Legal Opinion Letter

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# Iowa Limits Medical Expense Damages to the Sums Actually Paid to a Plaintiff's Health Care Providers

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With Governor Kim Reynolds' signature on June 18, 2020, Iowa enacted important legislation to preclude inflated medical damage awards in personal injury lawsuits, eliminating what is widely referred to as "phantom damages." This new law, S.F. 2338, prevents damages for past medical expenses in civil actions from exceeding what healthcare professionals and hospitals were actually paid or may be owed for the treatment provided. Iowa law previously allowed plaintiffs to submit for jury consideration evidence of the top-line sums on invoices for medical services, before reductions required by health insurance contracts or the terms of government programs, even though those amounts were never actually paid to the medical providers and hospitals. Allowing evidence of these illusory "billed" amounts, in addition to admitting evidence of the much lower sums actually paid to the healthcare providers for treating the plaintiff, sowed the seeds of jury confusion and set up plaintiffs to receive an unjust windfall. By adopting the changes set forth in S.F. 2338, which goes into effect July 1, 2020 and governs the damages for past medical expenses available in cases filed after that date, Iowa has eliminated an abusive and costly practice that exposed businesses and other lawsuit defendants to excessive damages.

**Change in Valuation of Medical Expense Damages**

S.F. 2338 establishes multiple layers of protection in the two new statutory sections it creates. First, new I.C.A. § 622.4 limits the evidence the jury may consider on the value of a plaintiff's past medical expenses to documents or testimony identifying the amounts "actually paid" to the health care providers plus any sums "actually necessary to satisfy the medical care charges that have been incurred but not yet satisfied." Second, new I.C.A. § 668.14A similarly restricts damages for past medical expenses recoverable by a personal injury plaintiff to those same amounts. Iowa courts had previously allowed plaintiffs to introduce the charges set forth on the providers' invoices prior to write-offs, contractual discounts, or other required reductions. *See Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 156-57 (Iowa 2004). Plaintiffs then could argue to the jury that the pre-reduction sums reflected the reasonable value of the treatment and therefore the appropriate amount of medical expense damages, even though the "billed" amounts may be hundreds of thousands of dollars more than what the providers were paid for treating the plaintiff.

To take one example, in *Lee v. Small*, 829 F. Supp. 2d 728 (W.D. Iowa 2011), the medical invoices totaled approximately $700,000, but the healthcare providers received only about $300,000 from private health insurance and Medicare. The plaintiff was allowed to present at trial evidence of the higher billed amounts, with support from expert testimony, and then argue that the jury should award him $700,000 as the figure reflecting the "reasonable and necessary cost" of his medical treatment. Iowa's new law

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will prevent plaintiffs from confusing or distracting juries with evidence suggesting that the value of the healthcare services rendered somehow exceeds the sums paid or still owing to the care givers.

Additionally, I.C.A. § 622.4 prevents claimants from circumventing the limit on recoverable medical expense damages by directing or encouraging healthcare providers to hold the treatment invoices rather than submit them to health insurers or government programs like Medicare or Medicaid. In instances when the invoices are never presented for payment, some plaintiffs contend that these withheld charges have been "incurred but not yet satisfied," and so only the full face value of the invoices reflects the proper valuation juries should assign to those services. *See*, *e.g.*, *Rutherford v. Joe Rud Trucking, Inc*., No. SA-13-CA-856-FB (HJB), 2015 WL 12582805 (W.D. Tex. Jan. 15, 2015). I.C.A. § 622.4 shuts down any such argument. Under the new statute, a plaintiff cannot present evidence of the value for medical services that "exceed[s] the amount by which the bills could be satisfied by the claimant's health insurance, regardless of whether such health insurance is used or will be used to satisfy the bills." In other words, if a plaintiff has available health coverage, then the plaintiff cannot introduce evidence to suggest that the jury should award more than what the applicable plan would pay the medical providers upon submission of the invoices.

**Medical Expense Valuation Reflects the Intended Aim of Compensatory Damages**

By enacting S.F. 2338, Iowa has restored an element of common sense into personal injury litigation by reconnecting the value of past medical expenses to the purpose of compensatory damages. Such damages are given in order to make an injured party whole, not to improve that claimant's overall position. Allowing a plaintiff to recover as medical expense damages more money than actually changed hands for the healthcare services provided would therefore amount to an excessive recovery.

Discounted or written-off sums that were never paid to a plaintiff's healthcare providers and which the plaintiff never owed to anyone cannot be seen as "damages" or "compensatory" in any way. These amounts represent nothing more than an illusion of damages: dollars that might have been paid to the care providers but never were. Because they neither reimburse expenditures made nor cover liabilities owed, these unrealized losses simply cannot be reconciled with the concept of compensatory damages. As the Pennsylvania Supreme Court has recognized, including healthcare fee write-downs and contractual discounts in a claimant's compensatory damages award "would provide her with a windfall and would violate fundamental tenets of just compensation." *Moorhead v. Crozer Chester Med. Ctr*., 765 A.2d 786, 790 (Pa. 2001), *abrogated on other grounds by Northbrook Life Ins. Co. v. Commonwealth*, 949 A.2d 333 (Pa. 2008). S.F. 2338 redefines recoverable medical expense damages so that these illusory, phantom damages are excluded from Iowa damages awards.

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