

# SpecialAlert

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## MICHIGAN NO-FAULT AUTO REFORM

In May 2019, Governor Gretchen Whitmer signed legislation making revisions to Michigan's no-fault auto insurance law. The changes are substantial and your employees will likely be asking questions about what your health plan covers relative to auto accidents. The state has released more details on some of the practical steps that health plans and auto insurers will be taking when the changes take effect for policies issued or renewed after July 1, 2020.

This *Special Alert* will review:

- Auto PIP coverage and employer-sponsored health plans
- Increased potential liability to employees

Employees will look to their employers for an understanding of how the health plan pays benefits related to auto accidents. Employers have time to plan their education strategy. Remember, the changes will take place as each employee's auto policy renews, so the need for information will occur over time.

### AUTO PIP COVERAGE AND EMPLOYER-SPONSORED HEALTH PLANS

The current Michigan no-fault law requires auto insurance policies to provide unlimited personal injury protection (PIP) coverage. In addition, PIP provides significant benefits that are not limited to medical services. PIP coverage includes all of the following without cost-sharing:

- Medical expenses ordered by a physician
- Attendant care
- Rehabilitation
- Home modifications
- Vehicle modifications
- Wage loss benefits (limited for a period of time)

If you are in an auto accident and have unlimited PIP, those unlimited benefits are available for any services you need related to that auto accident for the rest of your life.



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The new law still provides drivers with the option to maintain unlimited PIP benefits. However, it also provides options to lower PIP limits or even to opt out of PIP completely:

- \$50,000, but only if enrolled in Medicaid
- \$250,000
- \$500,000
- Opt out, but only if covered by Medicare or a qualifying health plan. A qualifying health plan is one that pays primary to auto insurance and has an individual deductible of \$6,000 or less per individual.

The premium for auto insurance will be less for employees if they elect lower limits or choose to opt out.

In addition, the new law has not changed an individual's choice of having coordinated or uncoordinated coverage. Coordinated coverage is less expensive for individuals, but can be elected only if their health plan pays primary to auto coverage for auto-related medical claims. The auto coverage will be secondary in this situation. Uncoordinated auto coverage is more expensive because the auto carrier pays first. Currently, with unlimited PIP being required, a health plan would rarely pay an expense if uncoordinated auto coverage is elected.

However, with new options available beginning in July, health plans may have new liabilities, with much dependent on how the plan pays for injuries incurred in auto accidents. In some cases, you may have choices related to how your plan pays for such claims.

These are the options:

- Fully-insured plans are required to pay primary to no-fault auto PIP coverage.

- ERISA self-funded plans have three options:

1. Primary stance – The health plan will pay before the auto coverage. This will result in the highest liability to the self-funded plan.
2. Secondary stance – The health plan will pay after the auto coverage. That results in very little liability today because PIP benefits are required to be unlimited for all drivers. But once employees can elect limited PIP, employers may see more liability, although the average car accident results in approximately \$75,000 in expenses.
3. Exclusionary stance – The health plan will not pay for any medical expenses related to an auto accident. The only coverage employees will have will be what is available through the auto carrier or if they pursue litigation for their excess medical expenses.

- Non-ERISA self-funded plans have two options:

1. Primary stance – The health plan will pay before the auto coverage.
2. Exclusionary stance – The health plan will not pay for any medical expenses related to an auto accident.

Please note, if you have employees outside of Michigan, an exclusionary stance can result in a significant hardship to them, as no other state allows individuals to purchase unlimited PIP benefits. Most PIP limits in other states are significantly lower, often capping limits at \$100,000 or less. A plan could take an exclusionary stance for plan

participants subject to the Michigan no fault auto law and a secondary stance for those not subject to the Michigan law.

In addition, the changes to Michigan's auto law will allow employees to sue an "at-fault" driver for any medical expenses not covered by auto or health plan coverage. The current law only allows individuals to sue at-fault drivers in limited circumstances:

- Death
- Serious impairment of body function
- Permanent serious disfigurement
- Mini tort up to \$1,000

Starting in July, individuals can also sue "at-fault" drivers for excess medical expenses.

Employees will have questions about how your health plan intersects with auto coverage, so they can make informed choices regarding their auto PIP election. Employers can use a generic communication to discuss how the health plan pays for medical claims arising from auto accidents. But some employers will want to use a more detailed communication that discusses the changes in the auto law to make sure their employees understand the choices they make.

The State of Michigan is requiring auto insurance carriers to use a specific form to describe PIP options to auto policyholders. The proposed model notice can be found at the end of the Bulletin 2020-03 INS at [https://www.michigan.gov/difs/0,5269,7-303-12900\\_13376--\\_00.html](https://www.michigan.gov/difs/0,5269,7-303-12900_13376--_00.html). Auto insurance carriers will need to use this model form. If the carrier wants to use a different form, that must be approved by the Department of Insurance.

The State of Michigan is also requiring health plans and health insurance carriers to provide information to individuals covered by qualifying health coverage. Specifically, the bulletin states:

Health insurers and health plans should develop a document that indicates whether a person's coverage is "qualified health coverage" for purposes of no-fault insurance under MCL 500.3107d(7)(b)(i).

The Director will consider a document that includes the following information to be compliant:

- The full names and dates of birth of all individuals covered under the policy or plan; and
- A statement: (a) as to whether the coverage provided constitutes "qualified health coverage" as defined in MCL 500.3107d(7)(b)(i), or (b) that the coverage:
  - Does not exclude coverage for motor vehicle accidents and
  - Has an annual deductible of \$6,000.001 or less per covered individual.

This Bulletin is located at the above link and is called Bulletin 2020-01 INS.

Your organization should make sure your health plan insurance carrier or Third Party Administrator (TPA) will provide this notice if you offer qualifying coverage.

### INCREASED POTENTIAL LIABILITY TO EMPLOYEES

All individuals with auto coverage in Michigan need to be aware of their increased liability following changes to the Michigan no-fault auto coverage legislation. Now that employees can limit or opt out of PIP, there

is a chance the auto and/or health plan will not cover all expenses related to a serious auto accident. In these situations, the injured party can sue the "at fault" driver for all the reasons indicated above including excess medical expenses. Many individuals who understand this may want to increase their liability coverage on their auto insurance policy.

The State of Michigan is going to require auto carriers to provide specific education related to this increased liability. You can see the proposed model form for this education at the end of the Bulletin 2020-03 INS.

### CONCLUDING THOUGHTS

The changes to Michigan no-fault auto coverage will affect all employees purchasing auto insurance. They will probably have questions about what your health plan pays for when medical claims arise from auto accidents. It is critical for employees to understand that the benefits under the auto PIP are not the same benefits provided by a group health plan. PIP benefits are more extensive and cover critical items that are not medical services. Furthermore, any cost-sharing under the health plans will apply to auto accident expenses.

The latest bulletins from the State of Michigan provide a sense of how auto insurance carriers and health plans will provide materials to help individuals make an informed PIP coverage decision. Nonetheless, your organization can provide additional information related to how your health plan will pay for medical claims caused by an auto accident.

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