

# SENATE, No. 3963

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 17, 2019

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**  
**District 22 (Middlesex, Somerset and Union)**  
**Senator NELLIE POU**  
**District 35 (Bergen and Passaic)**  
**Assemblywoman JOANN DOWNEY**  
**District 11 (Monmouth)**  
**Assemblyman JON M. BRAMNICK**  
**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Revises law concerning recovery of unreimbursed medical expenses as economic loss in civil action for damages arising from automobile accident.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/21/2019)

1 AN ACT concerning unreimbursed economic loss in an action for  
2 recovery of damages for bodily injury under certain  
3 circumstances and amending P.L.1988, c.119 and P.L.1972, c.70.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 10 of P.L.1988, c.119 (C.39:6A-4.6) is amended to  
9 read as follows:

10 10. a. The Commissioner of Banking and Insurance shall, within  
11 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.),  
12 promulgate medical fee schedules on a regional basis for the  
13 reimbursement of health care providers providing services or  
14 equipment for medical expense benefits for which payment is to be  
15 made by an automobile insurer under personal injury protection  
16 coverage pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), **[or]** by an  
17 insurer under medical expense benefits coverage pursuant to section  
18 2 of P.L.1991, c.154 (C.17:28-1.6), or for payment of unreimbursed  
19 medical expenses that are admissible as uncompensated economic  
20 loss pursuant to section 12 of P.L. 1972, c. 70 (C39:6A-12). These  
21 fee schedules shall be promulgated on the basis of the type of  
22 service provided, and shall incorporate the reasonable and  
23 prevailing fees of 75% of the practitioners within the region. If, in  
24 the case of a specialist provider, there are fewer than 50 specialists  
25 within a region, the fee schedule shall incorporate the reasonable  
26 and prevailing fees of the specialist providers on a Statewide basis.  
27 The commissioner may contract with a proprietary purveyor of fee  
28 schedules for the maintenance of the fee schedule, which shall be  
29 adjusted biennially for inflation and for the addition of new medical  
30 procedures.

31 b. The fee schedule may provide for reimbursement for  
32 appropriate services on the basis of a diagnostic-related (DRG)  
33 payment by diagnostic code where appropriate, and may establish  
34 the use of a single fee, rather than an unbundled fee, for a group of  
35 services if those services are commonly provided together. In the  
36 case of multiple procedures performed simultaneously, the fee  
37 schedule and regulations promulgated pursuant thereto may also  
38 provide for a standard fee for a primary procedure, and proportional  
39 reductions in the cost of the additional procedures.

40 c. No health care provider may demand or request any payment  
41 from any person in excess of those permitted by the medical fee  
42 schedules established pursuant to this section, nor shall any person  
43 be liable to any health care provider for any amount of money  
44 which results from the charging of fees in excess of those permitted  
45 by the medical fee schedules established pursuant to this section.

**EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 This subsection shall apply to unreimbursed medical expenses that  
2 are subject to the medical fee schedules and admissible as  
3 uncompensated economic loss pursuant to section 12 of P.L.1972,  
4 c.70 (C.39:6A-12).

5 (cf: P.L.1997, c.151, s.33)

6

7 2. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to  
8 read as follows:

9 12. Inadmissibility of evidence of losses collectible under  
10 personal injury protection coverage. Except as may be required in  
11 an action brought pursuant to section 20 of P.L.1983, c.362  
12 (C.39:6A-9.1), evidence of the amounts collectible or paid under a  
13 standard automobile insurance policy pursuant to sections 4 and 10  
14 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10), amounts collectible or  
15 paid for medical expense benefits under a basic automobile  
16 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-  
17 3.1) and amounts collectible or paid for benefits under a special  
18 automobile insurance policy pursuant to section 45 of P.L.2003,  
19 c.89 (C.39:6A-3.3), to an injured person, including the amounts of  
20 any deductibles, copayments or exclusions, including exclusions  
21 pursuant to subsection d. of section 13 of P.L.1983, c.362  
22 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil  
23 action for recovery of damages for bodily injury by such injured  
24 person.

25 The court shall instruct the jury that, in arriving at a verdict as to  
26 the amount of the damages for noneconomic loss to be recovered by  
27 the injured person, the jury shall not speculate as to the amount of  
28 the medical expense benefits paid or payable by an automobile  
29 insurer under personal injury protection coverage payable under a  
30 standard automobile insurance policy pursuant to sections 4 and 10  
31 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10), medical expense  
32 benefits under a basic automobile insurance policy pursuant to  
33 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits under a  
34 special automobile insurance policy pursuant to section 45 of  
35 P.L.2003, c.89 (C.39:6A-3.3) to the injured person, nor shall they  
36 speculate as to the amount of benefits paid or payable by a health  
37 insurer, health maintenance organization or governmental agency  
38 under subsection d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3).

39 Nothing in this section shall be construed to limit the right of  
40 recovery, against the tortfeasor, of uncompensated economic loss as  
41 defined by subsection k. of section 2 of P.L.1972, c.70 (C.39:6A-2),  
42 including all unreimbursed medical expenses not covered by the  
43 personal injury protection limits applicable to the injured party and  
44 sustained by the injured party, including the value of any  
45 deductibles and copayments incurred through a driver's secondary  
46 insurance coverage and medical liens asserted by a health insurance  
47 company related to the treatment of injuries sustained in the  
48 accident. Medical expenses shall be subject to the current

1 automobile medical fee schedules established pursuant to section 10  
2 of P.L.1988, c.119 (C.39:6A-4.6). In any case in which the  
3 recovery is for medical expenses only, a prevailing claimant shall  
4 be entitled to reasonable and necessary attorneys' fees incurred by  
5 the prevailing claimant in the collection of such medical expenses.  
6 (cf: P.L.2003, c.89, s.55)

7

8 3. This act shall take effect on August 1, 2019 and shall apply  
9 to automobile accidents occurring on or after that date.

10

11

12

#### STATEMENT

13

14 This bill permits a party injured in an automobile accident to  
15 recover, as part of the recovery of uncompensated economic loss,  
16 all unreimbursed medical expenses not covered by the personal  
17 inquiry protection (PIP) limits applicable to the injured party and  
18 sustained by the injured party. Beginning August 1, 2019, the bill  
19 subjects unreimbursed medical expenses in excess of the PIP limits  
20 to the automobile medical fee schedules and prohibits balance  
21 billing of any medical expenses claimed as damages and paid  
22 pursuant to the medical fee schedule. It is the intention of the  
23 Legislature that this bill entirely supplant the provisions of Senate  
24 Bill No. 2432 upon the bill's effective date for accidents occurring  
25 on or after August 1, 2019.