

A bill to be entitled

An act relating to damages in negligence actions; creating s. 768.755, F.S.; providing that a claimant in certain negligence actions may recover damages for the cost of medical or health care services only if such services are medically necessary; providing a methodology to calculate an award of damages for the cost of such medical or health care services; specifying evidence that is admissible and inadmissible in determining the award of damages; requiring an alternative calculation of damages if certain insurers file a lien or subrogation claim in the action; prohibiting the use of a finding of medical necessity for certain purposes; providing applicability; providing a directive to the Division of Law Revision and Information; 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 cost of medical or health care services; evidence of amount of damages; applicability.-

(1) (a) In any personal injury or wrongful death action to which this part applies, damages for the cost of medical or

27 health care services provided to a claimant may be recovered  
28 only for medical or health care services that are determined, by  
29 a preponderance of the evidence, to be medically necessary,  
30 which may be established, subject to rebuttal by way of expert  
31 testimony, as set forth in this paragraph, based on the  
32 introduction into evidence of the claimant's medical records. A  
33 defendant is not liable for damages arising from or related to  
34 the rendering of medical or health care services determined to  
35 be medically unnecessary, but is required to establish that a  
36 medical or health care service is unnecessary through expert  
37 witness testimony from a health care provider licensed and  
38 practicing in the same specialty as the health care provider who  
39 provided the service.

40 (b) The award of damages shall be calculated as follows:

41 1. For such medical or health care services provided by a  
42 particular health care provider to the claimant that are paid  
43 for by the claimant and for which an outstanding balance is not  
44 due the provider, the actual amount remitted to the provider is  
45 the maximum amount recoverable. Any difference between the  
46 amount originally billed by the provider and the actual amount  
47 remitted to the provider is not recoverable or admissible into  
48 evidence. In an action in which there is more than one health  
49 care provider who has provided health care services to the  
50 claimant, the evidence admissible under this subsection as to a  
51 provider with no outstanding balance due may not be used as  
52 evidence regarding the reasonableness of the amounts billed by

53 any of the other health care providers who have an outstanding  
54 balance due.

55 2. For such medical or health care services provided by a  
56 particular health care provider to the claimant that are paid  
57 for by a governmental or commercial insurance payor and for  
58 which an outstanding balance is not due the provider, other than  
59 a copay or deductible owed by the claimant, the actual amount  
60 remitted to the provider by the governmental or commercial  
61 insurance payor and any copay or deductible owed by the claimant  
62 is the maximum amount recoverable. Any difference between the  
63 amount originally billed by the provider and the actual amount  
64 remitted to the provider or due from the claimant for a copay or  
65 deductible is not recoverable or admissible into evidence. In an  
66 action in which there is more than one health care provider who  
67 has provided health care services to the claimant, the evidence  
68 admissible under this subsection as to a provider with no  
69 outstanding balance due may not be used as evidence regarding  
70 the reasonableness of the amounts billed by any of the other  
71 health care providers who have an outstanding balance due.

72 3. For such medical or health care services provided to  
73 the claimant for which an outstanding balance is claimed to be  
74 due the provider, the parties may introduce into evidence:

75 a. The usual and customary charges of providers in the  
76 same geographic area for identical or substantially similar  
77 medical or health care services.

78 b. Amounts billed by the provider for the services

79 provided to the claimant, including those amounts billed under  
 80 an agreement between the provider and the claimant or the  
 81 claimant's representative.

82 c. Amounts the provider received in compensation, if any,  
 83 for the sale of the agreement between the provider and the  
 84 claimant or the claimant's representative under which the  
 85 medical or health care services were provided to the claimant.

86 (2) Individual contracts between providers and licensed  
 87 commercial insurers or licensed health maintenance organizations  
 88 are not subject to discovery or disclosure in an action under  
 89 this part, and such information is not admissible into evidence  
 90 in an action to which this section applies.

91 (3) Notwithstanding any provision of this section, if  
 92 Medicaid, Medicare, or a payor regulated under the Florida  
 93 Insurance Code has covered or is covering the cost of a  
 94 claimant's medical or health care services and has given notice  
 95 of assertion of a lien or subrogation claim for past medical  
 96 expenses in the action, the amount of the lien or subrogation  
 97 claim, in addition to the amount of any copayments or  
 98 deductibles paid or payable by the claimant, is the maximum  
 99 amount recoverable and admissible into evidence with respect to  
 100 the covered services.

101 (4) This section applies only to those actions for  
 102 personal injury or wrongful death to which this part applies  
 103 arising on or after the effective date of this act and has no  
 104 other application or effect regarding compensation paid to

105 providers of medical or health care services. A determination as  
106 to medical necessity under this section may not be used by any  
107 person in an effort or action to recoup or recover payment made  
108 by a payor to a provider for medical or health care services or  
109 in any malpractice, disciplinary, or regulatory action or other  
110 proceeding against the provider.

111 Section 2. The Division of Law Revision and Information is  
112 directed to replace the phrase "the effective date of this act"  
113 wherever it occurs in s. 768.755, Florida Statutes, as created  
114 by this act, with the date this act becomes a law.

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