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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 outstanding; limiting recovery of such damages to 6 7 amounts customarily accepted by providers in the same 8 geographic area, with certain exclusions, if a balance 9 to the provider is outstanding; requiring medical or health care services to be medically necessary in 10 order to be recoverable; providing that lack of 11 12 medical necessity is an affirmative defense in an action for nonpayment; specifying that certain 13 evidence shall be considered in determining the 14 15 amounts customarily accepted; providing for reduction of awards under specified provisions; providing for 16 17 applicability; providing an effective date. 18 19 Be It Enacted by the Legislature of the State of Florida: 20 Section 768.755, Florida Statutes, is created 21 Section 1. 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 With respect to any medical or health care services (1)provided to the claimant for which an outstanding balance is not 28

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

34 With respect to any medical or health care services (2) 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, excluding government entitlement programs that are not arms-length transactions such as Medicaid 41 42 and Medicare. This limitation also applies to any lien or claim 43 of subrogation asserted for such services in the action, except 44 for a lien or claim of subrogation described in subsection (4). Damages for medical or health care services provided 45 (3) 46 or to be provided to a claimant are recoverable only for those 47 services determined, by a preponderance of the evidence, to be 48 medically necessary. If it is determined that any of the 49 claimant's medical or health care services provided were not 50 medically necessary, the claimant may not recover damages for 51 such services or recover from the nonprovider defendant for any 52 damages arising out of or related to such services. A patient is 53 not liable to a provider for past medical or health care 54 services rendered if such services were not medically necessary, 55 and nonpayment based on lack of medical necessity may be

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56	asserted as an affirmative defense in any action to recover such
57	damages.
58	(4) Notwithstanding any other provision in this section to
59	the contrary, if Medicaid, Medicare, or a payor regulated under
60	the Florida Insurance Code has covered or is an insurer covering
61	the claimant's medical or health care services and has given
62	notice of assertion of a lien or a claim of subrogation for past
63	medical expenses in the action, the amount of the lien or claim
64	of subrogation, plus the amount of any copayments or deductibles
65	paid or payable by the claimant, shall be the maximum amount
66	recoverable and admissible into evidence with respect to the
67	covered services.
68	(5) After damages in compliance with this section are
69	awarded to a claimant, the court shall apply s. 768.76 and
70	reduce the amount of such award, as appropriate.
71	(6) This section applies only to actions for personal
72	injury or wrongful death of the claimant and has no other
73	application or effect regarding compensation paid to providers
74	for medical or health care services.
75	Section 2. This act shall take effect upon becoming a law
76	and applies to all causes of action arising on or after that
77	date.

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