

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

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

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

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

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

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

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

81 1. Be designated by the Commissioner of Insurance
82 Regulation;

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

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

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

98 1. Be designated by the Commissioner of Insurance
99 Regulation;

100 2. Have reported a range of percentile benchmarks each

101 year for at least 5 years using the official codes for such
102 services, procedures, or equipment; and

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

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

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