

A bill to be entitled

An act relating to damages for medical or health care services; creating s. 768.755, F.S.; providing that damages for medical or health care services provided or to be provided to a claimant in personal injury or wrongful death are limited in certain circumstances; providing different limits depending on whether an outstanding balance is due to the provider; providing that damages are only recoverable for medically necessary services; providing a limitation if Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered or is an insurer covering the claimant's medical or health care services and has given notice of assertion of a lien or a claim of subrogation for past medical expenses; providing for applicability of collateral sources provisions; providing for applicability; providing an effective date.

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

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

768.755 Damages recoverable for medical or health care services.—In an action to which this part applies, damages for medical or health care services provided or to be provided to a

27 claimant are recoverable only as specified in this section.

28 (1) With respect to a medical or health care service
29 provided to the claimant for which an outstanding balance is not
30 due to the provider, the actual amounts remitted to the provider
31 are the maximum amounts recoverable. In such circumstances, a
32 difference between the amounts originally billed by the provider
33 and the actual amounts remitted to the provider are not
34 recoverable or admissible into evidence.

35 (2) With respect to any medical or health care services
36 provided to the claimant for which an outstanding balance is
37 claimed to be due to the provider, the provider is entitled to
38 the usual and customary charges for similar services received in
39 the community where the services were provided based on evidence
40 including, but not limited to, amounts accepted by providers
41 from licensed commercial health insurers licensed under the
42 Florida Insurance Code, Medicaid, and Medicare; amounts received
43 from private individuals on a self-payment basis; and amounts
44 that the provider received in compensation, if any, for the sale
45 of an agreement between the provider and the claimant or the
46 claimant's representative under which the medical or health care
47 services were provided to the claimant. This subsection also
48 applies to a lien or claim of subrogation asserted for medical
49 or health care services in the action, except for a lien or
50 claim of subrogation described in subsection (4).

51 (3) Damages for medical or health care services provided
52 or to be provided to a claimant are recoverable only for those

53 services determined, by a preponderance of the evidence, to be
54 medically necessary. A defendant is not liable for medical or
55 health care services determined to be medically unnecessary.

56 (4) Notwithstanding any other provision of this section,
57 if Medicaid, Medicare, or a payor regulated under the Florida
58 Insurance Code has covered or is an insurer covering the
59 claimant's medical or health care services and has given notice
60 of assertion of a lien or a claim of subrogation for past
61 medical expenses in the action, the amount of the lien or claim
62 of subrogation, plus the amount of copayments or deductibles
63 paid or payable by the claimant, is the maximum amount
64 recoverable and admissible into evidence with respect to the
65 covered services.

66 (5) After damages in compliance with this section are
67 awarded to a claimant, the court shall apply s. 768.76 and
68 reduce the amount of the award, as appropriate.

69 (6) This section applies only to actions for personal
70 injury or wrongful death of the claimant and has no other
71 applicability to or effect on compensation paid to providers for
72 medical or health care services.

73 Section 2. This act applies to causes of action arising on
74 or after the effective date of this act.

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