

LAW & POLICY GROUP

GRIST**MICHIGAN'S AUTOMOBILE INSURANCE REFORMS MAY COST GROUP HEALTH PLANS**

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Employers with employees residing in Michigan may want to revisit their health plans' coordination-of-benefits (COB) provisions for motor vehicle accident-related medical expenses. Beginning July 1, 2020, legislation (2019 Pub. Acts [21](#) and [22](#)) revises the state's no-fault automobile insurance law in a way that could increase health plans' exposure to costs resulting from motor vehicle accidents.

MICHIGAN'S CURRENT AUTOMOBILE INSURANCE STANDARD

Michigan requires no-fault automobile insurance policies to provide unlimited personal insurance protection (PIP) covering medical costs for injuries sustained in a motor vehicle accident. This coverage must include reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation.

Coordinated vs. Uncoordinated Coverage

Michigan residents can lower their automobile insurance premiums under the current system by selecting "coordinated" coverage. This coverage option makes any health insurance — including employer-sponsored health coverage — the primary payer rather than the automobile insurance. Coordinated coverage costs the insured less than uncoordinated coverage, which pays all medical and recovery costs related to a motor vehicle accident.

Under the current system, however, employees covered under a health plan that either excludes or limits coverage for auto accidents must enroll in unlimited, uncoordinated coverage, so the motor vehicle carrier pays all injury-related costs. The new legislation changes this requirement.

CHANGE TO THE PIP STANDARD

To reduce auto insurance premium rates, Michigan's amended no-fault automobile insurance law will no longer require drivers to purchase unlimited PIP medical coverage for motor vehicle injuries. The policyholder may elect reduced PIP medical coverage, which generally will have a lower premium.

For auto insurance policies issued or renewed after July 1, 2020, the policyholder may elect one of the following levels of PIP medical coverage:

- Unlimited (no cap on benefits) — same as the current no-fault car insurance standard for employees whose health plan excludes or limits coverage for automobile accidents
- \$500,000
- \$250,000
- \$50,000 if the primary insured is covered by Medicaid while the insured's spouse and any household relatives are covered by Medicaid, other PIP or "qualified health coverage"
- No coverage if the primary insured has Medicare Parts A and B while the insured's spouse and household relatives have other PIP or "qualified health coverage"

Qualified Health Coverage

"Qualified health coverage" — which may include an employer-sponsored group health plan — doesn't exclude or limit coverage for injuries related to motor vehicle accidents and has an annual deductible of \$6,000 or less per individual, annually adjusted by inflation. Medicare (Parts A and B) coverage also meets this definition.

Michigan regulators have informally stated that a COB provision making an employer-sponsored group health plan the secondary payer of medical claims related to car accidents will not disqualify the plan under these rules. As a result, liability for medical costs related to motor vehicle accidents may shift to self-funded employer plans that meet the definition of "qualified health coverage." For example, if an individual elects lower PIP coverage after June 2020 and has a car accident causing injuries, the plan's coverage will kick in when it would not have done so under current law.

COORDINATION OF BENEFITS

Self-funded group health plan sponsors should decide how and whether to cover expenses incurred for injuries sustained in a motor vehicle accident on or after July 1, 2020. These employers should consider whether to amend their plan's COB language for auto insurance policies in Michigan and whether it should differ from COB provisions with respect to auto insurance policies in other states.

The standard COB options and implications in Michigan are as follows.

- **Exclude coverage for injuries sustained in a motor vehicle accident.** This would prevent the group health plan from being "qualified health coverage" or paying for any medical costs arising from a motor

vehicle accident. However, a blanket exclusion could leave employees with uninsured medical bills for accident-related injuries if those costs exceed the reduced amount (i.e., \$250,000 or \$500,000) of PIP medical coverage elected instead of unlimited coverage under their automobile insurance policy.

- **Designate the group health plan as paying secondary to auto insurance.** This common COB provision may not help if the employer plan otherwise meets the definition of “qualified health coverage.” If so, the employee and any covered dependents could forgo PIP medical coverage offered by the auto insurance carrier. This would leave the employer group health plan as the sole source of coverage responsible for all medical costs.
- **Omit a motor vehicle COB provision.** This will shift most or all injury costs to the group health plan as the primary payer. If the plan otherwise meets the definition of “qualified health coverage,” individuals could potentially have no PIP medical coverage and pay reduced car insurance premiums.

Setting a motor vehicle injury-related deductible at \$250,000 or \$500,000 to match the new PIP options would shield the health plan from most accident-related costs, but this strategy could run afoul of the federal Affordable Care Act’s limits on in-network out-of-pocket (OOP) costs. [Final regulations](#) set the 2020 annual OOP limits for nongrandfathered group health plans at \$8,150 for self-only coverage and \$16,300 for other coverage — far below the PIP amounts.

Another strategy — placing a ceiling on motor vehicle injury costs — likely would violate federal rules barring lifetime and annual dollar limits on essential health benefits (EHBs). Many motor vehicle accident-related medical expenses, such as X-rays and hospitalization, presumably are plan-covered EHBs, so placing a ceiling on those costs would impose prohibited dollar limits.

NEXT STEPS

Before the changes in Michigan’s no-fault automobile insurance law take effect, employers whose self-funded group health plans cover Michigan residents should do the following:

- **Review the plan’s COB provisions, and make necessary changes.** Keep in mind that merely paying secondary to any auto insurance coverage may not protect the plan from paying first-dollar coverage if the employee can opt out of PIP. If no blanket exclusion for injuries related to a motor vehicle accident applies, employers may want to make COB rules specific for Michigan residents.
- **Communicate provisions to employees.** Employees may be confused by their auto insurance coverage options and what employer-provided coverage will cover in the event of a motor vehicle accident. Employers should prepare employee communications that:
 - Clarify how the employer’s group health plan interacts with Michigan’s PIP requirements, including the plan’s COB provisions

- Explain that PIP benefits for a motor vehicle injury last indefinitely, but employer-sponsored group health plan coverage may end at some time due to a change in plan eligibility, termination of the plan or other unforeseen factors
- Respond to participant requests for proof of coverage and explain whether the employer-sponsored health and/or disability insurance will provide benefits for injuries caused by a motor vehicle accident — even though this documentation isn't required under current law
- **Review plan-subrogation and right-of-recovery provisions.** Plan sponsors may want to consider whether to include specific language in their plan document and summary plan description to address Michigan's no-fault automobile insurance law changes and PIP provisions.
- **Comply with disclosure requirements.** Under federal law, plan administrators must provide a [summary of material modifications](#) for any plan changes made.

Michigan's regulatory agencies are expected to issue rules and additional guidance before the law's effective date. This may clarify some of the provisions, and employers will want to review any guidance.

RELATED RESOURCES

Non-Mercer Resources

- [2019 Pub. Act 21](#) (Michigan Legislature, June 11, 2019)
- [2019 Pub. Act 22](#) (Michigan Legislature, June 11, 2019)
- [HHS Notice of Benefit and Payment Parameters for 2020](#) (Federal Register, April 25, 2019)
- [29 CFR § 2520.104b-3](#), Summary of Material Modifications Regulation (eCFR)
- [Insurance Bulletins](#) (Michigan Department of Insurance and Financial Services (DIFS))
- [Consumer Page for Auto/Vehicle Insurance](#) (Michigan DIFS)

Mercer Law & Policy Resources

- [2020 ACA Cost-Sharing Caps Set, Play-or-Pay Penalties Projected](#) (May 8, 2019)

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