

By Senator Hays

20-00827A-12

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1                   A bill to be entitled  
2           An act relating to damages for medical or health care  
3           services; creating s. 768.755, F.S.; limiting recovery  
4           of damages for medical or health care services to  
5           amounts actually paid if no balance to the provider is  
6           outstanding; limiting recovery of such damages to  
7           amounts customarily accepted by providers in the same  
8           geographic area if a balance to the provider is  
9           outstanding; requiring medical or health care services  
10          to be medically necessary in order to be recoverable;  
11          specifying that certain evidence shall be considered  
12          in determining the amounts customarily accepted;  
13          providing for reduction of awards under specified  
14          provisions; providing applicability; providing an  
15          effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Section 768.755, Florida Statutes, is created to  
20          read:

21           768.755 Damages recoverable for medical or health care  
22          services.—In any action to which this part applies, damages for  
23          medical or health care services provided or to be provided to a  
24          claimant are recoverable only as provided in this section.

25           (1) With respect to any medical or health care services  
26          provided to the claimant for which an outstanding balance is not  
27          due to the provider, the actual amounts remitted to the provider  
28          are the only amounts recoverable. In such circumstances, any  
29          difference between the amounts originally billed by the provider

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30 and the actual amounts remitted to the provider are not  
31 recoverable or admissible into evidence.

32 (2) With respect to any medical or health care services  
33 provided to the claimant for which an outstanding balance is  
34 claimed to be due to the provider, and to claims asserted for  
35 medical or health care services to be provided to the claimant  
36 in the future, the maximum amounts recoverable are the amounts  
37 customarily accepted in payment for such services by other  
38 providers in the same geographic area. This limitation also  
39 applies to any lien asserted for such services in the action,  
40 except for those liens described in subsection (4). In  
41 determining the amounts customarily accepted, payment rates to  
42 providers in the same geographic area for identical or  
43 substantially similar medical or health care service on a cash  
44 basis, under Medicaid and Medicare, and by payors regulated  
45 under the Florida Insurance Code shall be considered.

46 (3) Damages for medical or health care services provided or  
47 to be provided to a claimant may be awarded only for those  
48 services determined, by a preponderance of the evidence, to be  
49 medically necessary. If it is determined that any of the  
50 claimant's medical or health care services provided or to be  
51 provided were or are not medically necessary, the claimant may  
52 not recover damages for such services or recover from the  
53 nonprovider defendant for any damages arising out of or related  
54 to such services.

55 (4) Notwithstanding any other provision in this section to  
56 the contrary, if Medicaid, Medicare, or a payor regulated under  
57 the Florida Insurance Code has covered or is an insurer covering  
58 the claimant's medical or health care services and has given

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59 notice of assertion of a lien in the action, the amount of the  
60 lien shall be the only amount recoverable and admissible into  
61 evidence with respect to the covered services.

62 (5) After damages in compliance with this section are  
63 awarded to a claimant, the court shall apply s. 768.76 and  
64 reduce the amount of such award, as appropriate.

65 (6) This section applies only to actions for personal  
66 injury or wrongful death of the claimant and has no other  
67 application or effect regarding compensation paid to providers  
68 for medical or health care services.

69 Section 2. This act shall take effect upon becoming a law,  
70 and shall apply to all causes of action arising on or after that  
71 date.