2)(b) and (2)(c) were limitations on evidence, subsections (2)(b)5. and (2)(c)3. would still allow a party to introduce "*[a]ny* evidence" of reasonable charges for past and future medical treatment. "The word 'any' is defined as 'one, no matter what one: every' or 'all.'" *McNeil v. State*, 215 So. 3d 55, 59 (Fla. 2017) (quoting Webster's Third New International Dictionary 97 (1993)).

II. Section 768.0427(2) does not create a burden of production.

Defendant argues that section 768.0427(2) requires a plaintiff to introduce the evidence listed in subsection (2). This Court disagrees. As explained below, subsection (2) merely concerns the admissibility of evidence; it does not create a burden of production.

Again, this Court's task "is to give effect to the words that the legislature has employed in the statutory text." *Davis*, 339 So. 3d at 323. Here, subsection (2) states: "Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection." § 768.0427(2), Fla. Stat. (emphasis added). Subsection (2) uses the word "admissible." It does not use the word "required" or otherwise state that a plaintiff must introduce the listed evidence. "If the Legislature had intended such a meaning, it could easily have made such intention clear." *Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015).

For example, Florida's transitory-substance statute expressly states that "[i]f a person slips and falls on a transitory foreign substance in a business establishment, the injured person *must prove* that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it." § 768.0755, Fla. Stat. (2024) (emphasis added). There are no such words in subsection (2) of section 768.0427. For instance, the legislature did not write: "A party *must prove* the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action as provided in this subsection."

Defendant relies on the fact that subsections (2)(b) and (2)(c) of section 768.0427 use the word "shall" in the phrase "shall include, but is not limited to." But that does not mean a plaintiff is required to introduce the listed categories of evidence. Depending on the context in which it is used, the word "shall" can have either a permissive or a mandatory sense. *E.g.*, *Belcher Oil Co v.*

Dade County, 271 So. 2d 118, 121 (Fla. 1972) (applying "[a] permissive rather than mandatory construction" to the word "shall" in a Florida statute).

For example, the United States Supreme Court has noted that "certain of the Federal Rules use the word 'shall' to *authorize*, but *not to require*, judicial action." *De Martinez v. Lamagno*, 515 U.S. 417, 432 n.9 (1995) (emphasis added). Likewise, the Florida Supreme Court has recognized that "the term 'shall' can be construed as 'must' or '*may*.'" *Allstate Ins. Co v. Orthopedic Specalists*, 212 So. 3d 973, 978 (Fla. 2017). Indeed, "courts in virtually every English-speaking jurisdiction have held—by necessity—that *shall* means *may* in some contexts, and vice versa." Bryan A. Garner, *Garner's Dictionary of Legal Usage* 952 (3d ed. 2011).

The Florida Supreme Court has explained that the interpretation of the word "shall" "depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute." *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977). Here, there are two contextual reasons why the word "shall" should be construed in its permissive, not mandatory sense.

First, the legislature did not write subsections (2)(b) and (2)(c) on a blank slate. To the contrary—as indicated at the onset of this order—"the common law can, and sometimes must, inform the proper understanding of a statutory text." *C.N. v. I.G.C.*, 316 So. 3d 287, 290 (Fla. 2021). Indeed, the Florida Supreme Court has recognized "the importance of reading statutes with an awareness of and sensitivity to background common law rules," and it has explained that "[c]ommon law rules might also inform the correct interpretation and application of statutory provisions themselves." *Ripple v. CBS Corp.*, 385 So. 3d 1021, 1028 (Fla. 2024).

Here, a relevant common law rule is the evidentiary collateral-source rule, which provides that "payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages." *Joerg*, 176 So. 3d at 1249. For

example, courts have applied the collateral-source rule to exclude evidence of insurance benefits. *E.g.*, *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455 (Fla. 1991), *superseded by statute on other grounds, Joerg*, 176 So. 3d at 1249. Courts have also applied the collateral-source rule to exclude "evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security." *Joerg*, 176 So. 3d at 1250 (collecting cases).

The legislature acted against this backdrop when it enacted subsections (2)(b) and (2)(c) of section 768.0427. Whereas the collateral-source rule would have excluded evidence of insurance, subsections (2)(b) and (2)(c) now authorize in certain circumstances the admission of evidence of what insurance is obligated to pay or would pay for medical bills. § 768.0427(2)(b)1.–2., (2)(c)1., Fla. Stat. Likewise, whereas the collateral-source rule would have excluded evidence of Medicare benefits, subsection (2)(b) and (2)(c) now authorize in certain circumstances the admission of "evidence of 120 percent of the Medicare reimbursement rate." *Id.* § 768.0427(2)(b)3, (2)(c)2.

In short, subsections (2)(b) and (2)(c) were enacted to repeal the evidentiary collateral-source rule in certain circumstances and render *admissible* certain evidence that would have otherwise been excluded by the rule. Defendant acknowledged as much in his response to Plaintiff's first supplemental memorandum, in which Defendant argued that "[t]he purpose of section 768.0427(2) is to modify the evidentiary component of the collateral source rule." (Doc. 162 at 7.) This understanding further demonstrates that subsections (2)(b) and (2)(c) do not set forth lists of evidence that a plaintiff is *required* to introduce or else suffer a directed verdict.

Another relevant background principle of law is "the general canon of evidence that any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion." *Williams v. State*, 110 So. 2d 654, 658 (Fla. 1959); *see also* § 90.402, Fla. Stat. ("All relevant evidence is admissible, except as provided by law."). If the

legislature intended to overrule that background principle, it needed to do so clearly. *Cf.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 52 (2012) ("A statute will be construed to alter the common law only when that disposition is clear."). "The presumption is that no change in the common law is intended unless the statute is explicit and clear in that regard. Unless a statute unequivocally states that it changes the common law, or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law." *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990); *accord Emerson v. Lambert*, 374 So. 3d 756, 768 n.15 (Fla. 2023).

Here, section 768.0427(2) does not explicitly change this background principle and render other forms of evidence inadmissible. As explained *supra* § I. the only limitation in subsection (2) is for evidence of *paid* medical expenses. Accordingly, the statute does not limit proof for unpaid past or future medical expenses, nor does it require a plaintiff to introduce particular evidence for such expenses.

Second, the last category of admissible evidence under subsections (2)(b) and (2)(c) is a catchall that allows a party to admit "*[a]ny evidence*" of reasonable amounts billed. § 768.0427(2)(b)5., (2)(c)3., Fla. Stat. (emphasis added). It would not make sense to interpret subsections (2)(b) and (2)(c) as setting forth required lists of evidence when one of the items on the lists is open-ended.

After all, there are many ways of proving reasonable amounts billed. A party could hire experts to opine on the issue. A party could also admit bills from different providers of comparable treatment. To read subsection (2) as a required list would mean that a plaintiff would need to introduce every possible form of evidence, which is an absurd result. "Where a statute is open to

multiple interpretations, Florida courts endeavor to avoid interpretations which would lead to absurd results." *Hardee County v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017).

III. Under the facts of this case, Defendant may not introduce evidence of Medicare and Medicaid rates.

As explained above, section 768.0427(2) alters the common law collateral source rule by expanding the admissible evidence a jury may consider when awarding past and future medical bills. Defendant argues that—under subsections (2)(b)3. and (2)(c)2.—Defendant may now introduce evidence of Medicare and Medicaid rates for past and future medical bills claimed by the Plaintiff at trial. Based on the facts of this case and the court's interpretation of these two subsections, this Court disagrees. Defendant may not introduce evidence of Medicare and Medicaid rates under subsections (2)(b)3. and (2)(c)2. because Defendant has not proved by a preponderance of evidence that Plaintiff "does not have health care coverage or has health care coverage through Medicare or Medicaid."

This Court starts with the text. For past medical charges, subsection (2)(b)3. states: "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 claimant's incurred medical treatment or services, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate." § 768.0427(2)(b)3., Fla. Stat. (emphasis added). Similarly, for future medical bills, subsection (2)(c)2. states: "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." *Id.* § 768.0427(2)(c)2. In short, both provisions allow evidence of Medicaid and Medicare rates only if

the claimant "does not have health care coverage or has health care coverage through Medicare or Medicaid."

As the party seeking to admit evidence of Medicare or Medicaid rates, Defendant has the burden to prove any preliminary facts required for the admission of such evidence. *See* § 90.105, Fla. Stat. (2024); *supra* at 2. Defendant has not presented evidence that Plaintiff "does not have health care coverage or has health care coverage through Medicare or Medicaid."

To the contrary, the only evidence before this Court on that issue shows that Plaintiff *does* have health care coverage other than Medicare or Medicaid. Specifically, on November 6, 2024, Plaintiff signed an affidavit in which she confirmed that she "was covered under a high-deductible health insurance policy (Aetna)" at the time of the underlying crash in this case and that she has "maintained health insurance through the Affordable Care Act from 2022 to the current date." (Doc. 142 ¶¶ 4–5.) The affidavit also states that Plaintiff is "not eligible for Medicare due to [her] age" and that she "applied for Medicaid, but was denied because [she is] under 65, not disabled and not caring for minor children." (Doc. 142 ¶ 6.) Some months after the crash, Plaintiff relocated from Jacksonville to a friend's home in Hortense, Georgia. (Doc. 142 ¶¶ 7-9.) There, she treated with physicians in Brunswick, Georgia who submitted some of their charges to her health insurance carrier. (Doc., 142, ¶ 10.) Her carrier denied these charges on the basis that Plaintiff's physicians were out of the insurance carrier's network. (Doc., 142, ¶ 10.)

Defendant contends that Plaintiff's health insurance does not constitute "health care coverage" for purposes of subsections (2)(b)3. and (2)(c)2. because Plaintiff's insurance did not pay for certain out-of-network treatment. Defendant maintains that the context and purpose of 768.0427(2), as a whole, make it clear that whether someone does or does not have "health care coverage" is determined by whether the Plaintiff has health care coverage for a particular

treatment, not whether Plaintiff has health care coverage at all. Defendant's view is inconsistent with the text of the statute.

The term "health care coverage" is defined in section 768.0427(1)(b) to mean "*any* third-party health care or disability services financing arrangement, *including, but not limited to*, arrangements with entities certified or authorized under federal law or under the Florida Insurance Code; state or federal health care benefit programs; workers' compensation; and personal injury protection." § 768.0427(1)(b), Fla. Stat. (emphasis added). The word "any" and the phrase "including, but not limited to" indicate the broad scope of the definition.

Critically, the definition of "health care coverage" does not have an exception for insurance policies that do not pay for certain out-of-network treatment. It is not this Court's role to create exceptions that are not in the statutory text. *E.g., State v. Geiss*, 70 So. 3d 642, 647–48 (Fla. 5th DCA 2011) ("[B]ecause the statute has no such language, it is not our place to read into the statute a concept or words that the legislature itself did not include.").

Not only is Defendant's argument not supported by the text of the statute, but it is also unworkable. What if a claimant had a deductible that is higher than the cost of the treatment? What if payment is denied by the insurer but the claimant challenges that denial? What if payment is denied through no fault of the claimant (e.g., because the provider does not correctly submit the bill)? In each of these cases, Defendant would presumably argue that the claimant does not have "health care coverage." Yet, under the statutory definition, the claimant *would* have health care coverage because there are no exceptions for the situations listed. It appears that the legislature avoided these thorny situations by broadly defining the term "health care coverage."

Finally, Defendant argues that he may introduce evidence of Medicare and Medicaid rates under the catchalls in subsections (2)(b)5. and (2)(c)3. This Court disagrees. The statute sets forth

a specific condition precedent to introduce evidence of Medicare and Medicaid rates in subsections (2)(b)3. and (2)(c)2. "[A] specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms." *Bank of N.Y. Mellon v. Glenville*, 252 So. 3d 1120, 1229 (Fla. 2018) (citation omitted).

Defendant cannot circumvent that condition precedent by relying on the catchalls. That would render meaningless the language in subsections (2)(b)3. and (2)(c)2., which allows evidence of Medicare and Medicaid rates only if "the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid." "[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *State v. Knighton*, 235 So. 3d 312, 316 (Fla. 2018) (citation omitted).

IV. Conclusion

For the reasons stated in this order, the following three motions are **DENIED**:

1. "Defendants motion in limine regarding section 768.0427," filed March 7, 2024 (Doc. 52)

2. "Defendants tenth motion in limine regarding past and future (unpaid) billing and letters of protection," filed August 21, 2024 (Doc. 107); *and*

3. "Motion to strike life care plan and Dr. Tinker," filed September 17, 2024 (Doc. 123).

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida on this 21st day of April, 2025.

JAMES H. DANIEL, Circuit Judge

Copies to:
Attorneys of Record via EPortal