

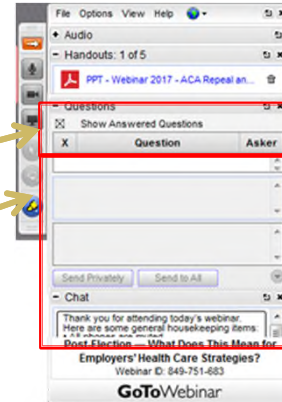
## Michigan No-Fault Reform and its Impact on Group Health Plans

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- PPT slides are available in the **Handouts Tab** to download on your dashboard
- Questions may be submitted to the presenter via the **Questions Tab** on your dashboard
- Questions will be answered at the end of the presentation
- A five question survey will launch at the end of the webinar for you to evaluate and provide us with your feedback



## Agenda

- Overview of no-fault before reform
- Overview of the no-fault reform provisions that impact group health plans
- Considerations for sponsors of group health plans
- Next steps
- Questions

## No-Fault Before Reform

### Before Reform

- Owners or registrants of a motor vehicle were required to purchase a no-fault policy with unlimited personal protection insurance (“PIP”) coverage
- Generally, PIP provides coverage for reasonable charges incurred for reasonably necessary products, services and *accommodations for an injured person’s care, recovery or rehabilitation*

## Before Reform

- Examples of items that may be covered under PIP (as well as a group health plan)
  - Inpatient hospital confinement following accident
  - Surgery to treat injuries
  - Initial physical, occupational and speech therapy

## Before Reform

- Examples of items that may be covered under PIP (but unlikely to be covered under a group health plan)
  - Attendant care
  - Rehabilitation past the point where further progress is no longer likely
  - Home modifications (e.g., wheelchair ramps into an individual's primary residence)
  - Auto modifications (e.g., automatic lifts to assist with entry and exit of a vehicle)

## Before Reform

- In other words, PIP covers anything that is reasonably necessary that is ordered by a licensed provider (e.g., a physician)
- Because unlimited PIP was required by law, most Michigan residents had more than adequate health and accident coverage, regardless of any other coverage

## Before Reform

- Coordinated coverage:
  - Individuals with other accident and health coverage, such as a group health plan, were entitled to purchase a “coordinated” (less expensive) no-fault policy for a reduced premium. MCL 3109a
  - The legislative intent behind MCL 3109a was that the other accident and health coverage pays primary to no-fault (the “Federal Kemper Rule”)

## Before Reform

- Coordination with group health plans:
  - Fully Insured GHPs: Under the Federal Kemper Rule, fully insured group health plans (regardless of which state the fully insured policy is issued) are required to pay primary to coordinated no-fault policies. *Citizens Insurance Company of America v. American Medical Security, Inc*

## Before Reform

- Self-Funded GHPs: ERISA preempts MCL 3109a. As a result, a self-funded ERISA GHP with an unambiguous COB provision will prevail over a conflicting COB provision in a coordinated no-fault policy. *Auto Club Insurance Association v. Frederick & Herrud*
  - Self-funded GHPs are permitted to pay secondary to coordinated no-fault policies
  - Self-funded GHPs are permitted to exclude benefits in the event of an auto accident
  - Individuals who were covered under a self-funded GHP who mistakenly purchased a coordinated no-fault policy were generally charged a \$250 or \$500 deductible in the event of an auto accident

## Before Reform

- Employers not subject to ERISA:
  - Governmental and church employers are not subject to ERISA
  - As a result, MCL 3109a is not preempted by ERISA for these employers
  - While it is not entirely clear, self-funded GHPs sponsored by these employers are likely required to pay primary to no-fault policies under the Federal Kemper Rule
    - If a non-ERISA employer's GHP pays primary, the subrogation/reimbursement provisions of the GHP may enable the recovery of the expenses paid from a third party involved in the accident (or its insurer)

## Before Reform

- Arguably, a non-ERISA self-funded GHPs sponsored by these employers may still exclude benefits in the event of an auto accident because it is not an issue of a conflicting COB clause

## Before Reform

- Michigan no-fault is unique
  - Most other state insurance laws require individuals to carry only a modest level of PIP/medical coverage under their auto or no-fault policies
    - As a result, an employer's self-funded GHP will generally not exclude motor vehicle injuries for non-Michigan residents (because it would potentially cause the individual to have a gap in coverage)
    - Rather, the employer GHP will typically pay secondary for non-Michigan residents (which causes the GHP to pay all but minor expenses in an auto accident)

## Before Reform

- Michigan no-fault does not apply to motorcycles
  - Like other states, Michigan motorcyclists are generally not required to maintain significant medical coverage under their motorcycle insurance policies
  - However, Michigan law requires motorcyclists to carry at least \$20,000 of coverage in order to ride without a helmet



## Before Reform

- Most GHPs pay secondary to motorcycle insurance
  - This typically causes the GHP to pay all but minor expenses incurred in a motorcycle accident
  - In Michigan some GHPs exclude the first \$20,000 of claims in the event of a motorcycle accident where the rider was not wearing a helmet

## PIP Benefits under No-Fault Reform

## No-Fault Reform

- For no-fault policies issued or renewed on or after July 1, 2020, individuals may choose various levels of PIP coverage:
  - \$50,000, if certain requirements are satisfied
  - \$250,000
  - \$500,000
  - Unlimited (i.e., PIP coverage before no-fault reform)
  - Opt-out (i.e., no PIP coverage), if certain requirements are satisfied

## No-Fault Reform

- \$50,000, if the following requirements are met:
  - The insured is enrolled in Medicaid; and
  - The insured's spouse and any resident relative:
    - Are also enrolled in Medicaid;
    - Have PIP coverage (under a different no-fault policy); or
    - Have "qualified health coverage"

## No-Fault Reform

- Opt-out (no PIP coverage), if the following requirements are met:
  - The named insured is enrolled in Medicare or has qualified health coverage; and
  - The insured's spouse and any resident relative have:
    - PIP coverage (under another no-fault policy); or
    - "qualified health coverage"

## No-Fault Reform

- "Qualified health coverage" means
  - Medicare; or
  - Other health or accident coverage that meets both of the following requirements:
    - Doesn't exclude or limit coverage for injuries related to motor vehicle accidents; and
    - The annual deductible is \$6,000 or less per individual (\$6,000 is annually adjusted by changes in CPI-medical component)
- No-fault reform did not impact the coordination of benefit rules

## Considerations for Sponsors of Group Health Plans

### Employee Communication

- Employee communication is key! Employees need to understand:
  - PIP benefits ≠ coverage under a GHP. In other words, PIP benefits generally cover substantially more items and services than a GHP
  - PIP benefits last for life (if unlimited) or until the PIP benefit maximum is reached. Coverage under a GHP will cease when an individual ceases to be eligible (e.g., inability to return to work), with possible extensions (employer-provided, FMLA – generally 12 weeks, and/or COBRA – generally 18, 29 or 36 months)
  - Employees must understand how the GHP is coordinated with no-fault policies

## Plan Design Considerations

- Sponsors of self-funded plans must decide how to provide benefits in the event of auto accidents:
  - Option 1- Pay Primary:
    - As long as the per-person deductible doesn't exceed \$6,000, this is likely "qualified health coverage," which will likely allow participants to opt-out of PIP coverage
    - This may shift the cost for all claims resulting from an auto accident to the GHP

## Plan Design Considerations

- Option 2 - Exclude coverage:
  - This is likely not "qualified health coverage," and as a result, a participant may not buy a no-fault policy with \$50,000 of PIP coverage or opt-out entirely
  - If a participant elected a no-fault policy with \$250,000 or \$500,000 of PIP coverage, the individual will be uninsured once the individual reaches the PIP maximum (e.g., in the event of a catastrophic accident)

## Plan Design Considerations

- Option 3 - Pay secondary:
  - Prior to no-fault reform, self-funded GHPs that paid secondary to no-fault were rarely required to pay any benefits in the event of an auto accident because everything was covered under the no-fault policy with unlimited PIP coverage
  - Is a secondary COB provision a “limit” which would prevent the plan from constituting qualified health coverage?
    - If so, the participant will be required to maintain at least \$250,000 in PIP coverage
    - If not, the participant may be able to carry just \$50,000 in PIP coverage or opt-out

## Plan Design Considerations

- In either case, after no-fault reform, under a secondary provision, a GHP will be required to provide benefits on behalf of a participant who opted-out or exhausted his or her \$50,000, \$250,000 or \$500,000 maximum
- For participants exceeding a \$250,000 or \$500,000 maximum, these will likely be high-cost claimants (i.e., more likely to reach stop-loss)
- What impact will the new law have on stop-loss rates?

## Plan Design Considerations

- Option 4 - Exclude the first \$250,000 or \$500,000 of claims in the event of an auto-accident:
  - This is likely not “qualified health coverage” (i.e., \$50,000 PIP coverage and opt-out options not available)
  - Similar to how many GHPs treat motorcycle coverage:
    - As discussed above, Michigan law requires motorcyclists to carry \$20,000 of coverage in order to ride without a helmet
    - Many GHPs exclude the first \$20,000 of claims in the event of a motorcycle accident where the rider was not wearing a helmet

## Plan Design Considerations

- Participants should understand the exclusion (e.g., a participant who is covered under a GHP with a \$500k exclusion should not elect \$250k of PIP coverage)
- What happens if the participant does not elect a sufficient amount of PIP coverage?

## Plan Design Considerations

- In making plan design decisions, plan sponsors should consider:
  - Should \$250k or \$500k be selected? What is the typical claims cost for a serious motor vehicle accident?
  - If the GHP pays secondary or excludes the first \$250k or \$500k in claims, this may increase the GHP's subrogation/right to recovery activity
  - As a result, plan sponsors should have their legal counsel review the GHP's subrogation/right to recovery provisions to ensure the plan is in a strong position to enforce

## Plan Design Considerations

- GHPs should also be prepared to pursue these claims and have a recovery firm and/or legal counsel in place to promptly act if needed
- Should these provisions apply in other states where no-fault policies provide less generous medical benefits?



## Next Steps

## Next Steps

- Develop an employee communication strategy
- Sponsors of self-funded GHPs should:
  - Determine how the GHP will coordinate with no-fault policies
  - Review the GHP's COB provisions regarding non-Michigan drivers and motorcyclists
  - Review the GHP's COB provisions to ensure they are consistent with the plan sponsor's intentions

## Next Steps

- For GHPs that pay secondary or exclude the first \$250k or \$500k of expenses, the plan sponsor should review the GHP's subrogation/right to recovery provisions and make arrangements for a recovery firm and/or legal counsel to be prepared to pursue any recoveries

Questions?



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37