



Significant Changes to Michigan No-Fault

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On May 30, 2019, Governor Gretchen Whitmer signed a bill into law that will make significant changes to Michigan's no-fault auto insurance system. Some of the important changes include providing drivers with choices in the amounts of coverage (including an opt out provision for personal injury protection benefits altogether), a reduction of the Michigan Catastrophic Claims Association fee paid by all Michigan drivers, a medical provider fee schedule and a provision banning insurance

companies from using certain non-driving factors to set their insurance rates, with the ultimate goal of reducing Michigan's highest-in-the-nation auto premiums. The new no-fault act was filed with the Secretary of State with an effective date of June 11, 2019, for all portions of the act that otherwise do not have a specified start date.

While the new act ostensibly will initiate dinner table conversations with respect to amounts of coverage and premiums, it also has far-reaching effects beyond the average Michigan driver's home, including several provisions that immediately affect claim handling and litigation from the insurance company's standpoint. The following is a list of changes that will have such an impact:

Medical Providers Can Assert a Direct Cause of Action Against an Insurer

Section 3112 of the new no-fault act provides that "[a] health care provider listed in Section 3157 may make a claim and assert a direct cause of action against an insurer, or under the Assigned Claims Plan under Sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." This provision seemingly obviates the need for a medical provider to produce an assignment of rights from an insured in order to seek payment directly from an insurer. Note that this provision references Section 3157 which mandates that the "physician, hospital, clinic, or other person" lawfully renders treatment to an injured person.

Injured Occupants and Non-Occupants Must Seek Benefits Directly from MACP

Whereas before, a person who suffered accidental bodily injury while an occupant in a motor vehicle could claim benefits from the insurer of the owner or registrant of the vehicle occupied first, then from the insurer of the operator second (if such person had no insurance of their own or did not have a spouse or resident relative who had insurance), the new act does away with this priority scheme completely. The new Act directs the occupant of the motor vehicle directly to the Michigan Assigned Claims Plan. MCL 500.3114(4).

Under MCL 500.3115, the non-occupant priority statute, the old priority scheme has been abrogated. A pedestrian or non-occupant can no longer claim benefits through the insurer of the owner or registrant of the motor vehicle involved, then from the operator, etc. (like the old occupant order of priority). The new Act directs the non-occupant directly to the Michigan Assigned Claims Plan.

Same Priority Scheme for Injured Motorcyclists

MCL 500.3114(5) maintains the same priority scheme for motorcyclists injured in accidents involving another motor vehicle, which is as follows: (1) insurer of the owner or registrant of the motor vehicle involved in the accident; (2) insurer of the operator of the motor vehicle involved in the accident; (3) the motor vehicle insurer of the operator of the motorcycle involved in the accident; and (4) motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident. However, what happens if, say, the owner or registrant of the motor vehicle involved in the accident (which would be first in the line of priority) elected to not maintain coverage for PIP or is otherwise excluded from coverage? Subsection (6) directs the injured claimant to make the claim “only under other policies, subject to subsection (7), in the same order of priority for which no such election has been made.”

Tort Liability for All Future Allowable Expenses and Work Loss

Whereas before, an injured person’s own insurance company would potentially be liable for unlimited medical and allowable expenses, Section 3135(3)(c) provides for potential tort liability for “[d]amages for allowable expenses, work loss, and survivor’s loss as defined in sections 3107 and 3110, including all future allowable expenses and work loss, in excess of any applicable limit under Section 3107C or the daily, monthly, and 3-years limitations contained in those sections, or without limit for allowable expenses if an election to not maintain that coverage was made under Section 3107D or if an exclusion under Section 3109A(2) applies. Under the new scheme, an injured person can sue an at-fault driver for traditional first-party benefits incurred beyond his or her own coverage limits, a marked difference from the old act which mandated that the injured person’s own insurance company provide unlimited coverage for all first-party benefits.

Tolling of One-Year Back Rule

Whereas before, it was settled that a claimant could not claim no-fault benefits incurred more than one year prior to the commencement of a lawsuit, Section 3145(3) provides that the period of limitations and recovery of benefits “is tolled from the date of a specific claim for payment of the benefits until the date the insurer formally denies the claim.” Thus, if an injured person receives services on June 1 and makes the claim for payment on the same day, the statute of limitations is tolled until the insurer formally denies the claim. In the above example, if the insurer formally denies the claim on July 1, the person has until July 1 of the following year to recover for the June 1 date of service.

Attorney Fees for Defending Claim Where Client was Unlawfully Solicited

Section 3148(2) provides that a Court may award an insurer attorney fees for “defending against a claim for which the client was solicited by the attorney in violation of the laws of this state or the Michigan Rules of Professional Conduct.” Note that MCL 750.410 makes it a misdemeanor for a person, association, firm, or organization of any kind to directly or indirectly solicit an injured person as the result of an accident to make a claim for damages or prosecute an action arising out of a personal injury claim.