

By Senator Hays

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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.

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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

20-00827A-12

20121328

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

20-00827A-12

20121328

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.