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TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 3.6. CLAIMS AND ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES [810 - 998.3] (Division 3.6 added by Stats. 1963, Ch. 1681.)

PART 5. PAYMENT OF CLAIMS AND JUDGMENTS [965 - 985] (Part 5 added by Stats. 1963, Ch. 1715.)

CHAPTER 4. Procedures Applicable to State and Local Public Entities [985- 985.] (Chapter 4 added by Stats. 1987, Ch. 1208, Sec. 8.)

985. (a) As used in this section:

(1) "Collateral source payment" includes either of the following:

(A) The direct provision of services prior to the commencement of trial to the plaintiff for the same injury or death by prepaid health maintenance organizations providing services to their members or by nonfederal publicly funded health service providers.

(B) Monetary payments paid or obligated to be paid for services or benefits that were provided prior to the commencement of trial to or on behalf of the plaintiff for the same injury or death from a provider of collateral source payments described in paragraphs (1) and (2) of subdivision (f).

(2) "Plaintiff" includes, but is not limited to, a person or entity who is entitled to make a claim under Part 2 (commencing with Section 6400) of Division 6 of the Probate Code for the collateral source benefits against the tortfeasor or alleged tortfeasor, and in the case of a minor, the minor and the minor's parent, legal guardian or guardian ad litem.

(3) "Commencement of trial" occurs as defined in paragraph (6) of subdivision (a) of Section 581 of the Code of Civil Procedure.

(b) Any collateral source payment paid or owed to or on behalf of a plaintiff shall be inadmissible in any action for personal injuries or wrongful death where a public entity is a defendant. However, after a verdict has been returned against a public entity that includes damages for which payment from a collateral source listed below has already been paid or is obligated to be paid for services or benefits that were provided prior to the commencement of trial, and the total of the collateral source payments is greater than five thousand dollars (\$5,000), that amount to be increased 5 percent compounded on January 1, 1989, and each January 1 thereafter, the defendant public entity may, by a motion noticed within the time set in Section 659 of the Code of Civil Procedure, request a posttrial hearing for a reduction of the judgment against the defendant public entity for collateral source payments paid or obligated to be paid for services or benefits that were provided prior to the commencement of trial. The hearing may be noticed with any motions pursuant to Sections 962 and 984 of the Government Code or Section 659 of the Code of Civil Procedure; however, the hearing shall not occur until after the determination of any motions for a new trial, for judgment notwithstanding the verdict, for remittitur, for additur, and after any mandatory settlement conference pursuant to Section 962 of the Government Code.

(c) A defendant public entity may, by interrogatory or in writing at the trial-setting conference, request from the plaintiff a list of the names and addresses of any provider of a collateral source payment affected by this section that has provided collateral source payments directly to or on behalf of the plaintiff and the amount provided to the plaintiff from each collateral source. The plaintiff shall produce the requested list within 30 days of such request. The plaintiff shall have a continuing duty to disclose to the public entity defendant the name and address of any provider of a collateral source payment affected by this section but not disclosed in plaintiff's response if that provider pays or owes collateral source payments to or on behalf of plaintiff between the time of plaintiff's response and the commencement of trial.

The public entity shall provide written notice to each provider of a collateral source payment listed by the plaintiff or identified by defendant of the date set for any pretrial settlement conference.

The provider of a collateral source shall not be required to attend a settlement conference unless requested to do so by the court. The court may request a provider of a collateral source to attend a settlement conference or to provide written information, to be available by telephone, or to otherwise participate in the conference, and a provider of a collateral source shall waive its rights to reimbursement unless it attends or otherwise complies with the request.

(d) If the plaintiff fails or refuses to supply to the defendant public entity information as to the identity of a provider of a collateral source payment, as required by this section, the defendant public entity may, upon discovery of the identity of the provider of a collateral source payment, within five years of the date of entry of judgment, request a reduction of the judgment for payment made or for services provided prior to the commencement of trial by that source. Failure of plaintiff to provide the names of collateral source providers affected by this section and known to plaintiff, shall subject plaintiff or plaintiff's attorney to sanctions pursuant to Section 128.5 of the Code of Civil Procedure.

(e) The public entity shall also give 20 days notice to the provider of a collateral source payment of any posttrial settlement conference or hearing regarding collateral source payments under this section.

Proof of service of any notice sent pursuant to this section shall be filed with the court and a copy served on all parties to the action.

(f) At the hearing the trial court shall, in its discretion and on terms as may be just, make a final determination as to any pending lien and subrogation rights, and, subject to subdivisions (1) to (3), inclusive, determine what portion of collateral source payments should be reimbursed from the judgment to the provider of a collateral source payment, deducted from the verdict, or accrue to the benefit of the plaintiff. No provider of collateral source payments pursuant to this section shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a public entity defendant other than in the amount so determined by the court. The following provisions shall apply to the court's adjustments:

(1) If the court has determined that the verdict included money damages for which the plaintiff has already received payment from or had his or her expenses paid by the following collateral sources: Medi-Cal, county health care, Aid to Families with Dependent Children, Victims of Crime, or other nonfederal publicly funded sources of benefit with statutory lien rights, the court shall order reimbursement from the judgment of those amounts to the provider of a collateral source payment pursuant to this section and on terms as may be just.

(2) If the court has determined that the verdict includes money damages for which the plaintiff has already received payment from or had his or her expenses paid by the following collateral sources: private medical programs, health maintenance organizations, state disability, unemployment insurance, private disability insurance, or other sources of compensation similar to those listed in this paragraph, the court may, after considering the totality of all circumstances and on terms as may be just, determine what portion of the collateral source benefits will be reimbursed from the judgment to the provider of the collateral source payment, used to reduce the verdict, or accrue to the benefit of the plaintiff. However, nothing in this section shall create subrogation or lien rights that do not already exist.

(3) In determining the amount to be reimbursed from the judgment to a provider of a collateral source payment, or the amount by which the judgment will be reduced to account for collateral source payments, the court shall make the following adjustments:

(A) Where plaintiff has been found partially at fault, the reimbursement or reduction shall be decreased by the same percentage as the entire judgment is reduced to take into account the plaintiff's comparative fault.

(B) The court shall deduct from the reimbursement or reduction the amount of premiums the court determines were paid by or on behalf of the plaintiff to the provider of a collateral source payment.

(C) After making the adjustments described in subparagraphs (A) and (B) above, the court shall reduce that amount by a percentage equal to the percentage of the entire judgment that the plaintiff paid or owes for his or her attorney fees and costs and reasonable expenses incurred.

(g) In no event shall the total dollar amount deducted from the verdict, paid to lienholders or reimbursed to all collateral source providers, exceed one-half of the plaintiff's net recovery for all damages after deducting for attorney's fees, medical services paid by the plaintiff, and litigation costs; however, the court may order no reimbursement or verdict reduction if the reimbursement or reduction would result in undue financial hardship upon the person who suffered the injury.

(h) Unless otherwise ordered by the court, 50 percent of any amount reimbursed pursuant to this section shall be due immediately. The court may order the remaining 50 percent to be paid in installments over a period of time to be determined by the court pursuant to Section 984, not to exceed 10 years.

(i) In any case involving multiple defendants, a reduction pursuant to this section shall be proportional to the percentage of the judgment actually paid by the public entity and shall satisfy the judgment as to the portion reduced so that no other judgment debtor shall be jointly liable for the portion of the judgment reduced pursuant to this section. If, after a hearing and determination pursuant to this section, the public entity judgment debtor is required to satisfy a portion of a joint and several judgment beyond that public entity judgment debtor's several portion due to the uncollectability of a joint tortfeasor's portion, the public entity may make a motion to reduce the additional portion in an amount proportional to the determination of the court pursuant to this section.

(j) In all actions affected by this section, the court shall instruct the jury with the following language:

"You shall award damages in an amount that fully compensates plaintiff for damages in accordance with instructions from the court. You shall not speculate or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict the court will make whatever adjustments are necessary in this regard."

(k) The Judicial Council shall adopt rules providing for a reasonable extension of the time for filing the notice of appeal from a judgment on the verdict to permit a motion for the hearing and the hearing itself.

(l) If the defendant public entity or defendant public employee is also a health care provider as defined in Section 3333.1 of the Civil Code, that section controls as to that defendant.

(m) This chapter does not apply to lien or subrogation rights provided in Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code.

(Added by Stats. 1987, Ch. 1208, Sec. 8.)