

SENATE, No. 789

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Eliminates certain personal injury protection options available under standard automobile insurance policies; requires \$250,000 of medical expense benefits under standard and basic automobile insurance policies.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S789 SCUTARI

2

1 AN ACT concerning automobile insurance policies and amending
2 various parts of the statutory law.

3

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

6

7 1. Section 4 of P.L.1998, c.21 (C.39:6A-3.1) is amended to
8 read as follows:

9 4. As an alternative to the mandatory coverages provided in
10 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), any
11 owner or registered owner of an automobile registered or
12 principally garaged in this State may elect a basic automobile
13 insurance policy providing the following coverage:

14 a. Personal injury protection coverage, for the payment of
15 benefits without regard to negligence, liability or fault of any kind,
16 to the named insured and members of his family residing in his
17 household, who sustained bodily injury as a result of an accident
18 while occupying, entering into, alighting from or using an
19 automobile, or as a pedestrian, caused by an automobile or by an
20 object propelled by or from an automobile, and to other persons
21 sustaining bodily injury while occupying, entering into, alighting
22 from or using the automobile of the named insured, with the
23 permission of the named insured. "Personal injury protection
24 coverage" issued pursuant to this section means and includes
25 payment of medical expense benefits, as provided in the policy and
26 approved by the commissioner, for the reasonable and necessary
27 treatment of bodily injury in an amount **[not to exceed \$15,000]** of
28 \$250,000 per person per accident**];** except that, medical expense
29 benefits shall be paid in an amount not to exceed \$250,000: (1) for
30 all medically necessary treatment of permanent or significant brain
31 injury, spinal cord injury or disfigurement or (2) for medically
32 necessary treatment of other permanent or significant injuries
33 rendered at a trauma center or acute care hospital immediately
34 following the accident and until the patient is stable, no longer
35 requires critical care and can be safely discharged or transferred to
36 another facility in the judgment of the attending physician**].** In the
37 event benefits paid by an insurer pursuant to this subsection are in
38 excess of \$75,000 on account of personal injury to any one person
39 in any one accident covered by a policy issued or renewed prior to
40 January 1, 2004, such excess shall be paid by the insurer and shall
41 be reimbursable to the insurer from the Unsatisfied Claim and
42 Judgment Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-
43 73.1). Benefits provided under basic coverage shall be in
44 accordance with a benefit plan provided in the policy and approved
45 by the commissioner. The policy form, which shall be subject to

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 the approval of the commissioner, shall set forth the benefits
2 provided under the policy, including eligible medical treatments,
3 diagnostic tests and services as well as such other benefits as the
4 policy may provide. The commissioner shall set forth by regulation
5 a statement of the basic benefits which shall be included in the
6 policy. Medical treatments, diagnostic tests, and services provided
7 by the policy shall be rendered in accordance with commonly
8 accepted protocols and professional standards and practices which
9 are commonly accepted as being beneficial for the treatment of the
10 covered injury. Protocols and professional standards and practices
11 which are deemed to be commonly accepted pursuant to this section
12 shall be those recognized by national standard setting organizations,
13 national or state professional organizations of the same discipline as
14 the treating provider, or those designated or approved by the
15 commissioner in consultation with the professional licensing boards
16 in the Division of Consumer Affairs in the Department of Law and
17 Public Safety. The commissioner, in consultation with the
18 Commissioner of **【the Department of】** Health **【and Senior**
19 **Services】** and the applicable licensing boards, may reject the use of
20 protocols, standards and practices or lists of diagnostic tests set by
21 any organization deemed not to have standing or general
22 recognition by the provider community or the applicable licensing
23 boards. Protocols shall be deemed to establish guidelines as to
24 standard appropriate treatment and diagnostic tests for injuries
25 sustained in automobile accidents, but the establishment of standard
26 treatment protocols or protocols for the administration of diagnostic
27 tests shall not be interpreted in such a manner as to preclude
28 variance from the standard when warranted by reason of medical
29 necessity. The policy form may provide for the precertification of
30 certain procedures, treatments, diagnostic tests, or other services or
31 for the purchase of durable medical goods, as approved by the
32 commissioner, provided that the requirement for precertification
33 shall not be unreasonable, and no precertification requirement shall
34 apply within ten days of the insured event. The policy may provide
35 that certain benefits provided by the policy which are in excess of
36 the basic benefits required by the commissioner to be included in
37 the policy may be subject to reasonable copayments in addition to
38 the copayments provided for herein, provided that the copayments
39 shall not be unreasonable and shall be established in such a manner
40 as not to serve to encourage underutilization of benefits subject to
41 the copayments, nor encourage overutilization of benefits. The
42 policy form shall clearly set forth any limitations on benefits or
43 exclusions, which may include, but need not be limited to, benefits
44 which are otherwise compensable under workers' compensation, or
45 benefits for treatments deemed to be experimental or
46 investigational, or benefits deducted pursuant to section 6 of
47 P.L.1972, c.70 (C.39:6A-6). The commissioner may enlist the
48 services of a benefit consultant in establishing the basic benefits

1 level provided in this subsection, which shall be set forth by
2 regulation no later than 120 days following the enactment date of
3 this amendatory and supplementary act. The commissioner shall
4 not advertise for the consultant as provided in sections 3 and 4 of
5 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

6 Medical expense benefits payable under this subsection shall not
7 be assignable, except to a provider of service benefits, in
8 accordance with policy terms approved by the commissioner, nor
9 shall they be subject to levy, execution, attachment or other process
10 for satisfaction of debts. Medical expense benefits payable in
11 accordance with this subsection may be subject to a deductible and
12 copayments as provided for in the policy, if any. No insurer or
13 provider providing service benefits to an insured shall have a right
14 of subrogation for the amount of benefits paid pursuant to any
15 deductible or copayment under this section.

16 Notwithstanding the provisions of P.L.2003, c.18, physical
17 therapy treatment shall not be reimbursable as medical expense
18 benefits pursuant to this subsection unless rendered by a licensed
19 physical therapist pursuant to a referral from a licensed physician,
20 dentist, podiatrist or chiropractor within the scope of their
21 respective practices.

22 Notwithstanding the provisions of P.L.2009, c.56 (C.45:2C-19 et
23 al.), acupuncture treatment shall not be reimbursable as medical
24 expense benefits pursuant to this subsection unless rendered by a
25 licensed acupuncturist pursuant to a referral from a licensed
26 physician within the scope of the physician's practice.

27 b. Liability insurance coverage insuring against loss resulting
28 from liability imposed by law for property damage sustained by any
29 person arising out of the ownership, maintenance, operation or use
30 of an automobile in an amount or limit of \$5,000, exclusive of
31 interest and costs, for damage to property in any one accident.

32 c. In addition to the aforesaid coverages required to be
33 provided in a basic automobile insurance policy, optional liability
34 insurance coverage insuring against loss resulting from liability
35 imposed by law for bodily injury or death in an amount or limit of
36 \$10,000, exclusive of interests and costs, on account of injury to, or
37 death of, one or more persons in any one accident.

38 If a named insured has elected the basic automobile insurance
39 policy option and an immediate family member or members or
40 relatives resident in his household have one or more policies with
41 the coverages provided for in sections 3 and 4 of P.L.1972, c.70
42 (C.39:6A-3 and 39:6A-4), the provisions of section 12 of P.L.1983,
43 c.362 (C.39:6A-4.2) shall apply.

44 Every named insured and any other person to whom the basic
45 automobile insurance policy, with or without the optional \$10,000
46 liability coverage insuring against loss resulting from liability
47 imposed by law for bodily injury or death provided for in
48 subsection c. of this section, applies shall be subject to the tort

1 option provided in subsection a. of section 8 of P.L.1972, c.70
2 (C.39:6A-8).

3 No licensed insurance carrier shall refuse to renew the coverage
4 stipulated by this section of an eligible person as defined in section
5 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
6 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
7 the consent of the Commissioner of Banking and Insurance.
8 (cf: P.L.2009, c.56, s.17)

9

10 2. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read
11 as follows:

12 4. Personal injury protection coverage, regardless of fault.

13 Except as provided by section 45 of P.L.2003, c.89 (C.39:6A-
14 3.3) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), every standard
15 automobile liability insurance policy issued or renewed on or after
16 the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall
17 contain personal injury protection benefits for the payment of
18 benefits without regard to negligence, liability or fault of any kind,
19 to the named insured and members of his family residing in his
20 household who sustain bodily injury as a result of an accident while
21 occupying, entering into, alighting from or using an automobile, or
22 as a pedestrian, caused by an automobile or by an object propelled
23 by or from an automobile, and to other persons sustaining bodily
24 injury while occupying, entering into, alighting from or using the
25 automobile of the named insured, with permission of the named
26 insured.

27 "Personal injury protection coverage" means and includes:

28 a. Payment of medical expense benefits in accordance with a
29 benefit plan provided in the policy and approved by the
30 commissioner, for reasonable, necessary, and appropriate treatment
31 and provision of services to persons sustaining bodily injury, in an
32 amount **【not to exceed】** of \$250,000 per person per accident. In the
33 event benefits paid by an insurer pursuant to this subsection are in
34 excess of \$75,000 on account of bodily injury to any one person in
35 any one accident, that excess shall be paid by the insurer and shall
36 be reimbursable to the insurer from the Unsatisfied Claim and
37 Judgment Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-
38 73.1). The policy form, which shall be subject to the approval of
39 the commissioner, shall set forth the benefits provided under the
40 policy, including eligible medical treatments, diagnostic tests and
41 services as well as such other benefits as the policy may provide.
42 The commissioner shall set forth by regulation a statement of the
43 basic benefits which shall be included in the policy. Medical
44 treatments, diagnostic tests, and services provided by the policy
45 shall be rendered in accordance with commonly accepted protocols
46 and professional standards and practices which are commonly
47 accepted as being beneficial for the treatment of the covered injury.
48 Protocols and professional standards and practices and lists of valid

1 diagnostic tests which are deemed to be commonly accepted
2 pursuant to this section shall be those recognized by national
3 standard setting organizations, national or state professional
4 organizations of the same discipline as the treating provider, or
5 those designated or approved by the commissioner in consultation
6 with the professional licensing boards in the Division of Consumer
7 Affairs in the Department of Law and Public Safety. The
8 commissioner, in consultation with the Commissioner of [the
9 Department of] Health [and Senior Services] and the applicable
10 licensing boards, may reject the use of protocols, standards and
11 practices or lists of diagnostic tests set by any organization deemed
12 not to have standing or general recognition by the provider
13 community or the applicable licensing boards. Protocols shall be
14 deemed to establish guidelines as to standard appropriate treatment
15 and diagnostic tests for injuries sustained in automobile accidents,
16 but the establishment of standard treatment protocols or protocols
17 for the administration of diagnostic tests shall not be interpreted in
18 such a manner as to preclude variance from the standard when
19 warranted by reason of medical necessity. The policy form may
20 provide for the precertification of certain procedures, treatments,
21 diagnostic tests, or other services or for the purchase of durable
22 medical goods, as approved by the commissioner, provided that the
23 requirement for precertification shall not be unreasonable, and no
24 precertification requirement shall apply within ten days of the
25 insured event. The policy may provide that certain benefits
26 provided by the policy which are in excess of the basic benefits
27 required by the commissioner to be included in the policy may be
28 subject to reasonable copayments in addition to the copayments
29 provided for pursuant to subsection e. of this section, provided that
30 the copayments shall not be unreasonable and shall be established
31 in such a manner as not to serve to encourage underutilization of
32 benefits subject to the copayments, nor encourage overutilization of
33 benefits. The policy form shall clearly set forth any limitations on
34 benefits or exclusions, which may include, but need not be limited
35 to, benefits which are otherwise compensable under workers'
36 compensation, or benefits for treatments deemed to be experimental
37 or investigational, or benefits deducted pursuant to section 6 of
38 P.L.1972, c.70 (C.39:6A-6). The commissioner may enlist the
39 services of a benefit consultant in establishing the basic benefits
40 level provided in this subsection, which shall be set forth by
41 regulation no later than 120 days following the enactment date of
42 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not
43 advertise for bids for the consultant as provided in sections 3 and 4
44 of P.L.1954, c.48 (C.52:34-8 and 52:34-9).

45 Notwithstanding the provisions of P.L.2003, c.18, physical
46 therapy treatment shall not be reimbursable as medical expense
47 benefits pursuant to this subsection unless rendered by a licensed
48 physical therapist pursuant to a referral from a licensed physician,

1 dentist, podiatrist or chiropractor within the scope of their
2 respective practices.

3 Notwithstanding the provisions of P.L.2009, c.56 (C.45:2C-19 et
4 al.), acupuncture treatment shall not be reimbursable as medical
5 expense benefits pursuant to this subsection unless rendered by a
6 licensed acupuncturist pursuant to a referral from a licensed
7 physician within the scope of the physician's practice.

8 b. Income continuation benefits. The payment of the loss of
9 income of an income producer as a result of bodily injury disability,
10 subject to a maximum weekly payment of \$100. Such sum shall be
11 payable during the life of the injured person and shall be subject to
12 an amount or limit of \$5,200, on account of injury to any one
13 person in any one accident, except that in no case shall income
14 continuation benefits exceed the net income normally earned during
15 the period in which the benefits are payable.

16 c. Essential services benefits. Payment of essential services
17 benefits to an injured person shall be made in reimbursement of
18 necessary and reasonable expenses incurred for such substitute
19 essential services ordinarily performed by the injured person for
20 himself, his family and members of the family residing in the
21 household, subject to an amount or limit of \$12 per day. Such
22 benefits shall be payable during the life of the injured person and
23 shall be subject to an amount or limit of \$4,380, on account of
24 injury to any one person in any one accident.

25 d. Death benefits. In the event of the death of an income
26 producer as a result of injuries sustained in an accident entitling
27 such person to benefits under this section, the maximum amount of
28 benefits which could have been paid to the income producer, but for
29 his death, under subsection b. of this section shall be paid to the
30 surviving spouse, or in the event there is no surviving spouse, then
31 to the surviving children, and in the event there are no surviving
32 spouse or surviving children, then to the estate of the income
33 producer.

34 In the event of the death of one performing essential services as a
35 result of injuries sustained in an accident entitling such person to
36 benefits under subsection c. of this section, the maximum amount of
37 benefits which could have been paid to such person, under
38 subsection c., shall be paid to the person incurring the expense of
39 providing such essential services.

40 e. Funeral expenses benefits. All reasonable funeral, burial
41 and cremation expenses, subject to a maximum benefit of \$1,000,
42 on account of the death of any one person in any one accident shall
43 be payable to the decedent's estate.

44 Benefits payable under this section shall:

45 (1) Be subject to any option elected by the policyholder
46 pursuant to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

47 (2) Not be assignable, except to a provider of service benefits
48 under this section in accordance with policy terms approved by the

1 commissioner, nor subject to levy, execution, attachment or other
2 process for satisfaction of debts.

3 Medical expense benefit payments shall be subject to any
4 deductible and any copayment which may be established as
5 provided in the policy. Upon the request of the commissioner or
6 any party to a claim for benefits or payment for services rendered, a
7 provider shall present adequate proof that any deductible or
8 copayment related to that claim has not been waived or discharged
9 by the provider.

10 No insurer or health provider providing benefits to an insured
11 shall have a right of subrogation for the amount of benefits paid
12 pursuant to any deductible or copayment under this section.
13 (cf: P.L.2009, c.56, s.18)

14

15 3. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to
16 read as follows:

17 13. Personal injury protection coverage options. With respect to
18 personal injury protection coverage provided on an automobile in
19 accordance with section 4 of P.L.1972, c.70 (C.39:6A-4), the
20 automobile insurer shall provide the following coverage options:

21 a. Medical expense benefit deductibles in amounts of \$500.00,
22 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

23 b. The option to exclude all benefits offered under subsections
24 b., c., d., and e. of section 4 of P.L.1972, c.70 (C.39:6A-4);

25 c. (Deleted by amendment, P.L.1988, c.119.)

26 d. For policies issued or renewed on or after January 1, 1991,
27 the option that other health insurance coverage or benefits of the
28 insured, including health care services provided by a health
29 maintenance organization and any coverage or benefits provided
30 under any federal or State program, are the primary coverage in
31 regard to medical expense benefits pursuant to section 4 of
32 P.L.1972, c.70 (C.39:6A-4). If health insurance coverage or
33 benefits are primary, an automobile insurer providing medical
34 expense benefits under personal injury protection coverage shall be
35 liable for reasonable medical expenses not covered by the health
36 insurance coverage or benefits up to the limit of the medical
37 expense benefits coverage. The principles of coordination of
38 benefits shall apply to personal injury protection medical expense
39 benefits coverage pursuant to this subsection;

40 e. **Medical expense benefits in amounts of \$150,000, \$75,000,**
41 **\$50,000 or \$15,000 per person per accident; except that, medical**
42 **expense benefits shall be paid in an amount not to exceed \$250,000**
43 **for all medically necessary treatment of permanent or significant**
44 **brain injury, spinal cord injury or disfigurement or for medically**
45 **necessary treatment of other permanent or significant injuries**
46 **rendered at a trauma center or acute care hospital immediately**
47 **following the accident and until the patient is stable, no longer**
48 **requires critical care and can be safely discharged or transferred to**

1 another facility in the judgment of the attending physician. The
2 coverage election form shall contain a statement, clearly readable
3 and in 12-point bold type, in a form approved by the commissioner,
4 that election of any of the aforesaid medical expense benefits
5 options results in less coverage than the \$250,000 medical expense
6 benefits coverage mandated prior to the effective date of P.L.1998,
7 c.21.

8 If none of the aforesaid medical expense benefits options is
9 affirmatively chosen in writing, the policy shall provide \$250,000
10 medical expense benefits coverage;] (Deleted by amendment,
11 P.L. , c.) (pending before the Legislature as this bill)

12 f. The insurer shall provide an appropriate reduction from the
13 territorial base rate for personal injury protection coverage for those
14 electing any of the options in subsections a., b., and d. **[and e.]** of
15 this section.

16 Any named insured who chooses the option provided by
17 subsection d. of this section shall provide proof that he and
18 members of his family residing in his household are covered by
19 health insurance coverage or benefits in a manner and to an extent
20 approved by the commissioner. Nothing in this section shall be
21 construed to require a health insurer, health maintenance
22 organization or governmental agency to cover individuals or
23 treatment which is not normally covered under the applicable
24 benefit contract or plan. If it is determined that an insured who
25 selected or is otherwise covered by the option provided in
26 subsection d. of this section did not have such health coverage in
27 effect at the time of an accident, medical expense benefits shall be
28 payable by the person's automobile insurer and shall be subject to
29 any deductible required by law or otherwise selected as an option
30 pursuant to subsection a. of this section, any copayment required by
31 law and an additional deductible in the amount of \$750.

32 An option elected by the named insured in accordance with this
33 section shall apply only to the named insured and any resident
34 relative in the named insured's household who is not a named
35 insured under another automobile insurance policy, and not to any
36 other person eligible for personal injury protection benefits required
37 to be provided in accordance with section 4 of P.L.1972, c.70
38 (C.39:6A-4).

39 Medical expense benefits payable in any amount between the
40 deductible selected pursuant to subsection a. of this section and
41 \$5,000.00 shall be subject to the copayment provided in the policy,
42 if any.

43 No insurer or health provider providing benefits to an insured
44 who has elected a deductible pursuant to subsection a. of this
45 section shall have a right of subrogation for the amount of benefits
46 paid pursuant to a deductible elected thereunder or any applicable
47 copayment.

1 The Commissioner of Banking and Insurance shall adopt rules
2 and regulations to effectuate the purposes of this section and may
3 promulgate standards applicable to the coordination of personal
4 injury protection medical expense benefits coverage.

5 (cf: P.L.1998, c.22, s.3)

6

7 4. This act shall take effect on the 30th day after the date of
8 enactment, and shall apply to automobile insurance policies issued
9 or renewed on or after the effective date of this act.

10

11

12

STATEMENT

13

14 This bill requires all standard and basic automobile insurance
15 policies to provide \$250,000 of personal injury protection for
16 medical expense benefits.

17 Under current law, the standard automobile policy provides a
18 number of different coverage options and the opportunity to buy
19 additional protection. One option allows drivers to purchase
20 medical expense benefits in the amounts of \$250,000, \$150,000,
21 \$75,000, \$50,000 or \$15,000 per person per accident. This bill
22 eliminates the option to purchase medical expense benefits in those
23 amounts, and instead provides that all standard policies will include
24 \$250,000 of medical expense benefits.

25 This bill provides that all basic policies must include \$250,000
26 of personal injury protection per person per accident for medical
27 expense benefits. Under current law, basic policies must provide
28 \$15,000 per person per accident, except that, medical expense
29 benefits shall be paid in an amount not to exceed \$250,000 under
30 certain circumstances.