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## **Collateral Source Reform – Putting an End to Double Recovery**

Claimants that bring forward a medical liability lawsuit may have already received payments from their health or disability insurance, workers compensation, and other sources. However, current collateral source rules in many states *forbid defendants from informing a jury* that the plaintiff has received payments for injuries from other parties – essentially allowing the plaintiff to recover costs twice because the jury is uninformed.

Personal injury lawyers, who collect fees of roughly 40% or more on the overall award, benefit from double recovery – *at everyone else's expense*. These windfall judgments result in higher insurance premiums for physicians, which in turn leads to increased health care costs and threatened access to care for all patients.

### **Jackpot Justice**

Meritless lawsuits and out-of-control jury awards are causing medical liability premiums to rise, driving good doctors out of the practice of medicine, driving up the cost of health care, and threatening patient access to quality medical care. In many cases, personal injury attorneys already try to jack up economic damage claims by requesting damages to cover the “full” price of healthcare services, rather than the lower price the healthcare provider agreed to accept for those services. By keeping the jury uninformed about what expenses have been or will be paid by other sources, personal injury lawyers hope to further escalate awards in order to increase their fees (which are based on a percentage of the award).

Because a jury may be forbidden from knowing that a patient has already received payments from outside sources, the award is often well above what is reasonably necessary.

- About 23 percent of all plaintiffs' verdicts in liability cases equal or exceed \$5 million. Nearly 50 percent of verdicts fall between \$250,000 and \$2.5 million.<sup>1</sup>
- In 2009, the average jury award escalated to almost \$600,000, up from about \$280,000 in 1996.<sup>2</sup>

### **The HEALTH Act and Collateral Source Reform**

Collateral source rule reform as proposed by the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act, H.R. 5 (as introduced in January 2011), is a key component of medical liability reform. By simply allowing the jury to be informed about outside payments made to the claimant, the jury is able to decide for itself whether or not such payments should be included in any damage award and make an appropriate decision based on all the facts. This provides a more just and equitable resolution than either keeping juries uninformed so they might award double the necessary damages or subtracting these outside payments from a jury's award decision.

With this change, juries will become fully aware of the health care costs actually incurred by deserving patients and render their judgment on those facts.

This important reform will bring jury awards more in line with an amount that is appropriate to compensate for actual out-of-pocket costs, and deter personal injury lawyers from trying to exploit juries in order to increase their own share of an award.

*When coupled with other proven liability reforms, collateral source rule reform has resulted in lower insurance premiums and health care costs in states across the country.*

*By including collateral source reform with comprehensive medical liability reforms at the federal level, we can ensure that deserving patients are fairly compensated.*

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<sup>1</sup> “Trial Trends 2010,” Verdict Search. <http://www.verdictsearch.com/index.jsp?do=trends>.

<sup>2</sup> PIAA Claim Trend Analysis 2010