



DOMICILE AND NO-FAULT REFORM

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The July 1, 2020, effective date of significant amendments to Michigan's system of no-fault automobile insurance requires everyone to pay attention and make thoughtful decisions about what coverage best serves their needs. Less expensive policies, with limited coverage for medical care and related expenses¹ (called "PIP") are available. No one should choose coverage based on price alone due to changes in liability exposure for at-fault drivers and the owners of the cars they drive.

No-fault changes require special attention by divorced and never-married parents, and the family law attorneys who represent them, because of one change in particular that concerns children whose parents do not live together. In order to properly advise our clients, we need to take another look at the Supreme Court decision in *Grange Insurance Company of Michigan v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013). In a dispute between insurance carriers under Michigan's no-fault law, the Supreme Court held that a child may have only one domicile and that the custody and parenting time order, not the actual custodial situation of the child, determines what that domicile is. This rule affects medical expense coverage for children injured in auto accidents and helps guide what our clients and former clients should be doing to prepare for the change in the law.

Changes Everyone Needs to Consider

Under Michigan's current no-fault insurance law, all medical expenses related to injuries sustained in an automobile accident, regardless of how much they might be, will be paid by the insurance company with priority, divided by companies of equal priority, or paid by the State through the Assigned Claims Plan ("ACP"). That changes significantly on July 1. Automobile owners and drivers are allowed to select lower limits of medical coverage – as low as \$250,000 per person or, even, a policy providing no medical expense coverage at all if the insured has other medical coverage for themselves, their spouse, and all family members who are domiciled in their household. Higher levels of coverage, including unlimited coverage, are available to Michigan vehicle owners and drivers, at higher premium rates. This aspect of no-fault reform was well publicized and should not come as a surprise to most families.

Another aspect of no-fault reform that did not receive substantial publicity is the dramatic reduction in who is entitled to receive medical expense benefits under a no-fault policy if they are injured in an automobile accident. Under prior law,² everyone injured in a motor vehicle accident was entitled to unlimited medical expense coverage from either their own auto insurance policy, which includes the policy of the parent with whom a child is domiciled; from the policy covering the driver or owner of the vehicle if they do not have their own coverage; and, if no other coverage can be found, from the ACP. Importantly, there was no tort liability for medical expenses,³ with limited exceptions, regardless of fault. The amended law eliminates no-fault insurance medical expense coverage and reinstates tort liability for injuries to unrelated passengers, related passengers not domiciled with the insured or their spouse, and pedestrians under all no-fault policies. Passengers and pedestrians who are not family members domiciled with the insured are entitled to medical expense payments only from their own policy, if they have one, or the ACP. That coverage is unlimited until July 1 – but then is limited to \$250,000 per person. The injured person can seek tort damages from an at-fault driver or owner for losses above that limit (if they were not more than 50% at fault for the accident) and, if interpreted as literally written, the ACP may be able to seek reimbursement of its payments from the at-fault driver or vehicle owner in tort.

Additional Considerations for Divorced and Never-married Parents

Standard no-fault coverage no longer provides any medical expense coverage or indemnity for passengers or pedestrians who are not the policy owner, their spouse or a family member who is domiciled in their home. What this means for divorced or never-married parents is that, in almost all cases, only one parent will be legally able to provide medical expense insurance for injuries to the child caused by an automobile and, if that coverage is not unlimited, there may be unprecedented amounts of uninsured medical expenses beyond the ability of their family to pay. Many health insurance policies excluded benefits for automobile accidents because no-fault paid those claims. In some cases, the child may be forced to

sue their parent to secure adequate medical care if that parent was the at-fault driver or owner.

The risk of uninsured medical expenses can be mitigated by requiring the parent with whom the child is domiciled to provide unlimited medical expense coverage in their household no-fault policy. As noted briefly in the introduction, which parent can provide the child with no-fault insurance coverage depends on what the judgment or custody order says, not what the parents actually do or who they want to provide coverage. With regard to parents and the domicile of a child, the *Grange* issue, the law is clear –

- the home of whichever parent is declared to have sole or primary physical custody is the child's domicile;
- if the judgment or order says joint physical custody, but contains a parenting time schedule, the home where the child is described as spending more overnights is the domicile;
- only where the judgment or order says joint physical custody (or doesn't specify physical custody) and the parenting time schedule is exactly 50/50 does the child have a domicile with whichever parent has physical custody – pursuant to the order – at the time.⁴

It is, therefore, critically important for divorced and never-married parents to know what their court orders say and, if necessary, amend their court orders to reflect the actual situation of their families, require adequate coverage for the child, and provide for verification that the order is being followed. The key is a declaration of primary or sole physical custody and, in a joint physical custody case, a specific parenting time plan that clearly states which parent has more overnights or that the parents have exactly the same number of overnights. The no-fault policy secured by the parent with physical custody will provide medical expense coverage for the child for all automobile related injuries. Whenever possible, the physical custodian should be required to secure a no-fault insurance policy with unlimited medical benefits, which will protect the

child and both parents from uninsured medical expenses and tort liability related to injuries to the child.

As a legal matter, the impending effective date of no-fault reform should be deemed “proper cause” to modify custody and parenting time orders to reflect the actual circumstances of each family. Of course, there is no law on this yet. Cooperative parents should be able to submit joint motions or stipulated orders to amend their custody and parenting time provisions. Parents who are not cooperative should file motions as soon as possible so that hearings can be held as soon as court circumstances allow, or the issue can be resolved on written submissions.

This is a new issue because unlimited benefits were available for injuries caused in accidents anywhere in the United States and Canada to Michigan domiciled children or children domiciled elsewhere while they are in Michigan. Divorced, divorcing, and never-married parents should now consider seeking an agreement/obligation to continue unlimited no-fault coverage if that is possible in light of the family's situation. Sometimes, though, having no-fault coverage for the child will not be possible. The physical custodian may be unable to secure no-fault insurance with unlimited medical expense coverage, perhaps because they don't drive, or drive only their roommate's⁵ or employer's vehicle, or live in a state other than Michigan that does not offer unlimited coverage. The physical custodian may also simply refuse to secure no-fault insurance or choose unlimited coverage, or may be unable to pay the premium and lose their coverage.

If the child's medical bills exceed the amount of no-fault medical expense coverage, an at-fault driver has tort liability for those expenses – even if that driver is a parent, grandparent, aunt, uncle, sibling, cousin, or family friend. That individual, or their liability insurance carrier, if any, will have to pay. Bankruptcy can mean no money at all is available to pay the cost of necessary medical care and children may have to go without that necessary medical care. Married parents can decide together what risks they are willing to take in this regard and if either secures coverage, the child is covered. Divorced and never-married parents should try to decide together as well, but that isn't always possible. Since all Michigan children can be expected to ride in vehicles, and only the domiciliary parent's policy and the ACP provide no-fault medical expense coverage, options for when that coverage is insufficient must be explored. Parents should consider limiting who their child can ride with. Just as we require a licensed driver to transport a child, parents may want to add a provision in the custody order prohibiting either parent from allowing the child to ride with anyone who does not have *liability* coverage that would provide medical expense benefits above the \$250,000 that ACP would pay if their child is injured in an accident where the driver is at fault. This would minimize the risk of uninsured medical expenses.

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If the domiciliary parent can't or won't provide coverage, there are options for the parent who does not have physical custodian to limit her or his liability should the child be injured in an automobile accident. Two of them are:

- Try to secure medical insurance covering their child that includes coverage for auto accident injuries, if it is available.
- Try to purchase a sufficiently large liability umbrella policy to pay those medical expenses awarded as damages in a settlement or judgment.⁶

The second suggestion is especially important if the parent who is not the physical custodian is likely to be driving the child in their vehicle and, therefore, potentially liable for uninsured expenses if the child is injured while in their car.

What to Look for Going Forward

All drivers in Michigan need to consider the risks of liability for substantial and increased amounts of damages for causing injury in an automobile accident. The promised cost savings for no-fault coverage will likely be fully offset or exceeded by the cost of additional coverage for umbrella liability policies and/or a new type of uninsured/underinsured coverage that fills the gaps created by the amendments to no-fault – once that coverage is created by companies and approved by the Commissioner of Insurance – for those who want to be protected from the risk of losing their assets to pay a tort judgment. For divorced or never-married parents, the idea of having to sue your co-parent in tort for medical expenses for your child is especially problematic, and bankruptcy will prevent recovery in many cases.

More options will probably become available in the marketplace as Michiganders begin to realize that they have potentially catastrophic personal liability issues and unreliable medical expense coverage for auto-related injuries. As those options become available, we will have more tools to help divorced and never-married parents navigate the cost/benefit analysis to best protect their children and themselves.

Endnotes

- 1 Expenses in addition to medical care are included in the “unlimited payment” provisions of current law and changed as of July 1. Since the point of this article is not to explain the details of what is or isn't included in PIP or personal protection insurance, I am simply using “medical expenses” as shorthand.
- 2 The provision of the new law that changed who is eligible for coverage under a driver's or owner's policy took effect already – with virtually no notice or fanfare.
- 3 Currently, at-fault drivers may still be liable in tort for lost income, pain and suffering, and other damages. Those risks can be insured against through “collision” and “umbrella” coverage carried by the driver or owner.
- 4 The operative language is at 494 Mich at page 512 and in footnote 7. Some of it may be dicta, however, since neither fact situation before the court involved a judgment or order that provided for joint physical custody or was silent as to physical custody.
- 5 A romantic partner who is legally unrelated to a child cannot provide no-fault coverage to their partner's child, even if the adults cohabit.
- 6 If you or any person drives unrelated individuals in their car who are unlikely to have their own insurance, such as their child's friend from a home without a car, or a work colleague from out of state, umbrella liability coverage is a good idea – not just for divorced or never-married parents.

