

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to medical malpractice; creating s.
3 766.1181, F.S.; specifying how to calculate damages in
4 certain personal injury or wrongful death actions;
5 prohibiting admission of specified information
6 relating to costs of medical or health care as
7 evidence in such actions; providing applicability;
8 providing a directive to the Division of Law Revision
9 and Information; providing an effective date.

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

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13 Section 1. Section 766.1181, Florida Statutes, is created
14 to read:

15 766.1181 Damages recoverable for cost of medical or health
16 care services; evidence of damages; applicability.-

17 (1) In any personal injury or wrongful death action to
18 which this chapter applies, damages for the cost of medical or
19 health care services provided to a claimant are calculated as
20 follows:

21 (a) For medical or health care services provided by a
22 health care provider to a claimant which the claimant paid for
23 and for which an outstanding balance is not due to the provider,
24 the actual amount remitted to the provider is the maximum amount
25 recoverable. Any difference between the amount originally billed
26 by the provider and the actual amount remitted to the provider
27 is not recoverable or admissible in evidence.

28 (b) For medical or health care services provided by a
29 health care provider to a claimant which a government program or
30 private health insurance paid for and for which an outstanding
31 balance is not due to the provider, other than a copayment or
32 deductible owed by the claimant, the actual amount remitted to

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33 the provider by the government program or private health
34 insurance, plus any copayment or deductible owed by the
35 claimant, is the maximum amount recoverable. Any difference
36 between the amount originally billed by the provider and the sum
37 of the actual amount remitted to the provider and the copayment
38 or deductible owed by the claimant is not recoverable or
39 admissible in evidence.

40 (c) For medical or health care services provided to a
41 claimant for which an outstanding balance is claimed to be due
42 to the health care provider and for claims asserted for medical
43 or health care services to be provided to the claimant in the
44 future, the maximum amounts recoverable are the amounts
45 customarily accepted from Medicare in payment for such services
46 by other health care providers in the same geographic area. This
47 limitation also applies to any lien asserted for such services
48 in the action, with the exception of liens identified in
49 subsection (3).

50 (2) An individual contract between a health care provider
51 and a health insurer or health maintenance organization is not
52 subject to discovery or disclosure in an action under this
53 section, and such information is not admissible in evidence in
54 an action to which this section applies.

55 (3) Notwithstanding this section, if Medicaid, Medicare, or
56 a payor regulated under the Florida Insurance Code has covered
57 or is covering the cost of a claimant's medical or health care
58 services and has given notice of assertion of a lien or
59 subrogation claim for past medical expenses in the action, the
60 amount of the lien or subrogation claim, in addition to the
61 amount of a copayment or deductible paid or payable by the

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62 claimant, is the maximum amount recoverable and admissible in
63 evidence with respect to the covered medical or health care
64 services.

65 (4) This section applies only to personal injury or
66 wrongful death actions to which this chapter applies which arise
67 on or after the effective date of this act. This section has no
68 other application or effect regarding compensation paid to
69 providers of medical or health care services.

70 Section 2. The Division of Law Revision and Information is
71 directed to replace the phrase "the effective date of this act"
72 whenever it occurs in this act with the date the act becomes a
73 law.

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