

RÉSUMÉ DIGEST

HB 423

2024 Regular Session

Melerine

Present law (R.S. 9:2800.27(B)) provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a contracted medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the contracted medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

Present law provides that the court shall award to the claimant 40% of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the claimant's cost of procurement, provided that this amount shall be reduced if the defendant proves that the recovery of the cost of procurement would make the award reasonable.

Proposed law would have retained present law but would have deleted the requirement that the court shall award the claimant 40% of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare.

Present law (R.S. 9:2800.27(F)) provides that the jury shall only be informed of the amount billed by a medical provider and whether another source has agreed to pay shall not be disclosed to the jury.

Proposed law would have repealed present law.

Proposed law would have applied to any cause of action occurring after Jan. 1, 2025.

Present law provides that present law shall not apply to cases brought under R.S. 40:1231.1 or 1237.1.

Proposed law would have retained present law but would have added medical payments benefit coverage only.

(Proposed to amend R.S. 9:2800.27(B), (D), and (F); Proposed to repeal R.S. 9:2800.27(G))

VETO MESSAGE:

"Please be advised that I made the decision to veto House Bill 423 of the 2024 Regular Session. This bill, which is the second attempt in four years to modify the doctrine of collateral source, has severe implications. It penalizes responsible consumers who maintain healthcare coverage and/or Medicare, and it potentially undermines the collateral source rule entirely. I want to emphasize that I was very clear with Representative Melerine and other members of the House and Senate I would only allow a bill with reasonable amendments to become law. House Bill 423, in its current form, does not meet this standard. Therefore, it will not become law.

The collateral source rule, a legal principle enacted in various forms across different states, including Louisiana, is designed to ensure fairness and just compensation for injured parties in civil lawsuits. It prohibits a person (the tortfeasor) who damages you from benefiting from his own negligence. It also prevents an injured person's tort recovery from being diminished, simply because the victim is responsible and may receive a benefit from an independent source such as health insurance or Medicare.

The collateral source rule is designed to do the following:

1. Promote Fairness: It ensures that compensation received by an injured party from sources independent of the defendant (such as insurance or benefits from their own insurance policies) does not diminish the defendant's liability. This promotes fairness by preventing defendants from benefiting from the injured party's prudence or foresight in obtaining insurance coverage.

2. Encourage Responsibility: By preserving compensation received from collateral sources, the rule encourages individuals to be responsible and prudent in securing insurance coverage or other benefits to protect themselves financially in case of injury or harm. This, in turn, helps to alleviate the burden on public resources and social services.
3. Protect Injured Parties: Injured parties often suffer physical harm, as well as financial losses, such as medical expenses, lost wages, and property damage. The collateral source rule ensures that these losses are fully compensated, regardless of any other sources of compensation available to the injured party. This protection is particularly crucial for individuals who may not have substantial financial resources or access to comprehensive insurance coverage.
4. Maintain Jury Integrity: Allowing evidence of collateral payments to be introduced at trial could unduly influence the jury and prejudice them against the injured party. By excluding such evidence, the collateral source rule helps to maintain the integrity of the jury's decision-making process and ensures that verdicts are based solely on the merits of the case.
5. Simplify Legal Proceedings: Including evidence of collateral payments in a lawsuit can complicate and prolong legal proceedings, as parties may need to litigate the admissibility and relevance of such evidence. By excluding collateral payments from consideration, the collateral source rule streamlines the litigation process and allows parties to focus on the central issues of liability and damages.
6. Provide Consistency and Predictability: The collateral source rule provides a clear and consistent framework for determining the extent of a defendant's liability in civil cases. This predictability is essential for both plaintiffs and defendants, as it allows them to assess their potential exposure to liability and make informed decisions regarding settlement negotiations and litigation strategies.

Without any evidence, there have been representations in our state that reducing the collateral source rule will result in lower car insurance rates. This is not the first time that Louisiana citizens have been promised that amending the collateral source rule will result in lower insurance premiums. In 2020, the Louisiana Legislature passed a comprehensive tort reform package known as the Louisiana Civil Justice Reform Act of 2020. It included a major revision to the collateral source rule, reducing the amount paid by an injured party who pays health insurance by 60%. The insurance commissioner at the time, Jim Donelon, along with insurance and business lobbyists, promised the 2020 tort reform would reduce car insurance rates in Louisiana by as much as 25% within about a year of the act taking effect. Since 2020, Louisiana citizens have not seen car insurance rates fall. Instead, car insurance rates continue to rise, which reminds me of the old adage, "fool me once, shame on you. Fool me twice, shame on me." Louisiana citizens will not be fooled.

In 2020, the lobbyists and special interests suggested that it was appropriate to reduce by 60% the amount awarded to the person buying health insurance. Now, these same groups are back to say that the current law makes Louisiana an outlier. Advocates of House Bill 423 believe that Louisiana citizens with health insurance and Medicare should not receive any reimbursement. In addition, they removed certain decisions from that of the judge to a jury, increasing opportunities for miscalculations, and creating more expensive and protracted litigation. Louisiana was not an outlier in 2020, and, currently, it is not an outlier on collateral source. (See attached Map of United States and corresponding collateral source rule.)

There is no proof that any responsible Louisiana citizen who uses health insurance is being overpaid at trial. The reality is the collateral source rule only impacts cases that are going to trial, and very few cases are actually going to trial these days.

For these reasons, I have vetoed House bill 423 and returned it to the Legislature. Nonetheless, if the Legislature wants to pass a reasonable collateral source rule next year, I will sign it into law."