


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 11-0228
Prime Sponsor(s): Rep. Gardner B.

Date: February 8, 2011
Bill Status: House Judiciary
Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING THE RECOVERY OF ACTUAL DAMAGES IN PERSONAL INJURY CASES.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue	See State Revenue section.	
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: None.		

Summary of Legislation

The bill clarifies a "contract exception" that permits Colorado courts to apply the collateral source rule in limited circumstances. In personal injury cases where a plaintiff claims an amount in damages for medical treatment, compensatory damage awards are limited under the bill to the amount actually paid to medical or health service providers or the amount customarily accepted by medical or health service providers. Under the bill, discounts for medical services negotiated by an insurer do not qualify for the contract exception and are set off from a plaintiff's damages award.

Background

The collateral source rule is a common law doctrine in tort cases, holding that an injured party may recover from both a defendant and third-party, "collateral" sources. Colorado legislatively abrogated the collateral source rule in 1986, but created an exception for benefits "paid as a result of a contract entered into and paid for on behalf of" a person. In November 2010, the Colorado Supreme Court held that the contract exception applied to the difference between amounts actually paid by an insurer to satisfy an injured party's medical and health care and the entire amount billed for medical and health services. According to the holding in *Volunteers of America v. Gardenswartz*, Colorado's contract exception under the collateral source rule allows an injured party to receive compensatory damages above the amount paid by his or her insurance.

State Revenue

The bill may reduce revenue to state agencies involved in the collection of awards in personal injury cases. The Department of Health Care Policy and Financing is the state agency most likely to be impacted by the bill in a significant manner. The department pays medical and health care providers in cases where a Medicaid client is injured. If the client recovers damages for the injury, the department may seek to have the court apportion the award. Last year, the department recovered approximately \$4 million from client personal injury actions. To the extent that awards under the bill may be reduced to reflect standard discounting of prices for medical and health care treatment, the department may see its recoveries reduced by up to 30 percent.

State Expenditures

The bill may reduce expenditures by state agencies involved in the payout of awards in personal injury cases. Based on diversion of employee claims to worker's compensation, the Colorado Governmental Immunity Act, and other limitations on state government liability, the state pays tort damages attributable to medical and health care costs in relatively few cases. To the extent that the state pays awards in tort cases, the state's costs in these cases may be reduced to reflect standard discounting of prices for medical and health care treatment.

Departments Contacted

Judicial
Personnel

Human Services
Law

Health Care Policy and Financing