

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WITHDRAWN (Y/N)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

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Leek offered the following:

Amendment (with title amendment)

Remove lines 17-85 and insert:

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

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

(a) "Charge benchmark," for particular health care
services, procedures, or equipment, means the value, at a
specified percentile rank within a range of benchmarks,
corresponding to the distribution of the full, nondiscounted
standard rates charged by health care providers in the same or
similar specialty under the current official code for such

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16 services, procedures, or equipment provided out-of-network, or
17 to uninsured individuals, in the same geographical area.

18 (b) "Imputed allowed amount benchmark," for particular
19 health care services, procedures, or equipment, means the value,
20 at a specified percentile rank within a range of imputed
21 benchmarks, corresponding to the distribution of the negotiated
22 in-network rates authorized for payment by commercial insurance
23 carriers, including any copays or deductibles payable by
24 insureds, under the current official code for such services,
25 procedures, or equipment provided by health care providers in
26 the same or similar specialty in the same geographical area.

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

33 (a) If the claimant has coverage for such services,
34 procedures, or equipment from a governmental program but, in
35 lieu of such coverage, chooses for those services, procedures,
36 or equipment to be provided by a health care provider who
37 contractually agrees to defer payment until recovery from the
38 claimant's damages award or settlement, evidence must be
39 introduced at trial of the usual and customary rates for such
40 services, procedures, or equipment at the 50th percentile rank

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41 of the imputed allowed amount benchmarks as reported in a
42 database established under s. 408.05, F.S., or a statistically
43 reliable benchmarking database maintained by an independent,
44 nonprofit organization that, at least annually, reports a range
45 of percentile ranks for imputed allowed amount benchmarks,
46 similar to the FAIR Health Database as it exists on the
47 effective date of this act. The organization must:

48 1. Be designated by the Commissioner of Insurance
49 Regulation;

50 2. Have reported a range of percentile benchmarks each
51 year for at least 5 years using the official codes for such
52 services, procedures, or equipment; and

53 3. Be unaffiliated with any carrier, provider, or other
54 stakeholder in the health care industry.

55
56 Whether the claimant is a Medicare or Medicaid beneficiary is
57 inadmissible at trial.

58 (b) If the claimant has coverage for such services,
59 procedures, or equipment from a commercial insurance carrier or
60 under a plan self-funded by the claimant's employer but, in lieu
61 of such coverage, chooses for those services, procedures, or
62 equipment to be provided by a health care provider who
63 contractually agrees to defer payment until recovery from the
64 claimant's damages award or settlement, evidence must be
65 introduced at trial of the usual and customary rates for such

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66 services, procedures, or equipment at the 85th percentile rank
67 of the imputed allowed amount benchmarks as reported in a
68 database established under s. 408.05, F.S., or a statistically
69 reliable benchmarking database maintained by an independent,
70 nonprofit organization that, at least annually, reports a range
71 of percentile ranks for imputed allowed amount benchmarks,
72 similar to the FAIR Health Database as it exists on the
73 effective date of this act. The organization must:

74 1. Be designated by the Commissioner of Insurance
75 Regulation;

76 2. Have reported a range of percentile benchmarks each
77 year for at least 5 years using the official codes for such
78 services, procedures, or equipment; and

79 3. Be unaffiliated with any carrier, provider, or other
80 stakeholder in the health care industry.

81 (c) If the claimant does not have coverage for such
82 services, procedures, or equipment, evidence must be introduced
83 at trial of the usual and customary rates for such services,
84 procedures, or equipment at the 85th percentile rank of the
85 charge benchmarks as reported in a statistically reliable
86 benchmarking database maintained by an independent, nonprofit
87 organization that, at least annually, reports a range of
88 percentile ranks for charge benchmarks, similar to the FAIR
89 Health Database as it exists on the effective date of this act.
90 The organization must:

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91 1. Be designated by the Commissioner of Insurance
92 Regulation;

93 2. Have reported a range of percentile benchmarks each
94 year for at least 5 years using the official codes for such
95 services, procedures, or equipment; and

96 3. Be unaffiliated with any carrier, provider, or other
97 stakeholder in the health care industry.

98 (3) This section applies only to those actions for
99 personal injury or wrongful death to which this part applies
100 arising on or after July 1, 2019, and has no other application
101 or effect regarding compensation paid to providers of medical or
102 health care services.

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

106 Remove lines 5-11 and insert:
107 evidence is inadmissible at trial; providing an effective date.