Client Alert

AMENDMENTS TO THE AMENDMENT: FURTHER CHANGES TO THE NO-FAULT ACT REFORM LEGISLATION

Prepared by

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INTRODUCTION

On June 11, 2019, Governor Whitmer signed a bill into law that amended the no-fault reform legislation that was passed only recently, on May 30, 2019. Some of the changes are stylistic (i.e. renumbering paragraphs, changing "shall" to "must," etc.) and are not substantive in nature. Other amendments provide effective dates for certain provisions of the legislation, and clarify other provisions that were somewhat confusing and ambiguous. Here is a summary of the important amendments.

EFFECTIVE DATE FOR INCREASED RESIDUAL BODILY INJURY POLICY LIMITS

The original bill provided that policy limits would be increased to $250,000 per person and $500,000 per accident, unless documentation was submitted to request limits as low as $50,000 per person and $100,000 per accident. The effective date for that provision was unclear, with some arguing that it was immediate while others arguing it applied only to policies that were delivered or issued for delivery after the bill was signed. The new provisions make it clear:

- Before July 2, 2020, the minimum policy limits are $20,000/$40,000.
- After July 1, 2020, the minimum policy limits are $250,000/$500,000 (with exceptions).

After July 1, 2020, an applicant or named insured may choose to purchase limits lower than $250,000/$500,000, but not lower than $50,000/$100,000. The applicant or named insured must still complete a required form, and after July 1, 2020, he or she must make a choice as to the desired policy limits. However, after July 1, 2020, if no selection is made, the default policy limits remain at $250,000/$500,000.

EFFECTIVE DATE FOR INCREASED MINI-TORT LIMITS

The original bill stated that a person sustaining damage to his or her vehicle could claim damages against the responsible party (aka a "mini-tort" claim) for up to $3,000 to the extent that the damages were not covered by insurance. This limit was previously $1,000. Since the original bill had no effective date for this provision, this provision was presumed to have immediate effect. On June 11, 2019, this provision was amended to clarify that the $3,000 limit for a mini-tort claim applies to motor vehicle accidents that occur after July 1, 2020.

COORDINATION OF BENEFITS OPT-OUT PROVISION CLARIFIED

Under MCL 500.3109a, an insurer may offer personal protection insurance benefits at reduced rates, deductibles, and exclusions reasonably related to other health and accident coverage. This was commonly referred to as a coordination of benefits provision, and created a scenario where health or disability insurance would be required to pay medical or wage loss benefits first, with the automobile insurer only having a potential exposure for excess benefits.

MCL 500.3109a was amended by the no-fault reform legislation to allow an insurer to offer an applicant or named insured, if they select allowable expenses coverage in the amount of $250,000, to be excluded from coverage for allowable expenses if the person has "qualified health coverage." This language was changed from "other health or accident coverage." Presumably, the purpose of this was to mirror that of MCL 500.3107D, which also provides for a complete opt-out of allowable expenses if the applicant or named insured has qualified health coverage and if other requirements apply.

Both statutes share the same definition of qualified health coverage. The term refers to other health or accident coverage where (a) the coverage does not exclude or limit coverage for injuries related to motor vehicle accidents and, (b) any annual deductible for coverage is $6,000 or less per individual. It also includes coverage under parts A and B of the federal Medicare program.

MCL 500.3109a provides that if the named insured has qualified health coverage, and the named insured's spouse and any resident relative residing in the same household also has qualified health coverage, the premium for allowable expenses on the policy must be reduced by 100%. If a member, but not all members, of the household is covered by qualified health coverage, then the policy is subject to a reduced premium, but only individuals with qualified health coverage receive a 100% reduction in the premium for allowable expenses. If there are members of the household who are not covered by qualified health coverage, then they would be able to claim up to $250,000 in allowable expenses should they suffer accidental bodily injury arising out of a motor vehicle accident.

If a person is excluded from allowable expenses due to having qualified health coverage loses their coverage, the named insured must notify the insurer that the person is no longer eligible. The named insured then has 30 days to obtain coverage for allowable expenses under the policy applicable to that individual. If the excluded individual suffers accidental bodily injury from a motor vehicle accident during that 30 day period, the individual must claim benefits under the

Michigan Automobile Insurance Placement Facility (MAIPF). If the coverage is not added by the end of the 30 day period, the injured person who was excluded is not entitled to coverage for allowable expenses.

REQUIREMENTS FOR MEDICAL EXAMINATIONS REVISED

MCL 500.3151 gives insurers the right to request that the injured person submit to a mental or physical examination performed by physicians. The first amendment created the requirement that the physician be licensed, board certified, or board eligible in an area of medicine appropriate to treat the claimant's condition. The most recent amendment implements a stricter requirement.

The new requirement indicates that, if the claimant is being treated by a specialist, the examining physician must specialize in the same specialty as the treating physician. Also, if the treating physician is board certified in a specialty, the examining physician must also be board certified in that specialty. As with the first amendment, the physician is also required to have an active clinical practice or teaching position within the year prior to the examination. If the claimant is being treated by a specialist, the active clinical practice or teaching position must be in that specialty.

FEE SCHEDULE TIED TO MEDICARE RATES

The new fee schedule under MCL 500.3157 applies to treatment or training rendered after July 1, 2021. While we previously indicated that the fee schedule was tied to Medicaid, the fee schedule calculates rates as a percentage of the amount payable under Medicare. Medicare, as defined in the statute, refers to fee for service payments under Part A, B, or D of the federal Medicare program, without regard to the limitations unrelated to the rates in the fee schedule, such as limitation or supplemental payments related to utilization, readmissions, recaptures, bad debt adjustments, or sequestration. This is significant because the reimbursement rates under Medicare are, generally, higher than Medicaid.

Should you have further questions regarding details of this new legislation, or how it might affect you or your organization, please contact our attorneys at Collins Einhorn Farrell PC and we would be happy to assist.

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AREAS OF PRACTICE

General & Automotive Liability Insurance Coverage

Matthew focuses his practice on defense litigation in first party No-Fault claims, uninsured and underinsured motorist claims, automobile negligence, premises liability, general liability, and contractual disputes. Matthew has extensive experience in defending catastrophic No-Fault claims, including claims for attendant care, home modifications, and vehicle modifications, as well as consulting insurers regarding catastrophic claims prior to litigation. Matthew has vast experience in all aspects of the litigation process from the discovery process through trial and routinely achieves successful results for his clients.

PROFESSIONAL ACTIVITIES

- Association of Defense Trial Counsel (President from 2015-2016)
- Michigan Defense Trial Counsel
- Monroe County Bar Association
- Oakland County Bar Association
- State Bar of Michigan
  - Insurance and Indemnity Law Section (Council Member 2017-2018)

PROMINENT OUTCOMES

Successfully argued and obtained summary disposition in Calhoun County Circuit Court in a lawsuit for first-party, no-fault benefits. A hospital claimed that, under an assignment clause in the hospital's consent-for-treatment form and the hospital's fee agreement with Cofinity/PPOM, it had standing to claim over $400,000 in no-fault benefits. The Court rejected this argument, finding that the assignment was invalid and that the Cofinity/PPOM agreement didn't give the hospital standing. The Court dismissed the case in its entirety.

Successfully argued and obtained summary disposition in a claim for first-party No-Fault benefits. The Court granted summary disposition and dismissed the case on the basis that the Plaintiff had failed to submit reasonable proof in support of her claim for attendant care benefits. Plaintiff was seeking over $300,000 in outstanding attendant care benefits.

Successfully argued and obtained summary disposition in a claim for first-party No-Fault benefits. The Court granted summary disposition and dismissed a large portion of the case on the basis that Plaintiff had failed to incur a claim for medical benefits. Plaintiff was seeking almost $1,000,000 in outstanding medical benefits.

EDUCATION

- Wayne State University Law School (J.D. 2006)
- Western Michigan University (B.B.A. *cum laude,* 2003)

ADMISSIONS

- State Bar of Michigan
- U.S. District Court, Eastern District of Michigan

ACCOMPLISHMENTS & AWARDS

- Listed "Rising Star" by Michigan Super Lawyers® Magazine (2012-2018)