IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.: 2023 12495 CIDL
DIVISION: 01

JESSICA M. MURPHY,

Plaintiff,

v.

R.A. NASS MANAGEMENT
COMPANY and KORY ALAN NASS,

Defendants.

_____/

ORDER DENYING DEFENDANTS' MOTION IN LIMINE REGARDING MEDICAL BILLS PRESENTED TO THE JURY PURSUANT TO HOUSE BILL 837 AND GRANTING PLAINTIFF'S MOTION TO DETERMINE THE ADMISSIBILITY OF PAST AND FUTURE MEDICAL EXPENSES EVIDENCE AT TRIAL UNDER SECTION 768.0427, FLA. STAT

THIS CAUSE has come before the Court upon Defendants' Motion in Limine Regarding Medical Bills Presented to the Jury Pursuant to House Bill 837 [DIN 46] and Plaintiff's Motion to Determine the Admissibility of Past and Future Medical Expenses Evidence at Trial Under Section 768.0427, Fla. Stat. [DIN 88]. The Court has reviewed the motions, the authorities offered in support thereof, the court file, heard the arguments of counsel, and being otherwise fully advised in the premises, finds as follows:

1. This action arises from a motor vehicle accident which occurred on August 3, 2023. This suit was filed on or about October 1, 2023.

2. On March 23, 2023, Governor DeSantis signed into law House Bill 837 ("HB 837"), which took effect on that same date. *See* Ch. 2023-15, Laws of Fla. Section 6 of HB 837 created Fla. Stat. § 768.0427, titled "Admissibility of evidence to prove medical expenses in personal injury or wrongful death actions; disclosure of letters of protection; recovery of past and future medical expenses damages."

3. Section 768.0427(2) is titled "Admissible Evidence of Medical Treatment or Service Expenses." As the title implies, this subsection addresses what evidence is admissible to prove the amount of damages in a personal injury or wrongful death case for both past and future medical treatment.

4. "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." Fla. Stat. § 768.0427(2)(a). This is a straightforward limitation on the admissibility of evidence of paid past medical expenses, and does not appear to be at issue here.

5. The parties disagree, however, on how to apply section 768.0427 to (a) a damages claim for past medical treatment that has not been satisfied, and (b) a damages claim for medical treatment the plaintiff will receive in the future. Those two situations are addressed in sections 768.0427(b) and (c), respectively, and they elaborate on what evidence is admissible depending on such matters as whether the plaintiff has health insurance, and if so, whether the plaintiff chooses to use health insurance benefits. These subsections are set forth in full below, with the emphasized language identifying the various scenarios:

> (b) **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.**
>
> 1. **If the claimant has health care coverage other than Medicare or Medicaid**, evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation.
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> 2. **If the claimant has health care coverage but obtains treatment under a letter of protection or otherwise does not submit charges for any health care provider's medical treatment or services to health care coverage**, evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.
>
> 3. **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.
> 4. **If the claimant obtains medical treatment or services under a letter of protection and the health care provider subsequently transfers the right to receive payment under the letter of protection 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.
> 5. **Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.**
>
> (c) **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.**
> 1. **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.
> 2. **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.
> 3. **Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.**

(Emphasis added).

6. Defendants argue that Plaintiff has received the majority of her treatment in this case pursuant to letters of protection, and that she was insured through Molina Healthcare, which provides healthcare services to Medicaid recipients. Thus, Defendants contend that Plaintiff's damages evidence for medical expenses incurred in the past and to be incurred in the future is limited by sections 768.0427(b)(3) and (c)(2) to 170% of the applicable Medicaid rate. *See* Defendants' Motion in Limine, p.7. Because Plaintiff bears the burden of proving at trial the reasonableness and necessity of medical treatment, as well as the reasonableness of the cost thereof, Defendants' interpretation of section 768.0427 would require Plaintiff to introduce evidence of the applicable Medicaid rates, and seemingly prohibit her from introducing any other evidence tending to show a reasonable amount of damages for past and future medical expenses.

7. Not surprisingly, Plaintiff disagrees with Defendants' statutory interpretation. Plaintiff notes that the introductory language to both subsections (b) and (c) state that "[e]vidence offered to prove the amount of damages . . . shall include, **but is not limited to**, evidence as provided in this paragraph." Fla. Stat. § 768.0724(2)(b)-(c) (emphasis added). After listing four categories of admissible evidence in subsection (2)(b), and two categories of admissible evidence in subsection (2)(c), each subsection contains a "catch-all" category of admissible evidence. Specifically, subsection 768.0427(2)(b)(5) deems admissible "**[a]ny evidence of reasonable amounts** billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant." (Emphasis added). Likewise, subsection 768.0427(c)(3) deems admissible "**[a]ny evidence of reasonable future amounts** to be billed to the claimant for medically necessary treatment or medically necessary services." (Emphasis added).

8. To limit Plaintiff to introducing evidence of 170% of the applicable Medicaid rate would, in this Court's view, read subsections 768.0427(b)(2)(5) and 768.0427(c)(3) out of the statute. That is contrary to a basic rule of statutory construction which "'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) (quoting *Quarantello v. Leroy*, 977 So. 2d 648, 652 (Fla. 5th DCA), *rev. denied*, 987 So. 2d 1210 (Fla. 2008) (some internal punctuation omitted)).

9. Given that section 768.0427 is relatively recent, it has not yet been construed by the Supreme Court of Florida or any District Court of Appeal. A number of circuit courts have interpreted the statute, however, and admittedly, they have arrived at differing conclusions. Each party has furnished the Court with several cases from other circuit judges around the State. Some have agreed with the Plaintiff's interpretation, while others have agreed with the position advanced by the Defendants.

10. Having reviewed all of those cases[1] together with the parties' arguments in this case, the Court ultimately agrees with Plaintiff that with respect to unpaid past medical expenses, as well as for future medical expenses, subsections 768.0724(2)(b) and 768.0724(2)(c) do not limit a plaintiff to proving damages with evidence of what health insurance, Medicare, or Medicaid would pay, or to the amount a third party may pay for the right to be paid under a letter of protection. Instead, these subsections allow *either* party to introduce evidence of damages by the methods set forth therein. Specifically, regardless of whether the Plaintiff is insured, or whether the Plaintiff is treating under a letter of protection, Plaintiff is free to introduce "any evidence of reasonable amounts billed to the [Plaintiff] for medically necessary treatment or medically necessary services," and is also free to introduce "[a]ny evidence of reasonable future amounts to be billed . . . for medically necessary treatment or medically necessary services." By the same token, Defendants are free to introduce evidence controverting Plaintiff's claims for medical expenses with any of the evidence deemed admissible under the statute, including under the "catch-all" provisions of subsections 768.0427(2)(b)(5) and 768.0427(2)(c)(3). The only true "limitation" on proof of medical expenses pertains to past medical expenses which have been satisfied, and it will be incumbent on Plaintiff at trial to prove the amount actually paid.

Based upon all the foregoing, it is now ORDERED AND ADJUDGED as follows:

A. Defendants' Motion in Limine Regarding Medical Bills Presented to the Jury Pursuant to House Bill 837 shall be, and the same is hereby DENIED.

B. Plaintiff's Motion to Determine the Admissibility of Past and Future Medical Expenses Evidence at Trial Under Section 768.0427, Fla. Stat. shall be, and the same is hereby GRANTED consistent with paragraph 10 above.

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[1] The Court finds particularly persuasive the "Order Denying Defendant's Motions Regarding Section 768.047(2), Florida Statutes" in *Beyenka v. Pyle*, Case No. 2023-CA-009204 (Fla. 4th Jud. Cir., Apr. 21, 2025), and "Order on Defendants' Motion in Limine Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services" rendered in *Adams v. Garcia*, Case No. CACE24008198 (Fla. 17th Jud. Cir., July 9, 2025).

C. Evidence of Plaintiff's paid and unpaid past medical expenses and services, and evidence of Plaintiff's future medical expenses and services, may be introduced at trial by either party in accordance with Fla. Stat. § 768.0427 as construed in paragraph 10 above.

D. Nothing herein should be construed as shifting the burden of proving the reasonableness and necessity of Plaintiff's medical treatment in the past or in the future, or the reasonableness of the charges therefor. That burden of proof remains with the Plaintiff.

DONE AND ORDERED in chambers, in Volusia County, Florida, on 24 day of July, 2025.

7/24/2025 1:19 PM 2023 12495 CIDL

e-Signed 7/24/2025 1:19 PM 2023 12495 CIDL

MICHAEL S ORFINGER
CIRCUIT JUDGE

Copies furnished by eService to:
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