

Confusion lingers after signing of auto insurance bill

Attorneys predict potential impacts of no-fault changes

By: Thomas Franz in News Stories June 20, 2019

Following the signing of a new auto insurance bill that will change the way drivers select insurance coverage, no-fault and insurance defense attorneys have questions and concerns about how the bill will influence cases stemming from car accidents in the future.

Attorneys on both sides of typical no-fault cases said the bill leaves many holes that will need to be filled by opinions and appeals in the near future.



"I think we're going to be exceedingly busy, and one of the reasons is this bill was drafted in the middle of the night and is so poorly written, it is going to take years to sort out," said Nicholas Andrews, a partner at Liss, Seder & Andrews PC in Bloomfield Hills.

Insurance defense attorney Adam Fadly of Foster Swift Collins & Smith PC in Southfield explained that while the new levels of coverage take effect in July 2020 and the new fee schedule takes effect in July 2021, the bill is silent on how its new provisions will apply effective May 30, 2019, as to the order of priority as it relates to qualifications of independent medical examinations that are ordered by insurance companies.

"The question that remains is do these changes, are they applied to accidents that occurred before May 30 or only to benefits that occurred after May 30? That's something defense attorneys will have to take a look at," Fadly said.

The bill was signed by Gov. Gretchen Whitmer on May 30.

One component that has Andrews concerned relates to the prompt-payment-of-benefits statute in the old law, which required an insurance company to pay a benefit within 30 days of receiving reasonable proof of the amount of loss sustained.

"Under this new approach, there appears to be many more layers of bureaucracy that almost turned that concept on its head," Andrews said. "Lawyers and claimants navigating that bureaucracy, it's going to be far more difficult."

Stephen Sinas, a no-fault attorney with Sinas Dramis Law Firm in Lansing, said the new law allows people who are drawing no-fault benefits under capped policies to pursue their excess medical and excess work loss from at-fault drivers. That aspect of the new law will lead to much more litigation, Sinas said.

"There is a huge financial exposure that every Michigan driver has now under the law, and they will have to pay more in their liability insurance," Sinas said. "I predict the law will result in a fault-finding frenzy that will take place in our courts regarding any auto accident involving anyone injured."

Fadly said the volume of lawsuits will depend on how many drivers buy a PIP coverage for allowable expenses or opt out.

"The plaintiff and defense attorneys will have to adapt to the changes and they'll always be creative in employing new litigation tactics," Fadly said. "We'll all have to be patient while appeals get filed."

Sinas said Michigan courts have not had to deal with findings of fault in auto cases in the way they will under the new law.

"Under the new law, people need to pursue tort actions to fund their medical care, which will make those actions more necessary to pursue and it will result in people filing lawsuits quicker than they normally needed to do," Sinas said.



Steven Gursten of Michigan Auto Law in Farmington Hills predicted that lawyers who tend to take on third-party tort cases with bigger policy limits will benefit from the new law, while PIP lawyers will suffer.

"If the majority of people are now going to choose lower PIP cap policies, then PIP isn't going to exist as it does now," Gursten said. "Regarding third-party tort, because we no longer have unlimited PIP, we now have the ability to sue for excess and futures in our third-party tort cases, and that's critically important."

One new area of law that Gursten said many attorneys will have to become very good at quickly is life care planning.

"The new law allows us to sue for both excess and future economic loss. That includes common medical care for their injuries because there's not going to be PIP anymore to pay for it," Gursten said.

"Now, the focus is going to be on what's the reasonable value of these needs projected over the course of their lifetime, and how is it going to be admissible in court. That's where normally you'd hire a special nurse or someone with experience in life care planning so you can bring that evidence to court and protect your client."

Regarding other impacts on the defense side, Fadly said vetting independent medical examination physicians will be critical in the event there's a challenge to their qualifications.

"There could also be a lot of issues that arise with policies that are rescinded or claimants think they have coverage at a certain level that they don't ultimately have. I think those are issues that will come up that will have to ultimately be ironed out," Fadly said. "Everything from the pleading stage through discovery to trial may ultimately be changed by the changes in the law."

Sinas predicted that a major legal battle will occur over whether the new limitations for fee schedules and attendant care limitations apply to people already injured prior to the new law taking effect.

"That issue will cause chaos in the system," Sinas said. "This will result in a significant reduction in people pursuing first-party no-fault cases. However, that reduction will be counterbalanced by the increase in the auto liability cases that will be filed."

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