ARBITRATOR'S QUICK REFERENCE GUIDE

SUPREME COURT ARBITRATION ADVISORY COMMITTEE
Revised October 2019

Table of Contents

WORKERS' COMPENSATION LIENS 3
TITLE 59 CLAIMS 6
PROOF OF MEDICAL AND HOSPITAL BILLS 8
PROOF OF LOST WAGES 11
CASES INVOLVING LIMITED PIP COVERAGE 12
DEFAULTS 14
OTHER IMPORTANT RULES 16

WORKERS' COMPENSATION LIENS

Two recent Appellate Division decisions have laid to rest any issues regarding the recovery of workers' compensation liens in automobile accident cases where the plaintiff was in the course and scope of his employment. Previously, in such a circumstance an underinsured motorist coverage carrier was not required to pay as part of a personal injury award or settlement the medical expense benefits that a workers' compensation carrier paid to an injured employee as part of its workers' compensation lien as the result of an automobile accident. Dever v. New Jersey Manufacturers Ins. Co., 2013 N.J. Super Unpub. LEXIS 2553 (App. Div. Oct. 23, 2013).

However, in Talmadge v. Burn, 446 N.J.Super. 413 (App. Div. 2016), the Appellate Division held that N.J.S.A. 34: 15-40 (a provision of the Workers' Compensation Act) requires an injured employee to refund paid workers' compensation benefits to the workers' compensation carrier upon recovery from a tortfeasor, thereby preventing a double recovery by the plaintiff. In an ordinary case, the medical expense portion of the workers' compensation lien will be recoverable as an item of special damages to the same extent as out-of-pocket medical expenses would otherwise be recoverable. Thus, the amount of the medical bills awarded in an arbitration (assuming they are found to be reasonable in amount, medically necessary and causally related to the accident) will generally be the actual amount paid by the workers' compensation carrier. See also Lambert v. Travelers Indem. Co. of Am., 447 N.J. Super. 61 (App. Div. 2016).

In addition to the medical expense portion of the workers' compensation lien, net loss wages are also admissible into evidence and recoverable. Although the temporary benefits for loss of income paid by the workers' compensation carrier may roughly duplicate the net lost wages of the employee, the required proof is the actual net lost wages.

While medical expense benefits and net lost wages are admissible into evidence, the amount of any permanency award is not. Even though it is not admissible, the amount of any permanency award together with the amount of the medical expense benefits and temporary benefits (subject to the statutory reductions) are required to be repaid to the workers' compensation carrier.

Essentially, N.J.S.A. 34:15-40 requires that the amount to be repaid for a workers' compensation lien is the gross worker's compensation lien (total amount of the medical expense benefits, the temporary benefits and the permanency award), less the amount attributable to attorney's fees (usually 33 1/3% depending on the extent of the third party recovery) and then less $750.00 for costs. For example, for a $90,000.00 workers' compensation lien, the amount to be repaid would be $90,000.00, less 33 1/3% ($30,000.00), or $60,000.00, less $750.00, for a net lien to be repaid of $59,250.00 (prior to any additional compromises) from the plaintiff's net recovery.

The workers' compensation lien has been held to apply to virtually all types of third party recoveries for personal injury cases including intentional acts, UM and UIM claims and legal malpractice. Utica Mut. v. Maran, 142 N.J. 609 (1995), Calapa v. Dae Ryung Co., 357 N.J. Super. 220 (App. Div. 2003), Midland Ins. v. Colatrella, 102 N.J.

612 (1985). However, a workers' compensation lien does not apply to a third party recovery against a public entity. Travelers Insurance vs. Collella, 169N.J. Super 412 (App. Div. 1979).

TITLE 59 CLAIMS

Claims against public entities often involve conditions of public property, which have resulted in injury. To prove a dangerous condition of property under the New Jersey Tort Claims Act, specifically N.J.S.A. 59:4-2, the plaintiff must show palpably unreasonable conduct that causes a dangerous condition of public property; proximate causation of the injury by the dangerous condition; that the dangerous condition created a reasonably foreseeable risk of the kind of injury that, in fact, occurred; and that a negligent act or omission of the public entity created the dangerous condition or that the public entity had actual or constructive notice of the dangerous condition for a sufficient period of time prior to the injury to have taken measures to protect against it. The term "palpably unreasonable" has been defined as conduct that "must be manifest and obvious and that no prudent person would approve of its course of action or inaction." Colitch v . Landedahl, 100 N.J. 485 (1985).

A key issue that arises for Arbitrators is whether or not a claim under the New Jersey Tort Claims Act exceeds the threshold contained in N.J.S.A. 59:9-2.Pursuant to the statute, in order for there to be a pain and suffering recovery, there must be a permanent loss of a bodily function, permanent disfigurement, or dismemberment where the medical treatment expenses are in excess of $3,600.00. Medical treatment expenses include the reasonable value of services for the necessary surgical, medical and dental treatment rendered to the plaintiff for the causally related injuries, sickness or disease and includes prosthetic devices, ambulance, and hospital or professional nursing services. Failure to reach the objective thresholds, which are both the monetary requirement of $3,600.00 and the

descriptive requirement as to the types of injuries that are required does not bar all causes of action, but rather, bars only the recovery for pain and suffering. Beauchamp v. Amedio, 164 N.J. 111 (2000).

If the monetary threshold is not met, but the plaintiff has sustained a permanent injury, disfigurement or dismemberment he/she may still recover damages for the permanent injury. Peterson v. Edison Township Board of Education, 137 N.J. Super. 566 (App. Div. 1975); Reale v.Township of Wayne, 132 N.J. Super. 100 (Law Div. 1975). Evidence of a permanent injury must be objective. Brooks v. Odom, 150 N.J. 395 (1997). Brooks also requires the plaintiff show that he/she has suffered a permanent loss of a bodily function that is "substantial." Thus, in order to exceed the pain and suffering threshold in a Tort Claims Act the plaintiff must satisfy a two-prong test by proving: 1) an objective, permanent injury, and 2) a permanent loss of a bodily function that is substantial. Gilhooley v . County of Union,164 N.J. 53 (2000). In addition, the "substantial" requirement has also been applied to the claim for disfigurement. Hammer v. Township of Livingston, 318 N.J. Super 298 (App. Div. 1999).

PROOF OF MEDICAL AND HOSPITAL BILLS

Dias v. A.J. Seabra's Supermarket, 310 N.J. Super 99 (App. Div. 1998) sets forth the procedure to be utilized with regard to the introduction of admissible medical bills into evidence. The total amount of the admissible medical bills incurred are introduced into evidence, subject to sufficient proof that they are reasonable, necessary, and causally related to the subject accident. Where a jury verdict awards those admissible medical bills as an item of special damages, the trial court molds the awarded amount based upon payments made by collateral sources and any remaining out-of-pocket losses. Thomas v. Toys "R" Us, Inc., 282 N.J. Super 569 (App. Div. 1995).

The arbitrator is both the jury and the judge for purposes of determining an award. In their capacity as the jury, the preliminary determination made by the arbitrator is the gross amount of the related and necessary admissible medical bills. As the judge, the arbitrator must then determine the amount of medical bills that are paid by a collateral source or were out of pocket. Some medical bills, reduced by certain collateral sources, are admissible into evidence and therefore, a proper element of the Arbitrator's Award.

As set forth in Perreira v. Rediger, 169 N.J. 319 (2001), standard contractual health insurance liens that are included in health insurance policies are not enforceable or recoverable. However, certain federal liens are subject to reimbursement including Medicare, Medicaid, and Self-Funded ERISA liens. These federal liens are paramount to State law by virtue of the Supremacy Clause and are therefore required to be reimbursed. These liens are in addition to any workers' compensation liens, which may be required to be

reimbursed pursuant to N.J.S.A. 34: 15-40.

It is important to understand how Medicare, Medicaid and ERISA liens operate with regard to a personal injury case that may come before an Arbitrator. Upon request, Medicare provides a Conditional Payments Ledger which itemizes the bills it has paid and which it contends are related to the subject accident. In most instances, there are some bills that are included that are not related to the accident at all, such as a visit to a podiatrist when the claimed injury is a fractured wrist. The procedure for removing those bills from the Conditional Payments Ledger by the attorney is to write to Medicare with sufficient proof that they do not belong on the ledger and request a revised list. Generally, by the time the Arbitration occurs, the lien that the Arbitrator is provided with has already been modified.

Medicare liens also demonstrate an instance where the gross amount of the medical bills will be completely different from the amount paid by Medicare since it pays at a much lower rate. Since the Arbitrator awards as damages the amount of the medical bills that are reasonable, necessary and causally related, the recoverable amount of the medical bills will often be the amount that is shown on the Conditional Payments Ledger.

The amount of the Conditional Payments Ledger is not the amount that will necessarily be paid back to Medicare. Generally, Medicare requires repayment of liens less the percentage of the total sum of the attorney's fees and costs in the case compared to the gross recovery. For example, if the attorney's fees are 33 1/3% and the costs in the case were actually 2% of the settlement, the final Medicare repayment amount will be approximately 35 1/3% less than the total conditional lien. While this information is useful to know, the Arbitration Award should be based upon the actual amount paid by the

lienholder (i.e. the full Medicare lien). Medicaid also provides a formula to reduce the amount that is actually required to be paid back; however, an ERISA lienholder is not required to do so and will often refuse to negotiate from the actual amount that is owed. An important point is that the amount of the Medicare lien, Medicaid lien and ERISA lien are separate items of damages in a given case and should be clearly reflected as such in the body of any Arbitration award by the Arbitrator.

PROOF OF LOST WAGES

It is the plaintiff's burden to prove the net amount of lost wages as the result of an accident. Caldwell v. Haynes, 136 N.J. 422 (1994). The net amount is defined as the amount after taxes. This proof is ordinarily accomplished by production of an income tax return, pay stubs, or other proof detailing the amount of taxes that are being paid from an individual's gross wages.

CASES INVOLVING LIMITED PIP COVERAGE

There will be cases where the plaintiff has chosen a limited amount of PIP coverage often only $15,000.00. N.J.S.A. 39:6A-12 prior to amendment indicated very plainly that the statute which makes the evidence of amounts collectible or paid under PIP inadmissible should not be construed to limit the right of recovery against the tortfeasor of uncompensated economic loss. In Wise v. Marienski, 425 NJ Super. 110 (Law Div. 2011), the defendant argued that bills in excess of a $15,000.00 PIP coverage limit were inadmissible pursuant to N.J.S.A. 39:6A-12. The court held that the bills in excess of the PIP coverage limit were, in fact, admissible into evidence and were not barred by the subject statute. See also Kimble v. LaVista, 2014 N.J. Super. Unpub. Lexis 1308, *1 (App. Div., June 6, 2014); Adesina v. Santana, 2012 N.J. Super. Unpub. Lexis 470, *14-15 (App. Div. March 5, 2012).

Even if the bills above a limited PIP policy or a standard $250,000.00 PIP policy were allowed into evidence in a given case, the issue was always whether or not they should be subject to the New Jersey Fee Schedule. In that dispute, the plaintiff often pointed to N.J.A.C. 11:13-29.1, which indicates that for any automobile-related injury, medically necessary expenses are payable under PIP coverage and the Fee Schedule will apply. If the expenses were not payable under PIP (since the coverage was exhausted), then the Fee Schedule would not apply and the debt for repayment of the medical bills is not based upon the Fee Schedule, but rather upon whether or not the bills are fair and reasonable in amount and medically necessary. The defendant argued that if the bills

from the doctor were not subject to the New Jersey Fee Schedule, the doctor would receive a windfall, because the medical bills and treatment arose out of an automobile accident, and the medical provider's recovery will be a greater amount for its medical services due to the fact that the plaintiff had obtained less coverage than what was available to him/her. The issue was decided by the Supreme Court in Haines v. Taft, 237 N.J. 271 (2019), holding that such medical bills were not admissible under current law and invited review by the Legislature. Following that decision, the Legislature passed two bills, both signed into law by the Governor, which are attached. Essentially, medical bills above the PIP limit of $15,000.00, $25,000.00 or even $250,000.00 for accidents before August 1, 2019 are admissible, if properly proven, without being subject to the New Jersey Fee Schedule. For bills from accidents on August 1, 2019 and thereafter that exceeded the chosen PIP limits, the bills are admissible in accordance with the Fee Schedule. For a general overview of the recovery of medical bills in a non-auto case, see Model Civil Jury Charge 8.11 A.

DEFAULTS

Prior to Rule 4:21A-9, the issue of parties in default in Arbitration was handled in a very inconsistent manner on a state-wide basis. With the above unifying Rule, there is a specific procedure to be followed by the Arbitrator with regard to parties in default. Under Rule 4:21A-9, a party against whom an arbitration award is sought has to either be in default for a period of less than six months or has had default judgment on liability entered against them pursuant to Rule 4:43-2(b).

If the default is less than six months old or there is default judgment on liability, then notice must be provided under paragraph (b) of Rule 4:21A-9 not later than 30 days prior to the arbitration hearing. The form of the notice is set forth in Appendix XXIX and is attached hereto. The Rule sets forth where the notice should be served, the method of service and that proof of the service of the notice of arbitration hearing must be filed with the Clerk of the Court prior to the arbitration.

As an Arbitrator, you must receive a copy of the filed proof of service and must note that in the arbitration award. If there is an adjournment of the arbitration, the party seeking the award against the defaulting party must promptly provide notice as to the new hearing date.

If the party in default or who has had default judgment on liability entered against it appears at the arbitration hearing, the ability to participate in the hearing will be to the same extent as though the matter were being tried before the Court. The party in default will be limited to cross-examination only and will be prohibited from introducing exhibits into

evidence or from providing affirmative evidence by way of testimony of witnesses, including the defaulting party itself.

If the party against whom a default or default judgment on liability has been entered does not appear, the party obtaining the arbitration award, pursuant to Rule 4:21A-9(c), is required to serve a copy of the arbitration award on the defaulting party within 10 days of the receipt of the arbitration award. The Rule should be cited in the arbitration award so that the party obtaining the award can follow the procedures set forth therein.

A checklist for Arbitrators to use in the event of defaulted parties is attached hereto.

OTHER IMPORTANT RULES

Rule 4:21A-4(c) Evidence.

The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence. In lieu of oral testimony, the arbitrator may accept affidavits of wit- nesses; interrogatories or deposition transcripts; and bills and reports of hospitals, treating medical personnel and other experts provided the party offering the documents shall have made them available to all other parties at least one week prior to the hearing. In the discretion of the arbitrator, police reports, weather reports, wage loss certifications and other documents of generally accepted reliability may be accepted without formal proof.

Rule 4:21A-4(f) Failure to Appear.

An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the non-appearing party shall be deemed to have waived the right to demand a trial de novo. A party obtaining the arbitration award against the non-appearing party shall serve a copy of the arbitration award within 10 days of receipt of the arbitration award from the court pursuant to R. 4:21A-5. Service shall be upon counsel of record, or, if not represented, upon such non-appearing party. Service shall be made as set forth in R. 4:21A-9(c). Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause, which motion shall be filed within 20 days of the date of service on the non-appearing party by the appearing party. Relief shall be on such terms as

the court may deem appropriate, including litigation expenses and attorney's fees incurred for services directly related to the non-appearance.

Rule 4:21A-7 Arbitration of Minor’s and Mentally Incapacitated Person’s Claims.

If all parties to the action accept the arbitration award disposing of the claim of a minor or mentally incapacitated person, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

APPENDIX XXIX
[NOTICE OF ARBITRATION HEARING]

Attorney Name: ______________________________
Address: ______________________________

____
Telephone: ______________________________
Attorney for: ______________________________

SUPERIOR COURT OF NEWJERSEY
LAW DIVISION, CIVIL PART
______________ COUNTY

DOCKET NO: __________________________

____
Plaintiff,

v.

CIVIL ACTION
NOTICE OF ARBITRATIONHEARING

____
Defendants.

TO: ____

TAKE NOTICE that a ☐default ☐default judgment on liability was entered against you on __________________________ , 20________,in the above matter. An arbitration hearing in this matter

is scheduled for __________☐a.m. ☐p.m. on________________,20_______, at

____
(location)

You have the right to appear at the arbitration hearing and should take whatever action you deem appropriate with regard to the same.

At the conclusion of the arbitration hearing an award of monetary damages may be entered against you which may then result in a final judgment being entered against you by the court. If the arbitration date is rescheduled or cancelled, you will be notified by separate correspondence. If you have a new address, it is your responsibility to notify the undersigned immediately in writing of your new address.

____
Attorney for

[Note: Adopted July 22, 2014 to be effective September 1, 2014.)

New Jersey Judiciary

Civil Practice Division

Arbitrator's Checklist – Rule 4:21A-9. Parties in Default

☐ Yes ☐ No

1. Was either default entered less than six months prior to the arbitration date or has default judgment on liability been entered?

☐ Yes ☐ No

2. Was Notice of the Arbitration Proceeding provided to the party in default in the form set forth in Appendix XXIX to the Court Rules (copy attached), no later than thirty (30) days prior to the arbitration hearing?

☐ Yes ☐ No

3. Was Proof of Service of the Notice of Arbitration Hearing filed with the clerk of the court prior to the arbitration hearing?
(The Proof of Service must certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or if the party has such knowledge, certifying to those underlying facts.)

☐ Yes ☐ No

4. Has a copy of the filed Proof of Service of the Notice of Arbitration Hearing been provided to you, the arbitrator, at the time of the arbitration hearing?

☐ Yes ☐ No

5. If the party against whom the arbitration award is sought, has had default or default judgment on liability entered against it and did not appear at the arbitration hearing today after notice, did you, the arbitrator, advise the party obtaining the arbitration award against the defaulting party that a copy of the arbitration award must be served upon the defaulting party within ten days of the date of receipt of the arbitration award pursuant to Rule 4:21A-9 (c)?

[First Reprint]

SENATE, No. 2432

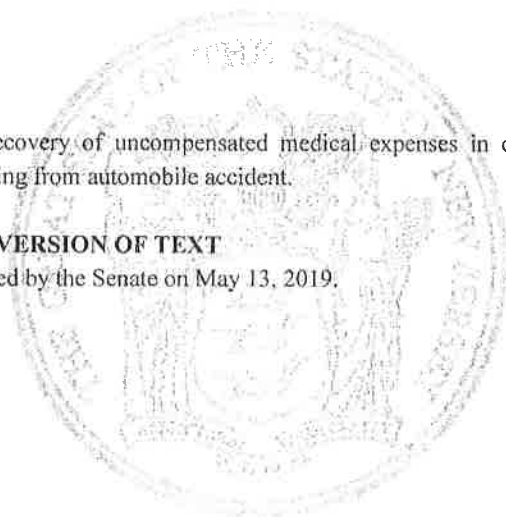
STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED APRIL 5, 2018

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)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblyman CRAIG J. COUGHLIN
District 19 (Middlesex)

Co-Sponsored by:
Assemblywoman Jasey



SYNOPSIS

Permits recovery of uncompensated medical expenses in civil action for damages arising from automobile accident.

CURRENT VERSION OF TEXT

As amended by the Senate on May 13, 2019.

(Sponsorship Updated As Of: 5/24/2019)

AN ACT concerning uncompensated economic loss in an action for recovery of damages for bodily injury and amending P.L.1972, c.70.

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

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

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

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

Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss as defined by subsection k. of section 2 of P.L. 1972, c. 70 (C. 39:6A-2), including [1]all[1] uncompensated medical expenses [1]**[**between**]** not covered by[1] the personal injury protection limits applicable to the

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate floor amendments adopted May 13, 2019.

1 injured party and [1]**[**$250,000,**]**[1] sustained by the injured party [1]**[**:
2 provided, however, that the amounts of any deductibles,
3 copayments or exclusions, including exclusions pursuant to
4 subsection d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3), shall
5 remain inadmissible pursuant to this section**]**. All medical
6 expenses that exceed, or are unpaid or uncovered by any injured
7 party's medical expense benefits personal injury protection limits,
8 regardless of any health insurance coverage, are claimable by any
9 injured party as against all liable parties, including any self-funded
10 health care plans that assert valid liens[1].
11 (cf: P.L.2003, c.89, s.55)
12
13 2. This act shall take effect immediately and apply to causes of
14 action [1]pending on that date or[1] filed on or after [1]**[**the 180th day
15 next following enactment**]** that date[1].

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.

GOVERNOR'S STATEMENT UPON SIGNING FOR SENATE BILL NO. 2432 (First Reprint) AND SENATE BILL NO. 3963

Today I am pleased to sign Senate Bill Nos. 2432 (First Reprint) and 3963, permitting a party injured in an automobile accident to recover, as part of the recovery of uncompensated economic loss, unreimbursed medical expenses that exceed the party's personal injury protection (PIP) limits. The bills are intended to overturn the March 26, 2019 decision of the New Jersey Supreme Court in Haines v. Taft. In Haines, the Court ruled that a party to an automobile accident may not recover unreimbursed medical expenses in excess of the party's PIP policy limits from the other driver. Recognizing that a plausible reading of the State's no-fault insurance laws could permit such a recovery, the Court "invited" the Legislature to clarify the statutory language at issue if the Legislature disagreed with the Court's decision. I applaud the sponsors of this bill for acting quickly to clarify the State's laws with regard to the recovery of unreimbursed medical expenses. The enactment of Senate Bill Nos. 2432 and 3963 will ensure that low-income drivers, who must settle for lesser PIP coverage options because they cannot afford better coverage, will not be denied the ability to recover their unreimbursed medical expenses from those who caused their injuries.

My signature of Senate Bill No. 3963 immediately follows my approval of Senate Bill No. 2432 (First Reprint), which overturns the Haines decision effective immediately and applies to causes of action pending on and arising after the effective date. Although I fully support the immediate reversal of the Haines decision, Senate Bill No. 2432 (First Reprint) contains a problematic provision that allows for the recovery of all medical expenses unpaid or uncovered by an injured party's PIP coverage, including expenses otherwise paid for through health insurance coverage. This provision appears to undermine the State's collateral source doctrine, which helps contain the cost of automobile insurance by preventing plaintiffs from recovering damages already paid by another source. The Legislature's inclusion of this provision is surprising, as it is unrelated to the bill's core mission of overturning the court's decision in Haines.

After my Administration expressed concerns to the sponsors of Senate Bill No. 2432 that this provision could have a negative impact on automobile insurance rates, the Legislature worked collaboratively with my Administration to draft and pass Senate Bill No. 3963. Senate Bill No. 3963 omits the offending language contained in the prior bill, making clear that the collateral source doctrine still applies to automobile cases. In addition, Senate Bill No. 3963 further protects drivers and contains insurance premium rates by subjecting unreimbursed medical expenses in excess of a driver's PIP policy limits to the automobile medical fee schedules. The bill also prohibits balance billing of any medical expenses claimed as damages and paid pursuant to the medical fee schedules. Together, the two bills

adequately protect drivers while ensuring that automobile insurance premium rates remain steady.

Date: August 15, 2019

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor