



FLORIDA TORT REFORM

Effective Date: Applies to any causes of action filed after March 24, 2023

◆ Two Year Statute of Limitations – Negligence Claims

- » Reduces statute of limitations for general negligence cases from four years to two years from date of loss. The new SOL will be applicable to accidents occurring after March 24, 2023.

◆ Modified Contributory Negligence

- » Amends Florida's comparative negligence system from a "pure" comparative fault system to a "modified" contributory negligence system in which a Plaintiff who is more than 50 percent at fault for his or her own injuries is barred from recovering.
 - Does not apply to an action for damages for personal injury or wrongful death arising out of medical negligence.

◆ Third-Party Bad Faith

- » No bad faith action will lie if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of a claim which is accompanied by sufficient evidence to support the amount of the claim.
- » Negligence is not the standard in determining bad faith on behalf of the insurer.
- » Claimant must act in good faith when making a claim.
- » If the insured, claimant, or a representative failed to act in good faith, the trier of fact may reasonably reduce the damages awarded against the insurer.
- » Multiple Competing Claims:
 - Allows insurers access to interpleader actions or binding arbitration to resolve multiple claims and avoid bad faith.

◆ Repeal of One-Way Attorney's Fees

- » Attorney's fees will only be recoverable in Declaratory Judgment actions following a total coverage denial (not applicable to homeowner's insurance and commercial property policies).
- » Right to recover attorney's fees cannot be transferred by assignment.
- » Creates a rebuttable presumption that the lodestar fee, the federal standard, is sufficient and reasonable in calculating attorney's fees in all circumstances, except those which are rare and exceptional in which a showing is made that competent counsel could not otherwise be retained.

◆ Premises Liability – Negligent Security

- » Bad Actor/Intentional Tortfeasor can be included on the verdict form for the jury to apportion fault.
- » Creates a presumption against negligence, on behalf of an owner or principal operator of a multi-family residential property, in connection with certain third-party criminal acts on the premises if the owner or operator substantially implements specific security measures, including:
 - Security camera system at entry and exit points, which records and maintains retrievable video footage for at least 30 days.
 - Dusk until dawn lighting in parking lots, walk ways, laundry rooms, common areas, and porches. (The parking lot illumination has to have an average of 1.8 foot-candles per square foot.)
 - At least a one-inch deadbolt on unit doors.
 - A locking device on windows, exterior sliding doors, and other doors not used for community purposes.
 - Locked gates with key or fob access for pool fence areas.
 - Peephole or door viewer on unit doors that do not include windows on the door or next to the door.
- » By January 1, 2025, the presumption applies if the owner or operator has:
 - Obtained a crime prevention assessment that is no more than three years old for the property.
 - Has provided proper crime deterrence and safety training to employees which must be conducted within 60 days of hire.
- » The assessment and training must be through a law enforcement agency or accredited Practitioner.
- » The burden of proof is on the owner/operator to demonstrate substantial compliance.

◆ Recovery of Damages for Medical Treatment

Past Paid Medical Bills

- » Restricts evidence of services that have already been satisfied to the amount actually paid for the services, regardless of the source of such payment.

Past Unpaid Medical Bills

- » Claimant has insurance 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.
- » Claimant has insurance but opts to use a letter of protection (or otherwise does not submit charges to his or her health insurer): 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, plus the claimant's share of medical expenses, had the claimant obtained treatment pursuant to the health care coverage.
- » Claimant has Medicare or Medicaid or does not have insurance: 120% of the Medicare reimbursement rate in effect on the date the claimant incurred the medical services. If there is no applicable Medicare rate for the services in question, 170% of the applicable state Medicaid rate.
- » Claimant receives services under Letter of Protection, and the bill is then transferred 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.
- » Claimant can also present any evidence of reasonable amounts billed to the claimant for medically necessary treatment or services provided to the claimant.

Future Medical Bills

- » Claimant has insurance other than Medicare or Medicaid or is eligible for such 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.
- » Claimant has Medicare or Medicaid or does not have insurance: 120% of the Medicare reimbursement rate in effect at the time of the trial for such future services. If there is no applicable Medicare rate for the future services in question, 170% of the applicable state Medicaid rate amount.
- » Claimant can also present any evidence of reasonable amounts to be billed to the claimant for medically necessary treatment or services.

◆ Letters of Protection

Required Disclosures

- » A copy of the Letter of Protection.
- » All billings must be itemized and if possible coded using CPT or HCPCS codes.
- » At the facility level including the outpatient setting, APC, EAPG, ICD, and CPT codes must be used.
- » At the facility level, including an inpatient setting, DRG and ICD codes must be used.
- » For factored Letters of Protection, the name of the purchaser, the dollar amount of the purchase, including any discount below the invoice amount.
- » Whether the claimant had health care coverage, and if so, the identity of such coverage.

Referrals for Treatment Under Letters of Protection

- » The identity of the person making the referral;
 - This includes lawyers, and such evidence is admissible irrespective of the attorney-client privilege.
- » The financial relationship between a law firm and a medical provider under a Letter of Protection, including the number of referrals, frequency and financial benefit obtained is relevant to the issue of bias of a testifying medical provider.

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