MARYLAND DEFENSE COUNSEL, INC.
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January 30, 2026

Chairman Willliam C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 269 – Courts and Judicial Proceedings - Evidence - Rebuttable Presumption of Medical Bills - OPPOSE

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

On behalf of the Maryland Defense Counsel, Inc. ("MDC") we oppose Senate Bill 269 ("SB 269")/House Bill 385, which seeks to establish a rebuttable presumption in certain civil actions that a medical bill from a health care provider is authentic, fair, and reasonable. If passed, SB 269 would tip the scale of justice in favor of the plaintiff on the issue of proving damages in personal injury and wrongful death cases. There is no justification for such a change, particularly as we are living in the age of record-setting "nuclear" verdicts.

Before addressing the impact of SB 269, we will provide a brief overview of Maryland law, as it presently stands, on the recovery of medical expenses in personal injury and wrongful death cases.

A. The Plaintiff Bears the Burden of Proving All Elements of a Tort Claim for Personal Injury or Wrongful Death, including Damages.

An individual who is the victim of a tort, such as someone involved in an auto accident due to the negligence of another driver, "may recover compensatory damages from the person responsible for that tort — commonly referred to as the tortfeasor." *Westfield Ins. Co. v. Gilliam*, 477 Md. 346, 353 (2022). "Such damages include, among other things, compensation for medical treatment that the victim obtained — or will obtain — as a result of the tort." *Id*. (citing Restatement (Second) of Torts §924(c) & comment f). The plaintiff, as the party asserting the claim, has the burden of proving all elements of their claim, including damages, (*see* Maryland Civil Pattern Jury Instructions ("MPJI-Cv") 1:16 (MSBA 2025)), including their "medical ... expenses reasonably *incurred* in the past and that with reasonable probability may be expected in the future." MPJI-Cv 10:2(5) (emphasis added). Thus, it is plaintiff's burden to show that the claimed expenses have been incurred before any evidence of such can be admitted. *See Worsham v. Greenfield*, 435 Md. 349, 78 A.3d 358 (2013) (defining "Incur" as "to become liable or subject to" per the Merriam-Webster Dictionary). Presently, under Maryland law, "the amount of a bill or an actual payment is inadmissible without evidence to prove that

the bills or payments actually reflect the 'fair and reasonable' value of the services." *Gilliam*, 477 Md. at 355. In cases where damages exceed $30,000,[1] proving that past medical expenses are "fair and reasonable" ordinarily requires expert testimony. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 56 (2013).

B. The Collateral Source Rule Limits What Evidence a Defendant Can Present to a Jury to Refute a Plaintiff's Claim for Medical Expenses.

While the plaintiff bears the burden of proving the fairness and reasonableness of past medical expenses, the defendant can present evidence to refute the plaintiff's damages claim. But the collateral source rule limits what evidence a defendant can present at trial to refute a plaintiff's claim for damages. Under the collateral source rule, a plaintiff is generally permitted to recover the full amount of provable damages, regardless of compensation received from a source "unrelated to the tortfeasor." *Haischer v. CSX Transp., Inc.*, 381 Md. 119, 132 (2004); *Gilliam*, 477 Md. at 355. The rule has its roots in the common law principle that a tortfeasor should not benefit from a plaintiff's prior contractual arrangements (*e.g.*, employer-provided insurance). *See also Eastern Shore Title Co. v. Ochse*, 453 Md. 303, 340 (2017). The rule still centers on this principle. For example, the Maryland Civil Pattern Jury Instructions prohibit jurors from reducing the amount of damages to account for collateral payments already made, such as "sick leave paid by the plaintiff's employer or medical expenses paid by plaintiff's health insurer." MPJI-Cv 10:8. As Maryland's Supreme Court has explained, "[t]he primary purpose of the collateral source rule ... is to ensure that a tortfeasor does not escape liability by enjoying a benefit accruing to the injured party." *Gilliam*, 477 Md. at 356. "Thus, a plaintiff may recover damages for a harm for which the plaintiff has already been compensated and, as a result, in some instances be made 'more than whole.'" *Id.* (quoting *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1310 (11th Cir. 2020)).

While SB 269 does **not** alter the collateral source rule, it creates a rebuttable presumption in favor of the plaintiff that any "medical bill" (as broadly defined under SB 269)—so long as it was provided during discovery—***is fair and reasonable***, and it eliminates the *prima facie* requirement for a plaintiff to offer expert testimony to establish the fairness and reasonableness of past medical bills. Under SB 269, a plaintiff is not even required to provide a defendant with notice that the plaintiff plans to offer such evidence without expert testimony. And even though the plaintiff ordinarily has the burden of proving all elements of a negligence claim, including damages, SB 269 puts the burden of production *on the defendant* to prove that a medical bill is "unfair" or is "unreasonable." Moreover, SB 269 creates the possibility that a plaintiff offers medical bills without expert

[1] Under Md. Code Ann., Cts. & Jud. Proc. § 10-104(b)-(e), in District Court matters or matters in Circuit Court where the amount in controversy does not exceed the amount specified in §4-401 of that title, which amount is currently $30,000, there are procedures for admitting medical records and bills into evidence without requiring expert testimony as to their admissibility. SB 269 does not change those provisions.

testimony, but the defendant rebuts the presumption. What happens in such a scenario? What jury instruction(s) would be given in such a situation? If enacted, this would constitute a dramatic change in the recovery of damages in personal injury and wrongful death cases in Maryland, one that favors the plaintiff.

One fundamental flaw to SB 269, however, is that it is premised on a well-known fiction: that a hospital's statement of charges represents actual expenses that have been incurred by a plaintiff. They do not, and this is common knowledge even among those who are not well-versed in healthcare pricing.

C. A "Statement of Charges" (or Chargemaster Rate) for Medical Services Is Not the Reasonable Value for Past Medical Expenses.

In the world of healthcare pricing, it is well-established that there can be a large difference between the amount charged and the amount accepted as payment by healthcare providers, *regardless of whether the treated patient is insured or uninsured*. *See* George A. Nation III, *The Valuation of Medical Expense Damages in Tort: Debunking the Myth That Chargemaster-Based "Billed Charges" Are Relevant to Determining the Reasonable Value of Medical Care*, 95 Tul. L. Rev. 937, 973-975 (2021). The billed amount is generally referred to as the gross charge or chargemaster rate. The vast majority of payors do not pay gross charges or chargemaster rates. *See* George A. Nation III, *Determining the Fair and Reasonable Value of Medical Services: The Affordable Care Act, Government Insurers, Private Insurers and Uninsured Patients*, 65 Baylor L. Rev. 425, 430 (2013).

The Maryland Supreme Court has acknowledged this:

> In many instances the nominal list price generated by a health care provider billing service may be a less meaningful indicator of market value than the MSRP [manufacturer suggested retail price] sticker on a new car in an auto showroom. That is because, among other things, *health care billing involves nominal prices seldom actually paid, alternative charges negotiated between providers and insurers, and rates set by government entities*.

Gilliam, 477 Md. at 354 (footnotes and citations omitted; emphasis added).

Notably, pursuant to the Affordable Care Act (ACA), in 2021, the federal government began requiring hospitals to publish their pricing. *See* 45 CFR § 180. The purpose of this rule was to provide greater transparency in pricing and enable consumers to better shop for medical services (https://www.cms.gov/hospital-price-transparency/consumers). The rule requires hospitals to publish their gross charge (their chargemaster rate), their payer-specific negotiated charges, their lowest negotiated amount, their highest negotiated amount, and the amount they

accept if payment is made in cash. *See* 45 CFR § 180.20. Recent research into the pricing transparency data has dispelled some prior misunderstandings about medical pricing. *See* Kliff Sara and Katz Josh, *Hospitals and Insurers Didn't Want You to See These Prices. Here's Why*., The New York Times, Aug. 22, 2021, at 2 (https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html). For example, some have argued that chargemaster rates reflect the reasonable value of care because that is what uninsured patients will pay. The pricing transparency data, however, showed "numerous examples of major health insurers – some of the world's largest companies, with billions in annual profits – negotiating surprisingly unfavorable rates for their customers. In many cases, *insured patients are getting prices that are higher than they would if they pretended to have no coverage at all*." *Id*. (emphasis added). This data, therefore, substantiates that gross charges do not reflect reasonable value.

To put it simply, chargemaster rates are fiction. They do not represent the reasonable value of the service being provided. Rather, reasonable value is what willing buyers and sellers are willing to exchange for those services. *See Children's Hosp. Cent. Cal. v. Blue Cross of Cal*., 226 Cal. App. 4th 1260, 1275 (2014) (defining "reasonable market value of the services at issue" as "the price that would be agreed upon by a willing buyer and a willing seller negotiating at arm's length.").

But under SB 269, there would be a *rebuttable presumption* that the gross, chargemaster amounts *are* fair and reasonable. The purpose of this is undoubtedly to increase the settlement values of personal injury and wrongful death cases. Such a presumption defies common sense, particularly when read in the context of the collateral source rule.

Lastly, SB 269 seemingly allows a lower bar for the introduction of medical bills into evidence in multi-million-dollar personal injury and wrongful death cases compared to District Court matters and Circuit Court matters that do not exceed $30,000 in the amount in controversy. Whereas SB 269 provides for a rebuttable presumption that a "medical bill" is fair and reasonable, under § 10-104(b)-(e), there is no such rebuttable presumption and instead the factfinder "may attach whatever weight" to a medical bill the factfinder deems appropriate. Certainly, a factfinder in a multi-million-dollar matter should not be able to presume the fairness and reasonableness of a medical bill if, in a substantially smaller matter, the factfinder cannot make such a presumption.

For all these reasons, MDC urges an unfavorable report on SB 269.

Sincerely,

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