

By Senator Richter

23-00729B-14

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1 A bill to be entitled
2 An act relating to damages in negligence actions;
3 creating s. 768.755, F.S.; providing that a claimant
4 in certain negligence actions may recover damages for
5 the cost of medical or health care services only if
6 such services are medically necessary; providing a
7 methodology to calculate an award of damages for the
8 cost of such medical or health care services;
9 specifying evidence that is admissible and
10 inadmissible in determining the award of damages;
11 requiring an alternative calculation of damages if
12 certain insurers file a lien or subrogation claim in
13 the action; prohibiting the use of a finding of
14 medical necessity for certain purposes; providing
15 applicability; providing a directive to the Division
16 of Law Revision and Information; providing an
17 effective date.

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

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

23 768.755 Damages recoverable for cost of medical or health
24 care services; evidence of amount of damages; applicability.-

25 (1) In any personal injury or wrongful death action to
26 which this part applies, damages for the cost of medical or
27 health care services provided to a claimant may be recovered
28 only for medical or health care services that are determined, by
29 a preponderance of the evidence, to be medically necessary. A

23-00729B-14

20141128__

30 defendant is not liable for damages arising from or related to
31 the rendering of medical or health care services determined to
32 be medically unnecessary. The award of damages shall be
33 calculated as follows:

34 (a) For such medical or health care services provided to
35 the claimant which are paid for by the claimant and for which an
36 outstanding balance is not due the provider, the actual amount
37 remitted to the provider is the maximum amount recoverable. Any
38 difference between the amount originally billed by the provider
39 and the actual amount remitted to the provider is not
40 recoverable or admissible into evidence.

41 (b) For such medical or health care services provided to
42 the claimant which are paid for by a governmental or commercial
43 insurance payor and for which an outstanding balance is not due
44 the provider, other than a copay or deductible owed by the
45 claimant, the actual amount remitted to the provider by the
46 governmental or commercial insurance payor and any copay or
47 deductible owed by the claimant is the maximum amount
48 recoverable. Any difference between the amount originally billed
49 by the provider and the actual amount remitted to the provider
50 or due from the claimant for a copay or deductible is not
51 recoverable or admissible into evidence.

52 (c) For such medical or health care services provided to
53 the claimant for which an outstanding balance is claimed to be
54 due the provider, the parties may introduce into evidence:

55 1. The usual and customary charges of providers in the same
56 geographic area for identical or substantially similar medical
57 or health care services;

58 2. Amounts billed by the provider for the services provided

23-00729B-14

20141128__

59 to the claimant, including those amounts billed under an
60 agreement between the provider and the claimant or the
61 claimant's representative;

62 3. Amounts the provider received in compensation, if any,
63 for the sale of the agreement between the provider and the
64 claimant or the claimant's representative under which the
65 medical or health care services were provided to the claimant;
66 and

67 4. Other relevant evidence.

68 (2) Individual contracts between providers and licensed
69 commercial insurers or licensed health maintenance
70 organizations, other than those applicable to the claimant, are
71 not subject to discovery or disclosure in any action under this
72 part, nor is such information admissible into evidence in any
73 action to which this section applies. This subsection also
74 applies to any lien or subrogation claim asserted for the cost
75 of medical or health care services in the action, except for a
76 lien or subrogation claim described in subsection (3).

77 (3) Notwithstanding any provision of this section to the
78 contrary, if Medicaid, Medicare, or a payor regulated under the
79 Florida Insurance Code has covered or is covering the cost of a
80 claimant's medical or health care services and has given notice
81 of assertion of a lien or subrogation claim for past medical
82 expenses in the action, the amount of the lien or subrogation
83 claim, in addition to the amount of any copayments or
84 deductibles paid or payable by the claimant, is the maximum
85 amount recoverable and admissible into evidence with respect to
86 the covered services.

87 (4) This section applies only to those actions for personal

23-00729B-14

20141128__

88 injury or wrongful death to which this part applies arising on
89 or after the effective date of this act and has no other
90 application or effect regarding compensation paid to providers
91 of medical or health care services. A determination as to
92 medical necessity under this section may not be used by any
93 person in an effort or action to recoup or recover payment made
94 by a payor to a provider for medical or health care services or
95 in any malpractice, disciplinary, or regulatory action or other
96 proceeding against the provider.

97 Section 2. The Division of Law Revision and Information is
98 directed to replace the phrase "the effective date of this act"
99 wherever it occurs in s. 768.755, Florida Statutes, with the
100 date this act becomes a law.

101 Section 3. This act shall take effect upon becoming a law.