UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JESSICA GUADALUPE RAMOS ALVAREZ, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF MINOR CHILD, J.Z.R.; AND VICENTE PAUL ZAMUDIO VAZQUEZ, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF MINOR CHILD, J.Z.R.,

Plaintiffs,

v.

DJORY ALDERSON LOUIS,

Defendant.

Case No. 2:24-cv-829-KCD-NPM

ORDER

Before the Court is Defendant Djory Alderson Louis's Motion for Partial Summary Judgment as to Claims for Medical Expenses. (Doc. 32.)[1] The question presented is whether a personal-injury plaintiff who chooses not to use their health insurance for medical care is barred from recovering those costs unless they introduce evidence of what their insurer would have paid. Defendant argues that Fla. Stat. § 768.0427 creates such an evidentiary burden. And the failure to meet it warrants summary judgment as to those medical expenses. (*Id.* at 3.) But Defendant's statutory reading runs headlong

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into the plain text. Because § 768.0427 acts as an evidentiary gateway for personal injury claimants—rather than a procedural trapdoor—Defendant's motion is **DENIED**.

I. Background

This case arises from a car accident. After Defendant allegedly rear-ended Plaintiffs' vehicle, the family sued. (Doc. 4.) But the current dispute concerns the bills, not the collision.

Although the adult plaintiffs (hereinafter "Plaintiffs") hold private health insurance, they chose not to use it. Instead, they obtained treatment under letters of protection, deferring payment until the conclusion of this litigation. This strategic choice allegedly resulted in billed amounts significantly higher than typical insurance reimbursement rates. (Doc. 32 at 4.) To support these damages, Plaintiffs have identified Dr. Thomas Roush, their treating physician, as an expert witness. They did not, however, disclose a witness to calculate what their private insurance would have paid had claims been submitted. (*Id.* at 2.)

Defendant now moves for partial summary judgment. He argues that under Fla. Stat. § 768.0427, Plaintiffs' failure to introduce evidence of insurance reimbursement rates acts as a complete bar to recovering the past or future medical care from Dr. Roush.

II. Discussion

This case comes to the Court on a pure question of law. The relevant facts are settled: Plaintiffs have private health insurance, but they chose not to use it. And they have not brought forward evidence of their insurance reimbursement rates, resting their case instead on Dr. Roush's testimony and their own bills. The only remaining conflict is over the application of § 768.0427.

Defendant reads § 768.0427 as a strict mandate: a plaintiff *must* introduce evidence of what their insurer would have paid, or else forfeit their claim for medical expenses. Plaintiffs, by contrast, read the statute as permissive, arguing that while such evidence is admissible, it is not the exclusive means of proving damages. (Doc. 36.) This is a classic exercise in statutory interpretation, ripe for resolution on summary judgment. *See, e.g.*, *Jacksonville Prop. Rts. Ass'n, Inc. v. City of Jacksonville*, No. 3:05-CV-1267-J-34JRK, 2009 WL 10669827, at *3 (M.D. Fla. Sept. 30, 2009); *Rodriguez v. Branch Banking & Tr. Co.*, 46 F.4th 1247, 1254 n.7 (11th Cir. 2022) ("As a federal court sitting in diversity jurisdiction, we apply Florida's substantive law.").

Neither party has identified a decision from Florida's appellate courts resolving this specific issue, and this Court has found none. We are, it seems, the first to arrive at this particular statutory intersection. Absent guidance

from the state bench, a federal court sitting in diversity must "decide novel questions of state law the way it appears the state's highest court would." *SE Prop. Holdings, LLC v. Welch*, 65 F.4th 1335, 1342 (11th Cir. 2023).

Section 768.0427 serves as the statutory gatekeeper for determining the reasonable value of medical services in personal injury litigation. Pertinent here, § 768.0427(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 [below]." *Id.* Three subsections then discuss past medical expenses that have been paid, past medical expenses that have not been paid, and future medical expenses.

For past medical expenses that have not been paid, § 768.0427(2)(b) provides: "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.* Five distinct categories follow:

> 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.
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> 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.
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> 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.
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> 5. Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.

Id.

The statute uses a parallel structure for future medical expenses under § 768.0427(2)(c). It starts with the same language: "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.* Three separate categories follow:

> 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.
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> 3. Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.

Id.

Defendant focuses on the introductory language in both provisions: "shall include, but is not limited to, evidence as provided in this paragraph." Defendant reads "shall" as a mandate on the party to produce specific evidence. So when a claimant has insurance, like here, § 768.0427(2)(b)3 and (2)(c)2 demands that they produce insurance rate evidence, and only insurance rate evidence, or recover nothing. In Defendant's words, "section 768.0427(2)(b)2 requires (shall) Plaintiffs to introduce evidence of what their insurer would have paid to satisfy their past expenses, while section 768.0427(2)(c)3 requires (shall) Plaintiffs to introduce evidence of what their insurer would pay for their future treatment." (Doc. 32 at 9.)

Defendant's argument misses the forest for the trees—or perhaps more accurately, mistakes a rule of evidence for a burden of proof. The text of § 768.0427 is explicitly directed at what the jury may see, not what the plaintiff must produce to survive dismissal. The statute is titled "Admissibility of evidence," and its subsections repeatedly frame their

directives in terms of what evidence is admissible for the purpose of proving damages. By insisting that this evidentiary permission slip is actually a mandatory checklist for a prima facie case, Defendant confuses the vehicle for the destination.

Defendant invites the Court to shun this structure and fixate on the word "shall," interpreting it as a procedural tripwire that mandates the production of specific evidence. (Doc. 32 at 9.) But this textual argument collapses when we look at the rest of the sentence: "shall **include, but is not limited to**." In Florida, as in ordinary English, the term "include" suggests a non-exhaustive list. *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 783 (Fla. 2017). When the legislature also adds the phrase "but is not limited to," it effectively shouts that the listed items are illustrative, not exclusive. To instead read the provision as a mandatory checklist is to ignore the legislature's explicit instructions. We cannot enforce the "shall" as a command to the parties while deleting the "not limited to" that preserves their evidentiary options.

Viewed through the correct lens, then, the statute's mandatory language—"shall include"—falls into place not as a burden of production for the litigant, but as a directive of admissibility for the Court. This is a common feature of Florida law. Statutes repeatedly declare that various items—photographs, judgments, sworn copies of writings, expert reports—

shall be admissible in evidence. *See, e.g.*, Fla. Stat. § 28.30(3) (photographs); § 92.07 (judgments); § 92.26 (sworn writings); § 440.25 (medical reports); § 772.15 (adjudications of not guilty). In each of these instances, the legislature is telling the court that it must keep the gate open when such evidence is proffered. It is not telling the litigant that they must walk through it. The directive binds the adjudicator, not the advocate. After all, it is courts—not parties—that admit evidence. And it is parties—not courts—that decide what to present.

If the Florida legislature had intended to dictate that only a specific type of evidence is sufficient to prove unpaid or future medical expenses, like Defendant argues, it knew how to do so. In § 768.0427(2)(a), the legislature did exactly that: evidence regarding satisfied medical bills "is limited to evidence of the amount actually paid." This is the language of restriction; it draws a hard line as to what is required. Yet when the text moves to the subsections at issue, that restrictive phrasing vanishes, replaced by the expansive directive that evidence "shall include, but is not limited to," the listed items. It is a fundamental canon of statutory construction that when the legislature uses different words in adjacent sections, it intends different meanings. *See City of Bartow v. Flores*, 301 So. 3d 1091, 1097 (Fla. Dist. Ct. App. 2020). To accept Defendant's reading would require us to perform a sort of judicial transplant—excising the "limited to" restriction from subsection

(2)(a) and grafting it onto a clause that explicitly declares it "is not limited to" such strictures. This Court has no authority to rewrite the statute to suit a policy preference that the plain text does not support. The job is to read the statute, not edit it.

Defendant's interpretation faces a final textual hurdle: the statute's explicit catch-all provisions. While Defendant insists that a plaintiff with insurance is confined to the specific evidentiary lane of insurance rates, the statute itself plows a much wider path. Subsection (2)(b)5 allows for the admission of "[a]ny evidence of reasonable amounts billed," and subsection (2)(c)3 similarly permits "[a]ny evidence of reasonable future amounts to be billed." The word "any" is expansive. *McNeil v. State*, 215 So. 3d 55, 59 (Fla. 2017). If Defendant were correct—that a plaintiff must strictly adhere to the insurance-rate provisions to the exclusion of all else—then these catch-all subsections would be rendered meaningless for a vast swath of litigants. We generally assume the legislature does not write statutory provisions only to have them effectively deleted by implication. By including these broad evidentiary options alongside the specific insurance directives, the text confirms that the legislature intended to provide a menu of admissible evidence, not a series of mutually exclusive traps.

III. Conclusion

In sum, the statute means exactly what it says. By providing that evidence "shall include, but is not limited to" specific categories, the Florida legislature created a non-exhaustive list of admissible evidence, not a mandatory checklist for survival. Defendant's reading would turn this broad evidentiary gateway into a narrow procedural chokehold, contradicting the plain text of the law. Because Plaintiffs are not required to introduce evidence of insurance reimbursement rates to maintain their claim for medical expenses, Defendant's Motion for Partial Summary Judgment (Doc. 32) is **DENIED**.

ORDERED in Fort Myers, Florida on January 23, 2026.

Kyle C. Dudek
United States District Judge

2026 WL 199278
Only the Westlaw citation is currently available.
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Case No. 2:24-cv-829-KCD-NPM

Filed 01/26/2026

Attorneys and Law Firms

Jessica J. Gonzalez-Monge, Rubenstein Law, Orlando, FL, Nicole Seeley, Ligori and Ligori, Attorneys at Law, Tampa, FL, for Plaintiffs Jessica Guadalupe Ramos Alvarez, Vicente Paul Zamudio Vazquez.

Joseph William Gelli, Boyd & Jenerette, P.A., Jacksonville, FL, Scott Parker Yount, Gisselle Sierra Navarro, Garrison, Yount, Forte, & Mulcahy, LLC, Tampa, FL, for Defendant.

AMENDED ORDER

Kyle C. Dudek United States District Judge

***1** The Court vacates its prior summary judgment order (Doc. 37) and enters this amended decision in its place. Before the Court is Defendant Djory Alderson Louis's Motion for Partial Summary Judgment as to Claims for Medical Expenses. (Doc. 32.)[1] The question presented is whether a personal-injury plaintiff who chooses not to use their health insurance for medical care is barred from recovering those costs unless they introduce evidence of what their insurer would have paid. Defendant argues that Fla. Stat. § 768.0427 creates such an evidentiary burden. And the failure to meet it warrants summary judgment as to those medical expenses. (*Id.* at 3.) But Defendant's statutory reading runs headlong into the plain text. Because § 768.0427 acts as an evidentiary gateway for personal injury claimants—rather than a procedural trapdoor—Defendant's motion is **DENIED.**

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This case arises from a car accident. After Defendant allegedly rear-ended Plaintiffs' vehicle, the family sued. (Doc. 4.) But the current dispute concerns the bills, not the collision.

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Defendant's interpretation faces a final textual hurdle: the statute's explicit catch-all provisions. While Defendant insists that a plaintiff with insurance is confined to the specific evidentiary lane of insurance rates, the statute itself plows a much wider path. Subsection (2)(b)5 allows for the admission of "[a]ny evidence of reasonable amounts billed,"

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ORDERED in Fort Myers, Florida on January 26, 2026.

All Citations

--- F.Supp.3d ----, 2026 WL 199278

Footnotes

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2 Federal courts sitting in diversity "apply state substantive law and federal procedural law." *Royalty Network, Inc. v. Harris*, 756 F.3d 1351, 1357 (11th Cir. 2014). Determining which bucket a state statute falls into can sometimes be sticky business. But we need not untangle that knot today. Both parties have litigated this case on the assumption that § 768.0427 is substantive. The Court will indulge that assumption because it makes no difference to the outcome. If § 768.0427 is substantive, Defendant loses because the statute's plain text does not support his argument. And if it is procedural, he has failed to identify a single federal statute or rule that would support his position.

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For past medical expenses that have not been paid, § 768.0427(2)(b) provides: "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.* Five distinct categories follow:

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> 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.

Id.

The statute uses a parallel structure for future medical expenses under § 768.0427(2)(c). It starts with the same language: "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.* Three separate categories follow:

> 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.

Id.

Defendant focuses on the introductory language in both provisions: "shall include, but is not limited to, evidence as provided in this paragraph." Defendant reads "shall" as a mandate on the party to produce specific evidence. So when a claimant has insurance, like here, § 768.0427(2)(b)3 and (2)(c)2 demands that they produce insurance rate evidence, and only insurance rate evidence, or recover nothing. In Defendant's words, "section 768.0427(2)(b)2

requires (shall) Plaintiffs to introduce evidence of what their insurer would have paid to satisfy their past expenses, while section 768.0427(2)(c)3 requires (shall) Plaintiffs to introduce evidence of what their insurer would pay for their future treatment." (Doc. 32 at 9.)

Defendant's argument misses the forest for the trees—or perhaps more accurately, mistakes a rule of evidence for a burden of proof. The text of § 768.0427 is explicitly directed at what the jury may see, not what the plaintiff must produce to survive dismissal. The statute is titled "Admissibility of evidence," and its subsections repeatedly frame their directives in terms of what evidence is admissible for the purpose of proving damages. By insisting that this evidentiary permission slip is actually a mandatory checklist for a prima facie case, Defendant confuses the vehicle for the destination.

Defendant invites the Court to shun this structure and fixate on the word "shall," interpreting it as a procedural tripwire that mandates the production of specific evidence. (Doc. 32 at 9.) But this textual argument collapses when we look at the rest of the sentence: "shall **include, but is not limited to.**" In Florida, as in ordinary English, the term "include" suggests a non-exhaustive list. *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC,* 226 So. 3d 774, 783 (Fla. 2017). When the legislature also adds the phrase "but is not limited to," it effectively shouts that the listed items are illustrative, not exclusive. To instead read the provision as a mandatory checklist is to ignore

the legislature's explicit instructions. We cannot enforce the "shall" as a command to the parties while deleting the "not limited to" that preserves their evidentiary options.

Viewed through the correct lens, then, the statute's mandatory language—"shall include"—falls into place not as a burden of production for the litigant, but as a directive of admissibility for the Court. This is a common feature of Florida law. Statutes repeatedly declare that various items—photographs, judgments, sworn copies of writings, expert reports—*shall* be admissible in evidence. *See, e.g.*, Fla. Stat. § 28.30(3) (photographs); § 92.07 (judgments); § 92.26 (sworn writings); § 440.25 (medical reports); § 772.15 (adjudications of not guilty). In each of these instances, the legislature is telling the court that it must keep the gate open when such evidence is proffered. It is not telling the litigant that they must walk through it. The directive binds the adjudicator, not the advocate. After all, it is courts—not parties—that admit evidence. And it is parties—not courts—that decide what to present.

If the Florida legislature had intended to dictate that only a specific type of evidence is sufficient to prove unpaid or future medical expenses, like Defendant argues, it knew how to do so. In § 768.0427(2)(a), the legislature did exactly that: evidence regarding satisfied medical bills "is limited to evidence of the amount actually paid." This is the language of restriction; it draws a hard line as to what is required. Yet when the text moves to the subsections at

issue, that restrictive phrasing vanishes, replaced by the expansive directive that evidence "shall include, but is not limited to," the listed items. It is a fundamental canon of statutory construction that when the legislature uses different words in adjacent sections, it intends different meanings. *See City of Bartow v. Flores*, 301 So. 3d 1091, 1097 (Fla. Dist. Ct. App. 2020). To accept Defendant's reading would require us to perform a sort of judicial transplant—excising the "limited to" restriction from subsection (2)(a) and grafting it onto a clause that explicitly declares it "is not limited to" such strictures. This Court has no authority to rewrite the statute to suit a policy preference that the plain text does not support. The job is to read the statute, not edit it.

Defendant's interpretation faces a final textual hurdle: the statute's explicit catch-all provisions. While Defendant insists that a plaintiff with insurance is confined to the specific evidentiary lane of insurance rates, the statute itself plows a much wider path. Subsection (2)(b)5 allows for the admission of "[a]ny evidence of reasonable amounts billed," and subsection (2)(c)3 similarly permits "[a]ny evidence of reasonable future amounts to be billed." The word "any" is expansive. *McNeil v. State*, 215 So. 3d 55, 59 (Fla. 2017). If Defendant were correct—that a plaintiff must strictly adhere to the insurance-rate provisions to the exclusion of all else—then these catch-all subsections would be rendered meaningless for a vast swath of litigants. We generally assume the legislature does not write statutory provisions only to

have them effectively deleted by implication. By including these broad evidentiary options alongside the specific insurance directives, the text confirms that the legislature intended to provide a menu of admissible evidence, not a series of mutually exclusive traps.

III. Conclusion

In sum, the statute means exactly what it says. By providing that evidence "shall include, but is not limited to" specific categories, the Florida legislature created a non-exhaustive list of admissible evidence, not a mandatory checklist for survival. Defendant's reading would turn this broad evidentiary gateway into a narrow procedural chokehold, contradicting the plain text of the law. Because Plaintiffs are not required to introduce evidence of insurance reimbursement rates to maintain their claim for medical expenses, Defendant's Motion for Partial Summary Judgment (Doc. 32) is **DENIED**. The Clerk is also directed to vacate the Court's prior order (Doc. 37) and strike it from the docket.

ORDERED in Fort Myers, Florida on January 26, 2026.

Kyle C. Dudek
United States District Judge

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
FIFTEENETH COUNTY, FLORIDA

CASE NO.: 2025CA002753
JANINE LYNETTE CAMACHO and
JEFFREY CAMACHO, Individually, and as
Husband and Wife,

Plaintiffs,
vs.

ELISABETH ANN TAYLOR, GEORGE
PRESSLEY TAYLOR V, and MICHELLE
LOPEZ,
Defendants.
_____/

DEFENDANTS' ORDER GRANTING DEFEDNATNS' MOTION IN LIMINE REGARDING ADMISSIBLE EVIDENCE OF PAST AND FUTURE MEDICAL TREATMENT OR SERVICES EXPENSES AND APPLICATION OF FLA. STAT. § 768.0427

THIS MATTER having come before this Honorable Court on October 30, 2025, via Zoom, on Defendants' Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services Expenses and Application of Fla. Stat. § 768.0427, and the Court having heard arguments from the parties, it is hereby:

ORDERED AND ADJUDGED as follows:

1.Defendants' Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services Expenses and Application of Fla. Stat. § 768.0427 is hereby **GRANTED.**

2.This matter was filed after March 24, 2023, and therefore compliance with Fla. Stat. §768.0427 is applicable to the parties in this litigation and will be required. Wolf v. Williams., 397 So. 3d 799, 802 (Fla. 5th DCA 2024).

3.At the time of the subject motor vehicle accident, the Plaintiff had health insurance.

4.Thus, under these circumstances, and under Fla. Stat. § 768.0427 the Plaintiff has the burden of proof and burden of production to provide *(a) 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. See Fla. Stat. § 768.0427(2)(a).*

5.The Court further finds, under Fla. Stat. § 768.0427, that the Plaintiff has the burden of proof and the burden of production to provide evidence, where applicable to this case, as follows:

6. *(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.*

7. *(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.*

8. *(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.*

9. *(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.*

10.*(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.*

11. As it pertains to Plaintiff's presentation of future medical bills, the Court places the burden on the Plaintiff under Fla. Stat. § 768.0427(c) to present evidence to the jury as follows:

12. *(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.

13. *(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.*

14. Compliance with Fla. Stat. § 768.0427 in this regard and in this case is a condition precedent to the admissibility of such evidence and the burden of proof and production is on the Plaintiff to comply and to produce said evidence and materials as contemplated under Fla. Stat. §768.0427.

DONE AND ORDERED in Chambers at Palm Beach County, Florida on this _____ day of _____, 2025.

50-2025-CA-002753-XXXA-MB 11/11/2025
G. Joseph Curley, Jr. Circuit Judge

50-2025-CA-002753-XXXA-MB 11/11/2025
G. Joseph Curley, Jr.
Circuit Judge

Honorable G. Joseph Curley, Jr. Circuit Court Judge

Copies Furnished To:

John J. Wilke, Esq. : WilkePleadings@wilkelawgroup.com; BoteroPleadings@wilkelawgroup.com

Brian P. Sullivan, Esq.: bps@searcylaw.com; _ricciteam@searcylaw.com

Sophie A. Velasquez, Esq.: reception@cconeytrybus.com; yhall@cooneytrybus.com; svelasquez@cooneytrybus.com; bmansfield@cooneytrybus.com; lcoker@cooneytrybus.com

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: CACE24004949 (18)

EDDIE F. ELLIS and BRIDGET E. WALKER,

Plaintiffs,

v.

TAYLOR N. BOYD,

Defendant.
_____/

ORDER ON DEFENDANT TAYLOR N. BOYD'S MOTION IN LIMINE OF ADMISSIBLE EVIDENCE OF PAST AND FUTURE EXPENSES FOR MEDICAL TREATMENT OR SERVICES

THIS CAUSE came before the Court on Defendant Taylor N. Boyd's Motion in Limine Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services filed on May 7, 2025. The Court, having reviewed the pleadings in support thereto, and having considered argument of counsel, and the Court being otherwise duly advised, the Court ORDERS AND ADJUDGES as follows:

The Motion is GRANTED, in part, and DENIED, in part.

This case arises from an automobile accident where the Plaintiffs allege they were injured after Defendant Taylor N. Boyd's vehicle collided with theirs. Defendant maintains that at all times material, Plaintiff Walker had private health insurance and Plaintiff Ellis had Medicare coverage available to cover medical expenses arising from the instant motor vehicle accident. Several unpaid bills for medical treatment have not been submitted to Plaintiff Walker's insurer for reimbursement, or to Medicare for Plaintiff Ellis' medical treatment.

I. Paid Past Medical Expenses

Section 768.0427(2)(a), Florida Statutes explains that "[e]vidence 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." (emphasis supplied).

Here, the statute is clear and unambiguous. The parties are restricted to presenting evidence of amounts actually paid for past medical expenses, rather than amounts billed.

In this regard, Defendant's Motion is GRANTED.

II. Unpaid Past and Future Medical Expenses

Section 768.0427(b)(1) addresses the evidence admissible to prove the amount necessary to satisfy unpaid charges incurred for medical treatment or services for claimants with healthcare coverage other than Medicare or Medicaid. Specifically, admissible evidence ***shall include, but is not limited to***:

> 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.

Unlike §768.0427(2)(a), subsection (2)(b) does not limit the evidence that may be admitted. "[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's use of different language in the subsections supports the conclusion that evidence of unpaid past medical expenses is not limited, as it is in subsection (2)(a). This is further supported by the well-settled rules of statutory interpretation. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132 (2012) ("[t]he verb *to include* introduces examples, not an exhaustive list."); *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.

This reasoning applies to both subsections (2)(b)(1) and (2)(b)(3). Accordingly, Defendant's Motion is DENIED on this issue.

III. Plaintiffs' Burden of Proof

Defendant argues that Plaintiffs are required to introduce evidence listed in subsection (2) to satisfy its burden of proof at trial on their claim for damages. Section 768.0427(2) states 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." (emphasis supplied). Subsection (2) uses the word "admissible." *Cf.* §768.0755, Fla. Stat. ("[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.") (emphasis supplied). Section 768.0427(2) does not use the word "required" or otherwise state that a plaintiff must introduce the listed evidence. *See i.e., Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015) ("If the Legislature had intended such a meaning, it could easily have made such intention clear."); *Tropical Coach Line, Inc. v. Carter,* 121 So.2d 779, 782 (Fla. 1960) ("If the language of the statute is clear and unequivocal, then the legislative intent must be derived from the words used without involving incidental rules of construction or engaging in speculation as to what the judges might think that the legislators intended or should have intended."); *Hughes v. Universal Prop. & Cas. Ins. Co.*, 374 So. 3d 900, 906 (Fla. 6th DCA 2023), review granted, No. SC2024-0025, 2024 WL 1714497 (Fla. Apr. 22, 2024) ("if the Legislature intended for section 627.70152 to apply retroactively to insurance policies issued before the statute's effective date, it knew how to say so.")

The Court notes that neither this Order nor §768.0427, Fla. Stat. have any bearing on Plaintiffs' burden to prove their medical expenses are reasonable and necessary. *Walerowicz v. Armand-Hosang*, 248 So. 3d 140, 143 (Fla. 4th DCA 2018) (stating it is "Plaintiff's burden to prove the reasonableness and necessity of medical expenses."); *Columbia Hosp.*, 33 So. 3d at 150 ("A claimant for damages for bodily injuries has the burden of proving the reasonableness of his or her medical expenses.") While §768.0427, Fla. Stat. does not explicitly require Plaintiff to introduce evidence of the reasonableness of the medical expenses she has submitted for the jury's consideration, the burden still rests on Plaintiff to demonstrate those expenses were reasonable.

Accordingly, Defendant's Motion on this issue is DENIED.

DONE AND ORDERED in Chambers, in Fort Lauderdale, Broward County, Florida on October 10, 2025.

FABIENNE E. FAHNESTOCK, CIRCUIT JUDGE

Copies furnished to:
All parties/counsel of record

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2025-CA-000500

KIMBERLY LYLES,

Plaintiff,

vs.

SEWNARINE BALRAJ,

Defendant.
_____/

ORDER ON DEFENDANT'S MOTION IN LIMINE REGARDING ADMISSIBLE EVIDENCE OF PAST AND FUTURE MEDICAL TREATMENT OR SERVICES EXPENSES AND APPLICATION OF FLA. STAT. § 768.0427

THIS CAUSE having come before this Court on Defendant's Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services and Application of Fla. Stat. § 768.0427, and Plaintiff's Response in Opposition [In Part], and the parties' Notices of Filing Supplemental Authorities, and this matter being heard via hearing on September 16, 2025, and after entertaining argument of counsel, the Court hereby:

ORDERED AND ADJUDGED, as follows:

1. Defendant's Motion in Limine regarding admissible evidence of past and future medical treatment or services expenses and application of Fla. Stat. 768.0427 is hereby **GRANTED in part and DENIED in part.**

2. The Court finds that Section 768.0427 applies to this matter and will also apply to the parties at trial.

3. The Court did not make any determination as to what evidence regarding Section 768.0427 will be admissible for trial purposes. The Court indicated that will be determined at a later date.

4. The Court finds that in the instant case Section 768.0427 (2)(a); (2)(b); and 2(c) apply.

5. The Defendant filed a Motion in Limine asking this Court, *inter alia*,[1] to conclude that pursuant to Section 768.0427(2), the Plaintiff has the burden of proof to provide evidence for the reimbursement rates for any private health care that did, or could, provide treatment, and/or reimbursement rates for Medicare/Medicaid that would cover said medical treatment in the past and in the future. Defendant also moved for an Order to introduce any evidence specifically permitted by subsection (2)(b)-(c). Defendant further argues that if the Plaintiff does not present this evidence, she will be prohibited from recovering past or future medical damages.

6. The Plaintiff opposed this Motion, arguing in relevant part that she does not have the burden to present any particular evidence under Section 768.0427(2), that the statute merely concerns the admissibility of evidence, and does not create a burden of production, that the only limitation in the statute is for evidence of ***satisfied*** medical expenses, that the statue does not limit proof for unpaid or future medical expenses, nor require a plaintiff to introduce particular evidence for such expenses, that the Legislature has provided a list of non-exclusive items that may be admissible in evidence.

7. This Court agrees with the Plaintiff's position. In issuing this ruling, this Court has reviewed all of the statewide orders provided by the parties, and finds most persuasive *Hourihan*

[1] The Defendant's Motion asks for other relief not opposed by the Plaintiff, and thus this Court did not need to rule on these other matters.

v. Mona, No. 16-2023-CA-010388 (Fla. 4th Cir. Ct. Aug. 1, 2025) (Anderson, J.), and Order denying Defendant's Motion for Reconsideration in that case on September 12, 2025.

8. First, this Court finds that Section 768.0427 is a statute of admissibility, not of burden shifting. The Florida Supreme Court has explained that where the Legislature wishes to amend the common law, it must do so explicitly. The Legislature has not included explicit language that the burden has been shifted to the Plaintiff to present any particular evidence and thus this Court cannot conclude that the Legislature has imposed a burden of evidentiary proof.

9. Second, even if that Supreme Court reasoning did not govern, as a matter of statutory construction, this Court finds that the statutory text in Section 768.0427(2) is clear that there is no burden shifting.

10. In examining the text, this Court turns to subsection (2), which 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 section."[2] This Court notes the word used is "admissible." Nothing here mentions burden shifting or whose burden anything is, with the Legislature simply referring to what is "admissible."

11. The Court next turns to subsection Section 768.0427 (2)(a). This reads, "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." This Court can only conclude that this shows the Legislature understands what it means to ***limit*** admissible evidence. The Legislature has done so for ***satisfied*** medical treatment or services.

12. By contrast, the language in subsection (2)(b) is different compared to 2(a). This says, "evidence offered to prove the amount necessary to satisfy ***unpaid*** charges for incurred

[2] All emphasis is by this Court.

medical treatment or services ***shall include*** but ***is not limited to evidence provided in this paragraph*** "

13. This Court notes the distinction between the language in subsection (2)(a) referring to what evidence "is limited to" and the language in subsection (2)(b) "is not limited to." This Court finds that this is not a burden shifting statute.

14. As for the use of the word "shall" in subsection (2), this Court finds this refers to the beginning of a list. As Plaintiff's appellate counsel pointed out, just because the phrase "shall include" is used does not mean that every single thing must be included or introduced. This Court also agrees with Plaintiff's appellate counsel that the word "shall" does not mean "must" in this context or circumstance and can include other items aside from those numbered and outlined under Section 768.0427(2)(b)(1-5). The word "shall" in this section does not indicate a burden shifting to the plaintiff, but rather simply indicates the beginning of a list.

15. Furthermore, this Court finds that the statutory reference to "not limited to" does not shift the burden to the Plaintiff. Subsection (2)(b)'s language refers to the evidence of the amount necessary to prove unpaid medical charges to include this non-exclusive list of 5 categories, without being limited to that list.

16. This Court also notes that even when not considering the subsection (2) language of the admissible evidence that "is not limited to," subsection (2)(b)5. is a catch-all provision that is part of the non-exhaustive list of admissible evidence.

17. At trial, the Plaintiff can offer evidence or decide not to offer any evidence under Section 768.0427 (2)(b)(1-5).

Similarly, at trial, the Defendant can offer evidence or decide not to offer any evidence under Section 768.0427 (2)(b)(1-5). At trial, the Defendant has the right to seek the admissibility of evidence under Section. 768.0427 in its entirety.

18. This Court is not making a finding of what will be admissible at trial or whether all of the buckets of evidence would govern the facts of this case.[3] But this Court finds it is up to the Plaintiff to bring in or not bring in whatever evidence they want to bring in. On the other hand, this Court also finds the Defendant will have its opportunity to present admissible evidence under the statute as well.

19. For the same reasons that Section 768.0427(2)(b) does not impose a burden on the Plaintiff to introduce certain evidence regarding past medical treatment and services, this Court finds the same is true for subsection (2)(c), and future medical treatment and services.

20. The Court further adopts and incorporates by reference its findings and rulings made orally at the hearing on this matter.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

502025CA000500XXXAMB 11/18/2025
Carolyn Bell Circuit Judge

502025CA000500XXXAMB 11/18/2025
Carolyn Bell
Circuit Judge

Copies Furnished To:

All counsel of record

Jason J. Guari, Esq.

[3] This Court is not making a finding of admissibility because there are other rules of evidence that may apply. This Court is also not making a finding of whether all of the buckets of evidence in subsection (2)(b) and (c) would be admissible.

Scott Perry, Esq.
Murray Guari Trial Attorneys
1525 N. Flagler Drive, Suite 100
West Palm Beach, FL 33401
(561-366-9099
jguari@murrayguari.com
phenney@murrayguari.com
pleadings@murrayguari.com
Trial Counsel for Plaintiff

Andrew A. Harris, Esq.
Harris Appeals, P.A.
5220 Hood Road, Suite 201
Palm Beach Gardens, FL 33418
andrew@harrisappeals.com
eservice@harrisappeals.com
Appellate Counsel for Plaintiff

Luis A. Botero, Esq.
John J. Wilke, Esq.
Wilke & Botero, Attorneys at Law
7284 W. Palmetto Park Road, Suite 306
Boca Raton, Florida 33433
BoteroPleadings@wilkelawgroup.com
WilkePleadings@wilkelawgroup.com
Counsel for Defendant