By Senator Stargel

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

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

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

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

(2) With respect to any medical or health care services
provided to the claimant for which an outstanding balance is
claimed to be due to the provider, and to claims asserted for
medical or health care services to be provided to the claimant
in the future, the maximum amounts recoverable are the amounts
customarily accepted in payment for such services by providers
in the same geographic area, excluding government entitlement
programs that are not arms’ length transactions such as Medicaid
and Medicare. This limitation also applies to any lien or claim
of subrogation asserted for such services in the action, except
for a lien or claim of subrogation described in subsection (4).

(3) Damages for medical or health care services provided or
to be provided to a claimant are recoverable only for those
services determined, by a preponderance of the evidence, to be
medically necessary. If it is determined that any of the
claimant’s medical or health care services provided were not
medically necessary, the claimant may not recover damages for
such services or recover from the nonprovider defendant for any
damages arising out of or related to such services. A patient is
not liable to a provider for past medical or health care
services rendered if such services were not medically necessary,
and nonpayment based on lack of medical necessity may be
asserted as an affirmative defense in any action to recover such
(4) Notwithstanding any other provision in this section to the contrary, if Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered or is an insurer covering the claimant’s medical or health care services and has given notice of assertion of a lien or a claim of subrogation for past medical expenses in the action, the amount of the lien or claim of subrogation, plus the amount of any copayments or deductibles paid or payable by the claimant, shall be the maximum amount recoverable and admissible into evidence with respect to the covered services.

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

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

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