

Michigan No-Fault Law Update
and MVA Financial Clearance Best Practices

MAHAP General Education Session
Mt. Pleasant, Michigan
January 29, 2016

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

No-Fault Update

Covenant Medical Center v. State Farm

Michigan Court of Appeals Case No. 322108 (2015) (unpublished)

- This case has spawned an incredible amount of Court activity – and if it hasn't affected you yet, it will soon
- You will receive copies of Motions and Notices of Hearing for those Motions advising you as to when and where the Court will be hearing the Motion
- If you haven't taken certain actions before the Motion and you ignore the Motion, the Court can order you to take huge discounts on your bills

The Court's Opinion

- 2011 Covenant's patient injured in a motor vehicle accident
- 2012 Covenant treated the patient for accident-related injuries
- July 2012 Covenant billed State Farm for the treatment
- August 2012 Covenant billed State Farm for the treatment
- October 2012 Covenant billed State Farm for the treatment
- November 2012 State Farm responded to Covenant in writing

- April 2013 The patient settled "all past and present claims incurred through January 10, 2013" as a result of the 2011 accident and the patient signed a release to that effect.

Covenant then filed suit against State Farm alleging unreasonable refusal to pay Covenant's bill

State Farm moved to dismiss Covenant's case saying that Covenant's claims were barred by the release signed by the patient (the treatment did fall into the time frame set forth in the release)

The trial court granted State Farm's Motion – saying that the release signed by the patient barred Covenant's claims

Covenant appealed to the Michigan Court of Appeals

The Court of appeals REVERSED the trial court's decision based upon its interpretation of MCL 500.3112

So the Court said that Covenant's claim against State Farm survived – this is a great case, right?

Yes – the result is great BUT it is the basis of the Court's decision – MCL 500.3112 - which is creating all of the problems

MCL 500.3112

500.3112 Persons to whom personal protection benefits payable; discharge of insurer's liability.

Sec. 3112.

Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. **If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate.**

The Court applied MCL 500.3112 as follows:

- 1) If the insurer **doesn't have notice in writing** of any other claims to payment for a particular covered service, then a good faith payment to its insured is a discharge of its liability for that service.
- 2) If the insurer **has notice in writing** of a third party's claim, the insurer can't discharge its liability to the third party simply by settling with its insured.

The Court then said that MCL 500.3112 **requires** that the insurer apply to the circuit court for an appropriate order directing how the no-fault benefits should be allocated.

Based on this ruling, the circuit courts have been inundated with Motions based on MCL 500.3112.

If Covenant had not provided any notice of its claim before the patient signed the release, the release would have extinguished its claim against State Farm.

Since Covenant provided written notice, it could have been subject to a circuit court apportionment of the settlement amount according to the Court of Appeals' ruling that such Motions are required to distribute settlement proceeds – but by filing its own lawsuit against State Farm, Covenant protected its right to pursue its entire bill and was not subject to the circuit court's apportionment of the insured's settlement amount.

Motion to Apportion Settlement Proceeds Pursuant to MCL 500.3112

Who Wins? Who Loses?

Patient's Attorney – Winner!

Even before the Covenant decision, some patient's attorneys brought these Motions in order to have distributions of the settlement proceeds that were very favorable to themselves.

They settle the case for much less than the amount owed, ask the Court for a one third attorney fee plus reimbursement of their costs and ask the Court to order medical providers to accept very small amounts on their bills.

The patient's attorney then sends the medical provider the check with a letter saying that it must be considered payment in full because that is what the Court has ordered.

Insurance Company – Winner!

Insurance Company lawyers bring these Motions in order to have the Court apportion the settlement amount and find that the amount allocated by the Court is a full and final payment. Where the patient's attorney settles the case too cheaply or stacks the allocation against the medical providers, the Court's order makes it binding.

The Judge – Loser

Circuit Court dockets are getting flooded with these Motions. The Judges really don't have the information necessary to make an informed decision as to the apportionment. There is no legal formula or guidelines as to what is required or fair. So many Judges will simply grant the requested apportionment unless there are objections.

Medical Providers – The Biggest Losers

If the medical providers don't object, the Court will likely grant the requested apportionment which is unfavorable to them.

If the medical providers do object, it costs the medical providers. A written objection is the bare minimum, and probably won't do much good unless someone appears in Court for the Motion hearing. Often, the size of the bill does not justify hiring an attorney so the medical provider can't afford the protection they need.

I Received One of These Motions – What Should I Do?

For the apportionment to be effective against you, you must receive a **Notice of Hearing** and a copy of the **Motion**.

The Notice of Hearing tells you when and where the Motion is scheduled to occur.

The Notice and Motion should be served upon you by certified mail to be effective (however, I have seen Judges go ahead and consider the rights of entities who received only notice by regular mail).

If you receive a Motion, call your attorney if you have one.

If you don't have an attorney, call the lawyer bringing the Motion.

- Ask for an explanation of the apportionment
- Try to negotiate a better deal
- File a written objection with the Court if you don't get the deal you want. Make sure and send the lawyer a copy. The objection should buy you some leverage with the lawyer bringing the Motion because he wants to appear in Court without opposition.
- Appear for the hearing (if the bill is large enough for it to be worth your time)

Can I Avoid Having to Deal With These Motions? How?

If a medical provider files a lawsuit against an auto insurer claiming an unreasonable delay in payment or unreasonable refusal to pay for auto accident-related treatment, they protect their own claim and are not subject to the apportionment in the patient's claim. In Covenant v. State Farm, this is exactly what Covenant did.

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.

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

Pursuant to MCL 500.3109a, an auto 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.

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 knew or should have known that the accident vehicle was taken unlawfully is not entitled to PIP.

Out of State Resident/Vehicle/Insurer – the patient was not a MI resident, was an occupant of a motor vehicle or motorcycle not registered in MI and the motor vehicle or motorcycle was not insured by an insurer that has filed certification in MI.

Excluded Driver – the patient was operating a motor vehicle or motorcycle as to which he was named as an excluded operator under the applicable insurance policy.

Intentional Act - A patient that intentionally crashes his car with the intent to injure himself 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).

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. A patient who seems to be an employee of a company and entitled to work comp may actually be an independent contractor and not entitled to work comp.

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.

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
- submission of your claim to the wrong insurance company is no excuse – you must submit it to the right insurer within one year or lose it
- 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

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.

However, the No-Fault Act states that the MACP may deny an application only if it is based on an "obviously ineligible claim." Otherwise, the MACP must **promptly** assign the claim.

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 and the claim is not "obviously ineligible," the MACP must 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 can't get a police report, 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.

