

1                   A bill to be entitled  
 2           An act relating to damages; creating s. 768.755, F.S.;  
 3           defining the terms "charge benchmark" and "imputed  
 4           allowed amount benchmark"; providing for the  
 5           calculation of damages for certain health care  
 6           services, procedures, or equipment under specified  
 7           circumstances; specifying that certain evidence is  
 8           inadmissible at trial; providing applicability;  
 9           providing an effective date.

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

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 13           Section 1. Section 768.755, Florida Statutes, is created  
 14 to read:

15           768.755 Damages recoverable for costs of past health care  
 16 services, procedures, or equipment; evidence of usual and  
 17 customary rates; applicability.-

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

19           (a) "Charge benchmark," for particular health care  
 20 services, procedures, or equipment, means the value, at a  
 21 specified percentile rank within a range of benchmarks,  
 22 corresponding to the distribution of the full, non-discounted  
 23 standard rates charged by health care providers in the same or  
 24 similar specialty under the current official code for such  
 25 services, procedures, or equipment provided out-of-network, or

26 | to uninsured individuals, in the same geographical area.

27 | (b) "Imputed allowed amount benchmark," for particular  
28 | health care services, procedures, or equipment, means the value,  
29 | at a specified percentile rank within a range of imputed  
30 | benchmarks, corresponding to the distribution of the negotiated  
31 | in-network rates authorized for payment by commercial insurance  
32 | carriers, including any copays or deductibles payable by  
33 | insureds, under the current official code for such services,  
34 | procedures, or equipment provided by health care providers in  
35 | the same or similar specialty in the same geographical area.

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

42 | (a) If the claimant has coverage for such services,  
43 | procedures, or equipment from a government program but, in lieu  
44 | of such coverage, chooses for those services, procedures, or  
45 | equipment to be provided by a health care provider who  
46 | contractually agrees to defer payment until recovery from the  
47 | claimant's damages award or settlement, evidence must be  
48 | introduced at trial of the usual and customary rates for such  
49 | services, procedures, or equipment at the 50th percentile rank  
50 | of the imputed allowed amount benchmark as reported in a

51 database established under s. 408.05, F.S., or a statistically  
52 reliable benchmarking database maintained by an independent,  
53 nonprofit organization that, at least annually, reports a range  
54 of percentile ranks for imputed allowed amount benchmarks  
55 similar to the FAIR Health Database as it existed on July 1,  
56 2019. The organization must:

57 1. Be designated by the Commissioner of Insurance  
58 Regulation;

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

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

64  
65 Whether the claimant is a Medicare or Medicaid beneficiary is  
66 inadmissible at trial.

67 (b) If the claimant has coverage for such services,  
68 procedures, or equipment from a commercial insurance carrier or  
69 under a plan self-funded by the claimant's employer but, in lieu  
70 of such coverage, chooses for those services, procedures, or  
71 equipment to be provided by a health care provider who  
72 contractually agrees to defer payment until recovery from the  
73 claimant's damages award or settlement, evidence must be  
74 introduced at trial of the usual and customary rates for such  
75 services, procedures, or equipment at the 85th percentile rank

76 | of the imputed allowed amount benchmarks as reported in a  
77 | database established under s. 408.05, F.S., or a statistically  
78 | reliable benchmarking database maintained by an independent,  
79 | nonprofit organization that, at least annually, reports a range  
80 | of percentile ranks for imputed allowed amount benchmarks  
81 | similar to the FAIR Health Database as it exists on July 1,  
82 | 2019. The organization must:

83 | 1. Be designated by the Commissioner of Insurance  
84 | Regulation;

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

88 | 3. Be unaffiliated with any carrier, provider, or other  
89 | stakeholder in the health care industry.

90 | (c) If the claimant does not have coverage for such  
91 | services, procedures, or equipment, evidence must be introduced  
92 | at trial of the usual and customary rates for such services,  
93 | procedures, or equipment at the 85th percentile rank of the  
94 | charge benchmarks as reported in a statistically reliable  
95 | benchmarking database maintained by an independent, nonprofit  
96 | organization that, at least annually, reports a range of  
97 | percentile ranks for charge benchmarks similar to the FAIR  
98 | Health Database as it existed on July 1, 2019. The organization  
99 | must:

100 | 1. Be designated by the Commissioner of Insurance

101 Regulation;

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

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

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

112 Section 2. This act shall take effect July 1, 2019.