

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:

12  
 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 benchmarks" for particular health care  
 20 service, procedure, or equipment, means the value, at a  
 21 specified percentile rank within a range of benchmarks, which  
 22 corresponds to the distribution of the full, nondiscounted  
 23 standard rates charged by health care providers in the same or a  
 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 a particular  
28 | health care service, procedure, 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 service,  
34 | procedure, or equipment provided by health care providers in the  
35 | same or a 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 service,  
43 | procedure, 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, 2020. 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.

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

63  
64 Whether the claimant is a Medicare or Medicaid beneficiary is  
65 inadmissible at trial.

66 (b) If the claimant has coverage for such service,  
67 procedure, 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 existed on  
80 July 1, 2020. The organization must:

81 1. Be designated by the commissioner of the Office of  
82 Insurance 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.

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, 2020. The organization  
97 must:

98 1. Be designated by the commissioner of the Office of  
99 Insurance 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.

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, 2020, 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, 2020.