

### **30.06 Measure of Damages--Medical Expense--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor**

The reasonable expense of necessary medical care, treatment, and services received [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].

The reasonable value of necessary medical care, treatment, and services received [and the present cash value of medical care, treatment and services reasonably certain to be received in the future].

*Instruction and Notes on Use revised September 2020 and Comment revised December 2020.*

#### **Notes on Use**

These are alternatives. One of these elements may be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

*Wills v. Foster*, 229 Ill. 2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008) and *Arthur v. Catour*, 216 Ill. 2d 72, 833 N.E.2d 847, 295 Ill. Dec. 641 (2005) describe the measure of damages as the reasonable value of medical expenses.

The first alternative is recommended when the plaintiff received a bill for medical care, treatment or services and there is no dispute regarding the reasonableness of the charges.

The second alternative is recommended when there is a dispute regarding the reasonableness of the plaintiff's medical bills or when the plaintiff seeks to recover the reasonable value of free medical services. *Wills v. Foster*, 229 Ill. 2d 393, 892 N.E.2d 1018, 323 Ill. Dec. 26 (2008).

To warrant inclusion of the bracketed material relating to future medical expenses, there must be evidence that such expenses are reasonably certain to be incurred.

If the plaintiff is a minor or minor's representative and the right to recover these expenses during minority has not been assigned to the minor, use IPI 30.08.

#### **Comment**

A plaintiff is entitled to recover the reasonable value of medical expenses. *Arthur v. Catour*, 216 Ill.2d 72, 833 N.E.2d 847 (Ill. 2005); *Wills v. Foster*, 229 Ill.2d 393, 892 N.E.2d 1018 (Ill. 2008). Illinois follows the "reasonable-value approach" under which a plaintiff may seek to recover the charged amount of a medical expense provided the plaintiff establishes that the charged amount is reasonable. *Wills*, 229 Ill.2d at 413. A paid medical bill constitutes prima facie evidence of reasonableness. *Id.* at 403. In the event that a plaintiff seeks to recover an unpaid portion of a medical expense, only the paid portion of the charge is considered prima facie reasonable. *Arthur*, 216 Ill.2d at 81-83; *Klesowitch v. Smith*, 2016 IL App (1st) 150414.

The difference between the charged amount and the paid amount of a medical expense is treated the same as an unpaid medical expense. *Id.* In order to recover an unpaid medical expense, the plaintiff must establish reasonableness of the unpaid charge by introducing the testimony of a person having knowledge of the services rendered and the reasonable value for such services. *Id.*

A defendant is entitled to challenge the plaintiff's evidence of reasonableness by either cross-examining the plaintiff's witnesses or by presenting evidence as to the reasonable value of the medical expense. *Arthur*, 216 Ill.2d at 83; *Wills*, 229 Ill.2d at 418. However, a defendant's ability to challenge the reasonableness of medical expenses is limited by, and not an exception to, the evidentiary component of the collateral source rule. *Wills*, 229 Ill. 2d at 418. For example, a defendant cannot introduce evidence that the plaintiff's bills were settled for an amount less than the billed amount because to do so would undermine the evidentiary component of the collateral source rule. *Id.* Under the collateral source rule, a plaintiff may seek to recover the amount originally billed by the medical provider, regardless of whether the plaintiff has any actual liability for those medical expenses. *Id.* at 399.

The policy justification for the collateral source rule is that "the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts *or other relations* that may exist between the injured party and third persons." *Id.* at 413 (emphasis in the original) (citing *Arthur*, 216 Ill. 2d at 79). Moreover a "benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor." *Id.* (quoting Restatement (Second) of Torts §920A, Comment *b*, at 514 (1979)). The collateral source rule has both evidentiary and substantive components. *Id.* at 400. The evidentiary component addresses trial and prevents "defendants from introducing evidence that a plaintiff's losses have been compensated for, even in part, by insurance." *Id.* at 418 (citing *Arthur*, 216 Ill. 2d at 79). The substantive component addresses post-trial and bars a defendant from moving a court to reduce an award because of collateral benefits. *Id.* This instruction addresses the latter.

Even in the absence of any billed or charged medical expense, a plaintiff is entitled to recover the reasonable value of gratuitous or free hospital, nursing, and medical services. *Wills v. Foster*, 229 Ill.2d 393, 892 N.E.2d 1018 (Ill. 2008) (overruling *Peterson v. Lou Bachrodt Chevrolet*, 76 Ill.2d 353, 392 N.E.2d 1 (Ill. 1979) as it is incompatible with the reasonable-value approach).

In actions for damages arising out of an injury to an unemancipated minor, the items of damage listed in this element are recoverable by the parents. *Reimers v. Honda Motor Co.*, 150 Ill.App.3d 840, 502 N.E.2d 428, 429-430; 104 Ill.Dec. 165, 166-167 (1st Dist.1986); *Curtis v. County of Cook*, 109 Ill.App.3d 400, 440 N.E.2d 942, 947; 65 Ill.Dec. 87, 92 (1st Dist.1982), judgment aff'd in part, rev'd in part, on other grounds, 98 Ill.2d 158, 456 N.E.2d 116, 74 Ill.Dec. 614 (1983). However, the usual practice in Illinois is to sue for those damages in the minor's action. This is accomplished by alleging an assignment, or waiver or relinquishment by the parents of their right to recover these damages. *Curtis v. Lowe*, 338 Ill.App. 463, 87 N.E.2d 865 (2d Dist.1949).

Parents may bring a derivative action for medical expenses arising under § 15 of the Rights of Married Persons Act (750 ILCS 65/15), commonly referred to as the Family Expense Act, which tolls during the child's infancy and must be filed within two years of the child reaching eighteen years of age. 735 ILCS 5/13-203, 5/13-211.

On the issue of present cash value, see the 34.00 series.