

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Hood offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

6 Section 1. Section 768.755, Florida Statutes, is created  
 7 to read:

8 768.755 Damages recoverable for cost of medical or health  
 9 care services; evidence of amount of damages; applicability.-

10 (1) In any personal injury or wrongful death action to  
 11 which this part applies, damages for the cost of medical or  
 12 health care services provided to a claimant may be recovered  
 13 only for medical or health care services that are determined, by  
 14 a preponderance of the evidence, to be medically necessary,  
 15 which may be established, subject to rebuttal by way of expert  
 16 testimony, as set forth in this paragraph, based on the  
 17 introduction into evidence of the claimant's medical records. A

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18 defendant is not liable for damages arising from or related to  
19 the rendering of medical or health care services determined to  
20 be medically unnecessary, but shall be required to establish  
21 that a medical or health care service is unnecessary through  
22 expert witness testimony from a health care provider licensed  
23 and practicing in the same specialty as the health care provider  
24 who provided the service. The award of damages shall be  
25 calculated as follows:

26 (a) For such medical or health care services provided by a  
27 particular health care provider to the claimant which are paid  
28 for by the claimant and for which an outstanding balance is not  
29 due the provider, the actual amount remitted to the provider is  
30 the maximum amount recoverable. Any difference between the  
31 amount originally billed by the provider and the actual amount  
32 remitted to the provider is not recoverable or admissible into  
33 evidence. In an action in which there are more than one health  
34 care providers who have provided health care services to the  
35 claimant, the evidence admissible under this subsection as to a  
36 provider with no outstanding balance due may not be used as  
37 evidence regarding the reasonableness of the amounts billed by  
38 any of the other health care providers who have an outstanding  
39 balance due.

40 (b) For such medical or health care services provided by a  
41 particular health care provider to the claimant which are paid  
42 for by a governmental or commercial insurance payor and for  
43 which an outstanding balance is not due the provider, other than

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44 a copay or deductible owed by the claimant, the actual amount  
45 remitted to the provider by the governmental or commercial  
46 insurance payor and any copay or deductible owed by the claimant  
47 is the maximum amount recoverable. Any difference between the  
48 amount originally billed by the provider and the actual amount  
49 remitted to the provider or due from the claimant for a copay or  
50 deductible is not recoverable or admissible into evidence. In an  
51 action in which there are more than one health care providers  
52 who have provided health care services to the claimant, the  
53 evidence admissible under this subsection as to a provider with  
54 no outstanding balance due may not be used as evidence regarding  
55 the reasonableness of the amounts billed by any of the other  
56 health care providers who have an outstanding balance due.

57 (c) For such medical or health care services provided to  
58 the claimant for which an outstanding balance is claimed to be  
59 due the provider, the parties may introduce into evidence:

60 1. The usual and customary charges of providers in the  
61 same geographic area for identical or substantially similar  
62 medical or health care services;

63 2. Amounts billed by the provider for the services  
64 provided to the claimant, including those amounts billed under  
65 an agreement between the provider and the claimant or the  
66 claimant's representative; and,

67 3. Amounts the provider received in compensation, if any,  
68 for the sale of the agreement between the provider and the

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69 claimant or the claimant's representative under which the  
70 medical or health care services were provided to the claimant.

71 (2) Individual contracts between providers and licensed  
72 commercial insurers or licensed health maintenance organizations  
73 are not subject to discovery or disclosure in any action under  
74 this part, nor is such information admissible into evidence in  
75 any action to which this section applies.

76 (3) Notwithstanding any provision of this section to the  
77 contrary, if Medicaid, Medicare, or a payor regulated under the  
78 Florida Insurance Code has covered or is covering the cost of a  
79 claimant's medical or health care services and has given notice  
80 of assertion of a lien or subrogation claim for past medical  
81 expenses in the action, the amount of the lien or subrogation  
82 claim, in addition to the amount of any copayments or  
83 deductibles paid or payable by the claimant, is the maximum  
84 amount recoverable and admissible into evidence with respect to  
85 the covered services.

86 (4) This section applies only to those actions for  
87 personal injury or wrongful death to which this part applies  
88 arising on or after the effective date of this act and has no  
89 other application or effect regarding compensation paid to  
90 providers of medical or health care services. A determination as  
91 to medical necessity under this section may not be used by any  
92 person in an effort or action to recoup or recover payment made  
93 by a payor to a provider for medical or health care services or

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94 in any malpractice, disciplinary, or regulatory action or other  
95 proceeding against the provider.

96 Section 2. The Division of Law Revision and Information is  
97 directed to replace the phrase "the effective date of this act"  
98 wherever it occurs in s. 768.755, Florida Statutes, with the  
99 date this act becomes a law.

100 Section 3. This act shall take effect upon becoming a law.  
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102  
103

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105 **T I T L E A M E N D M E N T**

106 Remove everything before the enacting clause and insert:

107 A bill to be entitled

108 An act relating to damages in negligence actions; creating  
109 s. 768.755, F.S.; providing that a claimant in certain  
110 negligence actions may recover damages for the cost of  
111 medical or health care services only if such services are  
112 medically necessary; providing a methodology to calculate  
113 an award of damages for the cost of such medical or health  
114 care services; specifying evidence that is admissible and  
115 inadmissible in determining the award of damages; requiring  
116 an alternative calculation of damages if certain insurers  
117 file a lien or subrogation claim in the action; prohibiting  
118 the use of a finding of medical necessity for certain  
119 purposes; providing applicability; providing a directive to

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2014)

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120 | the Division of Law Revision and Information; providing an  
121 | effective date.