

COORDINATION OF BENEFITS – HEALTH INSURANCE AND AUTO MEDICAL PAYMENTS

Being an agent is NOT easy – especially when laws and/or regulations change, insurance policy language changes, court cases change interpretation of insurance policies even when policy language doesn't change – and YOU have to keep track of all these changes in order to properly and correctly discuss insurance with clients.

So... remember a long long time ago ... and Tech Talks ago ... July 2008 (yes it is still archived on massagent.com website as are other prior Tech Talks) about automobile insurance v. health insurance coverage v. medical expenses arising from an automobile claim.

Metropolitan P&C v. Massachusetts Blue Cross 451 Mass. 389 (2008)

So, there was an auto accident/claim in 2002 where an insured was injured in the vehicle and medical bills were submitted under MAP PIP coverage and to the health insurance coverage provided by Blue Cross and Blue Shield of Massachusetts, Inc. Metropolitan, the auto carrier paid \$2,000 medical bills under PIP and considered themselves "done". After all, PIP states that it only pays \$2,000 of the \$8,000 limit for medical bills if there is also a health insurance policy.

(seventh edition 2000 MAP in force for court case) as well as current 2008/2016 MAP PIP excerpt:

Some people have a policy of health, sickness, or disability insurance or a contract or agreement with a group, organization partnership or corporation to provide, pay for, or reimburse the cost of medical expenses ("health plan"). If so, we will pay up to \$2,000 of medical expenses for any injured person. We will also pay medical expenses in excess of \$2,000 for such injured person which will not be paid by a health plan. Medical expenses must be submitted to the health plan to determine what the health plan will pay before we pay benefits in excess of \$2,000 under this Part. We will not pay for medical expenses in excess of \$2,000 that the health plan would have paid had the injured person sought treatment in accordance with the requirements of the health plan. In any case, our total payment for medical expenses, lost wages and replacement services will not exceed \$8,000.

The MM 99 11 amendatory endorsement to the BAP has the same language in the PIP coverage discussion.

PIP language is based on Massachusetts law MGL 90 § 34:

Notwithstanding the foregoing, personal 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. No policy of health, sickness or disability insurance and no 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, shall deny coverage for said expenses because of the existence of personal injury protection benefits. Notwithstanding the provisions of section seventy A of chapter one hundred and eleven of the General Laws, no entity which is the source of the provision, payment or reimbursement of said expenses shall recover any amount against the claimant nor shall it be subrogated to the rights of the claimant for claimant's personal injury protection benefits on account of its provision

payment of reimbursement of said expenses.

What happened in Met v. Blue Cross

The insured had purchased \$10,000 Part 6 Medical Payments. Metropolitan paid the first \$2000 of medical bills as required by policy language. Metropolitan declined any further medical bills even from Part 6 Medical Payments as they felt that health insurance carrier should be primary after the \$2000 PIP has been paid out.

Blue Cross stated that the language in its subscriber certificate makes it "secondary" and it can decline payment of medical expenses when ANY another insurance policy provides coverage. The MA Supreme Court agreed as MA law only discusses medical expenses payment under PIP and coordination with health insurance companies. There was no Massachusetts law regarding primary v. secondary status of Part 6 Medical Payments.

Metropolitan stressed that MP under the MAP/BAP is "intended to cover expenses not otherwise covered under a health insurance plan or PIP, such as co-payments, out-of-network care, and out-of-formulary prescription medications". Optional automobile medical payments were NOT intended to reimburse the nasty old health insurance carrier for doing what it would HAVE to do if the insured did NOT have automobile medical payments! (This is what I was taught years ago and ... believed.)

Alas, the MA Supreme Court still agreed with Blue Cross.

4. Conclusion. Because we find nothing in the statutory language governing PIP or MedPay to prohibit health insurers from deferring coverage due to the existence of MedPay benefits, we affirm the order of the Superior Court judge granting summary judgment in favor of the defendant **Blue Cross**

Automobile PIP is primary for the first \$2000. The Supreme Court stated: because the intent of MGL 90 § 34A is to "reduce the cost of **compulsory** motor vehicle insurance," the medical expenses cannot bounce back to PIP, but MUST be payable under Medical Payments coverage.

MA State Supreme court decided that if the insured has Part 6. Medical Payments coverage there is no legal prohibition from keeping the health insurance company from attaching coverage. "Obviously" the health insurance carriers have set up policy language to be secondary and/or attach limits of other sources and the MAP did not.

In 2003 the Division of Insurance Assistant General Counsel wrote the following to the MA Chiropractic Society:

"[I]f [a] health insurance contract contains language deferring primary coverage to the Medical Payments [c]overage ... then the Medical [P]ayments coverage should provide payment for any and all medical bills up to [its] limit ... Typically, if the health provider has deferring language in their [sic] contract, then the PIP pays the first \$2,000 in bills, Med Pay pays up to its limit and then the [h]ealth [p]rovider would pay for the medical expenses in accordance with its contract provisions and any uncovered bills may be paid by the PIP coverage if there is any remaining PIP money It is this Division's opinion that the above sequence of payment is the standard practice between the PIP, Medical Payments and [h]ealth [i]nsurance providers."

So ... the health insurance company can take your medical payments....

How fair is that if a premium has been paid for health insurance and a premium is paid for automobile medical payments, shouldn't the client be able to use both? Health insurance has co-payments and exclusions. If the insured needs surgery the health insurance normally pays that. But what about the resulting scars? Will the health insurance carrier pay for cosmetic surgery to remove scarring? Most probably not. Could automobile medical payments pay the cosmetic surgery expenses to remove scars incurred in an automobile accident? Most certainly. Why should my health insurance carrier get what IT paid out reimbursed and leave me with NOTHING for the expenses that it (health insurance) doesn't pay? I personally don't think this is fair.

Is there coordination of benefits language in optional medical payments – BAP or MAP since there is no "law" protection?

Neither the 2000 MAP (edition date applicable to court case) nor the 2008 MAP discuss coordination of Part 6 Medical Payments with other than automobile insurance coverage.

If someone covered under this Part is also entitled to Medical Payments coverage under another auto policy issued to you or any household member, we will pay only our proportionate share. If someone covered under this Part is using an auto he or she does not own at the time of the accident, the owner's automobile Medical Payments insurance must pay its limit before we pay. Then, we will pay up to the limit shown on your Coverage

Selections Page for any expenses not covered by that insurance.

We will not pay benefits under this Part which duplicate payments made under the Medical Payments coverage of any other auto policy.

The language in the commercial auto MM 99 13 Medical Payments endorsement (the edition applicable to court date as well as current 2013 edition) doesn't coordinate outside automobile coverage. The endorsement states:

3. The reference in Other Insurance to "other collectible insurance" applies only to other collectible auto medical payments insurance.

So ...from the 2000 Seventh edition MAP to the 2008 MAP, Part 6 Medical Payments did NOT coordinate with "non-auto policies". The BAP Massachusetts MM 99 13 Medical Payments endorsement for the BAP has stated the same "auto policy only" coordination language from the 1998 edition applicable to court case date to the present 2013 edition.

2016 MAP ... has finally modified Part 6 coverage coordination

The most current MAP, 2016, has added non-auto policy coordination language:

No payments will be made under this Part that duplicate payments made for the same bodily injuries under Parts 1, 2, 3, 5, or 12 of this Policy. In addition, no payments will be made under this Part that duplicate payments made for the same bodily injuries under any other auto insurance policy or under a health insurance policy covering the injured person.

Good News ...

What about those carriers still on the 2008 MAP? Will the health insurance companies be able to access the insured's medical payments coverage reimbursing the health insurance company for what it paid out and leaving the insured with nothing left for medical bills NOT payable under the health insurance policy such as cosmetic surgery to remove scars?

MA DOI 211 CMR 38 Coordination of Benefits

NOT since October 2016 per Massachusetts 211 CMR 38 Coordination of Benefits. If you want an entire copy you can access it through <http://www.mass.gov/ocabr/docs/doi/legal-hearings/211-38.pdf>. I have selected certain excerpts of the 2016 regulation:

211 CMR 38:01 Purpose and Availability states:

211 CMR 38.00 establishes an order in which Plans pay their claims when a person is covered by more than one Plan. Any Plan which contains a Coordination of Benefits provision must comply with 211 CMR 38.00. A Plan that does not contain such a provision may not take the benefits of another Plan into account when determining its benefits.

211 CMR 38.05: Order of Benefit Determination

Each Plan determines its order of benefits using the first of 211 CMR 38.05 that applies:

(1) Medical Payments Coverage and PIP Coverage in Motor Vehicle Insurance Policies

(a) If a person who has a Health Benefit Plan and a motor vehicle insurance policy incurs expenses or requires services as a result of an accident with a motor vehicle:

Personal Injury Protection, as defined by M.G.L. c. 90, § 34A, shall always be primary and pay the first \$2,000 of expenses as allowed under said statute. PIP shall thereafter be secondary to any such Health Benefit Plan(s) and shall coordinate with the Health Benefit Plan(s) pursuant to M.G.L. c. 90, §§ 34A and 34M.

(b) Medical Payments Coverage under a motor vehicle insurance policy shall always be secondary to and in excess of any Health Benefit Plan or Personal Injury Protection, as defined under 211 CMR 38.00.

So the 2016 regulation makes auto medical payments SECONDARY to health insurance coverage. The regulation applies ...period...whether the policy has coordination of benefits language or not.

Have some of your auto insurance companies already started invoking this 2016 regulation. Yes

Is this new regulation or 2016 MAP language good or bad?

Well, I guess ... it depends. Some lawyers might be unhappy in a situation where the client/insured is not at fault and is suing the "guilty party". Prior to 2016 MAP or 211 CMR 38 if the insured has \$25,000 medical payments coverage under the MAP, then the health insurance company would subrogate against the automobile insurance carrier to recoup what it had paid out already up to the auto medical payments limit. The health insurance carrier will also "attach" the potential bodily injury award that the client/insured might receive. The fewer medical bills remaining after the health insurance carrier receives subrogation payment from the auto carrier leaves the lawyer and his/her client more judgment money to split.

I suppose from that standpoint it is "sad" that there is a MA regulation removing the health insurance carriers right to attach my auto medical payments coverage. Now, the only place the health insurance carrier can go is against my potential judgement/settlement.

From the standpoint of an insured who paid for automobile medical payments and is injured and has bills/expenses that are NOT payable by the health insurance company and no one to "sue", then I'm happy with this 2016 regulation.

Whether the auto carrier has decided to use the 2016 MAP or not, the MA regulation 211 CMR 38 Coordination of Benefits will still apply.

As usual, if I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs at 1-800-742-6363 or ... BETTER YET email me at imorrill@massagent.com.

This article has been developed expressly for the members of MAIA. Reprint by other than members without the express permissions of the author is not permitted.

Thank You Company Partners 2017 for supporting MAIA's mission to strengthen and elevate the independent insurance agents of Massachusetts. We appreciate your generous support.

DIAMOND PARTNERS



PLATINUM PARTNERS



GOLD PARTNERS



91 Cedar Street, Milford, MA 01757
508-634-2900 • 800-742-6363
massagent.com®

inquiries to Melissa Murphy • mmurphy@massagent.com