STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2018-13-INS

In the matter of:
Disputes Between No-Fault Automobile Insurers
and Health Care Providers
_____/

Issued and entered
This 6th day of June 2018
By Patrick M. McPharlin
Director

This bulletin supersedes Bulletin 92-03, issued on October 23, 1992.

Bulletin 92-03 contained statements regarding the obligations of auto insurers to their insureds. This bulletin clarifies those obligations in light of recent case law interpreting certain provisions of the Insurance Code (Code).

On May 25, 2017, the Michigan Supreme Court issued an opinion in *Covenant Medical Center, Inc v State Farm Mutual Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017), in which it held that health care providers do not have a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits. See *Covenant*, 895 NW2d at 505.

While *Covenant* limited the ability of health care providers to file suit against auto insurers directly, it did not affect insurers' contractual duty to defend and indemnify their insureds "from liability for necessary services priced in excess of what the insurer considers to be reasonable and customary." *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 583; 543 NW2d 42 (1995) (overruled on other grounds by *Covenant*).

Under principles of contract law, an insurer has a duty to defend a suit if there are any theories of recovery that fall within the policy. See, e.g., *A&G Associates, Inc v Michigan Mutual Ins Co*, 110 Mich App 293, 299; 312 NW2d 235 (1982). "Thus, if the fees which the health care provider seeks to collect under the agreement with the insured concern goods or services which are arguably within the scope of the insured's no-fault coverage, the no-fault insurer not only may but, indeed, must defend the interests of its insured." Opinion of the Attorney General #6865 (Aug. 18, 1995).

In addition, *Covenant* did not alter insurers' obligation to pay "reasonable charges" for "reasonably necessary" products, services, and accommodations for an injured person's care. See MCL 500.3107(1)(a), MCL 500.3157. Together, these sections of the Code "clearly indicate that an insurance carrier need pay no more than a reasonable charge and that a health care provider can charge no more than that." *McGill v Automobile Ass'n of Michigan*, 207 Mich App 402, 502; 526 NW2d 12 (1994). Further, the "customary fee" that a particular provider charges under section 3157 does not define what constitutes a "reasonable charge" under section 3107. See *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365; 670 NW2d 569 (2003). Rather, the "customary fee" is simply the cap on what health care providers can charge, and is not, automatically, a "reasonable charge requiring full reimbursement under section 3107." *Id.* at 376.

The Director reminds auto insurers and health care provides that "the public policy of this state is that the existence of no-fault insurance shall not increase the cost of health care." *Id.* (internal citation omitted). The "plain and ordinary language of section 3107 … evinces the Legislature's intent to place a check on health care providers who have no incentive to keep the doctor bill at a minimum." *McGill*, *supra*, at 408. Therefore, "not only should an insurer audit and challenge the reasonableness of bills submitted by health care providers, but the providers should expect no less." *LaMothe*, *supra*, at 582, n 3. "[C]onsequently, insurers must determine in each instance whether a charge is reasonable in light of the service or product provided." *Advocacy Org*, *supra*, at 379.[1]

The Director will monitor these issues to ensure that insurers satisfy their duty to defend insureds and obligation to pay "reasonable charges" for "reasonably necessary" products, services, and accommodations; and that health care providers are only charging "reasonable amounts for the products, services and accommodations rendered." MCL 500.3157.

Any questions regarding this bulletin should be directed to:

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/s/

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Director

[1] In this regard, the Director notes that Michigan courts have expressly approved an insurer's determination of reasonableness in which it reimbursed 100% of a health care provider's charge where it did not exceed the highest charge for the same procedure charged by 80% of other providers rendering the same service. See *Advocacy Org*, *supra*, 257 Mich App at 381-382.