A bill to be entitled
An act relating to damages; creating s. 768.755, F.S.;
defining the terms "charge benchmark" and "imputed
allowed amount benchmark"; providing for the
calculation of damages for certain health care
services, procedures, or equipment under specified
circumstances; specifying that certain evidence is
inadmissible at trial; providing applicability;
providing an effective date.

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 costs of past health care
services, procedures, or equipment; evidence of usual and
customary rates; applicability.—
(1) As used in this section, the term:
    (a) "Charge benchmark," for particular health care
services, procedures, or equipment, means the value, at a
specified percentile rank within a range of benchmarks,
corresponding to the distribution of the full, non-discounted
standard rates charged by health care providers in the same or
similar specialty under the current official code for such
services, procedures, or equipment provided out-of-network, or
to uninsured individuals, in the same geographical area.

(b) "Imputed allowed amount benchmark," for particular health care services, procedures, or equipment, means the value, at a specified percentile rank within a range of imputed benchmarks, corresponding to the distribution of the negotiated in-network rates authorized for payment by commercial insurance carriers, including any copays or deductibles payable by insureds, under the current official code for such services, procedures, or equipment provided by health care providers in the same or similar specialty in the same geographical area.

(2) In a personal injury or wrongful death action to which this part applies, for any claim of damages for the costs of health care services, procedures, or equipment provided to a claimant which are unpaid and remain due and payable, evidence of the usual and customary rates for such services, procedures, or equipment must be introduced at trial as follows:

(a) If the claimant has coverage for such services, procedures, or equipment from a government program but, in lieu of such coverage, chooses for those services, procedures, or equipment to be provided by a health care provider who contractually agrees to defer payment until recovery from the claimant's damages award or settlement, evidence must be introduced at trial of the usual and customary rates for such services, procedures, or equipment at the 50th percentile rank of the imputed allowed amount benchmark as reported in a
database established under s. 408.05, F.S., or a statistically reliable benchmarking database maintained by an independent, nonprofit organization that, at least annually, reports a range of percentile ranks for imputed allowed amount benchmarks similar to the FAIR Health Database as it existed on July 1, 2019. The organization must:

1. Be designated by the Commissioner of Insurance Regulation;
2. Have reported a range of percentile benchmarks each year for at least 5 years using the official codes for such services, procedures, or equipment; and
3. Be unaffiliated with any carrier, provider, or other stakeholder in the health care industry.

Whether the claimant is a Medicare or Medicaid beneficiary is inadmissible at trial.

(b) If the claimant has coverage for such services, procedures, or equipment from a commercial insurance carrier or under a plan self-funded by the claimant's employer but, in lieu of such coverage, chooses for those services, procedures, or equipment to be provided by a health care provider who contractually agrees to defer payment until recovery from the claimant's damages award or settlement, evidence must be introduced at trial of the usual and customary rates for such services, procedures, or equipment at the 85th percentile rank.
of the imputed allowed amount benchmarks as reported in a database established under s. 408.05, F.S., or a statistically reliable benchmarking database maintained by an independent, nonprofit organization that, at least annually, reports a range of percentile ranks for imputed allowed amount benchmarks similar to the FAIR Health Database as it exists on July 1, 2019. The organization must:

1. Be designated by the Commissioner of Insurance Regulation;

2. Have reported a range of percentile benchmarks each year for at least 5 years using the official codes for such services, procedures, or equipment; and

3. Be unaffiliated with any carrier, provider, or other stakeholder in the health care industry.

(c) If the claimant does not have coverage for such services, procedures, or equipment, evidence must be introduced at trial of the usual and customary rates for such services, procedures, or equipment at the 85th percentile rank of the charge benchmarks as reported in a statistically reliable benchmarking database maintained by an independent, nonprofit organization that, at least annually, reports a range of percentile ranks for charge benchmarks similar to the FAIR Health Database as it existed on July 1, 2019. The organization must:

1. Be designated by the Commissioner of Insurance
2. Have reported a range of percentile benchmarks each year for at least 5 years using the official codes for such services, procedures, or equipment; and

3. Be unaffiliated with any carrier, provider, or other stakeholder in the health care industry.

(3) This section applies only to those actions for personal injury or wrongful death to which this part applies arising on or after July 1, 2019, and has no other application or effect regarding compensation paid to providers of medical or health care services.

Section 2. This act shall take effect July 1, 2019.