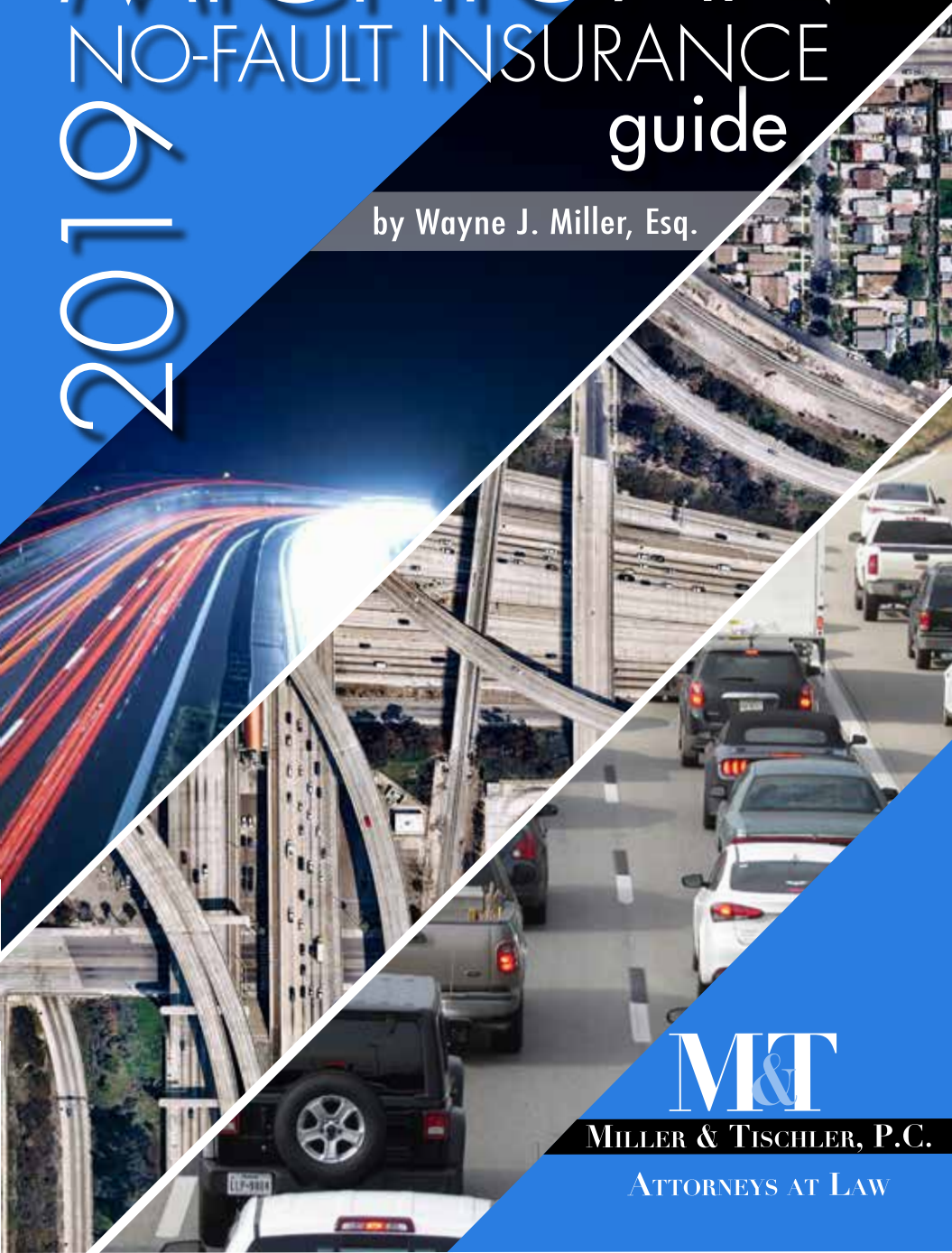


# MICHIGAN NO-FAULT INSURANCE 2019 guide

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**M&T**

**MILLER & TISCHLER, P.C.**

ATTORNEYS AT LAW

# MICHIGAN

## **AUTOMOBILE NO-FAULT LAWS**



Although there's nothing pleasant about motor vehicle accidents, Michigan's No-Fault ("No-Fault") Law provides some silver lining. This guide will provide you with an overview of how the Michigan No-Fault Law works.

Michigan's no-fault law has been in effect since October 1, 1973. However, the law has been dramatically changed, effective June 11, 2019. Some provisions go into effect immediately, while others have effective dates over the next couple of years following June 11, 2019. These effective dates will be discussed more thoroughly within.

## NO-FAULT

### **PROTECTS ACCIDENT VICTIMS**

The purpose of no-fault is to provide assured, adequate, and prompt payment for motor vehicle accidents. These benefits are available for virtually everyone, including passengers and pedestrians, regardless of fault or negligence. A few exceptions do exist, however. Those exceptions will be discussed in greater detail in this guide.

What kind of benefits are you entitled to? This guide can help you determine your rights under the No-Fault Law so that you may obtain the maximum amount of benefits to which you are entitled.

MICHIGAN NO-FAULT INSURANCE GUIDE:  
For Consumers and Service Providers

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# I. NO-FAULT INSURANCE IS MANDATORY FOR AUTOMOBILE OWNERS AND OPERATORS

The State of Michigan requires that all owners and registrants of motor vehicles have no-fault insurance.

## BASIC INSURANCE IS REQUIRED BY LAW

The owner or registrant of a motor vehicle, required to be registered in this state, must maintain 3 kinds of motor vehicle insurance:

- Personal Injury Protection (“PIP”), or insurance for your accidental bodily injuries that are motor vehicle accident related. Before the law was changed, people had only one option; that was to purchase the lifetime allowable expense benefits. One of the big changes in the new law is the ability to buy various levels of no-fault coverage. Effective July 1, 2020, people will still be able to buy lifetime coverage. But they will also be able to buy coverages of \$500,000, \$250,000, and in some cases even less. We recommend that people still buy the lifetime coverage because of the tremendous benefits available;
- Property Protection Insurance, or insurance for damage you caused to another’s property; and
- \$250,000 in residual liability insurance. This covers pain and suffering and economic losses in excess of that which is covered by no-fault insurance. Insurance customers are permitted to select a lower limit down to \$50,000. These higher limits are provided under the changed no-fault law and will be available as of July 1, 2020.

All other insurance is optional. Note that collision insurance is an optional coverage.

## EFFECT OF NO INSURANCE

Failure to maintain the basic insurance required by law is a misdemeanor punishable by fines and possible jail time.

But there could be even worse consequences for an uninsured person injured in a motor vehicle accident.

A person who operates a motor vehicle without the proper no-fault insurance in full force and effect is subject to both a criminal penalty and is disqualified from receiving any no-fault benefits whatsoever. (Note, however, that uninsured persons who are not operating their own uninsured vehicle may still be entitled to no-fault.)



## II. TIPS FOR BUYING THE RIGHT INSURANCE

Purchasing a policy of insurance for yourself and your automobile can be an extremely confusing venture.

Knowing what kind of insurance you need, and how much coverage you should get, can help matters greatly.

Make sure you are  
adequately protected.

Once you get into  
an accident, you are  
locked into whatever  
coverage you had at  
that time



### OPTIONAL UNINSURED/UNDERINSURED MOTORIST COVERAGE:

You may want to consider uninsured/underinsured motorist coverage. This is not legally required, but is a practical necessity. Uninsured and underinsured motorist coverage is optional coverage that protects you from uninsured/underinsured negligent drivers.

For example: if a drunk driver crashed into you and caused you to be a paraplegic, the amount you could recover from the drunk driver's insurer (see section on Noneconomic Damages) is limited to the amount of residual liability insurance the drunk driver had, if any. That amount could be the lowest amount permitted by law, only \$50,000. Or, if the drunk driver's completely uninsured, you would recover nothing.

With uninsured/underinsured coverage, you may recover up to the limit that **you** purchased.

# TO COORDINATE OR UNCOORDINATE...

## (WHAT DOES THAT MEAN?)

### COORDINATED BENEFITS:

Coordinated benefits is also called "excess" or "secondary" coverage, and is sold at a discounted premium. To have coordinated benefits means that the obligation to pay motor vehicle accident

related charges is shared between your health insurer and your no-fault insurer. Your health insurer pays some benefits, and your no-fault insurer pays the rest.



**CAVEAT WITH COORDINATED BENEFITS:** With coordinated no-fault benefits, your no-fault insurer is entitled to enforce any network restrictions in your primary medical insurance plan. Accordingly, your no-fault insurer may deny payment for services you received out of network (See section on Choice of Medical Care.)

### UNCOORDINATED BENEFITS:

To have uncoordinated benefits means that **all** of your reasonably necessary motor vehicle accident related medical charges are paid by your no-fault insurer. Your no-fault insurer is "primary" for paying coverage.

There are two advantages to having uncoordinated benefits: (1) Your health insurer may be required to also pay for these same charges, payments you get to keep. This is commonly referred to as "Double Dip." (2) You choose your provider - you are not limited to the providers designated by your health insurer or HMO. (See section on Choice of Medical Care.)

**Tip: The insurer usually gives you a coordinated policy unless you specify otherwise. Tell your agent that you want full, uncoordinated no-fault coverage. It will be slightly more expensive, but worth it.**

# INSURANCE AGENTS ARE NOT CREATED EQUAL

Even though they are selling the policies, some agents are not thoroughly trained about Michigan no-fault insurance. After reading this guide, you will know more about no-fault insurance than some agents.

Totally relying on the agent to get the insurance you truly need could be a big mistake; a mistake you won't know about until it's

too late, after a motor vehicle accident. Errors in your policy could prevent you from getting the coverage you need, or even worse, could lead to complete denial of your claims.



Here are some ways to make certain that your no-fault insurance policy is in order:

1. Know what you want;
2. Identify to your agent all of the residents living with you;
3. Provide your agent with accurate and complete information - inaccuracies on your application could disqualify you from benefits altogether;
4. Check your policy and declaration sheet to ensure all your information is accurate;
5. Follow up with a letter after making any changes...let your intentions be known; and
6. Don't let the agent talk you into lying about your living or driving situation... this will come back to haunt you if you ever make a claim, and the agent is seldom held liable!



## WHO IS COVERED UNDER YOUR NO-FAULT POLICY?



When you secure no-fault insurance for yourself, the policy will sometimes cover more than just you. Generally, the policy will also cover your spouse, children, or any other resident relative. This means that if your spouse and resident relatives were ever injured as passengers in a motor vehicle accident, coverage would be available for them through your policy if they have no insurance of their own.

**“Hidden Driver” Caveat:** You must disclose all people who drive your automobile on a regular basis. Your failure to do so may disqualify you or them from obtaining benefits in the event that injuries are sustained in a motor vehicle accident.

**Tip:** Make sure you inform your insurer of all people who drive your car, inform your insurer of family members who live with you, and identify which family members are of driving age. Remember to follow up with a letter.

## NO-FAULT DEDUCTIBLES

No-fault insurers are now permitted to offer deductibles for no-fault insurance (as well as for optional coverages such as collision and comprehensive). The law does not restrict the amount of the no-fault deductible. As long as you are covered by other health insurance, increasing your no-fault deductible could be an excellent way to lower your premium.





### III. ECONOMIC\* BENEFITS YOU RECEIVE WITH NO-FAULT INSURANCE

Regardless of fault, a no-fault insurer “is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle...” -MCL.500.3105(1)

Just what does that mean? What kind of benefits are your premiums paying for?

Economic no-fault benefits are payable for: “Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation.” -MCL.500.3107

As noted earlier, most who become injured before July 1, 2020 will remain covered by the current unlimited no-fault system, with some important exceptions for uninsured but not disqualified persons. Non-residents now have a different rule that is discussed in the disqualifications section. As of July 1, 2020, “PIP Choice” becomes available. In other words, people will be able to buy coverages at different levels. People will still be able to buy lifetime coverage. But they will also be able to buy coverages of \$500,000, \$250,000, and in some cases even less.

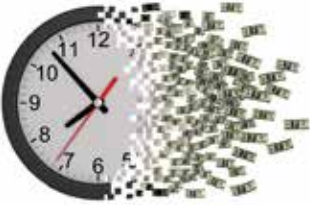
Another major change in the law is the imposition of fee schedules. Effective July 1, 2021, for service providers who are covered by Medicare, and subject to exceptions, payment will be permitted at 200% of what Medicare would pay for the same service. This rate decreases until, after 2 years, the permissible rate is 190%. For those services that are not covered by Medicare, there is a truly draconian fee schedule: 55% of the rate the provider charged as of January 1, 2019. This rate decreases until, after 2 years, the permissible rate is 52.5%. It is hard to see how many providers can stay in business at this rate. Because this rate is so obviously ruinous to a critical class of service providers, it is believed that this part of the fee schedule at least will be subject to legislative review and, hopefully, revision.

The following pages discuss benefits that have been recognized under the law. These will continue to be available under the new law, up to the limit of the coverage option chosen.

**\*For questions on noneconomic, or “tort” damages, refer to that section.**

# ANYTHING REASONABLY NECESSARY

That the benefits you receive be “reasonably necessary” is one of the main predicates for your entitlement to those benefits.



**COST LIMIT:** Under the new law, as of July 1, 2020, this will largely depend on the benefit limit chosen by the injured insured.

**DURATION:** As long as needed (for allowable expenses only.)

Examples of “reasonably necessary products, services and accommodations”:

- Medical bills, doctor examinations, follow ups, surgeries, etc.;
- Prescription costs;
- Rehabilitation and other therapies;
- X-rays, MRIs;
- Medical equipment and supplies such as wheelchairs, IVs, walkers, canes, crutches and other aids;
- Barrier Free Home Modifications: rails, wider doorways, wheelchair ramps, bathtub bars, toilet lifts, etc.



# REASONABLY NECESSARY CASE MANAGEMENT

In short, the case manager identifies and meets the unmet needs of persons severely injured in motor vehicle accidents.



The case manager is a professional concerned with organizing and arranging an injured person's medical and rehabilitation plan.

This could include arrangement of home staffing, outpatient programming, home modifications, counseling, and organizing the rehabilitation programming. The case manager is typically a registered nurse, but may also be an occupational therapist, speech pathologist, vocational rehabilitation counselor, social worker, or other professional trained and familiar with impairments caused by motor vehicle accidents.

Insurance companies will often assign a case manager at the beginning of a case. This is certainly appropriate. However, disputes often arise where the claimant wants to retain a case manager of his or her own choosing. Insurance companies may fight the claimant's choice on the theory that the case manager is an adjunct of the insurance adjusting process, not a service provider for the claimant. This is not true. A case manager works for the injured claimant.

## Case Management



**Claimants should know that they can insist on case managers of their own choosing.**

## REASONABLY NECESSARY ATTENDANT CARE

It has long been clear that family members may be paid for the provision of care services to injured spouses, parents or children. However, disputes often occur as to the proper charge for such services. As with all claims, the claim for attendant care must be carefully documented. This includes documenting the amount of care actually provided by way of carefully kept records; determination of the level and amount of care required (by doctor's prescription and evaluation by consulting nurse); determination of the reasonable charge for providing the required care, and confirmation that the family caregiver has an expectation of being paid for their service. Under the new law, and effective July 1, 2020, family provided attendant care may be limited to 56 hours/week.



**"As with all claims, the claim for attendant care must be carefully documented. This includes documenting the amount of care actually provided by way of carefully kept records..."**

**Benefits received from providing attendant care may be taxable income. For anyone receiving payments for attendant care, it is advisable to consult with a tax expert.**



## REASONABLY NECESSARY MEDICAL MILEAGE

You may claim a reasonable amount per mile for mileage related to obtaining medical care and services for injuries that are motor vehicle accident related. Mileage can be

reimbursed for purposes such as: doctor appointments, therapy appointments, trips to the pharmacy, and any other services for the injured person's care, recovery or rehabilitation.



As with all claims, the claim for medical mileage must be carefully documented. This includes documenting the amount of mileage actually incurred by way of carefully kept records.

## REASONABLY NECESSARY VANS

The extent of a no-fault insurer's obligation to purchase a modified van is a controversial issue. Claimants may want a fully equipped and modified van totally paid for by the insurer.

Insurers say that their obligation extends only to modifications of a van purchased by the insured. The Supreme Court has now ruled that the insurer only has to pay for modifications to a van purchased by the claimant (*Admire v. Auto Owners*).

**Keep a lookout!** Insurers will commonly ask you to sign an agreement that provides many limitations and conditions related to your van purchase. For example, insurers may want you to agree that the "operational life" of the van is 7 years, or 100,000 miles. Such agreements should be reviewed by an attorney.



# GUARDIAN/CONSERVATORSHIP EXPENSES

Services connected with guardianship and conservatorship are compensable under no-fault. The court in **Heinz v. ACIA**, stated:

"It is clear to us that if a person is so seriously injured in an automobile accident that it is necessary to appoint a guardian and conservator for that person, the services performed by the guardian and conservator are reasonably necessary to provide for the person's care. Therefore, they are allowable expenses..."

Thus, guardian/conservator expenses should be treated much like attendant care. Claims need to be supported by careful documentation. This includes documenting, by way of carefully kept records, the time spent performing guardian/conservator duties.

## Guardian/Conservator Services

Examples of services provided as the appointed guardian/conservator of the injured person, and performing tasks that he/she cannot do for himself/herself include:

- Making medical decisions
- Making legal decisions
- Attending medical/therapy appointments
- Attending meetings with legal counsel
- Managing bills
- Managing mail
- Attending court hearings/proceedings
- Arranging transportation
- Transporting to-from medical/therapy appointments, court proceedings, meetings with legal counsel, etc.



## LIMITED BENEFITS

Earlier in this guide, no-fault benefits were described as something that could be received forever with no time limit. While that remains true, a select few benefits are reimbursable only for a limited time and for limited amounts. The “PIP Choice” options do not appear to cover the following benefits. That is, when a no-fault policy is purchased, even with lower limits (e.g., \$250,000), those limits do not appear to apply to no-fault replacement service and work loss benefits. That is, no-fault replacement service and work loss benefits continue with the same limits that have always been applicable.

### **Replacement Services: LIMIT: 3 Years**



Replacement services, also known as the household chores benefit, provide reimbursement for household chores the injured person was formerly able to perform himself or herself that someone else must now perform. A maximum of \$20/day is payable for chores such as: mowing the lawn, shoveling snow, home maintenance, repair work and the like. It is payable even if family members do the service on behalf of the injured person.

### **Work Loss: LIMIT: 3 Years**



Loss of income from work is compensable for work an injured person would have performed had he or she not been injured. Because this benefit is not taxable, the amount paid is reduced by 15%. Accordingly, work loss is payable at 85% of the wages otherwise earned. The monthly maximum changes every year. As of October 1, 2018, the monthly maximum is \$5,700.



## Do not be cheated:

If you normally are taxed at a rate lower than 15%, you are entitled to receive work loss benefits at that same lower rate. To do so, you must present to the insurer reasonable proof of a lower rate of your income tax.



You **must** try to "mitigate" your damages.

That is, you must make reasonable efforts to work during the period of disability. Failure to do so may mean a reduction in, or total cutoff of, work loss benefits.

## Keep a lookout!

No-fault insurers may try to reduce your work loss benefits by subtracting benefits paid by other sources. Some credits may be proper (e.g., social security disability benefits).

Other attempted credits may not be proper. You should carefully review any attempt by no-fault carriers to diminish work loss benefits.



## CHOICE OF MEDICAL CARE

Ordinarily under no-fault, claimants have complete freedom to choose service providers. However, persons who are enrolled in HMOs are restricted in their choice of provider to those authorized by the HMO.

Claimants **do not** have the freedom to disregard their HMOs, simply because they have no-fault insurance.



**Bright side:** However, if you have paid extra for "uncoordinated" or "full" or "primary" coverage, then you have the freedom to depart without penalty from the HMO system. (See section on Coordinated/Uncoordinated benefits.)

**Tip:** This, therefore, becomes a reason to purchase uncoordinated benefits, even though it costs more. There are other reasons for buying uncoordinated benefits, including to prevent the depletion of lifetime benefits from other medical insurance, if such benefits are capped.

**benefits**

## IV. NONECONOMIC, OR “TORT” BENEFITS



So far, this guide has discussed certain economic no-fault benefits payable by your own insurer (first party). Now, we move on to discuss noneconomic, or “tort” benefits that a seriously injured person would receive from the negligent party's insurer (third party).

Noneconomic damages translate into “pain and suffering.”

Negligent drivers are immune from liability for third party pain and suffering damages EXCEPT when the pain and suffering caused exceeds the “tort threshold.” Negligent drivers also do not have tort immunity for economic losses that exceed the amounts chosen for no-fault PIP coverage. That is, if a person has chosen a \$250,000 limit under the new law (available as of July 1, 2020) and then is injured by a negligent driver, the negligent driver is exposed to tort liability for all medical bills that exceed the \$250,000 limit.

### ***The Tort Threshold:***

A negligent driver “remains subject to tort liability for noneconomic loss... if the injured person has suffered **death, serious impairment of body function, or permanent serious disfigurement.**” MCL 500.31.35

The new law, effective June 11, 2019, adopts a reasonable definition of the phrase “serious impairment of body function.” This will hopefully end decades of conflicting and draconian court decisions and make it reasonably easy to have your injury satisfy the threshold.

Meeting the threshold is essentially determined by measuring the changes between the injured person's pre-accident and post-accident lives. Recovery is unlikely in the absence of significant changes, such as inability to work for a significant period of time.

There is a special rule for those with closed head injuries (CHI). CHI plaintiffs can bypass the usual procedure by doctors' testimony that the CHI may be a "serious neurological injury."



## V. ELIGIBILITY FOR NO-FAULT BENEFITS

### QUALIFYING FOR NO-FAULT BENEFITS: AM I ELIGIBLE?

Assuming you are not disqualified (see section on Disqualification below), you are eligible to receive no-fault benefits if you sustained injuries arising out of owning, using, operating, or maintaining a motor vehicle as a motor vehicle. MCL 500.3105

#### 1. MUST BE A "MOTOR VEHICLE."

A motor vehicle is defined as a vehicle with more than two wheels, operated (or designed for operation) upon a public highway, and powered by a source other than muscular power.

**The following are examples of NON motor vehicles:**

**Bicycles**

**Farm Tractors**

**Snowmobiles**

**Motorcycles (see section on  
Motorcycles below)**



However, if any of those vehicles are involved in an accident **with** a motor vehicle, then there will be no-fault coverage.

## 2. MUST BE USED AS A MOTOR VEHICLE

A compensable injury will have been sustained while the motor vehicle was being used as a motor vehicle. This includes:

- **Transportation/driving function**
- **Maintenance of the vehicle**
- **Loading/unloading the vehicle**
- **Repairing the vehicle**
- **Entering/alighting from the vehicle**



Examples of a motor vehicle NOT being used as a motor vehicle include:

- **When the vehicle is merely the scene of a crime (e.g., criminal assaults, you were shot in your car.)**
- **When the vehicle is parked (certain exceptions apply). Parked vehicles are treated like a rock, tree, or any other stationary object.**



If your injury occurs in either of those circumstances, you are **not** likely eligible to receive no-fault benefits for that injury.

## 3. THE INJURIES MUST “ARISE” OUT OF REASONS RELATED TO THE MOTOR VEHICLE.

To be eligible, the injury must bear a causal connection to the use of the motor vehicle. The injury must be related to the accident. That means that pre-existing injuries are not compensable, unless they were aggravated by the motor vehicle accident.

## 4. PASSENGERS, CHILDREN, PEDESTRIANS AND BICYCLISTS



Passengers, children, pedestrians and bicyclists who sustain injury for reasons that arise out of a causal connection with a motor vehicle remain eligible for no-fault benefits. They are protected in cases of a hit and run, for example. This is true even if they are uninsured. If an insurer cannot be located, insurance will come by way of the Assigned Claims Facility (see section on the ACF below). However, effective June 11, 2019, uninsured passengers and non-occupants will now be capped at \$250,000.

Motorcyclists are also eligible for benefits, if injured because of a motor vehicle accident. (See section on Motorcycles.) Otherwise, they remain ineligible if injured.

### DISQUALIFICATION FROM NO-FAULT BENEFITS

Regardless of how terrible your injuries are after a motor vehicle accident, you may be disqualified from receiving no-fault benefits under certain circumstances. Disqualification can occur for any of the following reasons:

- **You were injured while operating an uninsured vehicle that is owned by you and/or registered by you.**
- **However, uninsured persons who were injured in a motor vehicle accident *not* involving their own uninsured cars are *not* disqualified. Under the old law, such uninsured persons were entitled to full coverage just as was anyone else. However, under the new law, uninsured persons who are not disqualified must in most cases receive their no-fault insurance through the Michigan Assigned Claims Plan (MACP). MACP benefits are capped at \$250,000. This change is effective for all persons injured after the effective date of the law, June 11, 2019.**
- **You were injured in a car you stole or helped steal.**

The No-Fault Law defines the "owner" of a vehicle to be a person who either has legal title, OR a person who has mere use of a vehicle for greater than 30 days! If you are an "owner", you must insure your car.

- You are a **NON Michigan resident** (unless you own a vehicle insured and registered in Michigan). This is a change in the law and is effective for all injuries after June 11, 2019.
- You intended to injure yourself.



## C. CONDUCT THAT IS NOT DISQUALIFYING

As indicated above, an insurer must provide you with no-fault benefits **without regard to fault**. Hence the usage of the phrase “no-fault.”

You may be surprised to learn that certain illegal operations of a motor vehicle do not necessarily disqualify you from receiving no-fault benefits (except if the car was stolen).

Engaging in the following conduct, though foolish, unlawful and punishable in other ways, will not disqualify you from no-fault:

- **Dangerous driving**
- **Negligent behavior**
- **Drunken driving**
- **Unlicensed driving**





## VI. MAKING YOUR CLAIMS FOR BENEFITS

The No-Fault Law provides a protocol for the handling of claims:

All claims must be made before the statute of limitations expires. That is generally within 1 year, but you can't be too careful. See section on Statute of Limitations below.

1. **Claims submitted with reasonable proof must be paid within 30 days;**
2. **If the insurer believes that reasonable proof has not been submitted, they must so inform the claimant in writing within 30 days;**
3. **Properly submitted claims that are unpaid after 30 days are considered overdue and bear 12% simple interest per year as a penalty;**
4. **If the insurer unreasonably delays or refuses to pay, they may be subject to a penalty attorney fee.**



This protocol suggests that claimants must put their claims and correspondence in writing, carefully monitor the insurer's progress, and make every effort to follow up in a courteous and professional manner. If the insurer requests further documentation, it should be provided to the extent reasonable. Only when it is plain that the insurer will not pay should the claimant then seek to litigate.

## WHOSE INSURANCE PAYS, IF NOT MINE?

The rules of priority can be technical. Generally, the injured person's own (or resident family member's) insurer pays first. However, there are numerous exceptions. If no other insurance is available, and the injured person is not disqualified, the State of Michigan provides insurance through the Michigan Assigned Claims Plan, or "MACP." As of June 11, 2019 benefits through the MACP are capped at \$250,000.



## THE MICHIGAN ASSIGNED CLAIMS PLAN ("MACP")

The MACP is an agency within the State of Michigan that essentially pays for your no-fault benefits if no other insurance is available for you.

You must apply by filling out a form. You may obtain this form by writing, calling or e-mailing the State of Michigan's Assigned Claims Plan at:

**MICHIGAN ASSIGNED CLAIMS PLAN**  
**P.O. Box 532318 Livonia, MI 48153**  
**E-mail address: [info@macp.org](mailto:info@macp.org)**  
**Telephone: (734) 464-8111**



To find out more, you may also visit them at their website:  
<http://www.michacp.org>

**Tip: Do not wait until the last minute to contact the MACP. It takes time to process your request. Filing a claim too late could result in lost benefits. (See section on Statute of Limitations.)**

## A WORD ON MOTORCYCLES

As discussed earlier, motorcyclists are generally ineligible to receive no-fault benefits unless they sustained injuries arising out of a motorcycle accident involving a motor vehicle.

## VII. STATUTE OF LIMITATIONS ON FILING CLAIMS

### ONE YEAR NOTICE REQUIREMENT

The insured must give notice to the insurer within one year of the accident. The notice must be in writing and state the injured's name and address, as well as the details of the injury and how it happened. Failure to do this properly may forfeit your claim.

### ONE YEAR BACK RULE

Benefits incurred more than one year prior to the filing of a lawsuit may be lost forever.

You may only make a claim for those benefits accrued within the year prior to filing your lawsuit.

**Tip: Do not wait too long to either give notice, make claims, or pursue unpaid claims. Unpaid benefits over 1 year old may be lost forever.**



## **VIII. SETTLEMENT OR "BUY-OUT" OF NO-FAULT BENEFITS**



Occasionally, no-fault insurance carriers will suggest settlement of the no-fault entitlement. This may also be called a "buy out" or "redemption" of the no-fault entitlement. In such a case, the no-fault carrier will offer to pay a certain amount of money in return for a full release on any further claims against the no-fault carrier. This should be approached with great caution.

Settling your no-fault entitlement is much like gambling.  
**BE CAUTIOUS.**

You are gambling that the amount of money you would otherwise have been entitled to is less than or equal to the amount of money that you are getting in settlement. Although all settlements are in effect gambling, the settlement of a no-fault entitlement carries with it great risk. This procedure should be considered only if there is a significant dispute as to coverage, or if competent medical evidence shows that the patient has achieved medical stability. Otherwise, there is not a reliable basis for estimating the value of the no-fault entitlement. All relevant factors should be considered, including obviously the amount offered by the insurance company.

This is not to say that settlement of the no-fault entitlement should never be considered. However, it should be approached with extraordinary caution. As a result, claimants may find themselves in great need for services, and without adequate resources.

## QUICK SUMMARY OF THE NEW LAW:

1. Effective June 11, 2019, uninsured passengers, pedestrians and other non-occupants will generally claim from the Michigan Assigned Claim Plan with a cap on allowable expenses of \$250,000.
2. Effective July 1, 2020, Michigan drivers will be able to choose coverages from full catastrophic coverage to \$500,000 to \$250,000, and even less in some circumstances. **We strongly recommend that people purchase the full catastrophic coverage.**
3. Effective July 1, 2020, Michigan drivers will be required to purchase \$250,000 in residual liability coverage (though they can opt to purchase down to \$50,000). **We strongly recommend that people purchase higher limits, as people injured may have purchased lower no-fault coverage.**
4. Effective July 1, 2021, mandatory fee schedules go into effect. Some of the limits imposed by this fee schedule will be ruinous to the effected providers. For example, the 55% fee schedule will put many providers and even industries out of business. **We strongly recommend that legislative action be pursued to correct this horrible public policy.**

# Frequently Asked Questions

## 1. WHAT DO I DO IF.....

### **I'm injured in a motor vehicle accident?**

- Report the accident and injuries to your no-fault insurer within 24 hours if you can, no later than 1 year.
- Alert all your providers (e.g. doctors and hospitals) that you have no-fault insurance, and provide them with the appropriate information.
- Keep track of all the attendant care provided to you and other expenses such as medical mileage and replacement services.
- Make a claim with your insurance company for all of your benefits as soon as you can before 1 year. Attach supporting documentation to your claim.
- You must not wait more than 1 year to find out if your benefits have been paid. If you are approaching 1 year and the insurer is avoiding paying what is owed, you may need an attorney. Waiting more than 1 year will jeopardize your right to collect benefits.

### **The insurance company denies all payment altogether?**

- If you are indeed eligible for coverage, and are not disqualified for any of the reasons stated in this guide (see section on Disqualification), you may need to see an attorney. You should do so before the statute of limitations has expired.

### **I am overwhelmed by the number of doctor appointments and other information on my case?**

- You may need a case manager.

## 2. IS A MOTORCYCLE/SNOWMOBILE/TRACTOR/BOAT A MOTOR VEHICLE?

- No. You cannot receive no-fault benefits if you were injured while operating one of those, unless a motor vehicle was also involved. (See section on Qualifying for No-Fault Benefits.)

### 3. MY HMO HAS RESTRICTED ME TO CERTAIN CARE PROVIDERS, BUT I HAVE NO-FAULT AND CAN GO WHEREVER I WANT FOR SERVICES, RIGHT?

- Not necessarily. If you sustain injuries which are covered under no-fault, and you also have health insurance, you would be wise to ensure that you remain in your network unless you have uncoordinated benefits. Otherwise, in some situations, you may not be covered by no-fault either. Refer to the section in this guide on Choice of Medical Care.

### 4. HOW DO I MAKE A CLAIM FOR NO-FAULT BENEFITS?

- First, you must report your accident to your insurer. Obtain your claim number from the insurance company. Within one year from the date the expense is incurred, you must send your insurer proof of your claim, as well as any medical records or documents supporting your claim. Spell out exactly what you are claiming, the amount claimed, and why. Do not forget to put your claim number at the top of the page.

## Contacting an Attorney

### 1. WHEN DO I NEED AN ATTORNEY?

- It's always good to contact an attorney to know your rights.

### 2. HOW DO I HIRE AN ATTORNEY?

- Depends on what kind of services you wish your attorney to provide. It is important that you find an attorney that you trust. You may want to arrange meetings with a few that you select. Make sure you bring a list of questions. Some attorneys work on an hourly basis, some on a contingency fee basis. Determine what method of payment is right for you.
- You will sign a retainer agreement. The retainer agreement is a contract to which both you and your attorneys are bound.







## WAYNE J. MILLER

WAYNE J. MILLER has been licensed to practice law in Michigan since 1980. The practice of no-fault insurance benefits is heavily emphasized in the firm, Miller & Tischler, P.C.

### ***Biographical Information:***

#### EDUCATION:

**B.A. University of Michigan, 1976**

**J.D. Wayne State University School of Law, 1979**

#### MEMBER OF:

- State Bar of Michigan
- American Association of Justice (AAJ)
- Michigan Association of Justice (MAJ)
- Brain Injury Provider Council of Michigan
- Brain Injury Association of America (BIAA)
- Brain Injury Association of Michigan (BIAM)
- Advisory Board, South Eastern Michigan
- Traumatic Brain Injury System of the Rehabilitation Institute of Michigan (SEMTBIS) (1990 to present)

#### TEACHING:

- Adjunct Professor of Law, No-Fault Insurance, Wayne State University Law School 1998-present

#### SIGNIFICANT APPELLATE DECISIONS:

- **Bailey v DAIE (1985)**, established the right to vocational rehabilitation under no-fault.
- **Henderson v ACIA, (1987)**, discussed the standard for use in head injury cases with pre-existing neurological disorders.

- *Kondrateg v ACIA* (1987), prevented AAA from imposing limitations on vocational rehabilitation under no-fault.
- *McMillan v ACIA*, (1992), an important decision regarding no-fault trial tactics.
- *Collins v Frankenmuth et. al.* (1992), confirmed the claimant's right to a jury trial under certain cancellation situations.
- *Owens v ACIA*, (1993), clarified a claimant's obligation to use government sources of health care where the claimant has chosen coordinated medical benefits.
- *Profit v Citizens*, (1993), clarified status of social security disability benefits for purposes of government benefit set offs.
- *DePyper v Safeco*, (1999), enforced requirement that cancellation notices include statutory warning.
- *Ardt v Titan*, (1999), limited effect of owned-uninsured vehicle disqualification.
- *Johnson/Houghton v ACIA*, unpublished (August 1, 2000). The Court of Appeals upheld the Heinz doctrine as to guardian/conservator expenses.
- *Lakeland Neurocare Centers (Murff) v Titan*, unpublished (February 6, 2001). The Court upheld coverage for a motorcyclist who hit a car parked in the high speed lane of I-94.
- *Lakeland Neurocare Centers v State Farm*, 250 Mich App 35 (2002). Published decision holding that health care service providers may enforce the no-fault penalty interest and no-fault penalty attorneys' fees provisions.
- *Morales v Auto-Owners*, 469 Mich 487 (2003), clarified that prejudgment interest does accrue during appellate proceedings.
- *USF&G v MCCA*, 484 Mich 1 (2009). Holds that the MCCA has no power to review no-fault insurer payments.
- *21st Century Insurance v Zufelt* (2016). Holds that renewal of insurance policy does not cure a previous fraud in the application for that policy.
- *Regents of the University of Michigan v Valentino* (2019). The Supreme Court makes clear the service providers are proper payees of no-fault benefits, and that it was proper for an insurer to pay directly to the provider.

## HONORS:

- BIAM Legacy Society Award, March 31, 2001
- Featured in the 2005-2014 Edition of "The Best Lawyers of America".
- Recipient of 2007 Most Respected Advocate Award from the Michigan Defense Trial Counsel.
- Named as a "Leader in the Law" of 2015 by Michigan Lawyers Weekly.
- Outstanding Achievement Award, 2019, Negligence Law Section of the State Bar of Michigan.



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