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Bulletin 2008-12

TO: **Motor Vehicle Insurers, Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations**

FROM: **Nonnie S. Burnes, Commissioner of Insurance**

DATE: **September 16, 2008**

RE: **Clarification of Coordination of Benefits under M.G.L. c. 90, §34A and the Interrelationship by and among PIP, Health Insurance and Medical Payments**

This bulletin clarifies certain provisions of Massachusetts Division of Insurance (the "Division") Bulletin B-1990-2 *Coordination of Benefits; PIP, MedPay and Health Insurance/Self-funded Employee Benefit Plans*, issued on September 21, 1990 ("Bulletin No. 90-02"). A copy of Bulletin No. 90-02 is attached. In light of the recent Massachusetts Supreme Judicial Court ("SJC") decision in *Metropolitan Property and Casualty Company v. Blue Cross Blue Shield of Massachusetts, Inc.*, 451 Mass. 389 (2008), the Division issues this bulletin to address the order for the coordination of benefits by and among Personal Injury Protection ("PIP") coverage, Medical Payments ("MedPay") coverage, and health coverage by a health insurance carrier for motor vehicle accident claimants. This bulletin clarifies Section 1 of Bulletin No. 90-02; it does not change Sections 2 and 3.

PIP is a compulsory coverage included in all Massachusetts motor vehicle liability insurance policies. It pays up to $8,000 for a claimant's medical expenses and lost wages. M.G.L. c. 90, §§34A and 34M define PIP benefits under a standard Massachusetts motor vehicle insurance policy and §34A provides for the coordination of benefits between health insurance carriers and motor vehicle insurers.

MedPay is motor vehicle insurance coverage that pays for medical and funeral expenses incurred as a result of a motor vehicle accident. M.G.L. c. 175, §111C. Although motor vehicle insurers are required to offer MedPay coverage of "at least five thousand dollars" under M.G.L. c. 175, §113C, coverage is optional.

On May 12, 2008, the SJC held in *Metropolitan* that a health insurance carrier may defer coverage of medical costs in excess of $2,000 in instances where the claimant has a motor vehicle insurance policy that provides coverage for MedPay and where the health coverage policy contains a clause stating that coverage is secondary to other coverage for health care services ("deferral" language). 451 Mass. at 394-97.

The SJC found that, under M.G.L. c. 90, §34A, PIP benefits under a motor vehicle policy cover medical expenses in excess of $2,000 *only* if the medical expenses are not covered by a health coverage policy. It held that when a health insurance carrier defers coverage on the ground that MedPay benefits exist and that a clause in its contract permits it to do so in light of the existence of such other insurance, the motor vehicle insurer must pay those expenses from the MedPay benefits, rather than from the PIP benefits. *Id.* at 395. The SJC acknowledged that this holding was consistent with the Division's position, previously announced in Bulletin No. 90-02.

No question or dispute exists among health insurance carriers and motor vehicle insurers that the initial $2,000 in medical expenses must be submitted to the motor vehicle insurer to be paid under PIP. *Metropolitan*, 451 Mass. at 390. Coordination of benefits becomes necessary after the initial $2,000 in benefits is exhausted. For example, where a claimant has health coverage, any claims in excess of $2,000 must be submitted to the health insurance carrier for coverage determination and the health insurance carrier is prohibited from denying payment on the basis that the claimant also has PIP coverage. PIP is not required to cover claims denied by a health insurance provider, however, where the claimant has failed to comply with the requirements of the health coverage policy, for example, by seeking out-of-network care. *Id.* at 392. *See Dominguez v. Liberty Mut. Ins. Co.*, 429 Mass. 112, 112-113, 706 N.E.2d 647 (1999).

Where a claimant has no health coverage, PIP covers the first $8,000 in medical expenses. If a claimant has no health coverage, but has MedPay, MedPay benefits are triggered only for costs in excess of $8,000 after the PIP benefit is exhausted, subject to the MedPay policy limits. Where a claimant has health coverage <u>and</u> MedPay, a claimant must submit any bills in excess of $2,000 first to the health insurance carrier, consistent with Massachusetts case law. *Mejia v. American Cas. Co.,* 55 Mass. App. Ct. 461, 771 N.E.2d 811 (2002). If, however, the health coverage policy contains a clause stating that coverage is secondary to other coverage for health care services, the health insurer may deny coverage, thus placing the responsibility for the claims in excess of $2,000 on MedPay. A health insurance carrier *may* deny coverage under these circumstances, but the health insurance carrier is not *required* to do so.

A final point of clarification of Bulletin No. 90-02 relates to the process for submission of claims for expenses in excess of the $2,000 PIP threshold. Regardless of whether deferral language exists in the health coverage policy, claims in excess of the $2,000 PIP threshold should be submitted first to the health insurance carrier. *Metropolitan*, at 396. If the health insurance carrier denies coverage, the motor vehicle insurer can determine whether PIP or MedPay applies based upon the reason for the denial. This amends the provision of Bulletin No. 90-02, that states that claims may be submitted to the health insurance carrier, motor vehicle insurer or both.

Examples of Coordination of Benefits:

1. **Claimant does not have health coverage or MedPay.**

   PIP will pay up to $8,000 in medical expenses and lost wages.

2. **Claimant has health coverage and does not have MedPay.**

   The first $2,000 in medical expenses is covered by PIP and any medical expenses in excess of $2,000 are submitted to the health insurance carrier to determine whether coverage exists. The health insurance carrier cannot deny payment for medical expenses on the basis of the existence of PIP coverage. If the health insurance carrier denies payment for a claim, the claimant may resubmit the claim to the motor vehicle insurer for consideration of coverage under PIP. PIP would not be required to cover a claim that was denied by the health insurance carrier for the claimant's failure to comply with the requirements of the health coverage policy, such as the claimant's receipt of medical services from an out-of-network provider, but PIP must pay costs for items such as dental visits or chiropractic visits if they are not included in the claimant's health coverage policy.

3. **Claimant has MedPay and does not have health coverage.**

   The first $8,000 in medical expenses is covered by PIP and any medical expenses in excess of $8,000 are submitted to MedPay for coverage.

4. **Claimant has health coverage and MedPay.**

   The first $2,000 in medical expenses is covered by PIP and any medical bills in excess of $2,000 are submitted to health insurance carrier for review. If the health coverage policy contains deferral language, the health insurance carrier may deny coverage on the grounds that the claimant has MedPay and MedPay will then be responsible for any medical expenses in excess of $2,000 up to the MedPay policy limits. If the MedPay limits are exhausted, PIP coverage will then be required to cover claims up to $8,000.
   If the health coverage policy does not contain deferral language, the health insurance carrier is responsible for payment of claims in excess of $2,000, except where the health insurance carrier denies coverage for a legitimate reason, such as the out-of-network example in 2. The denied claim is then resubmitted to the motor vehicle insurer for consideration under PIP and, where PIP is not required to pay for a claim that the health insurance carrier denied (for example, because of the claimant's failure to comply with the health coverage policy), the claim must be covered fully by MedPay.