THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE
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TIMOTHY H. GAILEY
COMMISSIONER OF INSURANCE

BULLETIN B-90-2

To: Automobile Insurers, Health Insurers, Blue Cross and Blue Shield, Health Maintenance Organizations, Trial Attorney Associations

From: Timothy H. Gailey, Commissioner of Insurance

Re: Coordination of Benefits and Subrogation Liens Under M.G.L. c. 90, s. 34A, as amended by the Auto Reform Law: Interrelationship Among PIP, Medical Payments and Health Insurance/Self-funded Employee Benefit Plans

Date: September 21, 1990

This three-page bulletin addresses a number of inquiries the Massachusetts Division of Insurance ("the Division") has received regarding the effect of Chapter 273 of the Acts of 1988 ("the Auto Reform Law") on the interrelationship among Personal Injury Protection ("PIP") benefits, Medical Payments ("MedPay"), and health insurance/self-funded employee benefit plan coverage for an auto accident claimant.

First-Party Coverage of Medical Bills

Section 16 of the Auto Reform Law amended G.L. c. 90, s. 34A, the section of the General Laws which defines PIP coverage under the standard Massachusetts auto policy. PIP is a compulsory coverage which pays up to $8,000 for the claimant's medical expenses and lost wages. The amendment requires coordination of PIP benefits with any available health insurance coverage when medical expenses exceed $2,000. G.L. 175, s. 111C, which authorizes the MedPay coverage in the standard Massachusetts auto policy, was not amended.

A common question that has arisen is when a person who is covered by health insurance has, for whatever reason, chosen also to buy MedPay coverage as part of his or her auto insurance package, at what point does the MedPay coverage begin?

Med Pay is an optional auto insurance coverage which pays for medical and funeral expenses incurred as a result of an accident. MedPay applies only after PIP benefits for medical expenses have been exhausted. MedPay coverage does not constitute "a policy of health ... insurance, or any contract or agreement of any [entity] to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services" for purposes of coordination under G.L. c. 90, s. 34A as amended.

Therefore, where there is health insurance coverage available, other than a government plan such as Medicare, Medicaid or CHAMPUS, medical expenses over $2,000 are not payable under PIP, so MedPay begins to provide coverage at that point, not after $8,000 of PIP benefits have been exhausted. Barring language in the health insurance contract allowing it to defer primary coverage to MedPay, or subrogate against the MedPay carrier, after the claimant has submitted $2,000 in medical expenses to the PIP carrier, the claimant may submit further medical bills to either MedPay or the health insurer, or both.

Where there is no health insurance available, PIP will cover the first $8,000 of medical expenses and lost wages, and when PIP benefits have been exhausted, MedPay will cover additional medical expenses.

Self-funded Employee Benefit Plans under ERISA

Sometimes a claimant's employer or a third-party administrator will refuse to pay a claimant's medical bills after the first $2,000 of medical expenses have been submitted to the PIP carrier. The claimant's employer or administrator of the plan may cite exemption from state law as a "self-funded employee benefit plan" under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. s. 1144. If the plan is fully self-funded, state insurance law, including M.G.L. c. 90, s. 34A, is preempted by ERISA. In that case, the plan may contain valid language deferring primary coverage to the automobile insurance carrier, and the PIP carrier will not be able to rely on the coordination provisions in M.G.L. c. 90, s. 34A. PIP must cover up to $8,000 in medical expenses and lost wages, and when PIP is exhausted, the Medical Payments coverage, if any, will apply.

Be aware that not every employee benefit plan that claims exemption under ERISA is fully self-funded. It is the position of the Division of Insurance that partially-insured plans must comply with state law. Partially-insured plans include those which are insured in any way, including any form of stop-loss or excess insurance, aggregate or otherwise, regardless of whether any trigger point has been reached in the individual case.

Health Insurers'/Self-funded Employee Benefit Plans' Right to Reimbursement from Third-Party Liability Settlement or Judgment Proceeds

If a health insurer or employee benefit plan does ultimately pay a portion of the claimant's medical bills, nothing in M.G.L. c. 90, s. 34A, as amended by the Auto Reform Law, precludes it from seeking reimbursement from any liability judgment or settlement proceeds. The Auto Reform Law only changed the rights health insurers may have had against the first-party PIP carrier, and did not affect whatever rights health insurers or employee benefit plans have to subrogate or otherwise recover from any third-party liability judgment or settlement proceeds.

Questions regarding this bulletin may be directed to Mary Bresnicky in the Legal Section, (617) 727-7189, ext. 411.