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SUMMARY OF THE PRINCIPAL CHANGES TO THE NO-FAULT ACT

Updated September 5, 2019

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INTRODUCTION

On May 24, 2019, the Michigan Senate and House of Representatives passed Senate Bill No. 1 that overhauls the decades-old Michigan No-Fault Act. Governor Gretchen Whitmer signed Senate Bill No. 1 on May 30, 2019, at the Mackinac Policy Conference. **Senate Bill No. 1** was ordered to take immediate effect. It has since been filed with the Secretary of State and is therefore **effective June 11, 2019**.

On June 4, 2019, the Senate and House passed House Bill No. 4397, which amended Senate Bill No. 1. Governor Whitmer has signed House Bill No. 4397, and it was ordered to take immediate effect. **House Bill No. 4397** has since been filed with the Secretary of State and is therefore **effective June 11, 2019**.

The amendments contain several significant changes to personal protection insurance (PIP), including:

- Varied coverage levels for allowable expenses with corresponding premium reductions;
- A limit on family/friend provided attendant care;
- A direct cause of action for medical providers;
- A medical provider fee schedule and utilization review process;
- Accreditation standards for certain medical providers;
- Elimination of certain categories of insurers in the order of priority;
- Tolling of the statute of limitations;
- Qualification for independent medical examiners;
- Managed care options;
- Michigan Assigned Claims Plan (MACP) limits and modifications;
- Michigan Catastrophic Claims Association (MCCA) oversight;
- A prohibition of the use of non-driving factors to set premiums and other insurer oversight;
- Increase in penalties and fines for insurers, claimants, and attorneys;
- Fraud task force;
- Increased minimum liability limits;
- Codification of the tort “threshold” standard; and
- Increased Mini Tort limits.

This summary focuses on the principal changes to the No-Fault Act in **Senate Bill No. 1** and **House Bill No. 4397**. This is not intended to be a substitute for the actual language of the amendments. Foster Swift’s No-Fault Practice Group will continue to provide updates and advice our clients on best practices in light of these sweeping changes.

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COVERAGE LEVELS FOR ALLOWABLE EXPENSES

I. **Then:** Michigan drivers used to be required to purchase automobile insurance policies with PIP coverage that provided unlimited allowable expenses under MCL 500.3107(1)(a) (e.g., medical bills, attendant care (nursing-type services), transportation services, medical mileage, home/vehicle modifications, etc.).

II. **Now:** Drivers will have the choice to purchase 1 of 5 coverage levels for **allowable expenses** under MCL 500.3107c and MCL 500.3107d in policies **issued or renewed after July 1, 2020**, as follows:

a. A limit of ***$50,000*** for any allowable expenses per person per loss if the applicant or named-insured is enrolled in Medicaid, and the applicant or named-insured's spouse and any resident relative has qualified health insurance, Medicaid, or PIP coverage that includes allowable expenses. MCL 500.3107c(1)(a). An average of 45% or greater reduction of the PIP premium per vehicle is required until July 1, 2028, for this level of coverage. Sec. 2111f(2)(a).

b. A limit of ***$250,000*** for any allowable expenses per person per loss. MCL 500.3107c(1)(b). An average of 35% or greater reduction of the PIP premium per vehicle is required until July 1, 2028, for this level of coverage. Sec. 2111f(2)(b).

c. A limit of ***$500,000*** for any allowable expenses per person per loss. MCL 500.3107c(1)(c). An average of 20% or greater reduction of the PIP premium per vehicle is required until July 1, 2028, for this level of coverage. Sec. 2111f(2)(c).

d. ***Unlimited*** allowable expenses per person per loss. MCL 500.3107c(1)(d). An average of 10% or greater reduction of the PIP premium per vehicle is required until July 1, 2028, for this level of coverage. Sec. 2111f(2)(d).

e. Complete ***opt out*** of all allowable expenses if the applicant or named-insured is a qualified person as defined by the statute, and if the applicant or named-insured's spouse and any resident relative has qualified health insurance or PIP coverage that includes allowable expenses. MCL 500.3107d. There shall be no PIP premium for opt out coverage. Sec. 2111f(3).

f. **Note:** Wage loss benefits, replacement service expenses, and survivor loss benefits are **not** included or affected by the new allowable expense limits, and they remain benefits that statutorily expire 3 years after the subject motor vehicle accident. MCL 500.3107(1)(b) and (c).

g. **Note:** Individuals who currently qualify for MCCA coverage, or who will ultimately qualify for MCCA coverage for a loss that occurred before July 1, 2020, will have unlimited coverage for allowable expenses excluding family/friend provided attendant care (a new limitation addressed below). MCL 500.3104(2) and MCL 500.3104(27).

h. **Note:** If 2 or more policies apply with the same or varied coverage limits, the benefits are only payable up to an aggregate coverage limit that equals the highest available coverage limit under any 1 of the policies. MCL 500.3107c(6).

i. **Note:** If qualified health insurance required by the complete opt out section (MCL 500.3107d) terminates, the persons required to have the qualified health insurance have 30 days to obtain insurance that provides coverage for allowable expenses, and the failure to do so will result in an exclusion of all allowable expenses under the subject policy for the subject loss.

    i. However, if the applicant or named-insured fail to obtain coverage within 30 days of the qualified health insurance terminating, and "a person" to whom the opt out election applies suffers accidental bodily injury arising out of a motor vehicle accident during the period in which there was no qualified health insurance, that person may not collect allowable expenses from the subject policy but *is entitled* to claim benefits under the *assigned claims plan* unless he or she is entitled to allowable expenses under another PIP policy. MCL 500.3107d(6). The statute is somewhat ambiguous on whether the use of "a person" under this subsection applies to the "applicant" or "named-insured" or only some *other* "person."

j. **Note:** Under the amended MCL 500.3109a(2), reduced premiums for coordination of benefits is still allowed, but now coordination is available if a person elects $250,000 in allowable expense limits, and his or her spouse and all resident relatives have the same health insurance that cover injuries arising out of motor vehicle accidents. The PIP premium must be reduced 100% if coordination is made under this section. Sec. 2111f(3) and MCL 500.3109a(2).

k. **Note:** Policies covering **transportation network companies** must choose from $250,000, $500,000, or unlimited for allowable expense limits. Opting out and $50,000 in limits for allowable expenses are *not* options for transportation network companies. MCL 500.3107c(7).

l. **Note:** The amended statute is **silent on self-insurers**, and it does not specify what level of allowable expenses self-insurers are required maintain on and after July 1, 2020. See MCL 500.3101(5) and MCL 500.3101d.

LIMIT ON FAMILY/FRIEND ATTENDANT CARE

I. **Then:** Family/friend provided attendant care used to be an unlimited allowable expense.

II. **Now:** Family/friend provided attendant care is limited to **56 hours per week** under MCL 500.3157(10).

a. The 56 hour per week limitation applies regardless of whether the applicable policy provides limits of $50,000, $250,000, $500,000, or unlimited in allowable expense limits.

b. Insurers may contract to provide more than 56 hours per week. MCL 500.3157(11).

c. **Note**: Professional/agency provided attendant care has no hourly limitation.

d. **Note**: It appears that the limitation on family/friend provided attendant care will apply retroactively effective **July 2, 2021**, as evidenced by the amended statute stating that an insurer shall pass on, in filings to which Sec. 2111f applies, savings realized from the application of section 3157(2) to (12) (i.e., the fee schedule) to services provided to injured persons in motor vehicle accidents that occurred **before** July 2, 2021. Sec. 2111f(8).

e. **Note:** It appears attendant care, whether provided by a professional or family/friend, falls within the definition of “treatment” as provided by MCL 500.3157(15)(k).

FEE SCHEDULE AND UTILIZATION REVIEW

I. **Then:** Medical providers used to be able to charge any amount they chose for their services as long as it was the “customary” amount they charged for cases not involving insurance, and insurers were required to pay the amount deemed “reasonable.”

II. **Now:** Although medical providers can charge any amount they choose for their services as long as it is their customary charge for cases that do not involve insurance, insurers are will only be required to pay rates in accordance with a **fee schedule** under MCL 500.3157. The No-Fault fee schedule is based on the Medicare fee schedule and governs charges by doctors, hospitals, clinics, rehabilitation facilities, and any provider who **lawfully** cares for and treats a person injured in a motor vehicle accident. Depending on the type of facility (e.g., one that has a substantial indigent patient population, a freestanding rehabilitation facility, or a Level I or Level II trauma facility), the fee schedule generally ranges from **190% to 250% of the amount payable under Medicare’s fee schedule phased into effect over 3 years beginning July 1, 2021**:

a. Subject to certain other sections under the revised No-Fault Act, MCL 500.3107(2) provides that a physician, hospital, clinic, or other person who renders treatment or rehabilitative occupational training to an injured person is not eligible for payment or reimbursement for more than the following:

i. For treatment provided after July 1, 2021 and before July 2, 2022, 200% of the amount payable under Medicare.

ii. For treatment provided after July 1, 2022 and before July 2, 2023, 195% of the amount payable under Medicare.

iii. For treatment provided after July 1, 2023, 190% of the amount payable under Medicare.

b. Subject to certain other sections under the revised No-Fault Act, MCL 500.3157(3) and (4) provide that a physician, hospital, clinic, or other person who renders treatment or rehabilitative occupational training to an injured person is not eligible for payment or reimbursement for more than the following **if it has 20-30% indigent volume** or it is a “**freestanding rehabilitation facility**” (i.e., an acute care hospital that meets certain requirements provided by the statute):

   i. For treatment provided after July 1, 2021 and before July 2, 2022, 230% of the amount payable under Medicare.

   ii. For treatment provided after July 1, 2022 and before July 2, 2023, 225% of the amount payable under Medicare.

   iii. For treatment provided after July 1, 2023, 220% of the amount payable under Medicare.

c. Pursuant to MCL 500.3157(5), a physician, hospital, clinic, or other person that provides 30% or more of its total treatment to an indigent volume is entitled to receive 250% of the amount payable under Medicare.

d. MCL 500.3157(6) provides that hospitals that are **Level I or Level II trauma centers** that provide treatment to an injured person are not eligible for payment or reimbursement more than the following:

   i. For treatment provided after July 1, 2021 and before July 2, 2022, 240% of the amount payable under Medicare.

   ii. For treatment provided after July 1, 2022 and before July 2, 2023, 235% of the amount payable under Medicare.

   iii. For treatment provided after July 1, 2023, 230% of the amount payable under Medicare.

e. **If Medicare does not provide an amount payable** for a treatment or rehabilitative occupational training that was provided, MCL 500.3157(7) provides that the physician, hospital, clinic, or other person that renders the treatment is not eligible for payment or reimbursement of more than 52.5% to 75% of:

   i. The physician, hospital, clinic, or other person's "**charge description master**" in effect on January 1, 2019 ("charge description master" is defined as a uniform schedule of charges represented by the person as its gross billed charge for a given service or item, regardless of payer type); or

   ii. If there was no "charge description master" in effect on January 1, 2019, the average amount the physician, hospital, clinic, or other person charged for treatment on January 1, 2019.

f. A neurological rehabilitation clinic is not entitled to payment for services unless it is accredited by the Commission on Accreditation of Rehabilitation Facilities or a similar organization recognized by the director for purposes of accreditation. MCL 500.3157(12).

g. After July 1, 2020, a physician, hospital, clinic, or other person providing treatment, products, services, or accommodations to a person who suffered accidental bodily injury is considered to have agreed to the following pursuant to MCL 500.3157a(1):

   i. Submit necessary records and other information concerning the provider's services for "**utilization review**;" and

ii. Comply with any decision of the department.

h. "Utilization review" means the **initial evaluation by an insurer or the MCCA** of the appropriateness in terms of both the level and the quality of services provided based on medically accepted standards. MCL 500.3157a(6).

i. MCL 500.3157a(2) that a provider that knowingly submits false or misleading records or other information to an insurer, the MCCA, or the director commits a fraudulent insurance act.

j. MCL 500.3157a(3) provides that the department shall promulgate administrative rules to:

   i. Establish criteria or standards for utilization review of treatment, products, services, or accommodations above the usual range of utilization for the services based on medically accepted standards; and

   ii. Provide procedures related to utilization review, including procedures for:

      1. Acquiring necessary records, medical bills, and other information concerning the services;

      2. Allowing an insurer to request an explanation for and requiring a provider to explain the necessity or indication for the services; and

      3. Appealing determinations.

k. MCL 500.3157a(4) provides that if a physician, hospital, clinic, or other person provides services that are not usually associated with, are longer in duration than, are more frequent than, or extend over a greater number of days than the services usually require for the diagnosis or condition for which the patient is being treated, the insurer or the MCCA may require the provider to explain the necessity or indication for the services in writing.

l. MCL 500.3157a(5) provides that if an insurer or the MCCA determines that a provider "overutilized" or otherwise provided inappropriate services or that the cost was inappropriate under the Act, the provider may appeal the determination to the department.

m. **Note:** An insurer shall pass on, in filings to which Sec. 2111f applies, savings realized from the application of section 3157(2) to (12) (i.e., the fee schedule) to services provided to injured persons in **motor vehicle accidents that occurred before July 2, 2021**. Sec. 2111f(8). This provision appears to imply that the fee schedule will apply retroactively effective July 2, 2021, to pending and future claims.

n. **Note:** It appears the insurer or MCCA can require the provider to undergo utilization review for the services provided, the amount of services, and the cost of services, and the provider's appeal of the insurer or MCCA's determination will go to the department.

o. **Note:** Bill review services will likely still be utilized until (and if) a specific and defined fee schedule is published.

MEDICAL PROVIDERS' DIRECT CAUSE OF ACTION

I. **Then:** Medical providers used to have to obtain assignments of rights/benefits in order to have standing to bring a direct cause of action against a PIP carrier, and under the current state of Michigan case law, anti-assignment clauses in insurance policies are unenforceable.

II. **Now:** Medical providers have a **statutorily created direct cause of action against insurers** and do not need an assignment of rights/benefits under MCL 500.3112.

a. A medical provider may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan, to recover **overdue** benefits payable for allowable expenses provided to the injured person.

b. The direct cause of action only applies to the providers' dates of service **after** June 11, 2019.

c. **Note**: The direct cause of action for providers renders anti-assignment clauses and the pending ruling from the Michigan Supreme Court in *Shah v. State Farm* **limited to services provided before June 11, 2019**.

d. **Note**: Overdue benefits are those that have not been paid within 30 days after the insurer received reasonable proof of the fact and amount of the accident-related loss, or within 90 days if reasonable proof was provided more than 90 days after the services were rendered. See MCL 500.3142 as amended and discussed below.

EXCLUSIONS TO PIP

I. **Then:** Generally, exclusions under MCL 500.3113 were summed up as applying to persons who (1) unlawfully took the vehicle; (2) were the owner/registrant of the involved uninsured vehicle; (3) were out of state residents, in a vehicle not registered in Michigan, and not insured by a Sec. 3163 insurer; and (4) were excluded as operators.

II. **Now:** The exclusions remain the same, except for the exclusion involving an out of state resident (number 3 above). The new exclusion dictates that a person who was not a resident of Michigan is simply not entitled to PIP benefits **unless** the person owned a motor vehicle that was registered and insured in Michigan. MCL 500.3113(c).

ORDER OF PRIORITY

I. **Then:** Generally, and notwithstanding exceptions for employer-provided vehicles and transportation vehicles, the order of priority for occupants and non-occupants under MCL 500.3114/3115 provided that an injured person was to collect PIP benefits from insurers in the following order:

a. Insurer of the named-insured;

b. Insurer of a spouse or resident-relative;

c. Insurer of the owner or registrant of the accident-involved vehicle; then

d. Insurer of the driver of the accident-involved vehicle; otherwise,

e. The injured person would apply for benefits through the assigned claims plan.

II. **Now:** The order of priority generally **eliminates insurers of the owner, registrant, and driver** of the accident-involved vehicle from the order of priority for both **occupants and non-occupants**. MCL 500.3114(a), (a)(4), and MCL 500.3115. In other words, the order of priority generally, and notwithstanding exceptions for employer-provided vehicles and transportation vehicles, is as follows:

a. Named-insured;

b. Spouse or resident-relative; then

c. Assigned claims plan.

i. MCL 500.3114(4) is the section that provides for assigned claims coverage. It does not, however, apply to a person insured under an opt out policy under MCL 500.3107d or coordination policy under MCL 500.3109a(2), or who is not entitled to allowable expenses under MCL 500.3107d(6)(c) or MCL 500.3109a(2) for failing to maintain the qualified health insurance coverage as required by the Act.

d. **Note:** A person injured in a motor vehicle accident in an **employer-provided vehicle** will still collect PIP benefits from the insurer of the employer-provided vehicle before turning to his or her own policy, or that of a spouse or resident-relative, or the assigned claims plan. MCL 500.3114(3).

e. **Note:** The general rule is that a person injured as an operator or passenger of a **vehicle that is in the business of transporting passengers** will collect PIP benefits from the insurer of the occupied vehicle. That rule, however, generally does **not** apply to a passenger in a school bus, common carrier bus, taxicab, transportation network company vehicle, or motor vehicle with opt out coverage under MCL 500.3107d or coordination under MCL 500.3109a(2) **unless** the passenger is not entitled to PIP benefits under any other policy. MCL 500.3114(2) and (2)(h).

f. **Note:** The order of priority for **motorcyclists** remains the same (i.e., insurer of the owner/registrant involved vehicle, then the insurer of the operator of the involved vehicle, then the motor vehicle insurer of the operator of the motorcycle, then the motor vehicle insurer of the owner/registrant of the motorcycle). But if the policy involved was one that opted out of allowable expense coverage under MCL 500.3107d or had coordination under MCL 500.3109a(2), the injured person claims benefits from the insurer in the next order of priority, and if there is no policy in the order of priority that did not opt out of allowable expenses, the injured person turns to the assigned claims plan. MCL 500.3114(5) and (6).

STATUTE OF LIMITATIONS & 1 YEAR BACK RULE

I. **Then:** The statute of limitations provided by MCL 500.3145 requires claimants to file a lawsuit within 1 year of the date of loss. The exception to the statute of limitations, however, is if proper written notice was provided to the insurer within 1 year of the date of loss, or the insurer made a payment, the claimant may file suit within 1 year of the most recent PIP benefit, but the claimant would be barred from recovering any benefits incurred more than 1 year before the lawsuit was filed (a/k/a "The 1 Year Back Rule").

II. **Now:** The statute of limitations and 1 year back rule remain the same, but there is a **tolling provision** added to the 1 year back rule:

   a. The time to file a lawsuit is **tolled** from the date of a specific claim or payment of benefits until the date the insurer **formally denies the claim**, but no tolling will apply if the "person" claiming the benefits fails to pursue the claim with "**reasonable diligence**." MCL 500.3145(3).

   b. **Note**: "Reasonable diligence" is not defined, so it may very well be an area ripe for litigation and for the courts to define.

   c. **Note**: It appears the tolling provision would apply to medical providers if they are said to be a "person" as that word is used in this section and throughout the No-Fault Act.

   d. **Note**: The tolling provision appears to be distinguishing a "formal denial" from a suspension of benefits or "under investigation" hold on benefits.

   e. **Note**: An action for recovery of property protection may not be commenced later than 1 year after the accident. MCL 500.3145(5).

INTEREST FOR OVERDUE BENEFITS

III. **Then:** A benefit used to be considered "overdue" and would bear 12% simple interest per annum under MCL 500.3142 if not paid within 30 days after the insurer received reasonable proof of the fact and amount of the loss.

IV. **Now:** The rule remains the same, except under the following circumstance:

   a. If a bill for an **allowable expense** is not provided to the insurer within 90 days after the service was provided, the insurer has 90 days from receipt of the "reasonable proof" to pay it before it is considered overdue. MCL 500.3142(3).

ATTORNEY LIENS AND FEES

I. **Then:** Pursuant to MCL 500.3148, an attorney is entitled to a reasonable fee for unreasonably denied or delayed benefits as determined by a court. An insurer may be entitled to a reasonable attorney fee against a claimant for a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation.

II. **Now:** The attorney fee statute generally remains the same, but the following significant provisions have been added:

a. An attorney advising or representing an injured person concerning a claim for payment of PIP benefits from an insurer **shall not claim, file, or serve a lien** for a payment of a fee or fees until payment for the claim is authorized under the No-Fault Act and the claim is **overdue**. MCL 500.3148(1)(a)-(b).

b. A court may award an insurer a reasonable amount **against a claimant's attorney** as an attorney fee for defending against a claim for which the client was solicited by the attorney in violation of the laws of Michigan or Michigan Rules of Professional Conduct. MCL 500.3148(2).

c. Attorney fees must not be awarded in relation to future attendant care for more than 3 years after the trial court judgment or order is entered. MCL 500.3148(4).

d. A court must not award attorney fees in relation to allowable expenses to an attorney who has, or had at the time of the service, a direct or indirect financial interest in the provider. MCL 500.3148(5).

e. **Note:** The requirement of a benefit being overdue before an attorney lien is valid may have far-reaching effects, from the pre-suit letter of representation phase all the way through trial, as the question of whether a benefit is overdue is generally a question of fact for a jury. Importantly, it provides insurers the freedom to issue payments directly to medical providers without adding the claimant/plaintiff's attorney as a payee on the check, so long as it is paid within 30/90 days of the insurer receiving "reasonable proof" as required by MCL 500.3142 as amended.

INDEPENDENT MEDICAL EXAMINATIONS

I. **Then:** Insurers used to be able to compel persons claiming PIP benefits to submit to an examination by a physician chosen by the insurer (IME) under MCL 500.3151 without any credential/qualification requirements of the examining physician required by the No-Fault Act.

II. **Now:** IME physicians **must be licensed in Michigan or another state** and meet the following criteria:

a. If care is being provided to the person to be examined by a specialist, the examining physician **must specialize in the same specialty** as the physician providing the care, and if the physician providing the care is board certified in the specialty, the examining physician **must be board certified in that specialty**. MCL 500.3151(2)(a); and

b. **During the year immediately preceding the IME**, the IME physician must have devoted a **majority** of his or her professional time to either or both of the following:

   i. Active **clinical practice**, and in the case of specialists, active clinical practice in that specialty; and/or

   ii. The **instruction of students** in an accredited medical school or in an accredited residency or clinical research program for physicians, and in the case of specialists, instruction of students in that specialty. MCL 500.3151(2)(b).

EFFECT ON TORT RECOVERY

I. **Then:** Injured persons used to be able to seek non-economic damages, and economic damages for wage loss, replacement services, and survivor's loss incurred 3 years after the accident ("excess PIP benefits"), from negligent drivers and owners under MCL 500.3135. The injured person must have suffered serious impairment of body function (i.e., a threshold injury). The threshold injury used to only be defined in Michigan case law. Additionally, drivers were required to maintain a minimum of $20,000/$40,000 in liability limits.

II. **Now:** Injured persons remain able to seek non-economic damages from negligent drivers and owners, but the **parameters of economic damages have expanded, the definition of a threshold injury has been codified, and the minimum liability limits have increased** as follows:

a. In addition to excess PIP benefits noted above, injured persons may seek all **allowable expenses** in excess of any applicable limit under MCL 500.3107c, or without limitation if the applicable policy provided an opt out of allowable expenses under MCL 500.3107d or coordination under MCL 500.3109a(2). MCL 500.3135(3)(c).

b. The threshold injury is now defined by statute in MCL 500.3135(5) as follows:

   i. The injury must be objectively manifested, meaning it is observable or perceivable from actual symptoms or conditions by someone other than the injured person;

   ii. The injury is an impairment of an important body function, which is a body function of great value, significance or consequence to the injured person.

   iii. The injury affects the injured person's general ability to lead his or her normal life, meaning it has had an influence on some of the person's capacity to live in his or her normal manner of living. Although temporal considerations may be relevant, there is no temporal requirement for how long an impairment must last. This examination is inherently fact and circumstance specific to each injured person, must be conducted on a case-by-case basis, and requires comparison of the injured person's life before and after the incident.

c. The new minimum liability limits are now increased to **$250,000/$500,000** by default unless a form issued in accordance with the Act has been provided allowing an applicant or named-insured to reduce the liability limits to **$50,000/$100,000**. Sec. 3009(1)(a) and (b) and Sec. 3009(5).

d. **Note:** The new mandate for minimum liability limits was initially made effective immediately in Senate Bill No. 1, but House Bill No. 4397 corrected that "oversight" and coordinated the effective date with the levels of coverage (i.e., July 2, 2020). Sec. 3009(1)(a)(b).

MINI TORT

I. **Then:** The maximum recovery limit was **$1,000** for damages to a motor vehicle caused by a negligent driver.

II. **Now:** The maximum recovery has now increased to **$3,000**. MCL 500.3135(3)(e).

MICHIGAN ASSIGNED CLAIMS PLAN

I. **Then:** The MACP used to provide unlimited allowable expenses under MCL 500.3172, et seq.

II. **Now:** The MACP limits for allowable expenses are now **$250,000, or $2,000,000** if the injured person qualifies to apply to the MACP under MCL 500.3107d(6)(C) or MCL 500.3109a(2)(d)(ii). MCL 500.3172(7).

III. Additional amendments of significance are as follows:

a. A person entitled to claim PIP benefits through the assigned claims plan must file a completed application on a claim form provided by the Michigan Automobile Insurance Placement Facility (MAIPF) and provide reasonable proof of loss to the MAIPF. The MAIPF or an insurer assigned to the claim must specify in writing the materials that constitute a reasonable proof of loss within 60 days after receipt by the MAIPF of an assigned claims application. MCL 500.3172(3).

b. The MAIPF or an insurer assigned to the claim is **not required to pay interest** in connection with a claim for any period of time during which the claim is "**reasonably in dispute**." MCL 500.3172(4).

c. If a claimant or person making a claim through or on behalf of a claimant fails to cooperate with the MAIPF as required by the No-Fault Act, the MAIPF **shall suspend benefits** to the claimant under the assigned claims plan. A suspension is not an irrevocable denial of benefits, and must **continue only until** the MAIPF determines that the claimant or person making a claim on behalf of a claimant cooperates or resumes cooperation with the MAIPF. The MAIPF shall promptly notify the claimant or a person making a claim on behalf of the claimant of the denial and reasons for the denial. MCL 500.3172a(1).

i. The claimant or person making a claim on behalf of a claimant must cooperate as follows under MCL 500.3172a(2):

1. Submit to an **examination under oath (EUO) and IME**.

ii. There is a rebuttable presumption of cooperation if:

1. A complete application has been submitted;

2. Reasonable proof has been submitted; and

3. The person submitted to an EUO (provided that 21 days' notice to appear for an EUO with reasonable accommodations as to date, time, and location were provided). MCL 500.3172a(2)(a) and (b).

d. The MAIPF may perform its functions and responsibilities under the No-Fault Act directly through an insurer assigned to the claim and the assignment of a claim is not a determination of eligibility and the claim may still be denied by the insurer assigned to the claim. MCL 500.3172a(3).

e. A person claiming benefits through the assigned claims plan must notify the MAIPF of his or her claim within 1 year after the date of the accident. MCL 500.3174. The time limit for filing an action remains controlled by MCL 500.3145.

f. The assigned insurer may bring an action for reimbursement or indemnification within the later of the following time parameters under MCL 500.3175(3):

i. 2 years after assignment of the claim to the insurer;

ii. 1 year after the date of the last payment to the claimant; or

iii. 1 year after the date the responsible third party is identified.

g. **Note:** See MCL 500.3114/3115 for the order of priority regarding assigned claims discussed above in the Order of Priority section.

h. **Note:** The amended assigned claims provisions minimize liability for interest if the claim is "reasonably in dispute," which will likely be a standard defined by the courts.

i. **Note:** The amended assigned claims provisions essentially codify language that is within the actual plan of the MACP regarding cooperation by the claimant.

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION

I. The MCCA appears to continue to be liable for catastrophic injuries payable under policies issued or renewed before July 2, 2020, and for policies after July 1, 2020, where drivers have opted to maintain unlimited allowable expenses. MCL 500.3104(2).

II. Individuals who currently qualify for MCCA coverage, or who will ultimately qualify for MCCA coverage for a loss that occurred before July 1, 2020, will have unlimited coverage for allowable expenses excluding family/friend provided attendant care. MCL 500.3104(27).

III. The MCCA will pay refunds to drivers if actuarial examination shows that MCCA assets exceed 120% of the MCCA's liabilities. MCL 500.3104(22).

IV. Retention for policies issued or renewed during the period of July 1, 2017, to June 30, 2019, is $555,000, and retention for policies issued or renewed during the period of July 1, 2019, to June 30, 2021, is $580,000. MCL 500.3104(n) and (o).

V. **Note:** With the likelihood of drivers either opting out of allowable expense coverage or capping their allowable expenses at $50,000, $250,000, or $500,000, the volume of MCCA claims is likely to diminish over time.

MANAGED CARE OPTIONS

I. Chapter 31A Section 3181, et seq., provides Managed Care Options. Insurers will be allowed to sell motorists their own "managed care" health plans to reduce vehicle premiums. The plans may include deductibles or co-pays and would direct claimants to a "preferred provider program" or other medical network selected by the insurer. There must be an exception for emergency care from the plan's preferred network. Sec. 3183(c).

INSURANCE COMMISSIONER OVERSIGHT

II. The Insurance Commissioner will provide instructions to consumers on its Department of Insurance and Financial Services website describing how the Insurance Commissioner may be able to assist a person who believes that an insurer is not paying benefits, not making timely payments, or otherwise not performing as obligated under the subject policy. The webpage will also allow a person to report insurance fraud and unfair settlement and claims practices to the Insurance Commissioner. Sec. 261.

ANTI-FRAUD UNIT

III. **Then:** The Anti-Fraud Unit was created through executive order last year by former Governor Rick Snyder.

IV. **Now:** The Anti-Fraud Unit is codified in Chapter 63 Section 6301, et seq. Governor Whitmer's budget proposes additional funding for the Anti-Fraud Unit. The plan maintains existing memorandums of understanding for anti-fraud collaboration between the Department of Insurance and Financial Services, the Attorney General's Office, and the Michigan State Police.

EFFECTIVE DATES

I. Senate Bill No. 1 and House Bill No. 4397 are both ordered to take **immediate effect June 11, 2019**. Within the language of each bill, there are defined effective dates for some provisions, but not all, which will likely leave it to the courts to interpret and decide several aspects of the No-Fault Act moving forward. The following are the most notable defined effective dates with notes on those provisions that are not as clearly defined:

a. Levels of Coverage:

   i. Policies issued or renewed on and after **July 2, 2020**. MCL 500.3107c(1).

b. Limit on Family/Friend Attendant Care:

   i. Services provided on and after **July 2, 2021**. MCL 500.3157(14) and (15)(k).

c. Fee Schedule:

   i. Phased in over 3 years beginning **July 2, 2021**. MCL 500.3157 generally and subsection (14).

d. Medical Provider Direct Cause of Action:

   i. Services provided on and after **June 11, 2019**. See Senate Bill No. 1 effective date and statement within the bill reading "Section 3112 . . . applies to . . . services . . . after the effective date of this amendatory act."

e. Utilization Review Process:

   i. Services provided on and after **July 2, 2020**. MCL 500.3157a(1).

f. Exclusions to PIP:

   i. **June 11, 2019**. Although not clearly stated, it appears the amended exclusion in MCL 500.3113(c) *arguably* applies only to motor vehicle accidents that occur on and after June 11, 2019.

g. Order of Priority:

   i. **June 11, 2019**. Although not clearly stated, the new order of priority *arguably* applies only to motor vehicle accidents that occur on and after June 11, 2019.

h. Tolling of the Statute of Limitations & 1 Year Back Rule:

   i. **June 11, 2019**. It is not clear, however, whether the tolling provision applies:

      1. Only to claims arising from motor vehicle accidents that occur **on and after** June 11, 2019; or

      2. Claims arising from motor vehicle accidents that occurred **before** June 11, 2019, but were incurred on and after June 11, 2019.

i. Interest for Overdue Benefits:

   i. **June 11, 2019**. It is not clear, however, whether the extended 90 day period applies:

      1. Only to claims arising from motor vehicle accidents that occur **on and after** June 11, 2019; or

      2. Claims arising from motor vehicle accidents that occurred **before** June 11, 2019, but were incurred on and after June 11, 2019.

j. Attorney Liens and Fees:

   i. **June 11, 2019**. It is not clear, however, whether the provisions governing attorney liens and fees apply:

      1. Only to claims arising from motor vehicle accidents that occur **on and after** June 11, 2019; or

      2. Claims arising from motor vehicle accidents that occurred **before** June 11, 2019, but were incurred on and after June 11, 2019.

k. Independent Medical Examiner Qualifications:

   i. **June 11, 2019**. It is not clear, however, whether the provisions governing the qualifications of IME doctors apply:

      1. Only to IMEs for claims arising from motor vehicle accidents that occur **on and after** June 11, 2019;

      2. IMEs for claims for benefits arising from motor vehicle accidents that occurred **before** June 11, 2019, but were incurred on and after June 11, 2019; or

      3. IMEs pending and scheduled on and after June 11, 2019.

l. Liability Limits:

   i. Policies issued or renewed on and after **July 2, 2020**. Sec. 3009(1)(a) and (b).

m. Mini Tort Limits:

   i. Accidents that occur on and after **July 2, 2020**. MCL 500.3135(3)(e).

n. Michigan Assigned Claims Plan:

   i. **June 11, 2019**. Although not clearly stated, it appears the amendments to the MACP provisions *arguably* apply only to motor vehicle accidents that occur on and after June 11, 2019.

o. Michigan Catastrophic Claims Association:

   i. The MCCA appears to continue to be liable for catastrophic injuries payable under policies issued or renewed **before** July 2, 2020, and for policies **after** July 1, 2020, where drivers have opted to maintain **unlimited** allowable expenses. MCL 500.3104(2) and (27).

p. Managed Care Options:

   i. **June 11, 2019**. Although not clearly stated, it appears Managed Care Options can be offered on and after June 11, 2019.

q. Insurance Commissioner Oversight:

   i. **June 11, 2019**. Although not clearly stated, it appears the oversight will begin on and after June 11, 2019.

r. Anti-Fraud Unit:

   i. **June 11, 2019**. Although not clearly stated, it appears the Anti-Fraud Unit will begin on and after June 11, 2019.

CONCLUSION

There are some amended provisions that provide clear legislative intent, while other provisions and their application are ambiguous. It is too soon to tell how the No-Fault Act moving forward will affect litigation, but we are committed to providing our clients with the best advice possible while navigating these changes. We have enclosed the following appendices to this summary as a reference:

Appendix A: Enrolled Senate Bill No. 1 signed by the secretaries of the Senate and House.
Appendix B: Enrolled House Bill No. 4397 signed by the secretaries of the Senate and House.

Please feel free to contact us if you have any questions.

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Updated September 5, 2019.
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