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Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we received the proposed constitutional initiative related to attorney fees and medical damages in motor vehicle accident cases (A.G. File No. 25-0022, Amendment #1).

BACKGROUND

Insurance Required for Motor Vehicles. Motor vehicle insurance compensates people—up to certain specified amounts (“coverage amounts”)—when an accident occurs resulting in injury or damage. State law requires motor vehicle owners to purchase and maintain insurance for motor vehicles, including cars and motorcycles. It also includes requirements for the kinds of insurance that must be obtained, what must be covered, and minimum coverage amounts. For example, state law requires personal auto insurance policies include a minimum coverage amount of \$30,000 per person for each accident that results in the death or injury of one person other than the policy owner. State law includes higher requirements for certain businesses, such as ride-share companies. The actual coverage amount of motor vehicle insurance policies can differ based on various factors—such as whether a person is willing to pay more for greater coverage.

Compensation May Be Sought for Motor Vehicle Accidents. People involved in motor vehicle accidents can seek compensation. This can include compensation for property damage, medical expenses, lost wages (such as if the person is unable to go to work), and pain and suffering. Compensation is typically sought from the person responsible for the accident and/or that person’s insurance company. If an agreement to settle the case is not reached between the people involved in an accident and/or their insurance companies, a dispute can be filed in the state trial court. Motor vehicle accident cases filed with the state trial courts can be resolved


Legislative Analyst’s Office
California Legislature
Gabriel Petek, Legislative Analyst
925 L Street, Suite 1000, Sacramento, CA 95814
(916) 445-4656

before the case goes to trial (such as if a settlement is reached) or after trial before a judge or jury. If the injured person wins, they receive compensation through a court judgement.

Medical Treatment May Be Obtained in Various Ways. People involved in motor vehicle accidents may seek various kinds of medical treatment for injuries, such as physical therapy or surgery. This treatment is generally obtained in one of three ways.

- 1) ***Personal Payment.*** People (including those who do not have health insurance) may pay for medical treatment themselves. These people could subsequently receive compensation to reimburse them for these costs through settlements or court judgements.
- 2) ***Health Insurance Coverage.*** People may seek treatment from providers paid for by their private or government health insurance (such as Medi-Cal, the state's Medicaid program). These people could subsequently receive compensation for injuries, such as from a settlement or court judgement. If this occurs, the California Department of Health Care Services (DHCS) is required by state and federal law to recover monies from these people for any services paid for by Medi-Cal. Private health insurance may similarly seek to recover monies for services they paid for.
- 3) ***Medical Liens.*** People may seek treatment from a medical provider who is willing to provide service without immediate payment. Instead, the patient signs a contract promising payment to the provider from any compensation they receive from a settlement or court judgement. This is known as a "medical lien." If the compensation received does not fully cover the provider's bill, the patient is generally responsible for paying the remaining amount.

Attorney Contingency Fee Contracts Commonly Used in Motor Vehicle Accident Cases. People seeking compensation in motor vehicle accidents may hire an attorney. State law generally requires attorneys enter into written contracts with clients to specify what services are being provided and how they will be paid for. Attorneys are commonly compensated through contingency fee contracts in motor vehicle accident cases. Under this kind of contract, clients typically only pay their attorneys if they settle or win the case. Attorneys generally pay for up-front litigation costs related to the cases (such as court fees and evidence collection costs). After a case is settled or won, some of these costs may be first deducted from the amount awarded. The attorney then receives a percentage of the remaining amount. The specific percentage is determined by the attorney and their client. A common contingency fee percentage in motor vehicle accident cases is roughly 33 percent, but can vary depending on complexity.

PROPOSAL

This measure generally seeks to limit attorney compensation in contingency fee contracts and the amount of medical damages that may be awarded in motor vehicle accident cases where compensation is being sought for injury or loss. It also increases the burden of proof that must be met to receive compensation for certain medical expenses. We describe these proposed changes in more detail below.

Covers Motor Vehicle Accident Cases Where Compensation Is Sought. This measure would apply in motor vehicle accident cases where a person seeks compensation for accidents involving most motor vehicles (including cars and motorcycles) that result in injury or loss related to the ownership or use of the vehicle. However, the measure specifies it does not apply to any claims related to sexual harassment or assault.

Limits Attorney Contingency Fee Contracts. This measure limits attorney compensation in motor vehicle accident cases involving contingency fee contracts. Specifically, it bans contracts that result in the client retaining less than 75 percent of the settlement or court judgement. Payments to pursue or settle the case, such as up-front litigation costs, would be deducted from the total amount before calculating the percentage.

Limits Amount That May Be Awarded for Medical Expenses. This measure limits the amount of compensation that could be awarded for medical expenses in motor vehicle accident cases before the courts. Currently, people may be awarded any amount as long as they can provide justification that the medical treatment was “reasonably necessary” and appropriately billed. Under this measure, for medical expenses that have already been personally paid or are covered by health insurance, the award amount is limited to the actual amount paid. For medical liens and potential future medical expenses, the award amount would be limited to (1) 125% of the applicable fee-for-service Medicare reimbursement rate, (2) 170% of the applicable fee-for-service Medi-Cal reimbursement rate if no Medicare rate exists, or (3) the median or average rates paid by certain commercial insurers if no Medicare or Medi-Cal rate exists. For potential future medical expenses, people who have private health insurance would be awarded the actual amount that their insurer would pay instead.

Increases Burden of Proof for Medical Liens. Currently, people seeking compensation in motor vehicle accident cases before the courts generally need to provide evidence that their request—both the medical treatment as well as its cost—was more likely to be necessary than not. This is the “preponderance of the evidence” legal standard. While this measure generally does not change that legal standard of proof for compensation to address paid or future medical expenses, it increases the legal standard of proof that must be met to receive compensation to address medical liens. Specifically, people must prove by “clear and convincing evidence”—a higher certainty than the preponderance of the evidence legal standard—that the medical liens reflect that the medical treatment received was reasonably necessary.

Prohibits Certain Financial Agreements Between Attorneys and Medical Providers. In motor vehicle accident cases, attorneys may refer their clients to medical providers who are willing to provide service through medical liens. This measure prohibits an attorney from making a referral to a health care provider if the attorney (or their immediate family) has a financial interest with the provider. The measure also prohibits an attorney from seeking or receiving any compensation (such as rebate or free medical service) for such referrals.

FISCAL EFFECTS

This measure could have various fiscal effects on the state and local governments. Their size would depend primarily on how attorneys, those who suffer loss in motor vehicle accidents, insurance companies, and others respond to it. As a result, the fiscal effects are subject to

uncertainty. For example, it is unclear how much the limits on attorney contingency fees and medical damages would reduce the number of cases that are filed in court and/or are settled quickly.

Change in State Court Costs. This measure would impact state court workload and costs in different ways. On the one hand, court workload and costs would likely be reduced due to a reduction in the number of motor vehicle accident cases being filed. For example, attorneys would likely decline to take on some cases they would have otherwise pursued due to the limits on contingency fees that reduce the amount they would be paid. Court workload and costs could also decrease for cases that are ultimately filed if some cases are processed or resolved more quickly. For example, the medical caps—which set a clear limit on the amount that may be recovered—could reduce the amount of time spent to resolve this portion of a case. On the other hand, court workload and costs could increase for some cases that are ultimately filed if they require more time to be processed or resolved. For example, meeting the new clear and convincing standard to prove that a person should be awarded compensation for their medical liens could result in more evidence being presented and considered in court, increasing the time such cases take. The fiscal impact of the above changes would likely result in net savings ranging from the millions of dollars to the tens of millions of dollars annually.

Increased State Medi-Cal Costs. The measure could result in increased costs to the state related to Medi-Cal. This is generally due to the reduction in the number of motor vehicle accident cases filed. For example, as noted above, if a Medi-Cal recipient receives compensation in such cases, DHCS is required to recover funds for any related services paid for by Medi-Cal. Attorneys declining cases could result in some Medi-Cal recipients not receiving compensation due to being unable to successfully pursue such cases. This would mean the state would be unable to recover as much of these funds. Additionally, more people—who otherwise may have relied on medical liens—might seek medical treatment through Medi-Cal, to the extent that they meet eligibility requirements. These increased costs could range from the millions to the tens of millions of dollars annually.

Other Fiscal Effects. The measure could have various other impacts on state and local governments. For example, insurance providers could face increased costs from people receiving medical services that previously were offset by compensation. If this resulted in increased health care premiums, state and local governments' costs related to health coverage for their employees could increase. Conversely, the state and local governments could experience decreased costs if they ultimately pay less to settle or resolve motor vehicle accident cases filed against them in court. The net impact of such effects is unknown.

Summary of Major Fiscal Effects. This measure would have the following major fiscal effects:

- Likely net savings to the state trial courts ranging from the millions of dollars to the tens of millions of dollars annually. These effects would depend on the overall reduction in motor vehicle accident cases being filed as well as the degree to which remaining cases would take longer to resolve.

- Increased state Medi-Cal costs that could range from the millions to tens of millions of dollars annually due to various factors, including a reduction in compensation for some motor vehicle accidents used to offset Medi-Cal costs.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance