

By Senator Stargel

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1 A bill to be entitled
2 An act relating to damages recoverable for health care
3 costs; creating s. 768.755, F.S.; defining the terms
4 "allowed amount benchmark" and "charge benchmark";
5 requiring that certain evidence of the usual and
6 customary rates for health care services, procedures,
7 or equipment be introduced at trial under specified
8 circumstances in personal injury or wrongful death
9 actions for certain claims of damages; providing
10 requirements for certain organizations that maintain a
11 benchmarking database; providing applicability;
12 providing a directive to the Division of Law Revision;
13 providing an effective date.

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

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17 Section 1. Section 768.755, Florida Statutes, is created to
18 read:

19 768.755 Damages recoverable for costs of past health care
20 services, procedures, or equipment; evidence of usual and
21 customary rates; applicability.-

22 (1) As used in this section, the term:

23 (a) "Allowed amount benchmark," for particular health care
24 services, procedures, or equipment, means the value, at a
25 specified percentile rank, corresponding to the distribution of
26 the negotiated in-network rates authorized for payment by
27 commercial insurance carriers, including any copays or
28 deductibles payable by insureds, under the current official code
29 for such services, procedures, or equipment provided by health

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30 care providers in the same or similar specialty in the same
31 geographical area.

32 (b) "Charge benchmark," for particular health care
33 services, procedures, or equipment, means the value, at a
34 specified percentile rank, corresponding to the distribution of
35 the full, nondiscounted standard rates charged by health care
36 providers in the same or similar specialty under the current
37 official code for such services, procedures, or equipment
38 provided out-of-network, or to uninsured individuals, in the
39 same geographical area.

40 (2) In a personal injury or wrongful death action to which
41 this part applies, for any claim of damages for the costs of
42 health care services, procedures, or equipment provided to a
43 claimant which are unpaid and remain due and payable, evidence
44 of the usual and customary rates for such services, procedures,
45 or equipment must be introduced at trial as follows:

46 (a) If the claimant has coverage for such services,
47 procedures, or equipment from a governmental program but, in
48 lieu of such program coverage, chooses for those services,
49 procedures, or equipment to be provided by a health care
50 provider who contractually agrees to defer payment until
51 recovery from the claimant's damages award or settlement,
52 evidence must be introduced at trial of the government program's
53 usual and customary rates for such services, procedures, or
54 equipment, including any copay or deductible that would be owed
55 by a claimant.

56 (b) If the claimant has coverage for such services,
57 procedures, or equipment from a commercial insurance carrier
58 but, in lieu of such insurance coverage, chooses for those

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59 services, procedures, or equipment to be provided by a health
60 care provider who contractually agrees to defer payment until
61 recovery from the claimant's damages award or settlement,
62 evidence must be introduced at trial of the usual and customary
63 rates for such services, procedures, or equipment equal to the
64 range of allowed amount benchmarks available from the 50th
65 through the 95th percentile ranks as reported in a statistically
66 reliable benchmarking database maintained by an independent,
67 nonprofit organization designated by the Commissioner of
68 Insurance Regulation. The organization must be unaffiliated with
69 any carrier, provider, or other stakeholder in the health care
70 industry.

71 (c) If the claimant does not have coverage for such
72 services, procedures, or equipment, evidence must be introduced
73 at trial of the usual and customary rates for such services,
74 procedures, or equipment equal to the range of charge benchmarks
75 available from the 50th through the 95th percentile ranks as
76 reported in a statistically reliable benchmarking database
77 maintained by an independent, nonprofit organization designated
78 by the Commissioner of Insurance Regulation. The organization
79 must be unaffiliated with any carrier, provider, or other
80 stakeholder in the health care industry.

81 (3) This section applies only to those actions for personal
82 injury or wrongful death to which this part applies arising on
83 or after the effective date of this act. This section has no
84 other application or effect regarding compensation paid to
85 providers of health care services.

86 Section 2. The Division of Law Revision is directed to
87 replace the phrase "the effective date of this act" wherever it

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88 occurs in this act with the date the act becomes a law.

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