

## CHANGES TO MICHIGAN NO-FAULT LAW

In May 2019, Governor Whitmer signed legislation making revisions to Michigan's no-fault auto insurance law. These changes are designed to promote lower insurance premiums and to provide more flexibility to drivers, but are also likely to have an impact on employers. Marsh & McLennan Agency's Michigan offices in Troy (employee benefits) and Livonia (business insurance) worked together to provide a summary of the changes to the no-fault law, which are expected to go into effect on auto insurance policies issued or renewed on and after July 1, 2020.

### SUMMARY OF THE CHANGES

The new law imposes significant changes that will certainly have an impact on all Michigan drivers. These include:

- **No-Fault PIP Choice.** Under the old law, Michigan auto policies were one-size-fits-all when it came to medical benefits (also known as Personal Injury Protection or PIP coverage).

If you were injured in a car accident, then the policy would pay unlimited lifetime medical benefits. The new law still provides drivers with the option to maintain unlimited medical benefits, although at a mandated lower premium. The new law also gives drivers the option to select lower limits of PIP:

- \$50,000 (if a driver is enrolled in Medicaid)
- \$250,000
- \$500,000

These options for lower medical limits will be available for policies that renew after July 1, 2020. Since PIP coverage tends to be a substantial portion of the overall auto insurance premium, the lower options could offer a significant cost savings for Michigan drivers.

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- **Medicare recipients may opt out of no-fault PIP medical benefits.** Drivers with Medicare benefits may elect not to maintain PIP coverage on their auto policies after July 1, 2020.

- **Employees with coverage under a fully insured medical plan may opt out of no-fault PIP medical benefits.** The employer-sponsored insured health plan cannot exclude or limit coverage for injuries related to motor vehicle accidents, and must have an annual deductible of \$6,000 or less per individual. Michigan state law requires insured health plans to pay on a primary basis for expenses associated with auto accidents.



- **Mandated savings.** Michigan PIP premiums will be subject to a mandated discount from July 1, 2020 through July 1, 2028. The new law dictates PIP premium savings as follows:
  - 45 percent for those drivers who choose the \$50,000 limit on PIP
  - 35 percent savings for drivers who choose a \$250,000 limit on PIP
  - 20 percent savings for drivers who choose the \$500,000 limit on PIP
  - 10 percent savings for drivers who choose to continue their unlimited medical benefits

However, the new law allows insurers to escape these discounts if they can prove that the mandatory rate reductions are unconstitutional or would result in insufficient capital.

- **Michigan Catastrophic Claims Association (MCCA).** Under the previous law, auto insurance companies were only responsible for the first \$555,000 of a PIP claim, and then received reimbursement from the State of Michigan's Catastrophic Claims Association (MCCA). The MCCA program was supported by an annual fee of \$192 per vehicle. Under the new law, the MCCA

would continue to pay for catastrophic injury claims for policies issued before July 2, 2020, as well as those policies issued after July 1, 2020, where drivers chose to include unlimited PIP benefits. All drivers will still be obligated to pay an annual MCCA assessment fee to cover deficits, even if they decide to cap or eliminate PIP benefits under the new law.

- **Maximum fee schedule for medical services.** Under the new law, doctors, hospitals, clinics, rehabilitation facilities and any provider who cares for and treats car accident victims will be subject to a cap on their fees. Reimbursement for services

rendered after July 1, 2021 will be based on a percentage of the amount payable under Medicare schedules. Ultimately, the savings that insurance carriers realize from the new fee schedule must be passed along to drivers in the form of lower premium rates. Carriers are obligated to show proof of these savings in their rate filings.

- **Prohibition on credit scoring and similar factors.** Auto insurers have historically used a wide variety of factors to analyze risk and to adjust pricing. Beginning July 1, 2020, insurance carriers are no longer permitted to use non-driving factors such as credit score, gender, marital status, home ownership, education level, occupation or postal code.
- **Increased mini tort.** Under the old law a driver could sue an at-fault driver for up to \$1,000 in vehicle damage. The new law increases this amount to \$3,000 for accidents that occur after July 1, 2020.
- **Restrictions on the one-year-back rule.** Under the old law, an injured driver was precluded from recovering PIP benefits for any portion of the loss incurred more than one year before the date on which the action was commenced. The new law somewhat relaxes this standard. The one-year limitation does not include the period of time *from* the date a person makes a specific claim for benefits *until* the date the insurer formally denies the claim. Howev-

er, the new law cautions that tolling of the limitation does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.

- **Independent medical examinations.** Under the old law, an insurance carrier could send an injured driver to a pre-selected doctor to determine the extent of his or her injuries. Drivers sometimes feared that a doctor appointed by the insurance carrier might be biased and therefore not provide an accurate assessment. The new law imposes the following rules for medical examinations:

1. The doctor must be licensed in Michigan.
2. If a specialist is providing care for the injured person, then the examining physician must specialize in the same specialty as the physician providing the care, and if the physician providing the care is board-certified in the specialty, then the examining independent medical exam physician must be board-certified in that specialty.
3. The examining doctor must have devoted a majority of professional time to clinical practice of medicine/specialty or teaching in an accredited medical school for the year prior to the date of the examination.

- **Limited attendant care coverage if provided by a family member.** Under the old law, an injured driver could receive attendant care

benefits 24 hours a day, seven days a week (even if those services were performed by a family member). This is the equivalent of 168 hours of weekly care. If the injured driver needed around-the-clock care for assistance with walking, bathing, dressing, using the toilet, using medical equipment or taking medication, among other things, then the auto policy would pay for the expense without a limit. Regardless of which option a driver selects for PIP benefits in the future, the maximum a driver could receive for family-provided attendant care benefits is 56 hours per week, which is the equivalent of seven eight-hour days.

- **Increased minimum liability limits:** In the event of a major accident involving serious injuries or damage to property other than a vehicle, the injured party may have the ability to bring a lawsuit against the at-fault driver for injury or damage. Under the old law, Michigan drivers were required to maintain mandatory minimum limits of \$20,000 per person and \$40,000 per accident. Those minimum limits increase under the new law to \$50,000 and \$100,000, respectively. The new law sets a “default” bodily injury liability limit of \$250,000 and \$500,000. Drivers

are able to elect higher or lower limits, but no less than \$50,000/\$100,000. The new minimum liability limits take effect after July 1, 2020.

- **Lawsuits for excess medical benefits:** Under the old law, an injured driver received unlimited lifetime medical benefits. Drivers had no reason to sue an at-fault driver for medical expenses. Under the new law, an injured driver can

bring a lawsuit against the at-fault party for medical costs exceeding the amount of PIP coverage selected.

This means all drivers should consider

increasing their liability limits in order to account for the increased risks of lawsuits for medical expenses. This provision takes effect on July 1, 2020.

All drivers will need to work with their auto insurance consultants to understand the risks and new coverage options available under their auto insurance plan.

### POTENTIAL IMPACT TO SELF-FUNDED EMPLOYERS

Employer options have not changed, but certainly their potential exposure may increase. Fully insured plans continue to be required to pay primary for



auto accident-related injuries. Self-funded plans can make other determinations regarding coverage for such claims:

- **Employer plans can pay primary.** The employer plan takes on most of the liability, by paying before any benefits that are available under the auto insurance policy.
- **Employer plans can pay secondary.** The employer plan pays after any PIP benefits are paid under the auto insurance. In this situation, employers may see an increased liability. Once employees have the choice to limit PIP benefits to \$250,000 or \$500,000, the employer plan will be responsible when PIP benefits are exhausted. Employer plans could also pay secondary after \$250,000 or \$500,000 in expenses to force an employee to elect a certain level of PIP coverage.
- **Employer plans can exclude coverage.** The employer plan will not pay any expenses related to injuries incurred in an auto accident.



Employers must carefully consider how their plan will handle coverage for health care expenses related to an auto accident. Your self-funded plan document needs to clearly disclose how your plan will pay for these claims. If your

self-funded plan covers employees outside the state of Michigan, and your plan intends to limit coverage (i.e., after \$5000,000 expenses or exclude coverage altogether), different coverage options should be made available for those employees/dependents who do not have no fault auto coverage. Typically, PIP benefits in other states is more limited than Michigan. Most states will not offer an unlimited PIP coverage option or even coverage at the \$250,000 or \$500,000 level. Limitations could leave out of state employees with considerable liability.

In addition, self-funded employers taking a secondary payer stance may want to learn more about the

subrogation capabilities of the health plan vendor. Employers should understand how their health plans can attempt to recover funds if the employee is not

at fault for the accident and takes legal action against the “at fault” driver for benefits. If the employee recovers funds from the other auto insurer that are designed to offset medical expenses, then the plan may want to recover a portion of these payments (because the plan is paying the actual medical benefits).

Health plan vendors will often contract with an independent vendor for subrogation. The vendor will typically retain a percentage of the recovered funds.

## NEW DECISIONS FOR EMPLOYEES

After July 1, 2020, employees will have new decisions to make when they secure or renew their auto coverage. Employees will look to you for a better understanding of how their health plan coverage may coordinate with their auto insurance. To that end, your organization may want to develop communication materials specific to your plan’s coverage for injuries received in an auto accident. These communications will be used throughout the year, not just during annual enrollment.

Key points you may want to include in will depend on how your plan handles coverage for injuries related to auto insurance:

- **Fully insured plan.** You should indicate that the plan is fully-insured and will thus pay primary for medical services needed as the result of an auto accident. The plan will only pay for eligible services under the health plan.
- **Self-funded plan with a secondary payer stance.** You should indicate that the plan is self-funded and will pay secondary for medical services needed as the result of an auto accident. The plan will only pay for eligible services under the health plan.
- **Self-funded plan with an exclusionary stance.** You should indicate that the plan is self-funded and **excludes** coverage for medical services needed as the result of an auto accident. Advise

the employee to discuss PIP coverage options with their insurance agent or auto insurance carrier, so they are not without medical coverage in the event of an auto accident.

With the changes to the no-fault law, employees may be seeking information throughout the year. Think about the best way to supply this information so employees can access it on their own. It is important to update this information if your plan's funding changes from insured to self-funded, and vice versa. It must also be updated if a self-funded plan changes payment status or coverage options.

In addition, employees will have an opportunity to modify their PIP coverage if there is a change or loss of their health plan benefits. Employees should contact their insurance agent or auto insurance carrier within 30 days to make changes.

### CONCLUDING THOUGHTS

The changes to Michigan's no-fault auto insurance law means human resources professionals must take a closer look at how the group health plan may be affected by the newly available PIP options.

If your plan is self-funded, you will need to understand how it pays for injuries resulting from auto accidents. If you take a secondary stance on benefits, you may see a potential increase in liability due to the new PIP options. In some cases there may be a gap between incurred charges for medical care and what is paid under the individual's auto insurance policy.

Allow your employees to decide how to handle their auto insurance coverage. Simply educate them on how your health plan will coordinate claims payment. Be clear if you take an exclusionary stance, because the employee's medical benefit will be limited to what they choose for PIP coverage.

Finally, your health plan may not provide coverage, or may include coverage limits, for services that would be covered without limitation under PIP benefits. For example, coverage for custodial care or modifications needed to homes or vehicles as a result of a disability. These services are covered by the PIP coverage and are not covered by health plans. That should be communicated to employees as well.

These rules may change as regulations are issued to address the practicalities of the new guidance. MMA MI will keep you posted of material changes. MMA



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