

ASSEMBLY, No. 2221

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Concerns recovery of unreimbursed medical expenses as economic loss in civil actions for damages resulting from automobile accidents.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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,
4 c. 70.

5

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

8

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

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

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

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

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 by the medical fee schedules established pursuant to this section.
2 This subsection shall apply to unreimbursed medical expenses that
3 are subject to the medical fee schedules and admissible as
4 uncompensated economic loss pursuant to section 12 of P.L.1972,
5 c.70 (C.39:6A-12).
6 (cf: P.L.1997, c.151, s.33)

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

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

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

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

1 accident. Medical expenses shall be subject to the current
2 automobile medical fee schedules established pursuant to section 10
3 of P.L.1988, c.119 (C.39:6A-4.6). In any case in which all liability
4 claims have been resolved and the recovery is for medical expenses
5 only, a prevailing injured party shall be entitled to reasonable
6 attorneys' fees incurred by the prevailing injured party in the
7 collection of those medical expenses.
8 (cf: P.L.2003, c.89, s.55)
9

10 3. This act shall take effect immediately and shall apply to
11 causes of action pending on that date or filed on or after that date.
12
13

14 STATEMENT

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16 This bill permits a party injured in an automobile accident to
17 recover, as part of the recovery of uncompensated economic loss,
18 all unreimbursed medical expenses not covered by the personal
19 inquiry protection (PIP) limits applicable to the injured party and
20 sustained by the injured party. The bill subjects unreimbursed
21 medical expenses in excess of the PIP limits to the automobile
22 medical fee schedules and prohibits balance billing of any medical
23 expenses claimed as damages and paid pursuant to the medical fee
24 schedule.

25 In cases in which all liability claims have been resolved and the
26 recovery is for medical expenses only, a prevailing injured party
27 will be entitled to reasonable attorneys' fees incurred by the
28 prevailing injured party in the collection of those medical expenses.

29 The bill takes effect immediately and will apply to causes of
30 action pending on the effective date, or filed on or after that date.

31 It is the intention of the sponsor that this bill entirely supplant
32 the provisions of Senate Bill No. 2432 and Senate Bill No. 3963,
33 both of which have passed both Houses of the Legislature, and are
34 currently awaiting the action of the Governor.