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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

BULLETIN 2017-06

To: Automobile Insurers, Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations

From: Gary D. Anderson, Commissioner of Insurance

Date: November 22, 2017

Re: Clarification of Coordination of Benefits under 211 CMR 38.00 for Medical Claims Associated with Motor Vehicle Accidents

On October 7, 2016, the Massachusetts Division of Insurance ("Division") adopted new rules and amendments to its Coordination of Benefits ("COB") regulation, 211 CMR 38.00. In light of the update to 211 CMR 38.00, the Division issues this Bulletin to address the coordination of benefits for accident-related medical claims between fully-insured health policies and the Personal Injury Protection ("PIP") and Medical Payments ("MedPay") benefits of motor vehicle liability policies. This Bulletin and the current version of the COB regulation replace and supersede any prior guidance regarding coordination of benefits, including B-1990-2 and Bulletin 2008-12.

Applicability of Coordination of Benefit Rules to Insured Health Plans

The provisions of 211 CMR 38.00 apply to insured health plans issued or renewed in Massachusetts. Carriers should refer to the definition of "Plan" in 211 CMR 38.02, which specifies that a Plan does not include the following:

1. Hospital Indemnity Benefits coverage or other fixed indemnity coverage;
2. Accident only coverage;
3. Specified disease or specified accident coverage;
4. Insured contracts that pay a fixed daily benefit without regard to which expenses are incurred or services received;
5. Medicare Supplement policies;

6. School accident-type coverages that cover students for accidents only, including those contracts covering students for accidents or athletic injuries, either on a 24 hour basis or on a "to and from school" basis;
7. Benefits provided in long-term care insurance policies for non-medical services or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;
8. A state plan under Medicaid; or
9. A governmental plan when, by law, its benefits are in excess of those of any private insurance plan or other nongovernmental plan.

Self-funded employment-sponsored health plans are not subject to state insurance rules and, therefore, are not bound by the provisions of 211 CMR 38.00¹. However, many self-funded employment-sponsored health plan administrators may elect to adopt the rules established within 211 CMR 38.00 to ease the administration of payments for motor vehicle accident-related medical claims.

Medical Expense Benefits within Motor Vehicle Liability Policies

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

MedPay is coverage offered as part of a motor vehicle liability insurance policy. MedPay can pay for reasonable medical and funeral expenses incurred as a result of a motor vehicle accident, as noted in M.G.L. c. 175, §111C. Although automobile insurers are required to offer MedPay coverage of "at least five thousand dollars" under M.G.L. c. 175, §113C, coverage is optional.

Coordination of Health and Automobile Insurance Benefits

The first \$2,000 in medical and funeral expenses incurred as a result of a motor vehicle accident must be submitted to the automobile insurer to be paid under PIP². Coordination of benefits becomes necessary after the first \$2,000 in medical and funeral expenses is paid under PIP.

¹ Since self-funded employee benefit plans are exempt from state insurance laws, a self-funded plan may contain language deferring primary coverage to the automobile insurer, but is not required to do so. If the self-funded plan does contain such deferral language, then the PIP insurer will not be able to rely on the coordination provisions in 211 CMR 38.00. PIP must cover up to \$8,000 in medical expenses, replacement services, funeral expenses and lost wages, and when PIP is exhausted, the Medical Payments coverage, if any, will apply.

² "[P]ersonal injury protection provisions shall not provide for payment of more than two thousand dollars of expenses incurred within two years from the date of accident for medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services if, and to the extent that, such expenses have been or will be compensated, paid or indemnified pursuant to any policy of health, sickness or disability insurance or any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services." *Creswell v. Medical West Community Health Plan, Inc.*, 419 Mass. 327, 332 (1995).

The remaining amount in PIP coverage is coordinated between the claimant's health and motor vehicle insurance plans. Once the first \$2,000 of PIP has been exhausted, any medical-related claims must be submitted to the health insurance carrier for coverage determination, if health coverage exists. The health insurance carrier cannot deny payment for medical expenses on the basis of the existence of PIP coverage. If there is a MedPay benefit within the motor vehicle policy, MedPay coverage is always secondary to and in excess of the benefits of the health coverage and the PIP benefit up to the limits of the MedPay benefit. *See* 211 CMR 38.05(1)(b).

PIP is not required to cover claims denied by a health insurance provider when the claimant has failed to comply with the requirements of the health coverage policy, e.g., by seeking out-of-network care that could have been obtained through one's health maintenance organization health insurance policy. *Dominguez v. Liberty Mut. Ins. Co.*, 429 Mass. 112, 112-113 (1999). However, if MedPay benefits are available, such denied claims would be payable under the MedPay coverage. *Mejia v. American Cas. Co.*, 55 Mass.App.Ct. 461, 466 (2002).

Coordination of benefits between health coverage, PIP and MedPay under 211 CMR 38.00³:

1. Claimant does not have health coverage or MedPay.

PIP will pay up to \$8,000 in medical expenses, replacement services, lost wages, and funeral expenses incurred as a result of an automobile accident.

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

The first \$2,000 in medical and funeral expenses is covered by PIP and any medical expenses in excess of the \$2,000 PIP threshold are submitted to the health insurance carrier. 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, but PIP must pay for reasonable expenses not covered under the claimant's health coverage policy (e.g., copayments; deductibles; and treatment that is not covered by health insurance, such as acupuncture).

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

The first \$8,000 in medical expenses, replacement services, lost wages, and funeral expenses is covered by PIP. Once PIP has been exhausted, medical and funeral expenses are submitted to MedPay for coverage up to the limits of the coverage purchased.

4. Claimant has health coverage and MedPay.

The first \$2,000 in medical and funeral expenses are covered by PIP and any medical bills in excess of the \$2,000 PIP threshold are submitted to the health insurance carrier. The health insurance carrier is responsible for payment of claims in excess of the \$2,000 PIP threshold,

³ Please note that these are general coordination of benefit rules between a fully-insured health plan and the PIP and MedPay coverages of a motor vehicle policy. Under certain circumstances, the PIP and MedPay benefits of a motor vehicle policy may be unavailable, reduced, or eliminated. *See* M.G.L. c. 90, §§34A and 34M; standard Massachusetts automobile insurance policy.

except where the health insurance carrier denies coverage for a legitimate reason (*e.g.*, claim for non-covered service). After payment is made by the health insurance carrier, the outstanding balance on the claim is then resubmitted to the motor vehicle insurer for consideration under PIP and, where PIP is unavailable or not required to pay for a claim denied by the health insurance carrier (for example, because of the claimant's failure to comply with the terms of the health policy), the claim must be covered by MedPay up to the limits of the MedPay coverage purchased.

Generally, the MedPay benefit of a motor vehicle liability policy pays for:

- applicable patient copayments, coinsurance or deductibles under the health coverage;
- health care services that are not covered services under the claimant's health coverage; or
- health care services from providers that are not part of the health coverage's network or were provided without prior authorization under the health coverage.

Restrictions on Billing Automobile Carriers for Amounts Beyond Health Carrier Payments

Where the PIP and MedPay coverages of a motor vehicle liability policy are secondary to coverage under a health plan, the coordination of benefits rules may not be used by a provider to increase the amount of payment to the provider for a service beyond the amount that the provider agreed to accept from the health insurance carrier as payment for the services. Thus, the provider may not bill the motor vehicle liability policy or the insured the difference between the provider's negotiated payment with the health insurance carrier and the provider's charge. Unless otherwise permitted under 211 CMR 38.00, the coordination of benefits rules may not be used to circumvent contractual agreements between providers and health plans by increasing the provider payment or decreasing the amount the provider has negotiated to accept in payment for services, less any required deductibles, coinsurance or copayments. Health plans should include provisions in their provider contracts to account for payments under coordination of benefits.

Limitations to Coordination of Benefits within Insured Health Plan Documents

Fully-insured health benefit plans *may not* include a "coordination of benefits" provision in their contracts making their coverage secondary to other coverage for health care services, including MedPay. Automobile insurers may continue to determine whether PIP or MedPay pays first based on the reason for the health insurance carrier's denial or based upon an exclusion under M.G.L. c. 90, §34A (*e.g.*, felonious conduct) or under the terms of the automobile insurance policy. The Division expects all health carriers to submit amendments to existing policy form materials that remove coordination of benefits provisions that are impermissible under 211 CMR 38.00 (*i.e.*, deferral to MedPay).

Effective Date of Amended Coordination of Benefits Rules

The Division expects all health and automobile insurance carriers to establish systems by no later than January 1, 2018 that comply with the provisions of 211 CMR 38.00 when responding to medical claims associated with automobile accidents that occur on and after that date.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner, Health Care Access Bureau, at 617-521-7323 or kevin.beagan@state.ma.us.