DIVISION CV-E GUIDELINES FOR RULE 1.202 CONFERRAL PRIOR TO FILING MOTION TO DETERMINE ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE EXPENSES PURSUANT TO SECTION 768.0427, FLORIDA STATUTES ("768.0427 MOTION"), AND DIVISION CV-E REQUIRED CONFERRAL PRIOR TO SCHEDULING HEARING ON 768.0427 MOTION

Since January 1, 2020, Division CV-E Policies and Procedures[1] published on the Fourth Judicial Circuit's website[2] established a mandatory meet and confer process to occur ***before*** scheduling the hearing on all motions except for the following motions: injunctive relief without notice; judgment on the pleadings; or to permit class action. Effective January 1, 2025, Florida Rule of Civil Procedure 1.202 titled "Conferral Prior to Filing Motions" requires parties to meet and confer before filing a motion in a civil case. The rule is intended to help with case management. Since January 1, 2025, the *Division CV-E Procedures for Scheduling and Hearing Motions Requiring Evidentiary Hearing* published on the Fourth Judicial Circuit's website require counsel for the parties to discuss during such required conferral whether there are factual issue(s) within such motion(s) the Court will be required to resolve with an evidentiary hearing.

As of the publication of these Guidelines, this Court has heard and ruled on one 768.0427 Motion. *See* ***Exhibit A*** *Order Denying Defendants' Motion in Limine Regarding Past Medical Bills and Defendants' Motion to Strike Plaintiff's Life Care Plan* in *Hourihan v. Mona*, Fourth Judicial Circuit, Case No. 2023-CA-10388. Generally, as of the publication of these Guidelines, several 768.0427 Motions have been scheduled for hearing in the past, however, it has been this Court's experience that such defense motions have been boilerplate recitations of section 768.0427, Florida Statutes, lacking any case specific allegations or assertions of relevant background facts with no response from the Plaintiff or a "Notice of Filing" various trial court orders – many of which summarily granting or denying a 768.0427 Motion without explanation or any recitation of the relevant facts or procedural history. Generally, in such cases no legal briefing was provided and the *ore tenus* initial discussions with the Court revealed a lack of conferral between the parties' respective counsel, no case specific arguments or, alternatively, abstract arguments that would require the Court to make findings of fact based on attorney arguments (which are not evidence) rather than proffering pincites to admissible evidence, including, but not limited to stipulation(s) of fact(s), affidavits or declarations, prior sworn deposition testimony, interrogatory answers, response(s) to Requests for Admissions, and live testimony either in person or by communication technology. When counsel for the parties agree or concede during the hearing that the 768.0427 Motion requires an evidentiary hearing including fact and expert testimony, for the Court to make findings of fact, the existence of additional case specific legal arguments not referenced in the Motion or Response (or the failure to file a Response altogether), the failure to adequately prepare for the hearing or otherwise fully inform the Court, or secure appellate counsel to argue the 768.0427 Motion, the hearing must be continued and rescheduled – delaying resolution of the motion for weeks or months, depending on the amount of hearing time needed to present all relevant fact and expert witness testimony, proffered evidence, and comprehensive legal arguments for the Court to consider in making its ruling, whether limited pre-hearing discovery relevant to the Motion will be necessary, and whether a *Daubert* or any other evidentiary Motions(s) will be necessary to determine the admissibility of any testimony or evidence in support of or opposition to the 768.0427 Motion. In sum, the failure of counsel to confer comprehensively or otherwise recognize everything necessary to fully inform the Court can unnecessarily delay the litigation and prevent timely completion of the case pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.250.

---

[1] *See* Sections III. L and M.

[2] See website: https://www.jud4.org/Ex-Parte-Procedures-and-Dates

Paragraph 20 of the Court's current template order setting actual trial period for Division CV-E cases published on the Fourth Judicial Circuit's website[3] imposes strict deadlines for filing and hearing 768.0427 Motions, and generally requires compliance with *Division CV-E Procedures for Scheduling and Hearing Motions Requiring Evidentiary Hearing* published on the Court's website and utilization of the Court's template for *Order Scheduling Motion for Evidentiary Hearing and Pre-Evidentiary Hearing Case Management Conference* published in Word format on the Court's website[3] to facilitate the meet and confer process. As such the Court finds it necessary to impose more specific requirements for counsel to discuss and consider during the pre-768.0427 Motion hearing conferral to reduce inefficiency, encourage timely resolution, and prevent trial continuances based on unresolved 768.0427 Motions.

The following guidelines are not intended to be exclusive conferral issues for 768.0427 Motions as there may be other legal, procedural, and evidentiary issues not covered by these guidelines. In any event, at a ***minimum***, counsel for the parties must consider and discuss the following during the conferral process prior to filing 768.0427 Motion and scheduling 768.0427 Motion hearings:

A. Collateral Source Rule History

Under Florida common law, the collateral source rule governed both the admissibility and impact of collateral source benefits at trial. *Joerg v. State Farm Mut. Auto Ins. Co.*, 176 So. 3d 1249, 1249 (Fla. 2015). Historically, the "evidentiary" component of the collateral source rule prohibited the admission of evidence of collateral source benefits because the "introduction of collateral source evidence misleads the jury on the issue of liability and, thus, subverts the jury process." *Id.* (quoting *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991)). At the same time, historically, the "damages" component "prevented the reduction of damages by collateral sources available to the plaintiff" based "on the principle that a tortfeaser should not benefit" from the plaintiff's benefits. *Id.* (citing *Gormley*, 587 So. 2d at 457).

History changed in 1986 when the Florida legislature enacted section 768.76 to modify the damages component of the collateral source rule "to reduce insurance costs and prevent plaintiffs from receiving windfalls." *Id.* However, Section 768.76 did not modify the evidentiary component of the collateral source rule, therefore, evidence of payments from collateral source benefits continued to be inadmissible at trial. *Id.*; *see also Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 200 (Fla. 2001) ("Upon proper objection, the collateral source rule prohibits the introduction of any evidence of payments from collateral sources."). Section 768.76 created a new procedure whereby the court, not the jury, reduced the jury's damages award by the amount of any collateral source benefits in a post-verdict evidentiary hearing. Section 768.76(1), Fla. Stat. (2024); *see, e.g. Caruso v. Baumle*, 880 So. 2d 540, 544 (Fla. 2004) (emphasizing that "the *court* reduces the jury award by the amount of collateral source benefits," not the jury, under section 768.76(1)). Under this post-section 768.76 procedure, it is generally considered reversible error to allow the jury to hear evidence of collateral sources during a jury trial due to the high possibility of prejudice. *See Sheffield*, 800 So. 2d at 200 & nn. 2, 3.

B. Collateral Source Rule Post-Section 768.0427

1. Does section 768.0427 abolish or alter the post-verdict evidentiary hearing procedure established by section 768.76 for the court to reduce the jury's damages award by the amount of any collateral source benefits?

[3] See Division CV-E website: https://www.jud4.org/Ex-Parte-Procedures-and-Dates

2. Does section 768.0427 permit evidence of collateral source benefits to be presented to trial juries?

3. To the extent section 768.0427 could be construed to permit a trial jury to consider evidence of collateral source benefits how can this be reconciled with the "inherently prejudicial effect of evidence of collateral source benefits" in jury trials *Joerg*, 176 So. 3d at 1255 (citing *Eichel v. N.Y. Cent. R.R. Co.*, 375 U.S. 253, 255 (1963))?

4. Does section 768.0427, like the common law and statutory collateral source rule, contain both an "evidentiary" component and a "damages" component?

5. Can section 768.0427(2) be construed as the "evidentiary" component because it provides that evidence of medical expenses "is admissible as provided in this subsection," that evidence of past, paid expenses "is limited to evidence of the amount actually paid," and that evidence of unpaid or future medical expenses "shall include, but is not limited to, evidence" of the share of expenses borne by the plaintiff's health care provider (section 768.0427(2)(a)-(c), Fla. Stat. (2024)?

6. Does subsection (2) titled "Admissible Evidence of Medical Treatment or Service Expenses" that begins with an introductory sentence providing that "[e]vidence 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" followed by subsections (2)(b) and (2)(c) allow parties to introduce "[a]ny evidence" of unpaid and future medical expenses, impose a **burden of production** on Plaintiff to introduce the enumerated categories of evidence found in those subsections? In sum, is the effect of subsection (2) to create a burden of production on the plaintiff or does it concern admissibility of evidence.

7. Does the use of "is admissible" and "shall include, but is not limited to" combined with catchall clauses allowing "[a]ny evidence" of reasonable expenses indicate that subsections (2)(b) and (2)(c) provide a non-exhaustive list of admissible evidence of unpaid past and future medical expenses while allowing for other evidence of reasonable expenses – together with the phrase "is admissible" and the title "Admissible Evidence of Medical Treatment or Service Expenses" – frame the statute as an evidentiary rule of inclusion not exclusion? Can these provisions of this statute be placed in the same types of statutes using the word "shall" to signify that a court must admit such evidence when it is proffered, produced, or presented by a party (e.g. §772.15, Fla. Stat. providing that a verdict or adjudication of not guilty "shall be admissible in evidence") – not to signify that a party must proffer, produce, or present such evidence. Do you agree that "[t]he word 'any' is defined as 'one, no matter what one: every' or 'all.'" *McNeil v. State*, 215 So. 3d 55, 59 (Fla. 2017) (citation omitted). If paragraphs (2)(b) and (2)(c) create a burden of production – is the plaintiff required to introduce every possible form of evidence of reasonable amounts under your interpretation of the statute? If so, would that create an absurd result? *Hardee County v. FINR, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017). Does the proposed interpretation of the catchall clauses of (2)(b)5 and (2)(c)3 require the Court to rewrite the statute to "read into the statute a concept or words that the legislature itself did not include"? *E.g., State v. Geiss*, 70 So. 3d 642, 647-48 (Fla. 5th DCA 2011).

8. Can section 768.0427(4) be construed as the "damages" component because it caps recoverable medical expenses by the amounts established under section 768.0427(2) and by the sum of the amounts "actually paid," incurred but "not yet satisfied," and necessary for future treatment?

9. When considering sections 768.0427(2) and 768.0427(4) together, is there any reasonable reading of the text of subsection (2) as requiring that the trial jury reduce a damages award based on insurance benefits, whether those benefits be payments in the form of contractual discounts or direct cash payments (*see Goble v. Frohman*, 901 So. 2d 830, 833 (Fla. 2005) (holding that when a health care provider enters into a contract with an insurer that requires it to discount its services to those insured by the carrier, that discount constitutes the "payment" of a collateral source benefit even though no money changes hands)?

10. Under section 768.0427 do the billed amounts of medical expenses remain the maximum, so long as those amounts are reasonable, before applying health insurance benefits?

11. Although section 768.0427 provides that evidence of collateral sources is "admissible," does the plain text of the statute mention "juries" anywhere, state that such collateral source evidence is admissible before "juries," or require juries to offset a plaintiff's damages by his or her collateral source benefits?

12. When the legislature enacted section 768.0427, did it modify or repeal section 768.76 (*compare* 768.76, Fla. Stat. (2022) *with* section 768.76, Fla. Stat. (2024))?

13. If you agree that the legislature did not modify or repeal section 768.76 when it enacted section 768.0427, does this suggest that post-verdict reductions for collateral source benefits under section 768.76(1) remain the procedure for setting off collateral source benefits?

14. If you agree post-verdict reductions for collateral source benefits under section 768.76(1) remain the proper procedure for setting off collateral source benefits, can the plain text of section 768.0427, to be read consistently with section 768.76(1) be construed to govern the admissibly of evidence and the calculations of damages during that post-verdict proceeding?

15. If you interpret section 768.0427 as providing that juries must reduce medical expense damages based on collateral sources, then did section 768.0427 implicitly repeal section 768.76(1) by removing the requirement for the court to make post-verdict reductions – if so, is this construction permissible if the two statutes can be read consistently with each other (*see Newell v. Fla. Dep't of Corr.*, 214 So. 3d 721, 725 (Fla. 1st DCA 2017) ("There is a general presumption that later statutes are passed with knowledge of prior existing laws, and a construction is favored which gives each one a field of operation, rather than have the former repealed by implication." (quoting *Oldham v. Rooks*, 361 So. 2d 140, 143 (Fla. 1978)); *Saridakis v. State*, 936 So. 2d 33, 35 (Fla. 4th DCA 2006) ("Under Florida law, the legislature is presumed not to have intended to write a statute that renders void in its application another statute that has not been amended or repealed"))?

16. In an effort to read sections 768.76 and 768.0427 consistently with each other should the court hold a ***pre-trial*** evidentiary hearing to calculate and determine the amount of reasonable past and future medical expenses the plaintiff can present to the jury after making appropriate reductions pursuant to ***both*** statutes?

17. Would interpreting section 768.0427 to allow juries to hear evidence about collateral sources derogate the common law collateral source rule (*see Joerg*, 176 So. 3d at 1249)?

18. Is section 768.0427 designed to change the common law collateral source rule in "clear, unequivocal terms" – does the statute clearly and unequivocally indicate that such evidence is admissible before juries (*see Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1048 (Fla. 2008) (quoting *Carlile v. Game & Fresh Water Fish Comm'n* 354 So. 2d 362, 364 (Fla. 1977)))?

19. If section 768.76 was not modified or repealed when the legislature enacted section 798.0427 and section 768.76 provides an existing evidentiary procedure to account for collateral sources without derogatory or otherwise undermining the common law rule or potentially confusing the jury, how would such collateral source evidence be relevant at a jury trial if courts are still required to determine collateral source reductions separately post-verdict (see sections 90.401, 90.402, and 90.403, Fla. Stat. (2024))?

20. If section 768.0427 is read as clarifying the evidence the Court must consider when reducing a damages award post-verdict, does this interpretation undermine the intent of the legislature when enacting the statute (*see* Fla. H.R. Staff Analysis of HB 837 (Feb. 17, 2023); *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 298 (Fla. 2007) ("legislature intent is determined primarily from the statute's text," not what any given legislator may have preferred) (citing *Maggio v. Fla. Dep't of Labor & Emp't Sec.*, 899 So. 2d 1074, 1076-77 (Fla. 2005)); *see also Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts*, 386 (2012) ("Even if the members of each house wish to do so, they cannot assign responsibility for making law – or the details of law – to one of their number, or to one of their committees"))?

21. Does the plain text of 768.0427 and "traditional canons of statutory interpretation" suggest that section 768.0427 does not alter the collateral source rule or permit trial juries to learn about or evaluate collateral source benefits (*see Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (recognizing that "the traditional canons of statutory interpretation can aid the interpretive process from beginning to end" and rejecting the notion that "there is no occasion for resorting to the rules of statutory interpretation and construction" when the language is clear and unambiguous)?

22. Does the proposed interpretation of the statute require the Court to rely on "legislative history" or "legislative intent"? If so, how does the Court reconcile this argument with the "supremacy-of-the-text principle?" *Taylor v. Nicholson-Williams, Inc.*, 368 So. 3d 1007, 1015 n. 3 (Fla. 5th DCA 2023) (citation omitted).

C. Constitutionality

1. Will there be any arguments made that section 768.0427(2) is unconstitutional, to the extent it is procedural, if it is interpreted as allowing evidence related to the plaintiff's private insurance benefits or (with respect to future benefits) from Medicare (*see Joerg v. State Farm Mut. Auto. Ins. Co.*, 176 So. 3d 1247, 1249-50, 1255 (Fla. 2015) (Medicare benefits); *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 200-03 (Fla. 2001) (group health insurance benefits); *Gormley v. GTE Products Corp.*, 587 So. 2d 455, 457-58 (Fla. 1991) (property insurance); *Dial v. Calusa Palms Master Ass'n, Inc.*, 337 So. 3d 1229, 1230-31 (Fla. 2022) (held that the holding in *Joerg* prohibiting admission of Medicare benefits at trial applied only to future benefits and not to benefits already extended))?

2. Do any of section 768.0427(2) subsections (a-e) require either party to prove anything to increase or decrease the damage awards or otherwise change substantive law on damages?

3. Do these subsections of section 768.0427(2) merely address what collateral source evidence is admissible or inadmissible? If so, would these subsections of section 768.0427(2) be procedural – controlling only the conduct of the litigants in court and not creating, modifying or eliminating any substantive rights (*see DeLisle v. Crane Co.*, 258 So. 3d 1219, 1229; *Glendening v. State*, 536 So. 2d 212, 215 (Fla. 1998))?

4. Would the only constitutional interpretation of section 768.0427(2), consistent with Florida Supreme Court precedent on the evidentiary aspect of the collateral source rule be an interpretation that the evidence of insurance, Medicare, or Medicaid benefits is admissible at the post-trial set off hearing, but not at the jury trial determining the amount of damages before application of setoffs?

D. Facts

1. Are there facts that the parties will be asking the Court to find or rely on in ruling on the 768.0427 Motion that will require the development of an evidentiary record during the hearing on the 768.0427 Motion?

2. A non-exhaustive list of such facts may include, but not be limited to the following:

- Whether any of Plaintiff's past medical expenses were submitted to a health insurance provider (government or private).
- Plaintiff's health care coverage status (past, present, or future).
- Liens and letters of protection for past satisfied medical expenses.
- The cost of Plaintiff's health care coverage incurred by the Plaintiff that may be considered a set-off to the set-off for collateral source calculations.
- The ability, or impossibility, of plaintiff to obtain contract rates of payment for in-network medical providers for the Court to consider within the collateral source (damages) rule.
- The contractual medical provider write-offs for Plaintiff's past, present, and future medical expenses.
- Any facts related to a reasonable projection of Plaintiff's health insurance coverage through the end of life expectancy, the cost of such coverage(s) to Plaintiff personally, and the viability of such sources of coverage (private health insurance, government entitlements, etc.) during the relevant future life expectancy of Plaintiff.

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

CASE NO.: 16-2023-CA-010388-AXXX
DIVISION: CV-E

HALEY ELIZABETH HOURIHAN,

Plaintiff,

v.

AMY SARAH MONA and
BEVERLY RAY MONA,

Defendants.
_____/

ORDER DENYING DEFENDANTS' MOTION IN LIMINE REGARDING PAST MEDICAL BILLS AND DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S LIFE CARE PLAN

I. Relevant Procedural History

THIS CAUSE came on to be heard at an in-person hearing held on July 2, 2025, on *Defendants' Motion in Limine Regarding Past Medical Bills* (Doc. 124) and *Defendant's Motion to Strike Plaintiff's Life Care Plan* (Doc. 126), (collectively "the Motions") both filed on February 5, 2025. *Plaintiff's Response to Defendants' Motion in Limine Regarding Past Medical Bills* and *Defendants' Motion to Strike Plaintiff's Life Care Plan* ("the Response") (Doc. 131) was filed on February 11, 2025, and *Plaintiff's Notice of Supplemental Authorities* ("Supplemental Authorities") (Doc. 151) was filed on June 23, 2025. Following the hearing the Court took the matter under advisement and requested counsel for the parties to prepare proposed orders with deadlines for filing any written exceptions or objections to such proposed orders. The Court has considered and thought about the Motion, Response, Supplemental Authorities, facts stipulated to by counsel for the parties, and arguments of counsel. The parties' respective proposed orders

Exhibit A

submitted to the Court were filed as exhibits to notice pleadings (Doc. 160 and 165) on July 11 and 17, 2025, respectively. Plaintiff filed *Plaintiff's Objections to Defendants' Proposed Order on Defendants' Motion in Limine Regarding Plaintiff's Past Medical Bills and Defendants' Motion to Strike Plaintiff's Life Care Plan* ("Plaintiff's Objections") (Doc. 169) on July 18, 2025, and Defendants' counsel filed no exceptions or objections to the Plaintiff's proposed order. The Court having reviewed the Motion, Response, Supplemental Authorities, facts stipulated to by counsel for the parties, and considered the arguments of counsel, respective proposed orders submitted by counsel for the parties, and Plaintiff's Objections, and being otherwise fully advised in the premises, for the reasons set forth below **DENIES** the Motions.

II. Relevant Stipulated Facts and Overview of Legal Issues

This matter arises from a motor vehicle collision that occurred on March 17, 2023. At the hearing, the parties orally stipulated that Plaintiff seeks to admit evidence of unpaid past medical expenses that were not submitted to her health care insurance provider for payment. Furthermore, the Plaintiff seeks to admit a life care plan evidencing future medical expenses which are not reduced by health care insurance adjustments. The parties do not dispute that section 768.0427, Fla. Stat. (2025), applies to this case since the Complaint was filed on September 12, 2023—after Florida House Bill 837 was passed into law. However, the parties disagree regarding the proper interpretation and application of section 768.0427.

Defendants propose that the language of section 768.0427—in particular, the use of the word "shall"—creates mandatory methods for Plaintiff to admit past and future medical expenses and, thereby, limits the evidence Plaintiff may introduce at trial. (*See* Defendants' Proposed Order at Doc. 160.) Specifically, Defendants claim that the only permissible method for Plaintiff to admit

past unpaid medical expenses is by way of subsection 768.0427(2)(b)2, and that Plaintiff's future medical expenses must be admitted in accordance with subsection 768.0427(2)(c)1. *See id.*

Plaintiff opposes Defendants' interpretation of section 768.0427 by appeal to the statutory language immediately after the "shall" relied upon by Defendants. (*See* Doc.131.) Plaintiff asserts the statutory text "shall include, but is not limited to, evidence as provided in this paragraph" in both subsections §768.0427(2)(b) and §768.0427(2)(c) creates non-exhaustive lists of admissible evidence. *Id.* Moreover, Plaintiff shows that both subsections 768.0427(2)(b) and 768.0427(2)(c) end with catch-all provisions that allow a party to admit "any evidence" of reasonable past and future medical expenses. *Id.*

The motions present two issues concerning section 768.0427(2). **First**, whether the statute limits evidence at trial of unpaid past and future medical expenses. **Second**, whether the statute creates a burden of production. Notably, Defendants have not yet sought to introduce any collateral-source evidence under the statute.[1]

THIS SECTION LEFT INTENTIONALLY BLANK

[1] All relevant deadlines for the Defendant to disclose any exhibits and witnesses proffered for the purpose of introducing collateral-source evidence at trial have expired. See *Order Setting Actual Jury Trial Period, Scheduling Pretrial Conference and Requiring Matters to be Completed Prior to Pretrial Conference* (Doc. 142) entered March 28, 2025.

The parties have also not raised any constitutional issues or arguments, and the Court has not considered any constitutional concerns in denying the Motions.[2] Further, the motions do not present any issues concerning post-trial setoffs under section 768.76, Fla. Stat. (2025)[3], which would not be ripe at this pre-trial stage in any event.

III. Legal Standards

"The 'plain meaning of the statute is always the starting point in statutory interpretation.'" *Alachua County v. Watson*, 333 So. 3d 162, 169 (Fla. 2022) (citation omitted). "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). "Judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text." *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (cleaned up).

---

[2] The Court explicitly disclaims making any constitutional decision that may be framed by the issues presented in the motions under consideration. The Florida Supreme Court has "the exclusive authority to adopt rules of judicial practice and procedure for actions filed in this State, while the Legislature is charged with the responsibility of enacting substantive law." *Se. Floating Docks, Inc. v. Auto-Owners Ins.*, 82 So. 3d 73, 78 (Fla. 2012). When a law enacted by the legislature conflicts with a rule of procedure adopted by the Florida Supreme Court, the law is unconstitutional. *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008) ("[W]here this Court has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict."). The same is true for laws that conflict with caselaw on a matter of procedure. *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1229 (Fla. 2018). *Compare 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."); and *Dial v. Calusa Palms Master Ass'n*, 337 So. 3d 1229, 1231 (Fla. 2022) (noting that *Joerg* "preclude[es] the admission of evidence of a plaintiff's eligibility for future Medicare benefits"); with § 768.0427(2)(c)2., Fla. Stat. (allowing the admission of a plaintiff's eligibility for future Medicare benefits). In short, if this Court were to accept that section 768.0427 is procedural, then section 768.0427 would be unconstitutional because it conflicts with the Florida Supreme Court's rulemaking authority. *See DeLisle*, 258 So. 3d at 1229. Courts should avoid statutory constructions that render a law unconstitutional. *See State v. Giorgetti*, 868 So. 2d 512, 518 (Fla. 2004). For purposes of deciding the instant motions, the Court has avoided such unconstitutional statutory constructions.

[3] To the extent a conflict could be read in the simultaneous application of section 768.76, Fla. Stat. (2025) and section 768.0427, this Court notes—without deciding whether any conflict exists—that the latter should prevail as the more specific statute and the last expression of legislative intent. *See McKendry v. State*, 641 So. 2d 45, 46-47 (Fla. 1994). To the extent they do not conflict, this Court is bound by both statutes.

IV. Analysis

Overview

This Court finds Plaintiff's interpretation correct and in accordance with the plain meaning of subsection 768.0427(2)(b) and subsection 768.0427(2)(c). The reasonable interpretation of these subsections is that they identify evidence that is admissible, as well as the conditions under which the listed evidence is admissible, without imposing a burden on any party to introduce the listed evidence. *See State Farm Mut. Auto. Ins. v. Shands Jacksonville Med. Ctr., Inc.*, 210 So. 3d 1224, 1228 (Fla. 2017) ("Where the wording of the Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the Legislature as expressed in the plain language of the Law." (citation omitted)). Other circuit courts have reached the same conclusion.[4]

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. After all, as the Florida Supreme Court has recognized, "it is absolutely speculative to attempt to calculate damage awards based on benefits that a plaintiff has not yet received and may never receive, should either the plaintiff's eligibility or the benefits themselves become insufficient or cease to continue." *Dial*, 337 So. 3d at 1231 (citation omitted).

If the legislature had intended for section 768.0427(2) to limit evidence of unpaid and future medical expenses to the enumerated categories, then it would have said so. Indeed, the legislature did limit the admissible evidence of paid medical expenses in subsection (2)(a), which states "[e]vidence offered to prove the amount of damages for past medical treatment or services

---

[4] *See, e.g., Beyenka v. Pyle*, No. 2023-CA-009204 (Fla. 4th Cir. Ct. Apr. 21, 2025); *Dunham v. Shuford*, No. 2023-CA-011925 (Fla. 4th Cir. Ct. May 28, 2025); *Morales v. Reeb*, No. 23-CA-016933 (Fla. 13th Cir. Ct. May 7, 2025); *Perez v. Winn*, No. 2024-CA-493 (Fla. 8th Cir. Ct. June 11, 2025).

that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment." Interpreting subsections (2)(b) and (2)(c) as limiting the evidence admissible to prove unpaid and future medical expenses would add a word the legislature chose to exclude while ignoring phrases like "is admissible," "include, but is not limited to," and "[a]ny evidence" that the Legislature did include.

If the Legislature had intended for subsections (2)(b) and (2)(c) to impose a burden of production, "it could have made such intention clear." *See Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015). It could have said that the enumerated categories of evidence are "required." It could have said that plaintiffs "must prove" the amount of medical expenses as provided in subsections (2)(b) and (2)(c), *E.g.* §768.0755 ("If 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.") (emphasis added). The Legislature could have said that the admission of the enumerated evidence is a "condition precedent" to recover medical expenses, as it did in section 768.0427(3) for cases involving letters of protection. *See* §768.0427(3), Fla. Stat. (2025). Finally, it could have written subsections (2)(b) and (2)(c) as exclusionary rules of evidence like subsection (2)(a) and excluded the "include, but is not limited to" language and the catchall clauses from those subsections. This would have limited the admissible evidence of unpaid and future medical expenses to the evidence specifically enumerated in subsections (2)(b) and (2)(c), functionally imposing a burden of production to introduce the enumerated evidence even if the statute did not explicitly do so.

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

Defendants seek to limit the evidence that Plaintiff may introduce to prove her reasonable medical expenses. Specifically, Defendants argue that "Plaintiff should not be able to mention or introduce into evidence past medical expenses over the amount he [sic] would be responsible for

had his [sic] medical providers submitted his [sic] bills to Aetna." Doc. 124 at 5. This Court respectfully 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." § 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." § 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 *not* limit evidence of unpaid past and future medical expenses.

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. *E.g., id.*, at 783 ("The qualifying phrase 'includes, but is not limited to' made clear that the Legislature intended to allow the protection of more interests than simply those set forth in the non-exhaustive list."); *State v. Haunter*, 395 So. 3d 607, 613 (Fla. 5th DCA 2024) ("The list is not exhaustive, as the statute expressly states . . . 'include, but are not limited to' . . . ."); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1115 (D.C. Cir. 2009) ("[A]dding 'but not limited to' helps to emphasize the non-exhaustive nature of [the list].").

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." § 768.0427(2)(c)3. (emphasis added).

Therefore, even if subsections (2)(b) and (2)(c) were limitations on evidence (which they are not), 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)).

B. Section 768.0427(2) does <u>not</u> create a burden of production.

Defendants assert that the life care plan prepared by Plaintiff's expert Dr. Christopher Leber is "non-compliant with Florida Statute § 768.0427" because it "does not state that it accounts for Plaintiff having a health insurance provider, the Medicare rates, nor does it account for what a treating physician may reasonably expect to recover or get paid for the services he is predicting Plaintiff will require in the future." (Doc. 126 at ¶ 7.) This Court disagrees. As explained below, subsection (2) merely concerns the admissibility of evidence. It establishes the rules for, and the burdens of, *admitting* evidence on medical expenses (i.e., a burden of admissibility).[5] It does not establish burdens of *production, persuasion, or proof* for medical expenses. Those burdens remained unchanged from the law that preexisted the enactment of section 768.0427.

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).

[5] Although this Court finds that section 768.0427 establishes a burden of admissibility applicable to plaintiffs and defendants, it is not predetermining the admissibility of any evidence Defendant might proffer pursuant to this statute in the instant matter.

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)).

To this Court's knowledge, the word "admissible" has not been used in the law to establish a ***burden of proof***. Instead, the "old soil" of prior precedent 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>"). 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).

Again, subsection (2) of the statute 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). 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. (2025) (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."

The word "shall" in the phrase "shall include, but is not limited to" 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. *See 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). There are many Florida Statutes that use the word "shall" to merely authorize the admission of evidence. *E.g.*, § 403.9423(1), Fla. Stat. (2025) ("Certification pursuant to ss. 403.9401-403.9425 shall be admissible as evidence of public need and necessity in proceedings under chapter 73 or chapter 74."); *see also id.* §§ 672.724, 772.15, 893.105(1). No court has held that these statutes require a party to introduce the listed evidence.

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 Specialists*, 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, "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." § 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. 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.

Notably, however, subsections (2)(b) and (2)(c) repeal the evidentiary collateral-source rule only to the extent provided in section 768.0427. For example, "evidence of 120 percent of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment or services" is admissible only "[i]f the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid." § 768.0427(2)(b)3. The term "health care coverage" is broadly defined. § 768.0427(1)(b). Unless a party can satisfy the conditions specified in subsections (2)(b)1.–4 and (c)1.–2., the collateral-source rule would continue to exclude such evidence. *E.g.*, *Farrington v. Richardson*, 16 So. 2d 158, 161 (Fla. 1944) ("The statute limits the common-law rule only to the extent set forth in the statute.").

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) (citations omitted); *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 above, 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. Instead, the fact that the lists included open-ended catchalls indicates that subsections (2)(b) and (2)(c) merely *authorize* the admission of evidence.

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).

V. Conclusion

For the foregoing reasons, *Defendants' Motion in Limine Regarding Plaintiff's Past Medical Bills* (Doc. 124) and D*efendants' Motion to Strike Plaintiff's Life Care Plan* (Doc. 126) are **DENIED**.

DONE AND ORDERED, in Chambers, at Jacksonville, Duval County, Florida on this 1st day of August 2025.

BRUCE R. ANDERSON, JR.
Circuit Judge

cc: Bryan S. Gowdy— bgowdy@appellate-firm.com
David C. Thompson— dthompson@farahandfarah.com
David M. Gagnon— dmg@taylordaylaw.com
John N. Kessenich— jnk@taylordaylaw.com
Theresa R. Sanders— tsanders@taylordaylaw.com
bipleadings@taylordaylaw.com

Case No.: 16-2023-CA-010388-AXXX