CS/HB 587 2013

A bill to be entitled

An act relating to damages for medical or health care services; creating s. 768.755, F.S.; limiting recovery of damages for medical or health care services to amounts actually paid if no balance to the provider is outstanding; limiting recovery of such damages to amounts customarily accepted by providers in the same geographic area, with certain exclusions, if a balance to the provider is outstanding; requiring medical or health care services to be medically necessary in order to be recoverable; providing that lack of medical necessity is an affirmative defense in an action for nonpayment; specifying that certain evidence shall be considered in determining the amounts customarily accepted; providing for reduction of awards under specified provisions; providing for applicability; providing an effective date.

1819

1

2

3

4

5

6 7

8

9

10

11

12

13

14

15

1617

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

2021

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

23

25

22

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.

2627

28

(1) With respect to any medical or health care services provided to the claimant for which an outstanding balance is not

Page 1 of 3

CS/HB 587 2013

due to the provider, the actual amounts remitted to the provider are the maximum 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

CS/HB 587 2013

<u>asserted</u> as an affirmative defense in any action to recover such damages.

- (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 applies to all causes of action arising on or after that date.