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No-Fault in a Nutshell ©

By:

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I. How Does the Auto No-Fault Law Work?

The basic concept of the Michigan auto no-fault insurance law is to assure payment of certain insurance benefits to all victims of motor-vehicle accidents regardless of who was at fault. In exchange for that right, the law imposes certain limitations on the rights of accident victims to pursue tort liability claims against the negligent parties who caused the accident. Under the Michigan no-fault law, it is important to keep in mind that every motor-vehicle accident occurring in this state has two separate and distinct claims: the first is for no-fault personal protection insurance (PIP) benefits, and the second is the tort liability claim against the party at fault for recovery of certain noneconomic and excess-economic-loss damages. Although the no-fault law was originally intended to simplify motor-vehicle accident claims, it has become a very complex law containing a number of important rules and requirements that must be followed to protect the legal rights of the auto-accident victim. This pamphlet is intended to provide a basic overview of the Michigan no-fault law but should not be considered a substitute for legal advice from an attorney who practices extensively in this area of the law.

II. What Are No-Fault PIP Benefits?

Under the Michigan No-Fault Act, there are four specific categories of no-fault personal protection insurance (PIP) benefits payable in motor-vehicle accidents resulting in bodily injury or death. These four PIP benefits are summarized below:

A. Allowable Expense Benefits – Section 3107(1)(a) of the Michigan No-Fault Act requires insurance companies to pay “allowable expenses” which are defined as “all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery or rehabilitation.” These benefits are payable for life and do not have a monetary cap. They are very broad and include: medical expenses; barrier-free residential accommodations; vocational rehabilitation; special transportation and medical mileage; guardian/conservatorship expenses; the services of an independent case manager;

and in-home attendant care. In order for family members of the injured victim to be entitled to receive compensation for in-home attendant care rendered to a relative, they must make it clear that the attendant care services were rendered with the expectation of payment. In addition, it is advisable for such caregivers to promptly submit bills to the insurance company seeking payment for their attendant care services.

B. Wage Loss Benefits – Section 3107(1)(b) provides that when an injured person cannot work as a result of an auto accident, work loss benefits are payable for up to three years for “*loss of income from work an injured person would have performed . . . if he or she had not been injured.*” These work loss benefits are payable at the rate of 85% of gross pay, including overtime. However, the work loss benefit cannot exceed the monthly maximum, which is adjusted every October to keep pace with the cost of living. The statute also provides for the payment of wage loss benefits to those individuals who are considered to be “temporarily unemployed” from full-time employment at the time of the injury.

C. Replacement Service Expenses – Section 3107(1)(c) of the Michigan no-fault law provides that an injured person may also receive reimbursement in an amount not to exceed \$20 per day for expenses incurred in having others perform reasonably necessary services that the injured person would have performed for the benefit of themselves or their dependents. This benefit primarily consists of domestic-type services, such as housekeeping, lawn work, snow removal, etc.

D. Survivor’s Loss Benefits – When a motor vehicle accident results in death, dependents of the decedent are entitled to recover survivor’s loss benefits under Section 3108 of the statute, as well as funeral and burial expenses under Section 3107(1)(a). Survivor’s loss benefits are payable for three years and are subject to the same maximum monthly benefit ceiling applicable to work loss benefits. These survivor’s loss benefits essentially consist of the after-tax income earned by the decedent, the value of fringe benefits that are lost as a result of the death of the decedent, and replacement service expenses incurred because of the decedent’s death.

III. Who Pays No-Fault PIP Benefits?

Under the Michigan no-fault law, the owner or registrant of motor vehicles required to be registered in Michigan must purchase compulsory auto no-fault insurance coverage. The failure to purchase such coverage can result in the injured owner or registrant being disqualified from receiving any benefits under the statute. If the injured person is entitled to no-fault benefits, the general rule is that the injured person receives these no-fault PIP benefits from his or her own no-fault insurance company or from a no-fault insurance policy issued to the injured person’s spouse or a relative of either domiciled at the same household. This general rule applies regardless of whether the injured person is driving or occupying his or her own motor vehicle, is a passenger in another motor vehicle, or is a pedestrian or bicyclist. However, there are other important legal principles regarding who pays PIP benefits that are discussed below:

A. Exceptions to the General Rule – There are exceptions to the general rule stated above, such as the situation where a person sustains injury while occupying a motor vehicle furnished by their employer. In that case, the employer’s no-fault insurance company must pay benefits. Another rule involves persons who do not own a vehicle and do not live with a relative who has a no-fault insurance policy. In those cases, payment obligations are determined based upon whether the injured person was an occupant or non-occupant of a motor vehicle at the time of the accident. If such a person was injured while an occupant of a motor vehicle, the person obtains PIP benefits from the owner or operator of the vehicle occupied. If such a person sustains injury while a non-occupant of a motor vehicle (e.g., a pedestrian or bicyclist), then the person receives PIP benefits from the vehicle involved in the accident. If no-fault coverage is not available through any of these sources and the injured person is not otherwise disqualified from PIP benefits, the person must submit their claim for PIP benefits to the Michigan Department of State Assigned Claims Facility.

B. Governmental Benefits – The Michigan no-fault law permits no-fault insurance companies to reduce no-fault PIP benefits by the amount of any governmental benefits paid or payable to the injured person as a result of the accident. Such benefits include Social Security disability benefits, workers compensation benefits, certain kinds of veterans or military benefits, and Social Security survivor’s benefits. Medicare and Medicaid are, however, prohibited by law from paying medical benefits to any person who is covered by no-fault insurance. Therefore, accident victims who are covered by Medicare or Medicaid must seek payment of medical expenses directly from the appropriate no-fault insurer and never submit such expenses to either of these governmental programs.

C. Coordination of Benefits – Under the Michigan no-fault law, an injured person may purchase either a coordinated or uncoordinated no-fault policy. Uncoordinated policies obligate the no-fault insurer to pay PIP benefits in the primary pay position without regard to whether there is other health and accident coverage. Coordinated no-fault policies, on the other hand, provide that the no-fault insurance company is only obligated to pay those expenses that are not paid by the victim’s “*other health and accident coverage*.” The vast majority of Michigan citizens have purchased coordinated no-fault policies, because they are generally cheaper. Therefore, persons who have coordinated no-fault policies must first seek payment from their health insurance companies before turning to their auto no-fault insurers for payment of any remaining balance.

D. Motorcycles – Under the Michigan no-fault law, a motorcycle is not considered to be a “*motor vehicle*.” Therefore, motorcycle operators and registrants are not required to buy auto no-fault insurance coverage. However, a person who is injured while operating or riding a motorcycle that is involved in a collision with a “*motor vehicle*” (e.g., a car, truck, etc.) is legally entitled to recover full no-fault PIP benefits. In those situations, the motorcyclist generally draws PIP benefits from the insurer of the motor vehicles involved in the collision.

IV. What Are Tort Liability Claims?

Under the Michigan no-fault law, an accident victim has the right to pursue a tort liability claim against the at-fault driver to recover those damages that are not compensable with no-fault PIP benefits. The compensation recoverable in these tort liability claims includes damages for “*noneconomic loss*,” and “*excess economic loss*.” In addition, if the person causing the accident was uninsured or did not carry enough insurance to fully compensate the victim for these types of damages, the victim can recover these damages from their own insurance company if the victim purchased optional uninsured and/or underinsured coverage. These basic concepts are explained further below.

A. Claims for Noneconomic Damage – Under the Michigan no-fault law, noneconomic damages consist of those losses that affect a person’s quality of life, such as pain and suffering, disability, incapacity, loss of function, diminished social pleasure and enjoyment, mental anguish and emotional distress, scarring and disfigurement, etc. Under the law, an accident victim is only entitled to recover these noneconomic damages if the victim sustained a “*threshold injury*.” Under the law, a threshold injury consists of one or more of the following: (1) serious impairment of body function, (2) permanent serious disfigurement, or (3) death. Unfortunately, the law regarding what constitutes “*serious impairment of body function*” or “*permanent serious disfigurement*” has been unclear, confusing, and conflicting. Therefore, persons sustaining bodily injury in a motor-vehicle accident should seek competent legal advice in order to determine whether their injury is of sufficient severity to satisfy these threshold requirements. Under the law, victims who are more than 50% at fault for the accident are not entitled to recover noneconomic damages.

B. *Claims for Excess Economic Loss Damages* – The Michigan no-fault law provides that if an injured person suffers certain past, present, and future financial expenses that are not compensable by no-fault PIP benefits, the person can recover those damages in the tort liability claim against the driver who caused the accident. These are called “*excess economic loss damages*” and include loss of income that exceeds the monthly cap on wage loss benefits or extends beyond the no-fault three-year wage loss benefit period. Under the law, an injured person need not prove a threshold injury (serious impairment of body function or permanent serious disfigurement) to recover for these excess-economic-loss damages.

C. *Uninsured/Underinsured-Motorist Claims* – If the person who causes the accident does not have any auto insurance, the victim may be able to recover noneconomic and excess-economic-loss damages from their own insurance company if the victim purchased optional uninsured motorist coverage. Similarly, if the person who caused the accident does not have enough auto insurance liability coverage to fully compensate the victim for noneconomic and excess economic losses, the victim can recover the uncompensated balance for these damages if the victim purchased optional underinsured motorist coverage. If it is suspected that the person causing the accident has either no insurance or inadequate insurance, a thorough investigation should be conducted immediately to determine if the victim is covered by uninsured-underinsured-motorist benefits.

V. What Are the Legal Time Limits?

The no-fault law contains very strictly enforced time limitations for processing claims for no-fault PIP benefits and for pursuing tort liability claims. These time limitations will be discussed below.

A. *No-Fault PIP Benefits* – The law contains two separate time limitations for processing no-fault PIP claims. They are as follows:

(1) The 1-year-notice rule – This rule requires the victim to submit appropriately detailed written notice of a no-fault PIP claim to the correct insurance company within one year of the date of the accident. Failure to provide this notice within the one-year period will result in a complete forfeiture of PIP benefits, unless some legally recognized exception applies. Under the current law, the 1-year notice rule does not apply to children or to those people who are essentially mentally incompetent.

(2) The 1-year-back rule – This rule provides that any legal action that is filed to enforce payment of no-fault PIP benefits can only go back one year from the date the lawsuit is filed. Therefore, all expenses payable under the no-fault law have a short one-year enforcement period that runs from the date the expense is incurred. Failure to file suit within this one year will bar the claim, unless some legally recognized exception applies.

B. *Tort Liability Claims* – The general rule under Michigan law is that tort liability claims have a three-year statute of limitations that runs from the date of the injury. This three-year limitations period applies to bodily injury as well as wrongful death claims. There are certain exceptions to this rule that apply to children or those who are mentally incompetent. However, it is best to assume that the statute of limitations for tort liability claims is always three years from the date of the accident without regard to these possible exceptions. Moreover, it is generally the case that if the victim intends to pursue a tort liability claim, the process should begin immediately so that valuable evidence is not lost or the claim is not otherwise weakened by the passage of time. Accordingly, accident victims who have potential tort liability claims should move quickly to protect their rights. Moreover, they should refrain from speaking with any investigators or insurance adjusters who represent the interests of the at-fault party.