STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2019-11-INS

In the matter of:

Disputes Between No-Fault Automobile Insurers
and Health Care Providers
_____/

Issued and entered
This 28th day of June 2019
by Anita G. Fox
Director

This bulletin supersedes Bulletin 2018-13-INS, issued on June 6, 2018.

Public Acts 21 and 22, enacted on June 11, 2019, amended numerous provisions of the Insurance Code of 1956, MCL 500.100 *et seq*. (Code), including Section 3112, MCL 500.3112. Section 3112, after amendment, now provides: "A health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person."

As amended, Section 3112 overturns *Covenant Medical Center, Inc v State Farm Mutual Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017), which held that health care providers did not have a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits. The amended statute provides the "statutory cause of action" found lacking by the Supreme Court in *Covenant*. In addition, the amended statute renders Bulletin 2018-13-INS obsolete because the bulletin was issued to explain the impact of the *Covenant* decision on disputes between no-fault automobile insurers and health care providers.

Bulletin 2018-13-INS also addressed the "reasonableness" of health care providers' charges, and auto insurers' obligation to pay "reasonable charges" for "reasonably necessary" products, services, and accommodations for an injured person's care. Public Acts 21 and 22 did not alter this fundamental principle.

Public Act 21 also requires the implementation of reimbursement rate caps beginning July 1, 2021. Until that date, auto insurers and health care providers are reminded 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). "[C]onsequently, insurers must determine in each instance whether a charge is reasonable in light of the service or product provided." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 379; 670 NW2d 569 (2003).[1] In light of the immediate effect of the amendment to Section 3112, health care providers may assert a direct cause of action against an insurer or the Michigan Assigned Claims Plan when there is a dispute over the

[1] In this regard, the Director notes that Michigan courts have expressly approved an insurer's determination of reasonableness when the insurer 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.

reasonableness of charges.

Any questions regarding this bulletin should be directed to:

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/s/

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