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A
Quick Guide
to the
**Michigan
Auto No-Fault
Law** ©

**Where
Do I Go
From
Here?**



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A Quick Guide to the Michigan Auto No-Fault Law[©]

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Michigan's auto no-fault insurance system is considered by many to be a model system that provides the best injury protection in the nation. Although the law was originally intended to simplify auto accident claims, it has become very complex. This pamphlet provides an overview of the key principles that apply to Michigan's no-fault law and the rules that must be followed to protect the legal rights of injured people. However, this pamphlet is not a substitute for legal advice from an attorney who practices extensively in the area of Michigan auto law.

1. HOW THE NO-FAULT LAW WORKS

The basic concept of Michigan's no-fault insurance law is to provide timely payment of insurance benefits to auto accident victims regardless of who caused the accident. In exchange for that right, the law puts certain limits on accident victims' rights to make a claim against the driver who caused the accident. It is important to keep in mind that every auto accident in Michigan potentially results in two separate insurance claims. The first is for no-fault *personal protection insurance (PIP) benefits*. The second is the *tort liability claim* for certain damages when someone else is at fault. These claims will be summarized below.

2. WHAT ARE NO-FAULT PIP BENEFITS?

Under the Michigan no-fault law, there are four (4) categories of no-fault personal protection insurance (PIP) benefits:

A. Allowable Expense Benefits

Auto insurance companies are required to pay allowable expense benefits, which are defined as *"all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation."*¹ These benefits are payable for life and do not have a dollar limit. They are very broad and can include: medical expenses; in-home patient care; home accommodations; vocational rehabilitation; special transportation and medical mileage; guardian/conservatorship expenses; and the services of an independent case manager.

B. Wage Loss Benefits

Auto insurance companies are required to pay wage loss benefits when an injured person cannot work as a result of the accident. These 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."*² Work loss benefits are payable at the rate of 85% of gross pay, including overtime. However, the work loss benefit cannot exceed the legal monthly maximum. The law also provides wage loss benefits to individuals who are *"temporarily unemployed"* from full-time employment at the time of their injury.

C. Replacement Service Expense Benefits

Auto insurance companies are required to pay replacement service expense benefits when an injured person incurs expenses to obtain reasonably necessary services that the injured person would have performed had the injury not occurred.³ This benefit is limited to \$20 per day for up to three years after the accident. It is primarily meant to cover household services, such as housekeeping, yard work, snow removal, etc.

D. Survivor's Loss Benefits

Auto insurance companies are required to pay survivor's loss benefits when someone dies in an auto accident.⁴ These benefits are payable for



"Life can change in a blink of an eye. On Dec. 28, 2006, I was headed to work as a home health nursing manager when another driver lost control and crossed the center line. Today, six and half years later, I have recovered to the point that I can get around short distances with a walker and use a wheelchair for longer errands. I continue to need daily assistance for safety with showering, dressing, meal preparation and mobility. Auto no-fault covers these needs that allow me to live in my own home."

—Sheryl Dana



maximum. These benefits primarily consist of the after-tax income of the person who died, the value of any fringe benefits lost as a result of their death, and replacement service expenses, as previously explained. In cases of death, insurance companies are also required to pay funeral and burial expenses, not to exceed the legal maximum.

3. WHO PAYS NO-FAULT PIP BENEFITS?

A. The General Rule

When someone is injured in an accident, the general rule is that the injured person receives PIP benefits from their own insurance company, or from an insurance policy issued to the injured person's spouse, or a relative living in the same household.⁵ This general rule applies regardless of whether the injured person is driving or occupying his or her own 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, which are discussed below.

B. Exceptions to the General Rule

There are some exceptions to the general rule stated above. One exception is when a person is injured in a vehicle owned or registered by their employer. In that case, the employer's auto insurance company must pay PIP benefits. Another exception involves injured people who do not own a vehicle and do not live with a relative who has an auto insurance policy. In those cases, the obligation to pay PIP benefits is determined by whether the injured person was an "*occupant*" or "*non-occupant*" of the vehicle at the time of the accident. If the injured person was an occupant, that person obtains PIP benefits from the insurance company of the owner or operator of the vehicle. If the injured person was a non-occupant (e.g. a pedestrian or bicyclist), that 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 injured person must submit their claim for PIP benefits to the Assigned Claims Plan, which is currently administered by the Michigan Automobile Insurance Placement Facility.

C. Governmental Benefit Setoffs

Michigan's no-fault law permits insurance companies to reduce PIP benefits by the amount of any governmental benefits paid or payable to the injured person as a result of the accident.⁶ Such benefits include Social Security disability and survivor benefits, worker's compensation benefits, and certain kinds of veteran or military benefits. Medicare and Medicaid, however, are prohibited from paying medical benefits to any person who is covered by no-fault insurance. Therefore, injured people who are covered by Medicare or Medicaid must seek payment of medical expenses directly from the appropriate auto insurer and never submit such expenses to either of these governmental programs. This same rule applies to an injured person's medical providers.

D. Coordination of Benefits

Under Michigan's no-fault law, there are two types of no-fault PIP coverages: *coordinated and uncoordinated*. The difference between these two coverages determines what insurance company has the obligation to pay medical expenses when the injured person has both traditional health insurance and auto no-fault insurance.⁷ Uncoordinated no-fault policies require the auto insurance company to pay PIP benefits regardless of whether there is health insurance coverage. On the other hand, coordinated no-fault policies require an auto insurance company to pay only those medical expenses that are not covered by the injured person's traditional health insurance. Therefore, when there is coordinated no-fault coverage, traditional health insurance must pay first, unless the health insurance is provided through a particular type of plan governed by federal law, in which case different rules may apply. The majority of Michigan citizens have purchased coordinated no-fault policies.



E. Motorcyclists

Under Michigan's no-fault law, a motorcycle is not required to purchase auto no-fault insurance because a motorcycle is not legally considered to be a "motor vehicle." However, if a motorcyclist is injured in an accident involving a "motor vehicle" (e.g., a car or truck), the motorcyclist is entitled to recover full PIP benefits, as previously described. In those situations, the motorcyclist will generally collect PIP benefits from the insurance company of the motor vehicle involved in the accident.⁸ There are, however, certain exceptions to that general rule.

F. Disqualification

Under certain circumstances, a person injured in a motor vehicle accident may be legally disqualified from recovering

PIP benefits.⁹ There are several ways that disqualification can occur. The most common disqualification is when the injured person was the "owner or registrant of a motor vehicle involved in the accident" that was not insured as required by law. Another disqualification occurs if the owner or registrant of a motorcycle involved in an accident did not carry traditional liability insurance coverage for the motorcycle. Other disqualifications exist, including those that may apply to certain out-of-state residents.

4. WHAT ARE TORT LIABILITY CLAIMS?

Michigan law provides that, under certain circumstances, an injured person has the right to make a tort liability claim against the at-fault driver to recover certain damages that are not compensated through no-fault PIP benefits.¹⁰ The compensation recoverable in tort liability claims includes damages for "noneconomic loss" and "excess economic loss." In addition, if the person who caused the accident was uninsured, or did not carry enough liability insurance to fully compensate the injured person for these types of damages, the injured person can recover these damages from their own insurance company if the injured person was covered by optional *uninsured and/or underinsured* motorist coverage. These basic concepts are further explained below.

A. Claims for Noneconomic Damage

Under Michigan law, noneconomic damages include losses that affect a person's quality of life, such as pain and suffering, disability, incapacity, mental anguish, scarring and disfigurement, etc. An injured person is only entitled to recover noneconomic loss damages if that person sustained a "threshold injury." Michigan law defines a threshold injury as one or more of the following: (1) serious impairment of body function, (2) permanent serious disfigurement, or (3) death. Unfortunately, the law defining "serious impairment of body function" and "permanent serious disfigurement" has been unclear, confusing, and conflicting. People injured in motor vehicle accidents should seek competent legal advice in order to determine whether their injury is serious enough to satisfy these threshold requirements. It is important to note that injured people who are more than 50% at fault for the accident are not entitled to recover noneconomic damages.

Under certain circumstances, an injured person has the right to make a tort liability claim against the at-fault driver to recover damages not compensated through no-fault PIP benefits.

When an at-fault driver causes an accident resulting in death, the estate of the person who died may bring a claim for wrongful death.

B. Claims for Excess Economic Loss Damages

Michigan's no-fault law also allows an injured person to recover compensation for certain kinds of financial losses that are not covered by PIP benefits. These financial losses are called "***excess economic loss damages***" and include the loss of income above the monthly limit on wage loss benefits or the loss of income beyond the three-year anniversary of the accident. An injured person does not need to prove a threshold injury (serious impairment of body function or permanent serious disfigurement) to recover excess economic loss damages.

C. Claims for Wrongful Death

When an at-fault driver causes an accident resulting in death, the estate of the person who died may bring a claim for "***wrongful death***" under the combined provisions of the Michigan no-fault law and the Michigan wrongful death law. Wrongful death claims can include several categories of damages, depending on the circumstances. In order to pursue a wrongful death claim, the family of the person who has died must take specific steps through the Probate Court to open an estate so that a claim can be pursued.

D. Uninsured / Underinsured Motorist Coverage

If the at-fault driver has no insurance or inadequate liability insurance, injured persons should investigate immediately if they are covered by uninsured or underinsured motorist benefits. These benefits may be payable under multiple auto insurance policies, including the injured person's own policy and/or a policy that covered the vehicle in which the injured person was riding at the time of the accident. All such policies must be read carefully to determine if they apply and, if so, the rules that must be followed in order for an injured person to enforce their rights. Failure to strictly comply with all rules and time limits may result in a complete loss of benefits.

Injured persons should investigate immediately if they are covered by uninsured or underinsured motorist benefits.

E. Protecting the Liability Claims

If the injured person or their family intends to pursue a tort liability claim, the process should begin immediately so that valuable evidence is not lost or the claim weakened by the passage of time. In addition, those considering pursuing a liability claim should decline to speak with any investigators, insurance adjusters, or others who represent the interests of the at-fault driver or that driver's insurance company.

5. WHAT ARE THE LEGAL TIME LIMITS?

Michigan's no-fault law contains very strictly enforced time limitations for auto no-fault PIP benefit claims and tort liability claims. These time limitations will be discussed below.

A. No-Fault PIP Benefits

The law contains two separate time limitations regarding no-fault PIP claims. They are as follows:

1) ***The 1-year-notice rule*** – This rule requires the submission of legally adequate written notice of a PIP claim to the appropriate 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 loss of PIP benefits, unless some legally recognized exception applies.

2) ***The 1-year-back rule*** – This rule provides that any lawsuit that is filed



B. The Tort Liability Claim

Under Michigan law, an auto tort liability lawsuit must be filed within three years from the date of accident, unless some legally recognized exception applies. One such exception is for minor children and another is for those persons who are mentally incompetent. Generally, lawsuits for wrongful death must also be filed within three years of the date of accident, unless some legally recognized exception applies.

6. A WORD OF CAUTION!

In the last several years, there have been a number of significant court decisions that have adversely affected the rights of injured people and their providers to recover PIP benefits and pursue tort liability claims. In certain areas, these court cases have caused considerable confusion and uncertainty. This is particularly true with regard to PIP claims dealing with handicap transportation, home accommodations, and in-home patient care. Therefore, patients and their providers should be mindful of these decisions and exercise caution when dealing with these issues.

HELPFUL RESOURCES AND REFERENCES

Listed below are the names and contact information of organizations and agencies that may help auto accident victims and their families better understand and deal with the Michigan auto no-fault system.

Coalition Protecting Auto No-Fault (CPAN)

A broad-based coalition to preserve the integrity of Michigan's model no-fault insurance system. • 216 N. Chestnut St., Lansing, MI 48933 • (517) 882-1096
www.cpan.us • www.ProtectNoFault.org

Brain Injury Association of Michigan (BIAMI)

A non-profit membership organization providing information, referrals, education, advocacy and support for those who have experienced a brain injury. 7305 Grand River Ave., Brighton, MI 48114 • (810) 229-5880
www.biami.org

Michigan Brain Injury Provider Council (MBIPC)

The Michigan Brain Injury Provider Council's purpose is to enhance the ability of rehabilitation, health care, and related services to people with brain injuries. 7305 Grand River, Suite 100, Brighton, MI 48114-7379
(810) 229-5237 • Fax (810) 229-8947
info@mbipc.org • www.mbipc.org

Michigan Automobile Insurance Placement Facility (MAIPF)

Michigan's residual market mechanism for automobile insurance. The Facility was established by Chapter 33 of the Michigan Insurance Code to guarantee that automobile insurance is available to Michigan citizens who are unable to obtain automobile insurance in the

Michigan Association For Justice (MAJ)

MAJ members are leaders in the law for their respective fields. They can provide referrals to individuals seeking a quality attorney to assist them that specialize in Michigan auto law. • 6639 Centurion Dr., Lansing Charter Township, MI 48917 • (517) 321-3073
www.michiganjustice.org

Michigan Department of Insurance and Financial Services (DIFS)

611 W. Ottawa St., 3rd Floor, Lansing, MI 48933-1070
(517) 373-0220 or (877) 999-6442 (Toll-Free)
www.michigan.gov/difs

The Michigan Independent Case Management Council (MICMC)

c/o 216 N. Chestnut St., Lansing, MI 48933
(517) 882-1096

The Michigan No-Fault Auto Insurance Law: Your Rights and Benefits® A Practical Guide For Patients and Providers, by George T. Sinas

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