

By Senator Stargel

15-00292D-13

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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          providing that a patient is not liable for payment of  
12          a procedure that is medically unnecessary and  
13          nonpayment may be asserted as an affirmative defense  
14          in any action to recover damages; specifying that  
15          certain evidence shall be considered in determining  
16          the amounts customarily accepted; providing for  
17          reduction of awards under specified provisions;  
18          providing for applicability; providing an effective  
19          date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

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

25           768.755 Damages recoverable for medical or health care  
26           services.—In any action to which this part applies, damages for  
27           medical or health care services provided or to be provided to a  
28           claimant are recoverable only as provided in this section.

29           (1) With respect to any medical or health care services

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30 provided to the claimant for which an outstanding balance is not  
31 due to the provider, the actual amounts remitted to the provider  
32 are the only amounts recoverable. In such circumstances, any  
33 difference between the amounts originally billed by the provider  
34 and the actual amounts remitted to the provider are not  
35 recoverable or admissible into evidence.

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

47 (3) Damages for medical or health care services provided or  
48 to be provided to a claimant are recoverable only for those  
49 services determined, by a preponderance of the evidence, to be  
50 medically necessary. If it is determined that any of the  
51 claimant's medical or health care services provided were not  
52 medically necessary, the claimant may not recover damages for  
53 such services or recover from the nonprovider defendant for any  
54 damages arising out of or related to such services. A patient is  
55 not liable to a provider for past medical or health care  
56 services rendered if such services were not medically necessary,  
57 and nonpayment based on lack of medical necessity may be  
58 asserted as an affirmative defense in any action to recover such

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59 damages.

60 (4) Notwithstanding any other provision in this section to  
61 the contrary, if Medicaid, Medicare, or a payor regulated under  
62 the Florida Insurance Code has covered or is an insurer covering  
63 the claimant's medical or health care services and has given  
64 notice of assertion of a lien or a claim of subrogation for past  
65 medical expenses in the action, the amount of the lien or claim  
66 of subrogation, plus the amount of any copayments or deductibles  
67 paid or payable by the claimant, shall be the maximum amount  
68 recoverable and admissible into evidence with respect to the  
69 covered services.

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

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

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