The 2019 No-Fault Reform Amendments:

Fully Implemented- Now What?

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Remember when? The Good?

SB1 passed on bi-partisan basis and signed by Governor,

Both sides get the credit- or the blame!

Payments on Capped Benefits

- Recent survey by the Insurance Alliance of Michigan shows that Michigan Insurance consumers are opting for the following PIP coverages:
- 69% opting for lifetime, unlimited “allowable expense” coverage
- 15% opting for $500,000 “allowable expense” coverage
- 8% opting for $0 “allowable expense” coverage, due to Medicare opt out in MCL 500.3107d or Health Insurance opt out under MCL 500.3109a(2)
- 7% opting for $250,000 “allowable expense” coverage
- 1% opting for $50,000 “allowable expense” coverage, available to Medicaid recipients, only

Payment on Capped Benefits cont.

- But we also have a significant number of Claimants being shifted over to the MAIPF/ MACP, pursuant to the changes in No-fault priorities involving “strangers to the insurance contract.”
- These include occupants in motor vehicles who don’t have insurance of their own, whether individually or through a spouse or domiciled relative- these folks used to receive benefits from the insurer of the owner, registrant, or operator of the motor vehicle occupied, under the former provisions of MCL 500.3114(4)
- These also include non-occupants of motor vehicles, who likewise did not have insurance of their own, whether individually or through a spouse or domiciled relative- these individuals use to receive benefits from the insurer of the owner, registrant or operator of the motor vehicle involved in the accident, under the former provisions of MCL 500.3115.

Payment on Capped Benefits cont.

- Effective July 2, 2020, the “allowable expense” benefits for these individuals are now capped at $250,000
- What order are these limited benefits paid?
- First in, first out?
- First in with “reasonable proof of the fact and of the amount of loss sustained”?
- Interpleader?
- Medical provider versus patient issues?

The Bad

The Ugly

Fee Schedule- MCL 500.3157(2)- Who does it apply to?

- MCL 500.3157(1) says that “a physician, hospital, clinic, or other person” that “lawfully renders treatment” may charge a “reasonable amount” for the “treatment.”
- MCL 500.3157(2) then says that “a physician, hospital, clinic, or other person” that renders treatment “is not eligible for payment or reimbursement under this chapter for more than the following:”
- So at first blush, it appears that anyone rendering “treatment” is bound by the Fee Schedule, or “Fee Cap.”
- Treatment is defined by MCL 500.3157 (15)(k) as including “products, services, and accommodations”
  - Note that this mirrors the language of MCL 500.3107(1)(a) defining Allowable Expenses.

Fee Schedules and the 45% “Haircut”

- Not much of a problem when a charge for “treatment” is payable under Medicare- generally at 200% of Medicare reimbursement, with higher amounts payable for certain providers
  - New DIFS Administrative rule adopted 10/1/2021 seems to say that if 200% of Medicare rate is higher than the “reasonable and customary” rate, then the 200% rate applies. See R 500.203
- But what if there is no Medicare reimbursement available?

Who Does the Haircut Apply To?

- Then the new rate allowed is 55% of the amount in the provider's Charge Description Master as of January 1, 2019, or, if no Charge Description Master, the average amount charged by the provider for the "treatment" on January 1, 2019
- MCL 500.3157(7) says it applies to "Treatment" where the expenses incurred for the service are not reimbursable or payable under Medicare
- Theoretically, the 45% haircut applies to **all providers** of "Treatment" to the extent that those services are not payable by Medicare.
- Includes TBI facilities, attendant care providers (both agency- provided and individually provided), and perhaps other "allowable expense" providers.

Result? UGLY

- Many attendant care companies and TBI facilities have been forced to shut down or reduce operations.
- In some "Breaking News", DIFS Bulletin 2021-38-INS, which was released on 10/11/2021, adds some exceptions to the "45% Haircut":
  - Products, services, and accommodations that are not provided by physicians, hospitals, clinics, or other **like** persons, but which are otherwise compensable as "allowable expenses" under PIP, are not subject to MCL 500.3157. They are instead subject to MCL 500.3107(1)(a), which requires that these charges be "reasonable."

Items not covered by Fee Schedule/ Fee Cap pursuant to DIFS Bulletin 2021-38

- **Examples of products, services, and accommodations not subject to MCL 500.3157 but subject to MCL 500.3107(1)(a) include but are not limited to:**
- **Services related to guardianship or conservatorship;**
- **vehicle modifications;**
- **home modifications;**
- **computer equipment and supplies;**
- **generators;**
- **non-emergency medical transportation;**
- **non-prescription drugs and over-the-counter medical supplies;**
- **and certain case management services.**

So does the Fee Schedule/ Fee Caps apply to claims arising out of losses which occurred prior to June 11, 2019? - Update

- Andary v. USAA Casualty Insurance Company, Court of Appeals Docket no. 356487
- Ingham County Circuit Court Judge Wanda Stokes dismisses lawsuit challenging application of the Fee Schedule/ Fee Cap to claims arising out of losses occurring prior to June 11, 2019;
- Court of Appeals denies Motion to Expedite
- Supreme Court denies Bypass Application for Leave to Appeal
- Briefing is now complete, including numerous *Amici* on both sides of the dispute
- Waiting for panel to be convened and oral argument scheduled

So does the Fee Schedule/ Fee Caps apply to claims arising out of losses which occurred prior to June 11, 2019? – Update cont.

- Melrose v. Nationwide Mutual Insurance Company, Genesee County Circuit Court Docket no. 19-1134555-NF
- On September 30, 2021, Judge F. Kay Behm issues an Opinion and Order denying Defendant's Motion for Summary Disposition, noting that ‘Nothing in the plain language of MCL 500.3157 suggests that it was intended to apply retroactively.”