

MVA?
PIP, OOP, MACP, ERISA,
COB, SOL and Other Acronyms
You Need to Know

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Robert E. Dice, Jr., Esq.
Dice Law PLLC
25925 Telegraph Rd. – Suite 200
Southfield, Michigan 48033
www.dicelaw.us
rob@dicelaw.us
(248) 234-8288
(313) 727-5300

Why Learn About No-Fault?

- Auto insurance pays the highest percentage of all insurance options
- Lack of knowledge often leads to write offs or submission to a lower percentage insurance option
- Lack of knowledge leads to frustrating interactions with auto insurance adjusters
- Increasing your knowledge leads to increased revenue without reducing costs or staff

No-Fault Problems – Can You Solve Them?

- The patient leaves without providing any insurance information
- The patient refuses to provide auto insurance information or make a claim
- There is a dispute between auto insurers
- There is a coordination dispute between an auto insurer and another insurer
- The auto insurer claims that the treatment is not related to the auto accident
- The adjuster keeps telling you the claim is “under investigation”
- The adjuster refuses to pay your claim because the patient’s claim is “in litigation”
- The claim must be made through the Michigan Assigned Claims Plan
- The claim involves treatment related to a motorcycle accident

PIP – An Overview:

1. When should bills be paid by auto insurance?

If a “**motor vehicle**” is “**involved**” in the accident, the injured person is entitled to no-fault benefits (also known as “first party” or “PIP” (Personal Injury Protection) benefits).

2. What circumstances give rise to a claim for no-fault benefits?

MCL 500.3105 provides that a no-fault insurer is liable for paying benefits for **accidental injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.**

3. What medical expenses must the insurer pay?

MCL 500.3107 provides that personal protection insurance benefits are available for “allowable expenses.” **Allowable expenses are “all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation.”**

4. What must a medical provider establish in order to get paid?

- A) The claimed expense must be incurred (the insurer has no duty to preauthorize treatment).
- B) The expense must be for the injured person’s care, recovery or rehabilitation.
- C) The charge must be reasonable.
- D) The treatment must be reasonably necessary.

5. When is payment due?

MCL 500.3142(2) provides that no-fault benefits are due 30 days after the insurer “receives reasonable proof of the fact and of the amount of loss sustained.”

6. How do I know which auto insurance company has to pay the bills?

If a patient is injured in a car accident and has car insurance, you make a claim with that car insurance. But what about situations where it is not so simple? The Michigan No-fault Act (MCLA 500.3101 et. seq.) sets forth the rules for determining which insurance company pays under different circumstances.

OOP and Exclusions: A Systematic Analysis

First, you must determine whether or not benefits are available under the No-Fault Act. Ask the following questions:

1. Was there an accidental injury that arose out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle?

- If the answer is “Yes,” continue.

There is a great body of law in which the courts have analyzed whether injuries “**arose out of**” the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

Some examples:

- **Maintenance** – coverage generally allowed.
- **Loading/Unloading property into or out of the vehicle** – coverage generally allowed.
- **Slip and fall** – coverage available but limited.
- **Assault while in motor vehicle** – coverage generally NOT allowed.

2. Do any exclusions apply?

Uninsured owner/operator - If the patient is an owner and driver of an uninsured vehicle that was involved, he or she is not entitled to PIP.

Stolen Vehicle - A patient that participates in the theft of the accident vehicle is not entitled to PIP.

Intentional Act - A patient that intentionally crashes his car cannot claim PIP benefits.

Two Types of Ownership – Titled Ownership and Constructive Ownership

MCL 500.3101 requires owners of motor vehicles to insure them. If you are the driver of a vehicle that you own that is not insured, you are not entitled to PIP benefits. The two main types of ownership under this section are **titled ownership** (the person holds title to the vehicle) and **constructive ownership**. MCL 500.3101(h)(i) defines a constructive owner as a person having use of a motor vehicle for a period that is greater

than 30 days. This definition of ownership greatly expands the reach of the uninsured owner/operator exclusion.

Michigan Courts have taken the position that it is not necessary that 30 days actually pass before a person can be deemed a constructive owner. Rather, Michigan case law indicates that if it was the intent of the parties that the prospective user/owner have exclusive use of the vehicle for more than 30 days, he is a constructive owner even if the accident occurs before he has had the vehicle for 30 days.

ORDER OF PRIORITY: **3 CATEGORIES OF CLAIMANTS – 3 PRIORITY SCHEMES**

If the patient's circumstances pass the tests above and none of the exclusions apply, you determine the responsible insurance company by first determining whether the patient is:

- an **Occupant** of a privately owned vehicle,
- a **Non-Occupant** or
- a **Motorcyclist** according to the Michigan No-Fault law.

The priority scheme for determining which auto insurance company is responsible for PIP benefits is different for an **occupant, non-occupant and motorcyclist**. The charts that follow explain the process for determining which company is responsible.

MOTORCYCLES ARE NOT “MOTOR VEHICLES” UNDER THE MICHIGAN NO-FAULT ACT

A **motorcycle** is not defined as a motor vehicle under the No-fault law. Accordingly, you can't purchase no-fault insurance on a motorcycle. However, motorcyclists are often entitled to claim PIP benefits if a motor vehicle is involved in the accident.

If patient is injured in a **single motorcycle accident** (e.g. a motorcyclist hits a tree, deer, or other motorcycle), **no PIP benefits** are available. However, if a motor vehicle hits a motorcycle or a motor vehicle cuts a motorcyclist off causing him to lose control and suffer injuries, a “motor vehicle” was “involved” and no-fault benefits are available.

Order of Priority: **OCCUPANTS**

1. **Named Insured:** If the patient has a motor vehicle with insurance, that insurance company pays. If not, proceed to next level.



2. **Spouse or Resident Relative:** Does the patient live with a spouse or relative that has an insured motor vehicle? If so, that company pays. If not, proceed to next level.



3. **Insurance Company of the Owner of the vehicle they were in:** The insurance on the motor vehicle occupied pays. If none, proceed to next level.



4. **Insurance Company of the Driver of the vehicle they were in:** If the driver borrowed a friend's uninsured motor vehicle, the driver may have an insured motor vehicle. If so, the driver's insurance company pays. If not, proceed to next level.



5. **Michigan Assigned Claims Plan:** Some automobile insurance companies that do business in Michigan participate in the assigned claims plan. If there is no insurance at any of the levels described above and there are no exclusions that would bar coverage, the MACP will assign the claim to an insurance company for the payment of benefits.

Order of Priority:
NON-OCCUPANTS

(This includes pedestrians, joggers, bicyclists, snowmobilers,
moped riders, tractor drivers, but not motorcyclists)

1. Named Insured: If the patient has a motor vehicle with insurance that company pays. If not, proceed to the next level.



2. Spouse or Resident Relative: Does the patient live with a spouse or relative that has an insured motor vehicle? If so, that company pays. If not, proceed to the next level.



3. Insurance Company of the Owner of the vehicle involved: If none, proceed to the next level.



4. Insurance Company of the Driver of the vehicle involved: If the driver borrowed a friend's uninsured motor vehicle, the driver may have an insured motor vehicle. If so, the driver's insurance company pays. If not, proceed to the next level.



5. Michigan Assigned Claims Plan: Some automobile insurance companies that do business in Michigan participate in the assigned claims plan. If there is no insurance at any of the levels described above and there are no exclusions that would bar coverage, the MACP will assign the claim to an insurance company for the payment of benefits.

Order of Priority:
MOTORCYCLES
(Operators and passengers)

1. Insurance Company of the Owner of the Motor Vehicle “involved”. If none, proceed to the next level.



2. Insurance Company of the Operator of the Motor Vehicle (not motorcycle) “involved.” If none, proceed to the next level.



3. Insurance Company of the Motor Vehicle (not motorcycle) of the operator of the motorcycle. If none, proceed to the next level.



4. Insurance Company of the Motor Vehicle (not motorcycle) of the Owner or person on the registration of the motorcycle. If none, proceed to the next level.



5. Spouse or Resident Relative: Does the patient live with a spouse or relative that has an insured motor vehicle? If so, that company pays. If not, proceed to the next level.



6. Michigan Assigned Claims Plan: Some automobile insurance companies that do business in Michigan participate in the assigned claims plan. If there is no insurance at any of the levels described above and there are no exclusions that would bar coverage, the MACP will assign the claim to an insurance company for the payment of benefits.

OOP - ESSENTIAL PATIENT INFORMATION

To determine the appropriate no-fault insurer in any circumstance, you must have certain essential information from the patient. Gaps in this information can cause you to become hopelessly stalled in your analysis. At a minimum, you need the following information:

Patient Information

- Driver's license (or State ID) number (better yet, a copy of the front and back)
- Date of Birth (if no driver's license obtained)
- Auto insurance information
- Marital status
- Did the motor vehicle accident occur while you were on the job?

The Accident

- Location of the accident
- Was a Police Report made? If so, by what police dept.? Incident number?

Accident Vehicle

- Name and contact information for the owner of the vehicle
- Name and contact information for the driver of the vehicle
- Auto insurance on the owner or driver's vehicles
- Did the patient use this vehicle? How often?

Other vehicles

- Identify all motor vehicles owned by you or relatives living in your household
- Insurance information for any insured vehicles in your household

SPECIAL PRIORITY SITUATIONS:

Company Car: If patient is injured and he has a car given to him or her to use by his or her employer, the only time that the insurance policy on that car pays is if the employee, spouse or resident relative was actually occupying that vehicle at the time of injury. Otherwise, the priority scheme for occupants of motor vehicles applies. MCL 500.3114(3).

Vehicles for Hire: If patient is in a vehicle for hire (limousine, ambulance) the hired vehicle's insurance company pays. If the hired vehicle has no insurance, you then follow the priority scheme for occupants of motor vehicles. For taxi cabs, school buses and certain other types of buses, the priority scheme is the same as that for occupants of motor vehicles. MCL 500.3114(2).

WHAT IF THE PATIENT IS NOT A RESIDENT OF MICHIGAN?

Out of state Resident in Michigan Accident: An insurer that sells auto insurance in Michigan must file a certification pursuant to MCL 500.3163. If a resident of another state is involved in an accident in Michigan and his insurance company has filed the MCL 500.3163 certification, the out of state resident is entitled to Michigan No-Fault benefits. A list of insurers certified in Michigan can be found at www.michigan.gov/difs. Note: A \$500,000.00 limit will likely apply to such claims. MCL 500.3163(4).

COB - COORDINATION OF BENEFITS **Dealing with ERISA, SPDs and Other Issues**

Pursuant to MCL 500.3109a, an insurer may offer to coordinate health and accident coverages at an appropriate premium reduction. From a practical standpoint, most automobile insurance policies sold in Michigan provide for coordinated benefits.

However, even where a patient has a coordinated auto insurance policy, it remains primary under certain circumstances:

- The patient's health insurance is through Medicare or Medicaid,
- The patient's health insurance is a self-funded ERISA plan, or
- The patient's health insurance has a valid exclusion for treatment of auto accident-related treatment

Generally, an election to coordinate auto insurance coverage with other coverages applies only to the named insured in the policy, the spouse of the named insured or any relative residing in the same household as the named insured. MCL 500.3109(3).

Practical recommendations for successfully dealing with coordination of benefits issues include:

- Get as much information as to all existing policies so that the order of priority of insurers can be determined.
- If the health insurer is claiming secondary status as a self-funded ERISA plan, request the full Summary Plan Description (not Summary of Plan Benefits) from the health insurer because any auto insurer will demand a copy before agreeing to assume status as primary insurer.
- If an auto insurance policy is primary but refusing to pay and the patient has Medicare coverage, there is a process for billing Medicare "conditionally" while you pursue payment from the auto insurer.

PIP v. WC
Auto Insurance v. Workers' Compensation

If a patient sustains an injury that arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle while on the job, issues may arise. If the patient is covered under a workers' compensation insurance policy, that policy is primary for medical benefits. However, when the patient says that he was injured on the job, you can't assume that workers compensation insurance is primary. First, the patient may not be covered under a work comp policy. Second, the work comp insurer may dispute the patient's right to benefits.

If a work comp carrier disputes a worker's claim for benefits where the injury arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, the applicable auto insurance must pay the patient's medical benefits and intervene in the workers' compensation claim to obtain reimbursement.

Practical recommendations for situations involving on the job injuries and motor vehicles include:

- Get as much information as to the circumstances of the accident so a determination can be made as to which insurer is likely responsible.
- Don't stop gathering information after the patient gives the information regarding his workers compensation insurance – get the auto insurance information on the employer-furnished vehicle and the employee's personal vehicles.
- If the workers' compensation carrier refuses to pay, make a claim with the auto insurance, advising them of their responsibility to pay and intervene in the patient's workers' compensation case.

MACP
THE MICHIGAN ASSIGNED CLAIMS PLAN:
It's Getting Tougher Every Day

Injured persons who are uninsured may still, under many circumstances, qualify for no-fault insurance. Often, that insurance is provided through the Michigan Assigned Claims Plan. Upon proper application, the MACP assigns the claim to one of the no-fault insurers that voluntarily participate with the Plan.

Since December 17, 2012, The Plan has been administered through the Michigan Automobile Insurance Placement Facility (MAIPF). The application form and additional information can be obtained at www.michacp.org or by calling or writing to:

Michigan Assigned Claims Plan
PO Box 532318
Livonia, MI 48153
734-464-8111

The MACP application for benefits form is needlessly long, complex, and contains intimidating and misleading statements that are a real deterrent to people honestly pursuing their legitimate legal rights. Many people give up rather than even attempt to pursue an assigned claim.

From a practical standpoint, with the MACP it has been far more difficult to get a claim assigned to a participating insurer than in the past. Instead of assigning the claim upon receiving application, the MACP frequently responds by asking for additional information. The purpose of such requests is to frustrate claimants and cause them to give up because it simply is too difficult or isn't worth the time to deal with the MACP.

Practical recommendations for making claims through the MACP include:

- If you are unable to determine the applicable insurance company, file an assigned claim or encourage the patient to file. If there is no higher priority insurer, the MACP will assign the claim to a participating insurance company.
- Do your investigation early and make an assigned claim as soon as possible to avoid problems with the one year statute of limitations.
- Document all attempts to contact the patient or other persons relevant to the investigation of potential available insurance. Attempts to contact them in writing are best because you have documentation to show the MACP.
- You do not have to make the claim in the patient's name. You can make the claim in the name of the medical provider.
- Although it is preferable, you do not have to submit a copy of the police report as proof of the auto accident. If you don't have time to get a police report or can't locate one, submit the EMS run sheet or even hospital records that document the accident.
- Don't give up. The goal of the MACP is seemingly to make the claim process so onerous and intimidating that claimants will not complete the process.

SOL
The No-Fault Statute of Limitations:
Warning – Extreme Caution Required!

Under the Michigan No-Fault Act, A claimant must give notice of a no-fault claim to the appropriate insurance company within 1 year of the date of the accident AND must submit reasonable proof of the fact and amount of loss for each expense claimed within 1 year of the date that the expense was incurred. Therefore, a medical provider has 1 year from the date of treatment to submit its bill to the appropriate auto insurance company.

A medical provider must file suit if its bill is not paid within one year of the date of service to avoid losing the right to payment by operation of the statute of limitations.

Medical providers should carefully track every account involving auto insurance where filing suit would be economically feasible so that suit can be filed if payment is not received within one year of the date of treatment. It doesn't matter whether the failure to pay results from the action or inaction of the insurance company – if you don't file suit within one year, your claim is barred.

Practical recommendations for dealing with the short statute of limitations include:

- start red flagging unpaid auto accounts for action not later than 180 days after the date of service
- submission of claims by certified mail is recommended because if it becomes necessary to file a lawsuit, the failure of the insurance company to pay within 30 days can be used to obtain interest and attorney fees
- don't wait until the absolute last minute – file suit within 30 days of the one year anniversary of the date of first treatment
- don't accept promises from an insurance adjuster to extend the time to file suit beyond one year as such promises may not be enforceable

MEDICAL PROVIDER CLAIMS

How can a provider get involved in the No-Fault insurance claim?

Often a patient is involved in a motor vehicle accident, yet the medical provider has difficulty submitting its claim and getting it paid by the automobile insurance. And now that there is effectively one year to get paid or file suit on a bill, fast action is even more crucial. Problems arise when:

- The patient does not cooperate.
- The auto insurance company delays payment or refuses to pay.
- The patient has an attorney that you don't want to represent you.
- The bill is unpaid and the one year anniversary of the treatment is near.

How can a doctor, hospital or other provider bring a claim? There are four potential methods:

1. Through the patient with his cooperation.
2. Assignment: The patient assigns his legal rights to the medical provider.
3. Intervention: A medical provider can intervene in a pending lawsuit with its own lawyer. Michigan Court Rule 2.209 provides for intervention, but it is up to the judge's discretion. Intervention can save a claim that would otherwise be lost to the statute of limitations if it is beyond one year from the date of service.
4. Direct action: Since 2002, Michigan law allows a provider to bring a lawsuit directly against the auto insurance carrier. (Warning: medical providers are subject to the same one-year statute of limitations that applies to the patient).

Because of the short statute of limitations on no-fault claims, usually a medical provider is involved in a lawsuit brought by the patient that includes a claim for medical expenses or as a Plaintiff in a direct action.

Advantages of a direct action:

- Most auto adjusters would rather pay a medical provider than a patient/claimant. They tend to become jaded and suspicious of claimants but this is usually not the case with most medical provider claims.
- The adjuster is more likely to resolve a medical provider claim because these claims essentially become a battle between two witnesses: (1) an insurance hired gun that has performed a onetime examination and (2) a treating physician with a track record with the patient.

- The adjuster knows that you will be able to produce a physician witness in support of the claim. (Note: it is often important that the physician have an accurate history in order to be persuasive).
- You choose your own attorney and the terms of your payment to the attorney.

An Attorney Collects Your Bill – You Never Hired Him **Do You Owe Him a Fee?**

You get a call from an attorney saying that he has forced an insurance company to pay your patient's bill. He wants you to compromise your bill and pay him a fee for collecting it. Can he do this?

“No” - if the bills were paid voluntarily (that is, the bills were not in dispute).

“No” - if he has never notified you (the medical provider) prior to collecting on its bills (however, per recent Michigan case law, very little notice is required).

“Yes” - if the attorney notified the medical provider, allowed it to decline his services and he has performed “substantial work” to justify a fee. If the provider ignores the notice, the attorney may still be entitled to a fee if he performed “substantial work. (Michigan Rule of Professional Conduct 1.5).

Practical recommendations for dealing with patient attorneys include:

- Don't ignore a letter from a patient's attorney offering to collect your bill. If you do, it can be interpreted as tacit approval and you may be required to pay the attorney. (In a recent case, the Court ruled that the attorney's name on a Medicaid claim form and a medical record request was enough for the Court to find that the medical provider had notice of his involvement).
- If you do not want the patient's attorney to represent your interests, notify the attorney and the insurance company in writing immediately.
- If you do work out a deal with the patient's attorney to collect your bill, work out the fee arrangement in advance and get it in writing. Be careful as to what you are agreeing to accept (agree to accept a certain percentage of your outstanding charges – NOT a percentage of the recovery on the case).

- If you use your own attorney and pursue a direct action in your own name, contact your lawyer immediately so that you don't miss the one year deadline.
- It usually makes sense to hire your own attorney as he/she will put your interests first and be less likely to compromise your bill.
- If over a year has passed and you haven't filed suit, you are too late. However, you may still intervene in the patient's suit, if he has filed one. If you are too late to intervene, negotiate the best deal possible with the attorney. Demand that he document the "substantial work" that he performed in collecting your bill.