

NEWS & INSIGHTS

Future Medical Expenses

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To defendants in medical negligence actions, the guaranteed healthcare insurance coverage provisions of the Affordable Care Act have groundbreaking potential to dramatically reduce damages for the costs of future medical expenses. The Supreme Court's 2nd affirmation of the constitutionality of the Affordable Care Act in June 2015 assures that the challenge to apply the ACA to reduce future medical costs will battle on in courts across the country.

By now, the Affordable Care Act, or "ACA", has become a familiar term in American culture. Despite political or personal debate, it is well-known that the core provisions of the ACA guarantee lifetime healthcare insurance coverage for essential medical care at limited cost and prohibit insurance companies from denying coverage for pre-existing conditions. According to the federal government, these provisions promise to provide insurance coverage to

millions of previously uninsured Americans. Experts agree that Justice Roberts' opinion upholding the constitutionality of the Act in its most recent appearance before the United States Supreme Court in June 2015, has assured us that the ACA is here to stay.

A new idea, surfacing in courts across the country, is the impact that the ACA will have on awards in personal injury litigation. Plaintiffs in medical negligence cases must present evidence to enable juries to determine the reasonable cost of medical care that an injured plaintiff expects to incur. In a catastrophic injury case, those projections often surpass millions of dollars over the individual's lifetime. Although defendants, in rebuttal, may offer their own calculations to juries, Pennsylvania law prohibits discussion of payments made by most other sources which will actually cover those medical costs, such as health insurance coverage. This prohibition is traditionally known as the collateral source rule.

The collateral source rule is not unique to Pennsylvania. It is a conventional rule of evidence crafted in a time when health insurance coverage was uncommon, and courts sought to prevent those who purchased insurance policies from being punished for their investment. After all, the plaintiff argued, a defendant should not benefit from payments made by plaintiff's own insurer. Since 2014, however, health care insurance coverage in the United States is no longer a commodity enjoyed by a few wise investors, but rather the mandated responsibility of all American citizens. The ACA provides that all persons in the United States be afforded health insurance coverage, regardless of their health or financial situation. In support of that purpose, the individual mandate provision requires every applicable individual to obtain minimum coverage or pay a penalty. This means that all plaintiffs, regardless of the severity of their injury, or the exorbitant projections of their future medical care, will have the right to insurance coverage for future needs at specific limited cost.

Juries sitting in medical malpractice trials are acutely aware of the impact of the ACA on their daily lives, and they will undoubtedly question why a plaintiff should receive a multi-million dollar award for future medical expenses when that plaintiff will never actually be responsible for paying those costs. Inappropriate use of the collateral source rule to prohibit discussion of the ACA only serves to mislead juries as to the actual future financial burden placed on the plaintiff. In fact, plaintiffs will no longer be forced to face the impending prospect of indefinite out-of-pocket costs for future medical expenses; instead, out-of-pocket costs payable by the plaintiff will be limited annually, and capable of calculation with reasonable certainty. Further, the ACA removed the risk that a plaintiff may lack future health insurance coverage due to denials for pre-existing conditions, complicated medical histories, or lifetime caps on coverage. Plaintiffs can no longer reasonably argue that future insurance coverage is "speculative", nor that a plaintiff will be excluded from the insurance market, nor burdened with 100% of the cost of future medical care. Under ACA coverage, the plaintiff's essential medical needs will be covered, costs will be limited and lifetime coverage is guaranteed.

Defendants across the country are alerting courts to the ACA's real-world effect of significantly reducing future medical expenses to injured plaintiffs. Over the past 8 months, judges in at least 3 states permitted consideration of the ACA as part of the evidence in calculating awards for future medical costs. In Ohio, a court found that it could not "restrict reference to the Affordable Care Act as it is the law of the land." Defendants here in Pennsylvania, and across the country, must continue to convince courts that the ACA is the "law of the land", and that under the ACA's safety net, plaintiffs will never be faced with millions of dollars of expenses for future care; therefore, it is no longer reasonable or fair to continue to misinform juries that a plaintiff will be forced to pay for future medical expenses 100% out-of-pocket.

In Pennsylvania, it will be essential to present evidence methodically supported by targeted expert testimony. We

recognize the enormous impact the ACA will have on future medical negligence cases, in the Commonwealth, and across the country. While state evidentiary law varies, the national impact of the ACA must be understood, and we are taking a leadership role nationally on this new and evolving area.

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