March 31, 2026

VIA EMAIL: rulescomments@arcourts.gov

Kyle E. Burton
Clerk of the Arkansas Supreme Court
Attn: Amendments to Arkansas Rules of Evidence
625 Marshall Street
Little Rock, AR 72201

RE: Creation of Rule 412 of the Arkansas Rules of Evidence (2026 Ark. 18)

Dear Mr. Burton:

We, the undersigned, are the leading organizations representing lawyers who primarily represent defendants in civil litigation. In addition, our organizations include significant stakeholders across the business and civil justice communities. Our members and supporters include numerous Arkansas employers.

We support the proposed creation of Rule 412, which aligns the Arkansas Rules of Evidence with 2025 Acts of Ark. No. 28. This rule provides that the reasonable value of past necessary medical care, treatment, or services received is to be determined based on amounts actually paid for that care, regardless of the source of payment. Likewise, evidence of the reasonable value of medical care, treatment, or services that remain unpaid would be limited to the amount that the plaintiff or a third party is legally responsible for paying. Amounts beyond those values, such as hospital chargemaster rates or other list prices for medical care, would be inadmissible.

There is often a stark difference between the "billed," "gross," or "standard" rates for medical care and the amount that healthcare providers accept as payment. Billed rates are often many multiples the amount providers routinely accept.[1]

Healthcare providers typically receive payment based on negotiated rates with managed care plans or schedules set by Medicare rules.[2] Likewise, uninsured patients rarely pay list prices, as healthcare providers offer programs providing

[1] *See, e.g.*, George A. Nation III, *Hospital Chargemaster Insanity: Heeling the Healers*, 43 Pepp. L. Rev. 745, 748 (2016) ("[C]hargemaster prices are insanely high, often running ten times the amount that hospitals routinely accept as full payment from insurers.").

[2] *See Daughters of Charity Health Servs. of Waco v. Linnstaedter*, 226 S.W.3d 409, 410 (Tex. 2007) ("Few patients today ever pay a hospital's full charges, due to the prevalence of Medicare, Medicaid, HMOs, and private insurers who pay discounted rates."); *see also* Centers for Medicare & Medicaid Services, *Fee Schedule - General Information.*

subsidies or discounts to low-income patients and write off an increasing amount of bills that reflect list prices.[3]

In sum, billed rates often exist only in medical billing systems and may be listed on bills, but they are often at levels that the plaintiff, a third party covering the plaintiff, or anyone else for that matter ever pays. It is misleading to tell juries that the cost of a plaintiff's medical care is $100,000 when the healthcare provider accepted $8,500 as full payment.

The approach proposed by Rule 412 and 2025 Acts of Ark. No. 28 is consistent with a growing number of states, whether through court rulings or legislation, that recognize the reality of medical billing practices. Since 2020, six states in addition to Arkansas have enacted legislation providing that evidence offered to prove the amount of damages for past medical treatment or services is limited to the amount actually paid, regardless of the source of payment.[4] Several other states have taken this approach.[5] State high courts have also recently addressed the issue, rejecting use of billed rates to compute damage awards.[6] Other states have long determined damages for medical expenses based on the amount paid, not amounts charged. For example, the California Supreme Court has ruled that its courts do not allow recovery based on amounts that appear on medical bills "for the simple reason that the injured plaintiff did not suffer any economic loss in that amount."[7]

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[3] One study found that patients with private insurance paid 41% of list prices, patients with Medicare and Medicaid paid 35% and 30% of list prices, respectively, and uninsured patients paid 39% of list prices. Glenn A. Melnick & Katya Fonkych, *Hospital Pricing and the Uninsured: Do the Uninsured Pay Higher Prices?*, 27 Health Aff. 116, 118 (2008).

[4] *See* Fla. Stat. Ann. § 768.0427(2) (enacted 2023); Ga. S.B. 68 (2025) (to be codified at Ga. Code Ann. § 51-12-1.1); Iowa Code §§ 622.4, 668.14A (enacted 2020); La. S.B. 231 (2025) (amending La. Rev. Stat. § 9:2800.27); Mont. Code Ann § 27-1-308 (enacted 2021); Tenn. Code Ann. § 29-26-119 (enacted 2024).

[5] *See, e.g.*, N.C. Gen. Stat. Ann. ch. 8C, Rule 414 (enacted 2011); Okla. Stat. Ann. tit. 12, § 3009.1 (enacted 2011); Tex. Civ. Prac. & Rem. Code Ann. § 41.0105 (enacted 2003).

[6] *See, e.g., Gardner v. Norman*, 2025 UT 47, ¶¶ 4, 41, -- P.3d -- (Utah Oct. 30, 2025) ("The gross charge does not reflect [the plaintiff's] past medical expenses because neither he nor his insurance were ever obligated to pay that amount," and finding that, instead, "the amount of the negotiated charge reflects the actual loss incurred, which is the measure of special damages.").

[7] *Howell v. Hamilton Meats & Provisions, Inc*., 257 P.3d 1130, 1133 (Cal. 2011). Rather, "a personal injury plaintiff may recover *the lesser* of (a) the amount paid or incurred for medical services, and (b) the reasonable value of the services." *Id*. at 1138 (emphasis in original); *see also Moorhead v. Crozer Chester Med. Ctr.*, 765 A.2d 786, 789-90 (Pa. 2001) (recognizing that an injured party may only recover "the amount paid for the medical services" and finding that awarding a plaintiff the billed amount of $108,668.31 when the healthcare provider accepted

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We support the creation of Rule 412 of the Arkansas Rules of Evidence.[8] Thank you for the opportunity to comment.

DRI – Association of Lawyers Defending Business

Lawyers for Civil Justice

U.S. Chamber of Commerce Institute for Legal Reform

NFIB Small Business Legal Center, Inc.

Coalition for Litigation Justice, Inc.

National Association of Mutual Insurance Companies

Arkansas State Chamber of Commerce

International Association of Defense Counsel

Federation of Defense & Corporate Counsel

Association of Defense Trial Attorneys

American Tort Reform Association

Washington Legal Foundation

American Property Casualty Insurance Association

$12,167.40 would provide the plaintiff with a $96,500.91 "windfall and would violate fundamental tenets of just compensation"), *abrogated on other grounds by Northbrook Life Ins. Co. v. Commonwealth*, 949 A.2d 333 (Pa. 2008).

[8] The Arkansas Association of Defense Counsel filed a separate comment supporting the rule. *See* Stuart P. Miller, President, Arkansas Association of Defense Counsel, to Kyle Burton, Re: 2026 Ark. 18, In Re Creation of Rule 412 of The Arkansas Rules of Evidence (Mar. 16, 2026) ("[T]he AADC expresses its full support for the Court's opinion delivered on February 6, 2026, entitled 'In Re Creation of Rule 412 of The Arkansas Rules of Evidence.'").