

NOTE: These answers should not be considered legal advice for your particular claim. The No-Fault law contains many caveats and exceptions and thus consultation with an attorney specializing in No-Fault matters is critical. The answers below should not be a basis for you taking or refraining from action. Always consult with an attorney for answers specific to your questions.

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Q: I was involved in a motor vehicle accident and my insurance company keeps talking about 1st party and 3rd Party benefits. I do not understand what these terms mean.

A: The No-Fault Act provides two broad divisions of claims: “economic” and “non-economic.” “Non-economic” loss is commonly referred to as pain and suffering damages or “3rd Party damages” because they are paid by someone other than the insurance company. “Economic” loss is called “1st Party” coverage, No-Fault or “PIP” benefits. These benefits are paid by your insurance company.

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Q: Am I eligible for No-Fault benefits?

A: Benefits are provided for “accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.” If you were injured in a motor vehicle accident, or were hit by an motor vehicle, you are entitled to No-Fault benefits. There is an exception to this rule for uninsured drivers. If you did not have insurance when the accident occurred, please consult with an attorney to determine your eligibility for benefits.

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Q: How do I make a No-Fault claim?

A: Contact your insurance agent or the claim reporting center and let them know you were involved in an accident. An adjuster should contact you within a few days and explain No-Fault benefits to you. After this initial contact, you should receive an "Application for PIP benefits" form. Complete this form and return it to the claims adjuster. This form must be submitted to your insurance company within one year of the accident for you to obtain benefits.

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Q: Do I need a lawyer to make a No-Fault claim?

A: As a general rule, you should be able to make a No-Fault claim without the assistance of an attorney. However, it is always advisable to talk with a knowledgeable attorney about your No-Fault benefits.

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Q: Are snowmobile and motorcycle accidents covered by No-Fault?

A: Only if a motor vehicle is involved in the accident. Snowmobiles and motorcycles are not considered to be motor vehicles. If a snowmobile or motorcycle collides with a tree or flips over, there is no No-Fault coverage. However, if a motorcycle or snow mobile is hit by a car or truck, then a motor vehicle is involved and there is No-Fault coverage.

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Q: What if I was a pedestrian hit by a motor vehicle?

A: Many persons are under the impression that, in order to be entitled to No-Fault benefits, an injury victim must have paid for these benefits in the form of purchasing a No-Fault policy. The general rule should be understood: Everybody injured in a motor vehicle accident is covered by No-Fault. Note the exception to this rule for uninsured drivers.

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Q: I did not have insurance on my vehicle when I was involved in a motor vehicle accident. Am I still entitled to No-Fault benefits?

A: An uninsured passenger or pedestrian is entitled to No-Fault benefits. If you were the owner of the uninsured motor vehicle involved in the accident then you are not entitled to No-Fault benefits.

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Q: I am receiving social security or workers compensation. Will this affect my No-Fault claim?

A: Yes. If you are already obtaining benefits from a governmental source, you will not be able to “double dip” by also getting paid from No-Fault. A substantial amount of litigation has occurred to determine what kinds of government benefits must be subtracted from No-Fault benefits. For example, workers’ compensation benefits, social security disability benefits and others have been held to be subject to this subtraction from No-Fault benefits. There are many more benefits that have been the subject of litigation and an attorney should be consulted to determine whether a specific benefit is indeed subject to subtraction. Note, this subtraction occurs even if you have uncoordinated No-Fault benefits.

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Q: What are the benefits that I am entitled to under No-Fault?

A: Below is a basic summary of No-Fault benefits:

- Work loss up to three years, subject to a statutory maximum which changes every year. The current maximum for 2008 is \$4987.00 per month.
- Replacement Services up to \$20.00 per day for three years.
- Medical expenses (see specific questions below)
- Medically related mileage.
- Home modifications.
- Handicap modified vehicle.
- Attendant Care services (even if provided by family members).
- Vocational rehabilitation.

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Q: How is my work loss calculated?

A: The No-fault law allows the insurance company to pay wage loss benefits by taking 85% of an injured person's gross salary, up to a maximum in place for the year of the accident, "unless the claimant presents to the insurer in support of his claim reasonable proof of a lower value of the income tax advantage in his case...." For example, if a person making \$10,000 pays only \$1,000 in taxes, only 10% should be deducted from the no-fault benefit and not 15%. Reasonable proof, usually a tax return, should be submitted to the insurance company to make sure you are receiving the maximum benefit. The injured person can never get more than the monthly No-Fault maximum for wage loss.

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Q: What is the difference between Replacement Services and Attendant Care Services?

A: Replacement Services are available for up to 3 years from the accident date, and are limited to \$20/day. This benefit is for services which the injured person would have performed had she not been injured. Replacement services would be available for mowing the lawn, laundry, dishes, taking out the garbage and other household chores and daily activities. Attendant Care Benefits are not limited in duration or amount. Attendant Care Benefits are for personal care services, for example personal hygiene.

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Q: What medical expenses are covered under No-Fault?

A: Benefits are to be paid for "...all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured persons care, recovery or rehabilitation..." What is reasonable will depend on the facts of each specific case. For example, it would not be reasonable to provide a wheelchair for a person who broke his arms, while it would be reasonable to provide a wheelchair for a person who broke her legs. "Products, services and accommodations" may include a wide range of items from purchasing a neck brace to home care and home modification all the way to purchasing a handicap equipped van.

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Q: I had a pre-existing condition when I was injured in the accident. Will this pre-existing condition prevent or limit my right to No-Fault benefits?

A: No. No-Fault coverage is available where the accident combines with or aggravates a pre-existing condition.

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Q: I have an HMO for my general medical coverage. I was in a motor vehicle accident. Now, my No-Fault insurance company tells me I have to “treat within my network.” What exactly does this mean?

A: If you have an HMO or a coordinated no-fault policy you must obtain treatment within the confines of your HMO or member benefits. This means if there are two physicians, one in the HMO and one outside the HMO, you must see the physician within the HMO. On the other hand, if the treatment you require is not available within the HMO, and the service is deemed reasonably necessary by the HMO physician, you may be able to treat outside of your HMO. Great care should be taken in both making and documenting the decision to treat outside of the HMO.

If you have an uncoordinated No-Fault policy, you have the freedom to depart from the HMO system without penalty.

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