



## PLAINTIFFS LIMITED TO PRESENTING EVIDENCE OF AMOUNTS ACTUALLY PAID TO HEALTH CARE PROVIDERS UNDER NEW MONTANA LAW

A recent Montana Senate Bill (SB 251), effective as of April 30, 2021, has completely changed the scope of damages recoverable for medical services or treatment in actions arising from bodily injury or death. This new bill limits damages to the actual amount paid by or on behalf of the plaintiff to health care providers.

Previously, Montana's common law regarding the measure of damages recoverable followed precedent from a 2015 Montana Supreme Court case that allowed a plaintiff to present evidence of all amounts health care providers billed regardless of how much was actually paid. *Meek v. Mont. Eighth Judicial Dist. Court*, 2015 MT 130, ¶ 22, 379 Mont. 150, 155, 349 P.3d 493, 497. Under *Meek*, a defendant could contest the reasonableness of a plaintiff's billed amounts. A defendant could provide evidence of the amount that, for example, Medicare pays for the same or similar service, usually at a heavily discounted rate, from the one shown on a medical bill, to contest the plaintiff's damages. This evidence was admitted so long as the defendant did not present any evidence or make the argument that the plaintiff was covered by Medicare, or another insurance provider, or that Medicare or an insurer paid any part of the plaintiff's medical expenses.

Senate Bill 251 has abrogated the common law stemming from *Meek* and revised the allowable damages under section 27-1-308(2)(a), MCA, by limiting plaintiff's damages to the amounts actually paid by or on behalf of the plaintiff to health care providers. Further, the Bill now limits evidence concerning the cost of medical

services or treatment only to evidence that establishes the reasonable value of medical services or treatment by identifying the amounts actually paid by or on behalf of the plaintiff, regardless of the source of the payment. Section 27-1-308, MCA. The new Bill even goes as far as including a jury instruction that prohibits the jury from considering, in determining its award, any charges for medical services or treatment that were included on health care providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or otherwise not paid.

This alteration to the common law from *Meek* means a plaintiff can no longer provide evidence of his or her medical bills as a measure of damages, but rather is limited to evidence of the actual amount paid by or on behalf of the plaintiff for his or her medical treatment. This also means that evidence of a plaintiff's insurance company paying for the medical bill can now be presented to prove the reasonable recovery amount. This has completely limited a plaintiff's allowable damages, significantly decreasing the recovery amount a plaintiff can seek and limiting a plaintiff's claims to the actual amount paid for the service, regardless of the amount on his or her medical bills. Current and prospective clients are advised to consult with Montana counsel, including the authors of this important alert, to address personal injury claims brought against them in Montana.

If you have any questions about this update, please contact [Brian L. Taylor](#), [Steven M. Hamilton](#), [Michael J. Johnson](#), [Ryan P. Browne](#), or [Peter M. Damrow](#).