

A Legal Update

Russell, McTernan and McTernan
839 Washington Street, Norwood, MA 02062

Whose Insurance Company Is This Anyway?

As many of you are aware, Massachusetts has a No-Fault system of automobile insurance. Under No-Fault, your auto insurer is obligated to pay up to \$8,000.00 in reasonable and necessary medical expenses and/or lost wages incurred as a result of an auto accident regardless of who is at fault. This protection is called Personal Injury Protection (PIP) and is compulsory for all motor vehicles registered in Massachusetts. If you have healthcare insurance, your auto insurer must pay the first \$2,000.00 in medical expenses and/or lost wages and then is only obligated to pay additional lost wages and/or medical expenses (if not covered by your healthcare insurer) up to the \$8,000.00 limit. You have no right to sue a negligent driver for pain and suffering unless you have more than \$2,000.00 in medical expenses or meet other statutory requirements (death, fracture, serious scar or disfigurement, etc.).

You, as the policyholder, need to do certain things to ensure that you receive these benefits. First and foremost, you must cooperate with your insurer. You are required to notify your insurer immediately if you have an accident. A PIP Application must be submitted and consent forms signed authorizing your insurance company to obtain any related medical or lost wage information needed. Furthermore, you must make yourself available for a statement under oath and/or a physical examination by the insurance company's doctor.

In recent years, auto insurers have become very aggressive in limiting or denying PIP benefits. The most common way benefits are limited is to request that you be examined by the insurance company's doctor. Usually the result of such an examination is that you have reached a medical endpoint and treatment is no longer required. Based on that report the insurer will stop paying for medical treatment under PIP claiming the treatment is no longer reasonable and necessary. Such a denial of payments should be challenged if you and your treating doctor believe further treatment is necessary.

Another area where insurers have increasingly denied benefits is in the coordination of benefits between PIP and your healthcare insurer. One insurer denied paying PIP benefits because the claimant sought treatment outside of his healthcare network. When the claimant sued the insurer for breach of contract, the Supreme Judicial Court of Massachusetts upheld the insurer's position that it was not responsible for

the payment of medical expenses that would have been covered by the healthcare insurer had the claimant stayed within his network. A second insurer has taken it one step further and has denied not only PIP coverage but coverage under an optional medical payment provision of the policy as well.

What can you do to protect your right to these benefits? First, if you feel you are being treated unfairly, give us a call and we will be glad to help you. Second, treat within your own healthcare network. If you need services that your healthcare insurer does not provide, make sure you get the referral necessary for that treatment. Lastly, if your insurer requests that you attend a medical examination you must cooperate. Though benefits can be denied for cancellations and no-shows that does not mean that you have to attend on the date and time or the place set by the insurer. Call them and reschedule the exam for a mutually agreeable time and place.