

## Phantom Damages Are Increasing General Liability and Health Care Costs

*Legislation in Kentucky is needed to bring fairness to the calculation of damages in general liability and medical malpractice litigation – doing so will also help to reduce liability and health care costs.*

**Today, the “billed” charges for medical services – not the “paid” charges for those services – are being used to determine economic damages for medical expenses in personal injury litigation.**

**Hospital reimbursement from Medicaid, Medicare, and commercial insurance is much lower than the billed charge. On average:**

- Medicaid reimburses only **25%** of billed charges;
- Medicare reimburses only **28%** of billed charges; and
- Commercial insurance reimburses only **53%** of billed charges.

Injured patients should be compensated for amounts they or their insurer has actually paid for medical care; but, when recoveries are calculated using billed charges rather than actual reimbursement, “phantom damages”

are created which neither the patient nor their insurer ever paid.

**Phantom damages inappropriately inflate total damages in litigation by:**

- Overstating economic losses for medical care by using billed, rather than paid, charges;
- Overstating pain and suffering and punitive damages, because these are typically based on the value of the plaintiff’s medical expenses (i.e., two times the medical expenses); and
- Overstating attorney fees as these are typically calculated as a percent of total damages.

Phantom damages falsely inflate recoveries and these losses impact a business owner’s and a medical provider’s liability insurance premiums; thus, they are a significant contributing factor in the cost of litigation and liability insurance in Kentucky. Even a small number of cases can cause premiums to rise if the damages are based on medical charges that no one ever actually paid. Insurance premium rate increases are contributing to the financial pressures facing hospitals, particularly small hospitals and those operating on thin margins.

Several states have taken action to limit a plaintiff’s recovery for medical expense damages to the sums actually paid to the health care providers. Passing similar legislation in Kentucky will lower the cost of litigation and help reduce liability and health care costs without depriving plaintiffs from recovering legitimate reimbursement for their care.

EXAMPLE (Medicaid Patient)	(Current Practice) Billed Charges	(Proposed) Paid Charges
Medical Expenses	\$500,000	\$125,000
Pain and Suffering	\$1,000,000	\$250,000
Punitive Damages	\$3,000,000	\$750,000
<b>GRAND TOTAL</b>	<b>\$4,500,000</b>	<b>\$1,125,000</b>
Attorney Fees (40%) before costs	\$1,800,000	\$450,000

**By using “billed” charges rather than “paid” charges, total costs are inflated**

