

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 205

Introduced by Bosn, 25.

Read first time January 14, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil actions; to provide requirements for
2 admissibility of evidence relating to damages for past or future
3 medical expenses; to require certain disclosures by claimants in
4 certain cases; to provide limitations on damages for medical
5 expenses; to provide for a cap on noneconomic damages in certain
6 civil actions against commercial motor vehicle carriers; and to
7 provide duties for courts.
8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** For purposes of sections 1 to 4 of this act:

2 (1) Claimant means a person seeking damages for medical expenses in
3 a personal injury or wrongful death action;

4 (2) Factoring company means a person who purchases a health care
5 provider's accounts receivable at a discount below the invoice value of
6 such accounts;

7 (3) Health care coverage means any third-party health care or
8 disability services financing arrangement, including, but not limited to,
9 arrangements with entities certified or authorized under state or federal
10 law; state or federal health care benefit programs; workers'
11 compensation; and personal injury protection;

12 (4) Health care provider means any of the following professionals
13 and entities, and professionals and entities similarly licensed in
14 another jurisdiction:

15 (a) A facility licensed under the Health Care Facility Licensure Act
16 and its clinical and nonclinical staff providing inpatient or outpatient
17 services;

18 (b) A health care professional licensed under the Uniform
19 Credentialing Act;

20 (c) A professional health care service entity as defined in section
21 71-7910.01;

22 (d) An organization or association of health care professionals
23 licensed under the Uniform Credentialing Act;

24 (e) A clinical laboratory providing services in this state or
25 services to health care providers in this state, if the clinical
26 laboratory is certified by the Centers for Medicare and Medicaid Services
27 of the United States Department of Health and Human Services under the
28 federal Clinical Laboratories Improvement Act of 1967, as amended, and
29 any rules issued thereunder, as such act and rules existed on January 1,
30 2025;

31 (f) A federally qualified health center as defined in 42 U.S.C.

1 1396d(1)(2)(B), as such section existed on January 1, 2025; and

2 (g) A home health aide as defined in section 71-6602; and

3 (5) Letter of protection means any arrangement by which a health
4 care provider renders treatment in exchange for a promise of payment for
5 the claimant's medical expenses from any judgment or settlement of a
6 personal injury or wrongful death action. The term includes any such
7 arrangement, regardless of whether referred to as a letter of protection.

8 **Sec. 2.** (1) Evidence offered to prove the amount of damages for
9 past or future medical treatment or services in a personal injury or
10 wrongful death action shall only be admissible as provided in this
11 section.

12 (2) Evidence offered to prove the amount of damages for charges for
13 past medical treatment or services that have been satisfied is limited to
14 evidence of the amount actually paid, regardless of the source of
15 payment.

16 (3) Evidence offered to prove the amount necessary to satisfy unpaid
17 charges incurred for medical treatment or services is limited to the
18 following:

19 (a) If the claimant has health care coverage other than medicare or
20 medicaid, evidence of the amount which such health care coverage is
21 obligated to pay the health care provider to satisfy such charges, plus
22 the claimant's share of such charges;

23 (b) If the claimant has health care coverage but obtains treatment
24 under a letter of protection or otherwise does not submit charges for any
25 health care provider's medical treatment or services to health care
26 coverage, evidence of the amount the claimant's health care coverage
27 would pay the health care provider to satisfy such past unpaid charges,
28 plus the claimant's share of such charges, had the claimant obtained
29 medical services or treatment pursuant to the health care coverage;

30 (c) If the claimant does not have health care coverage or has health
31 care coverage through medicare or medicaid, evidence of one hundred

1 twenty percent of the medicare reimbursement rate in effect on the date
2 of the claimant's incurred medical treatment or services or, if there is
3 no applicable medicare rate for a medical treatment or service, one
4 hundred seventy percent of the applicable state medicaid rate in effect
5 on such date;

6 (d) If the claimant obtains medical treatment or services under a
7 letter of protection and the health care provider subsequently transfers
8 the right to receive payment under the letter of protection to a third
9 party, evidence of the amount the third party paid or agreed to pay the
10 health care provider in exchange for the right to receive payment
11 pursuant to the letter of protection; and

12 (e) Any evidence of reasonable amounts billed to the claimant for
13 medically necessary treatment or medically necessary services provided to
14 the claimant.

15 (4) Evidence offered to prove the amount of damages for any unpaid
16 charges for future medical treatment or services the claimant will
17 receive is limited to the following:

18 (a) If the claimant has health care coverage, other than medicare or
19 medicaid, or is eligible for any such health care coverage, evidence of
20 the amount for which such future charges of health care providers could
21 be satisfied if submitted to such health care coverage, plus the
22 claimant's share of such charges;

23 (b) If the claimant does not have health care coverage, has health
24 care coverage through medicare or medicaid, or is eligible for such
25 coverage through medicare or medicaid, evidence of one hundred twenty
26 percent of the medicare reimbursement rate in effect at the time of trial
27 for the medical treatment or services the claimant will receive or, if
28 there is no applicable medicare rate for a medical treatment or service,
29 one hundred seventy percent of the applicable state medicaid rate in
30 effect at such time; and

31 (c) Any evidence of reasonable future amounts to be billed to the

1 claimant for medically necessary treatment or medically necessary
2 services.

3 (5) This section does not impose an affirmative duty upon any party
4 to seek a reduction in billed charges to which the party is not
5 contractually entitled.

6 (6) Individual contracts between health care providers and
7 authorized commercial insurers or authorized health maintenance
8 organizations are not subject to discovery or disclosure and are not
9 admissible into evidence to prove the amount of damages for past or
10 future medical treatment or services in a personal injury or wrongful
11 death action.

12 **Sec. 3.** In a personal injury or wrongful death action, as a
13 condition precedent to asserting any claim for expenses for medical
14 treatment or services rendered under a letter of protection, the claimant
15 shall disclose:

16 (1) A copy of the letter of protection;

17 (2) All billings for such medical expenses, which must be itemized
18 and, to the extent applicable, coded according to:

19 (a) For health care providers billing at the provider level, the
20 American Medical Association's Current Procedural Terminology (CPT), or
21 the Centers for Medicare and Medicaid Services' Healthcare Common
22 Procedure Coding System (HCPCS), in effect on the date the medical
23 treatment or services were rendered;

24 (b) For health care providers billing at the facility level for
25 expenses incurred in a clinical or outpatient setting, including when
26 billing through an Ambulatory Payment Classification (APC) or Enhanced
27 Ambulatory Patient Grouping (EAPG), the International Classification of
28 Diseases (ICD) diagnosis code and, if applicable, the American Medical
29 Association's Current Procedural Terminology (CPT), in effect on the date
30 the medical treatment or services were rendered; and

31 (c) For health care providers billing at the facility level for

1 expenses incurred in an inpatient setting, including when billing through
2 a Diagnosis Related Group (DRG), the International Classification of
3 Diseases (ICD) diagnosis and procedure codes in effect on the date on
4 which the claimant is discharged;

5 (3) If the health care provider sells the accounts receivable for
6 the claimant's medical expenses to a factoring company or other third
7 party:

8 (a) The name of the factoring company or other third party who
9 purchased such accounts; and

10 (b) The dollar amount for which the factoring company or other third
11 party purchased such accounts, including any discount provided below the
12 invoice amount;

13 (4) Whether the claimant, at the time medical treatment or services
14 were rendered, had health care coverage and, if so, the identity of such
15 coverage; and

16 (5) Whether the claimant was referred for medical treatment or
17 services under a letter of protection and, if so, the identity of the
18 person who made the referral. If the referral is made by the claimant's
19 attorney, disclosure of the referral is permitted, and evidence of such
20 referral is admissible notwithstanding any attorney-client privilege
21 asserted. In such situation, the financial relationship between a law
22 firm and a health care provider, including the number of referrals,
23 frequency, and financial benefit obtained, is relevant to the issue of
24 the bias of a testifying health care provider.

25 **Sec. 4.** The damages that may be recovered by a claimant in a
26 personal injury or wrongful death action for the reasonable and necessary
27 cost or value of past or future medical treatment or services shall not:

28 (1) Include any amount in excess of the evidence of charges for
29 medical treatment or services admitted pursuant to section 2 of this act;
30 or

31 (2) Exceed the sum of the following:

1 (a) Amounts actually paid by or on behalf of the claimant to a
2 health care provider who rendered medical treatment or services;

3 (b) Amounts necessary to satisfy charges for medical treatment or
4 services that are due and owing but at the time of trial are not yet
5 satisfied; and

6 (c) Amounts necessary to provide for any reasonable and necessary
7 medical treatment or services the claimant will receive in the future.

8 **Sec. 5. (1) For purposes of this section:**

9 (a) Commercial motor vehicle has the same meaning as in section
10 60-316; and

11 (b) Commercial motor vehicle carrier means any person that
12 transports property by commercial motor vehicle upon the public highways.

13 (2) The total amount recoverable per plaintiff for noneconomic
14 damages in a civil action for personal injury or death involving a
15 commercial motor vehicle requiring a commercial driver's license, whether
16 in tort or otherwise, is one million dollars. This limit on damages
17 applies regardless of the number of derivative claims or theories of
18 liability in the civil action.

19 (3) In a civil action subject to the limit provided in subsection
20 (2) of this section:

21 (a) If the action is tried before a jury, the jury shall first make
22 a finding as to noneconomic damages without regard to the limit in
23 subsection (2) of this section. If the noneconomic damages exceed such
24 limit, the court shall then reduce the award to comply with such limit;
25 and

26 (b) If the action is tried without a jury, the court shall first
27 make a finding as to noneconomic damages without regard to the limit in
28 subsection (2) of this section. If the noneconomic damages exceed such
29 limit, the court shall then reduce the award to comply with such limit.