

SpecialAlert

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MICHIGAN NO FAULT AUTO CHANGES COMING SOON

In May 2019, Governor Gretchen Whitmer signed legislation revising Michigan's no-fault auto insurance law. The changes are substantial and your employees will likely ask about your health plan coverage for auto accidents. The changes affect auto insurance carriers and health insurance carriers as they adopt administrative changes related to no fault auto insurance policies issued or renewed after July 1, 2020.

This *Special Alert* reviews:

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

Employees will ask how the health plan pays benefits for auto accidents. 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. This is one of the reasons Michigan's auto insurance is so expensive. In addition, PIP provides significant benefits other than medical services. PIP coverage includes all the following without cost-sharing:

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

If you are in an auto accident and have unlimited PIP, those unlimited benefits are available for any



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services you need resulting from that auto accident for the rest of your life.

While the new law allows drivers to keep unlimited PIP benefits, it also allows drivers to lower PIP limits or even to opt out of PIP completely. Auto insurance carriers will send policyholders a form that outlines the following six options for PIP coverage:

- **Option 1:** Unlimited PIP
- **Option 2:** Limited coverage of \$500,000 PIP
- **Option 3:** Limited coverage of \$250,000 PIP
- **Option 4:** Limited coverage of \$250,000 PIP with some or all persons excluded from PIP medical. This option is available only if you choose the \$250,000 PIP medical limit.
 - A named insured who wishes to exclude PIP medical must have qualifying health coverage other than Medicare.
 - Any resident relative or spouse who wishes to exclude PIP medical must have qualifying health coverage.
 - Qualifying health coverage means either of the following:
 - Health and accident coverage that does not exclude or limit coverage for injuries related to auto accidents and has an annual individual deductible of \$6,000 or less
 - Coverage under both Medicare Parts A and B

- Those excluded will have **no PIP medical** coverage. Those not excluded will have \$250,000 in **PIP medical** coverage.
- **Option 5:** Limited coverage of \$50,000 PIP. This option is available only if:
 - The applicant or named insured is enrolled in Medicaid
 - A spouse and all resident relatives have one of the following:
 - a) Qualified health coverage
 - b) Medicaid enrollment
 - c) Coverage under another auto policy with PIP medical coverage
- **Option 6:** No PIP medical coverage for anyone this policy covers. This option is available only if both of the following apply:
 - The applicant or named insured is covered under both Medicare Parts A and B
 - A spouse and all resident relatives the policy covers have qualified health coverage or are covered under another auto policy with PIP medical coverage.

These options for lower PIP limits will be available for policies that renew after July 1, 2020. The premium for auto insurance will be less for employees if they choose lower limits or opt out.

In addition, the new law has not taken away the choice of having coordinated or uncoordinated coverage. Coordinated coverage is less expensive, but available

only if the health plan pays first for auto-related medical claims. Auto coverage is 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. Much depends on how the plan pays for injuries from auto accidents. In some cases, you may choose among the following options.

- Fully-insured plans must pay primary or before no-fault auto PIP coverage.
- ERISA self-funded plans have three options:
 1. Primary stance – The health plan pays before the auto coverage. This results in the highest liability for the self-funded plan.
 2. Secondary stance – The health plan pays after the auto coverage. That results in very little liability today because PIP benefits must be unlimited for all drivers. Once employees can elect limited PIP, employers may see more liability. The average car accident results in approximately \$75,000 in expenses. It appears if your self-funded plan is considered “qualifying health coverage”

(deductible of less than \$6,000 per person), your employees can opt-out of PIP coverage. If an employee makes that choice, the employer will, as a practical matter, be paying primary because there will be no PIP coverage. Thus, employer liability may be higher if a significant number of employees opt-out of PIP coverage.



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 sue 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. This stance results in the highest liability to the self-funded plan.
 2. Exclusionary stance – The health plan will not pay for any medical expenses stemming from an auto accident. The only coverage employees will have will be what is available through their auto carriers or if they sue for their excess medical expenses.

Don't forget, if you have employees outside of Michigan, an exclusionary stance can result in a significant hardship to them, as no other state allows people 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 partic-

ipants subject to the Michigan no fault auto law and a secondary stance for those not subject to the Michigan law. This will only be possible if your TPA can manage this separated coordination of benefits stance.

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

1. Death
2. Serious impairment of body function
3. Permanent serious disfigurement
4. Mini tort up to \$1,000

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

Employees will want to know how your health plan intersects with their auto coverage, so they can make informed choices. Employers can offer generic information

discussing how the health plan pays for medical claims arising from auto accidents. But some employers will want to discuss the changes in the auto law in more detail to make sure their employees understand their choices.

The State of Michigan is also requiring health plans and health insurance carriers to inform those with 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).

A document that includes the following information will comply:

- The full names and birth dates of everyone the policy or plan covers
- A statement confirming:
 - a) The coverage constitutes "qualifying health coverage" as defined in MCL 500.3107d(7)(b)(i)
 - b) The coverage:
 - Does not limit or exclude coverage for motor vehicle accidents
 - Has an annual deductible of \$6,000.001 or less for each covered individual.

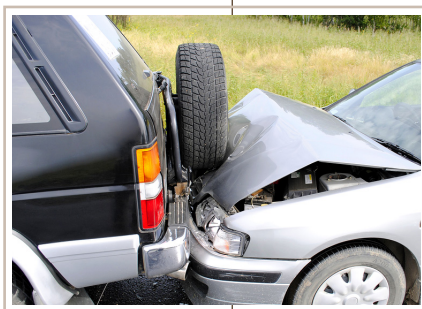
This Bulletin is located at https://www.michigan.gov/documents/difs/Bulletin_2020-01-INS_678517_7.pdf.

Make sure your health plan insurance carrier is sending this form to your fully-insured employees upon request. The State of Michigan is expecting employers with self-funded plans and qualifying health plan coverage to send a form to plan participants upon request.

INCREASED POTENTIAL LIABILITY FOR EMPLOYEES

Anyone in Michigan with auto coverage needs to be aware of the increased liability arising from 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 stemming from 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. For that reason, some employees may want to increase their auto insurance liability coverage.

The State of Michigan is going to require auto carriers to thoroughly explain this increased liability.



CONCLUDING THOUGHTS

The changes in Michigan no-fault auto coverage will affect all employees when they purchase auto insurance. They will probably ask what your health plan pays for when medical claims arise from auto accidents. You may want to go a step further and explain the health plan and the changes in the auto law. Employees must understand that the benefits under the auto PIP are not the same benefits a group health plan provides. 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 people make an informed PIP coverage decision. Self-funded employers that sponsor qualifying health plan coverage must develop a process to provide the qualifying health coverage notice to employees requesting it. MMA



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