

EXPLANATION OF MICHIGAN NO-FAULT LAW

This explanation of Michigan's no-fault law is a general description without all of the details or exceptions. Please feel free to raise any question with your lawyer about the law or procedure that applies to your claim.

The Michigan no-fault law provides certain benefits to an injured person without regard to who was at fault in the accident. These benefits are called "no-fault benefits." They can be thought of as a type of health and disability policy that insures the person and their family whether the injured person was in their motor vehicle or someone else's or was a pedestrian.

COVERAGE

If an injury is the result of a motor vehicle accident (usually a car, truck, or bus and not a parked vehicle), there will generally be no-fault coverage. To qualify as a motor vehicle, the law requires that the vehicle have more than two wheels, operate by power other than muscular power, and be operated or designed for operation on a public highway.

Certain people are excluded from benefits if their uninsured car is involved in the accident and they are the owner of that vehicle.

Furthermore, motorcyclists are excluded from no-fault coverage because the vehicle is a two-wheeled vehicle. However, when a motorcycle collides with an automobile, a motor vehicle is involved and no-fault coverage will generally be provided, usually from the insurer of the striking vehicle.

WHICH COMPANY PAYS BENEFITS

No-fault benefits are similar to health and disability policies. They generally follow the person who bought the insurance rather than the motor vehicle that is insured. No-fault coverage is, to some extent, personal in origin and extends to the insured, the insured's spouse, and relatives residing in the insured's household. Thus, usually the injured person will get no-fault benefits based on the policy that the person has on their own vehicle. If that policy does not apply, no-fault benefits may be obtained from a policy on the spouse's vehicle or that of any relative residing in the same household. If there is no coverage in the name of the injured person or a relative in the household, the injured person will be assigned an insurer by an assigned pool set up to pay no-fault benefits called the Michigan Assigned Claims Plan (MACP). The MACP also comes into play if no insurer can be identified.

APPLICATION FOR NO-FAULT BENEFITS

The law requires that certain information be supplied to the no-fault carrier within one year of the accident. Generally, the law requires an identification of where, when, and who was injured; a description of the nature of the injury; and a claim for no-fault benefits. A standard application for benefits form (which can be obtained through the Department of Insurance and Financial Information or through any insurance company) can be used to apply for benefits. The form

requests all of the factual information required by statute to be provided to the no-fault insurer. If the application for benefits with the appropriate information is not submitted to the insurer within one year of the date of the accident, the individual's claim for no-fault benefits can be barred. If a question arises regarding who should receive the no-fault application for benefits, a claimant is well advised to give the written application for benefits to each insurance company that may be responsible to pay no-fault benefits.

MEDICAL BENEFITS

The No-Fault Act requires that the no-fault insurer pay reasonable charges for necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation arising out of a motor vehicle accident. Starting in July 2020, the amount of medical expenses the no-fault insurer is obligated to pay will depend on the insured's coverage in the applicable policy. Medical benefits include such things as hospital bills, doctor visits, medical tests, physical therapy, prescriptions, appliances, transportation to and from medical care, vans, wheelchairs, home modifications, and home or residential care, including attendant care provided by family members.

Nursing care is an entirely separate expense from replacement services. Nursing care benefits, also called "attendant care benefits," provide care for the injured person. Replacement services are those household tasks that the injured person would have performed for themselves or their dependents. Replacement service benefits have a maximum of \$20 per day. Reimbursement for attendant care provided by a person who knows you is limited to 56 hours per week.

COORDINATED/EXCESS MEDICAL COVERAGE

The no-fault law allows the no-fault insurance company to sell several types of no-fault coverage. One of those types of coverage is coordinated (sometimes called "excess") medical coverage. Usually, there is a small premium reduction for the coordinated excess coverage compared to a full policy. An insurance agent must offer the choice of full coverage or the premium discounted coordinated coverage to the named insured. The election of a coordinated policy applies to the named insured, that person's spouse, and any relative residing in the insured's household.

If you have a coordinated or excess coverage policy, you must use the health care insurance or HMO first if the service is available. The no-fault insurer will pay for the care that is not covered by the health insurance or HMO or in excess of the HMO or health insurance coverages. For example, if the HMO limits the number of physical therapy visits to 16 and your doctor recommends 20, the no-fault carrier would be responsible for the remaining 4 physical therapy visits.

With a coordinated policy, the no-fault insurer will require proof that the bills have been submitted to the other health plan first and that the other health plan has either rejected them or made the appropriate partial payment under its contract before the no-fault insurance company will honor the submission.

With full health policy and no-fault coverage, under some circumstances (usually Blue Cross Blue Shield policies) the medical bills will be paid twice, once by the health insurer to the provider and a second time by the no-fault carrier directly to the injured person. Many health insurance policies include policy language to avoid paying for medical expenses resulting from motor vehicle accidents if there is no-fault coverage. Others have a coordination provision that states that the health insurer is not responsible for no-fault benefits if there is a full no-fault policy. That type of coordination has been allowed when there is a full no-fault policy. If you have a health insurance policy, you should examine it to determine whether or not it excludes motor vehicle accidents.

MEDICAL MILEAGE

Medical expense benefits include mileage to and from medical care. As a claimant, you should keep a record of the mileage expenses by date and miles for submission to the no-fault carrier. The state premium rate of mileage is approximately \$.58 per mile at the present time. The IRS mileage rates are approximately \$.58 per mile for business and \$.20 per mile for medical. The amount paid by insurers varies from about \$.30 per mile to \$.57 per mile.

FUNERAL EXPENSES

The No-fault Act also provides funeral expense benefits of a minimum of \$1,750 with the right to purchase up to \$5,000 in funeral and burial expense coverage. Depending on the amount that was purchased on the no-fault insurance policy that applies to the case, there will be at least \$1,750 towards funeral and burial expenses if a death results from a motor vehicle accident.

WAGE LOSS

The No-fault Act provides benefits for wage loss that are payable for three years from the date of the accident. The wage loss benefits may be up to 85 percent of a person's wage and salary or the current monthly maximum amount, which is about \$5,700 per month, whichever is less. The monthly maximum in effect at the time of the accident is the maximum for that injured person for the next three-year period. However, the no-fault wage loss maximum is adjusted annually for inflation. The income that is recoverable is what you would have earned, not what you could have earned. It is also not based necessarily on the last year or even the last month's earnings. A new job, a promotion, and a new wage rate (if provable) are recoverable under no-fault insurance.

No-fault wage loss benefits are paid at the 85 percent rate since the statute assumes a 15 percent tax reduction. The no-fault insurer is allowed a tax reduction from the gross wage since the no-fault wage loss received is tax free under the Internal Revenue Code.

No-fault wage loss does not include most fringe benefits unless they are actual monetary payments such as cash bonuses or contributions to a specific savings or retirement fund. Other noncash fringe benefits such as health insurance, life insurance, etc., are not recoverable as a no-fault wage loss. However, no-fault wage loss does include overtime pay, wage increases, and bonus payments that are lost.

SURVIVOR'S LOSS

A dependent survivor of an individual who is killed in a motor vehicle accident has the right to survivor's loss payments similar to the wage loss benefits of a surviving disabled claimant. Generally, the three-year income payment is paid to a narrow group of dependents, usually the spouse and minor dependent children. The maximum for survivor's loss benefits is currently about \$5,700 a month (adjusted annually), which also includes the replacement service maximum of \$20 per day. However, survivor's income loss is broader than wage loss and includes fringe benefits, including health insurance and other premiums and coverages that the decedent's employment would have provided, plus lost wages, salary, and other income.

COORDINATION OR SETOFF OF OTHER BENEFITS

The no-fault wage loss and survivor's loss benefits are reduced by Social Security disability or survivors benefits or worker's compensation benefits. If the no-fault policy that applies was a coordinated policy, the no-fault insurer is entitled to a credit for any private disability payments or insured medical payments made. Depending on the nature of the benefits, the no-fault insurer does not get a credit or reduction from the wage loss or survivor's loss benefits for sick pay, vacation pay, or similar employment-provided wage continuation (except for wage continuation benefits available through the employer that are paid or typically would be paid by an insurance company).

REPLACEMENT SERVICES

Under the No-fault Act, an injured person or the survivor of a deceased may recover replacement services. The no-fault law provides for the payment of up \$20 per day for the loss of services that the injured or deceased person would have provided for themselves (if the person is surviving) and for dependents. The replacement services are payable only for the first three years after the accident. Typical replacement services include such things as housecleaning, washing dishes, yard work, home maintenance, babysitting, child transportation. The service can be hired and paid to nonfamily members or provided by family members with a payment or promise to pay by the injured person. Benefits for replacement services are not adjusted for inflation and have not been increased since the act was enacted in 1973.

LAWSUIT FOR NO-FAULT BENEFITS

If a lawsuit is brought for no-fault benefits, the claimant may seek benefits going back to one year from the date of the filing of the suit and benefits that accrue while the suit is pending up to the trial. Under certain circumstances, the court may oversee future care beyond the trial date. The law does not allow one suit for the claimant to receive a lump-sum cash amount for past and all future benefits.

If there is a substantial benefit in dispute, it is important that a lawsuit be filed within one year of the disputed items. If suit is filed more than a year after the disputed item, that claim is barred. In most cases some interest will be awarded on benefits recovered. In some cases the court may award an attorney fee.

AUTO NEGLIGENCE SUIT

The no-fault law allows a lawsuit against the negligent driver under certain circumstances. To bring a suit, the other driver must be more than 50 percent at fault in causing the accident to allow the injured person to recover noneconomic emotional and pain and suffering damages (in some cases, certain economic damages may also be recoverable). Lawsuits may be brought against negligent drivers when an accident has resulted in death, permanent serious disfigurement, the serious impairment of a body function, or long-term income loss.

The frequent battle is whether or not the injury constitutes a serious impairment of a body function. The statute requires that there be an objective impairment that affects a person's ability to live at least a portion of their life. The no-fault threshold focuses on whether or not there is some observable impairment, not injury, and whether that impairment affects that particular person's life, interests, or lifestyle. This requires some objective observation, presumably by doctors or others, as to a physical impairment, but the focus is on what things in your life are impaired or affected by your injury. The more objective the injury and impairment, the easier the decision on whether the serious impairment is met. Furthermore, observations by coworkers and family members about the differences before and after may have a very significant effect on convincing a jury that you have a serious impairment of body function. You will need a doctor who is willing to explain without minimization the true nature of the problem and the impairment that it causes. A court may dismiss a claim if it determines that there is not sufficient objective evidence of a serious impairment. The statute requires that it be an impairment of an important body function, and that may depend on the impairment's impact on the quality of your life and the nature of the injury that you've sustained. On some occasions, it is necessary to hold off bringing a claim until the nature of the injury and its impairments are known so that if a serious long-term impairment exists, it can be demonstrated to the court and a jury. If you bring a claim now for an injury that the judge finds is not serious enough and dismisses the case, you will not be able to bring a claim for that injury later even though the condition worsens. In addition to proving that the other driver was at fault in the accident in an automobile case, it is equally important that there be sufficient evidence of an objective nature of a serious impairment of some an important body part that affects your life for your style, work, and living. Besides family members and treating medical providers, you should mention to your lawyer, your friends, coworkers, and other persons who might be able to corroborate the before and after differences and explain the impact that the injury has had and the impairments that it has caused in your life.

The rules for an automobile negligence lawsuit include the following:

- The other driver must be more than 50 percent at fault for the accident for the injured person to recover noneconomic pain and suffering and other types of noneconomic damages. In some cases, economic damages such as excess wage loss or survivor's loss after three years may be recoverable even if the other driver was less than 50 percent at fault.
- For an injured person to successfully bring a claim for noneconomic damages such as pain and suffering, there must be an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

- If the injured person owned and was driving an uninsured motor vehicle, noneconomic damages such as pain and suffering, embarrassment, or loss of enjoyment to life are not recoverable against the other driver. Economic wage losses or survivor's losses may be recovered.

TIMING FOR A THIRD-PARTY SUIT

In general, a no-fault auto negligence lawsuit must be brought within three years from the date of the accident or the claim is forever barred. There are exceptions for the mentally impaired and for minors. A minor may bring a claim until their 19th birthday.

RETENTION OF AN ATTORNEY

The Michigan Court Rules allow clients to hire an attorney for a no-fault matter on either an hourly or a contingent fee basis. Normally, the client hires the attorney on a contingent fee basis. A contingent fee means that the client will pay the attorney a percentage of the recovery from the settlement or amount secured by suit. The typical percentage is 33 percent. A Michigan Court Rule regulates the use of contingent fee agreements and allows a one-third contingent fee as a maximum. If a client retains an attorney on a contingent basis and the case is unsuccessful, the client does not owe the attorney money for attorney fees. However, if the matter is unsuccessful, the client is responsible to pay the costs of the litigation. The costs are not the attorney's or the staff's time but the out-of-pocket money the attorney spends to process your case. Typically these costs include such things as filing fees, witness's time at depositions, medical records, case evaluations, and other out-of-pocket expenses. Usually, the most expensive costs are to secure medical testimony to present to a jury (by either video deposition or live testimony) the nature of the injuries. Although these costs are the responsibility of the client whether the matter is won or lost, most attorneys pay the costs as they are incurred and are reimbursed at the end of the suit.

If the suit is successful, under the contingent fee contract and court rules, the attorney is first reimbursed for the costs that have been advanced in processing the claim. The net amount of the settlement after costs are subtracted is then subject to the contingent percentage, usually one third, which represents the attorney's fee. The net balance of the settlement or result is payable to the client.

TAX CONSEQUENCES OF FIRST-PARTY OR THIRD-PARTY RECOVERY

In most cases the amount a claimant receives in a personal injury action, either for no-fault benefits or for auto negligence pain and suffering or long-term wage loss or survivor's loss, is not taxable. However, any interest that a court awards is subject to income taxation.