

SENATE, No. 760

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Clarifies right to recover certain uncompensated medical expenses under private passenger automobile insurance.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning certain personal injury protection coverage
2 options under private passenger automobile insurance, and
3 amending P.L.1983, c.362 and P.L.1972, c.70.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to
9 read as follows:

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

14 a. Medical expense benefit deductibles in amounts of \$500.00,
15 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

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

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

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

33 e. (1) Medical expense benefits in amounts of \$150,000,
34 \$75,000, \$50,000 or \$15,000 per person per accident; except that,
35 medical expense benefits shall be paid in an amount not to exceed
36 \$250,000 for all medically necessary treatment of permanent or
37 significant brain injury, spinal cord injury or disfigurement or for
38 medically necessary treatment of other permanent or significant
39 injuries rendered at a trauma center or acute care hospital
40 immediately following the accident and until the patient is stable,
41 no longer requires critical care and can be safely discharged or
42 transferred to another facility in the judgment of the attending
43 physician. The coverage election form shall contain a statement,
44 clearly readable and in 12-point bold type, in a form approved by
45 the commissioner, that election of any of the aforesaid medical

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 expense benefits options results in less coverage than the \$250,000
2 medical expense benefits coverage mandated prior to the effective
3 date of P.L.1998, c.21 (C.39:6A-1.1 et al.).

4 If none of the aforesaid medical expense benefits options is
5 affirmatively chosen in writing, the policy shall provide \$250,000
6 medical expense benefits coverage.

7 (2) Election of any of the medical expense benefits options
8 pursuant to this subsection shall not be construed to limit the right
9 of recovery by an injured party, against a tortfeasor, of
10 uncompensated medical expenses over the elected coverage limit;

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

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

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

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

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

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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
41 sustained by the injured party, including the right of recovery of
42 uncompensated medical expenses over any coverage limit elected
43 pursuant to subsection e. of section 13 of P.L.1983, c.362 (C.39:6A-
44 4.3).

45 (cf: P.L.2003, c.89, s.55)

1 3. This act shall take effect immediately, and apply to any
2 cause of action that accrues on or after the effective date.

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STATEMENT

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7 This bill clarifies the right of an injured insured under a private
8 passenger automobile insurance policy to recover certain
9 uncompensated economic losses from the tortfeasor. Specifically,
10 the bill states that an election of any of the medical expense benefits
11 options pursuant to subsection e. of section 13 of P.L.1983, c.362
12 (C.39:6A-4.3) shall not be construed to limit the right of recovery
13 by an injured insured, against the tortfeasor, of any uncompensated
14 medical expenses over an elected coverage limit.