

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 lack of medical necessity is an
 12 affirmative defense in an action for nonpayment;
 13 specifying that certain evidence shall be considered
 14 in determining the amounts customarily accepted;
 15 providing for reduction of awards under specified
 16 provisions; providing for applicability; 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
 22 to read:

23 768.755 Damages recoverable for medical or health care
 24 services.—In any action to which this part applies, damages for
 25 medical or health care services provided or to be provided to a
 26 claimant are recoverable only as provided in this section.

27 (1) With respect to any medical or health care services
 28 provided to the claimant for which an outstanding balance is not

29 due to the provider, the actual amounts remitted to the provider
30 are the maximum amounts recoverable. In such circumstances, any
31 difference between the amounts originally billed by the provider
32 and the actual amounts remitted to the provider are not
33 recoverable or admissible into evidence.

34 (2) With respect to any medical or health care services
35 provided to the claimant for which an outstanding balance is
36 claimed to be due to the provider, and to claims asserted for
37 medical or health care services to be provided to the claimant
38 in the future, the maximum amounts recoverable are the amounts
39 customarily accepted in payment for such services by providers
40 in the same geographic area. This limitation also applies to any
41 lien asserted for such services in the action, except for those
42 liens described in subsection (4).

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

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56 (4) Notwithstanding any other provision in this section to
57 the contrary, if Medicaid, Medicare, or a payor regulated under
58 the Florida Insurance Code has covered or is an insurer covering
59 the claimant's medical or health care services and has given
60 notice of assertion of a lien in the action, the amount of the
61 lien shall be the maximum amount recoverable and admissible into
62 evidence with respect to the covered services.

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

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

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