Transparency in Medical Expense Recoveries is Needed in Florida

Background: Compensatory damages exist for the purpose of making an injured party whole, not to enrich that injured person. When an injured party's medical expenses are covered by insurance or government programs, the total payouts made to the health care providers should represent the upper limit of compensatory damages recoverable for medical expenses. To allow a plaintiff to recover more than what the doctors and hospitals receive in payment would permit a windfall award, which is not consistent with the fundamental principles of compensatory damages.

Current Landscape in Florida: Unfortunately, under current Florida law juries are given a misleading impression of a claimant's medical damages. Under Florida law, the claimant at trial is allowed to present the "billed" amounts or "sticker price" for the medical treatment provided, even though contractual discounts and write-offs required by health insurance will reduce those charges drastically before the health care provider is paid. Defendants cannot counter by introducing evidence of what the providers have already received in payment, or what they typically accept for rendering similar medical services. Although current statute directs the judge to reduce the verdict award by amounts never paid pursuant to insurance contracts or government program reimbursement limits, the false understanding given to jurors affects other aspects of the verdict. Because juries are often urged to determine non-economic and future damages by multiplying the medical expense damages by a factor of three or more, evidence of the inflated medical expenses may mislead juries into awarding excessive amounts for pain and suffering and future damages for anticipated medical treatment. Florida law provides no opportunity for defendants to obtain a post-trial reduction for those categories of damages.

Why It's a Problem: To make matters worse, many plaintiffs' attorneys in Florida encourage their clients to use an arrangement called "letters of protection" to manufacture increased damages. A letter of protection is a contract between an injured claimant and a health care provider stating that the medical professional is owed a specific amount for treating the claimant but will defer receiving payment and not submit changes to any available health care insurance or government program. Instead, the provider will be paid from the proceeds of a pending lawsuit after the litigation is resolved. This arrangement allows the provider to set the price for treatment without accountability to a health care insurer or government program. Treatment charges under letters of protection are frequently much higher than the usual and customary payments accepted for similar treatment services, even by that same provider, but the inflated value set by the letter of protection will be the medical expense number that the jury hears. Thus, many Florida claimants, at the suggestion of their lawyers, avoid submitting covered claims to their own health insurers to pump up the perceived damages at issue in a lawsuit.

- Florida courts allow claimants to represent the treatment cost set by letters of protection to juries as the true value of the medical care provided even when the health care provider has sold the right to recover on the letter of protection to someone else. Letters of protection at their core are a receivable asset, and providers who prefer to get paid promptly rather than wait for resolution of the claimant's lawsuit often sell the right to recover to a medical lien financing company for a sum considerably less than the letter of protection's face value but greater than the reimbursement rate allowed by the claimant's insurer. Even though the issuing physician has accepted a smaller sum for rendering the claimant's medical care, the jury will be told that the sum stated in the letter of protection reflects the cost of that treatment.

- Current law limits defendants' opportunity to demonstrate that the plaintiff's requested sum for medical expenses is excessive and unreasonable. The Florida Supreme Court ruled that the

attorney-client privilege prevents defendants from conducting discovery to show that a referral relationship exists between the plaintiff's lawyer and a health care provider who chooses to proceed under a letter of protection rather than submit charges to available insurance, and courts often allow providers to resist discovery regarding their fee schedules on grounds that they reflect proprietary information. Without the ability to demonstrate the inflated nature of the medical expense valuations, the jury will be misled into awarding windfall sums to the claimant.

What Can Be Done: Several other states have addressed this issue through legislation to ensure that lawsuit recoveries for health care expenses make sense. Florida should follow the lead of these states to ensure that juries know the true cost of a claimant's medical treatment.

- Montana in 2021 and Iowa in 2020 passed legislation that limit damages recoveries to "amounts actually paid" to treating health care providers and "amounts actually necessary to satisfy the charges that have been incurred" and prohibits evidence inconsistent with those valuations.
- Oklahoma requires that "the actual amounts paid for any doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the [injured] party shall be the amounts admissible at trial, not the amounts billed for expenses incurred in the treatment of the party." (12 Okla. St. Ann. § 3009.1).
- Other states, including Texas, North Carolina, Louisiana, Michigan, and Connecticut have also taken legislative action to prevent windfall recoveries for medical expense damages.

The Public Agrees:

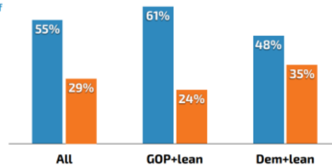
- According to polling conducted by Echelon Insights on behalf of Citizens Against Lawsuit Abuse (CALA), 55% of Florida voters believe the jury should know if the plaintiff agreed to higher-than-average medical treatment costs when they are deciding whether the defendant should have to pay more for those costs.
- Furthermore, 71% of Florida voters believe medical providers should not be able to charge more than they would if the plaintiff was using insurance to cover the costs.

Most say jury should hear medical cost comparison

Q. When a jury in Florida is reviewing an injury case where a plaintiff and their lawyer have agreed on a letter of protection with their medical provider, do you think...?

The jury should be told both the amount the medical provider is charging for the treatment of the person in the injury case, as well as what the average cost of treatment for their injury is in their area. The jury should know if the plaintiff agreed to higher- than-average treatment costs when they are deciding whether the defendant should have to pay for those costs.

The jury should only be told the amount the medical provider is charging for the treatment of the person in the injury case. The jury doesn't need cost comparisons to decide whether the defendant should have to pay for the plaintiff's medical costs.



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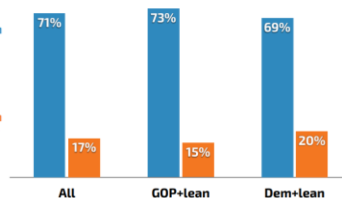
... But broad majority agree medical providers should NOT be able to charge more than they would if the plaintiff was using insurance

Q. If a medical provider agrees to wait to collect payment for someone's treatment until that person's injury lawsuit is over, do you think...?

The medical provider should NOT be able to charge more for that person's treatment than they would normally charge someone who was paying for the treatment using health insurance.

The medical provider should be able to charge more for that person's treatment than they would normally charge since they might have to wait longer to receive payment from a lawsuit settlement than they would from a health insurance company.



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