

At the end of October 2009, the Michigan Catastrophic Claims Association issued a Claim Bulletin. The Claim Bulletin will affect the handling and settlement of No-Fault PIP Claims in the State of Michigan. The Bulletin announces a new reporting requirement for member carriers. The MCCA now requires pre-approval for all proposed PIP claim settlements that involve:

1. Any written settlement agreement of a disputed claim;
2. Any agreement setting an attendant care rate; and
3. Any agreement to purchase or modify a home or van.

This reporting requirement and involvement of the MCCA is effective immediately. The Claim Bulletin leaves many questions that have yet to be answered. Questions such as how long will the review take place, when does an insurance carrier access the MCCA or what needs to be submitted to the MCCA will be answered as this process develops.

Please see below for the full MCCA Bulletin.



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CLAIM BULLETIN

MCCA WILL APPROVE WRITTEN SETTLEMENT AGREEMENTS AND AGREEMENTS TO SET ATTENDANT CARE RATES

Background

On July 21, 2009, the Michigan Supreme Court ruled in *United States Fidelity Insurance & Guaranty Company v Michigan Catastrophic Claims Association* that the MCCA does not have the authority to deny a member's request for reimbursement on the basis that the member paid an unreasonably high charge for a reasonably necessary product, service or accommodation for an injured person's care, recovery, or rehabilitation. The Court stated "that the indemnification obligation set forth in § 3104(2) does not incorporate the reasonableness standard that § 3107 requires between claimants and member insurers." This 4-3 decision followed a motion for rehearing and reversed the Court's December 29, 2008 decision in the same case.

The Court went on to suggest that the MCCA could protect itself from having to reimburse members for unreasonable payments made to PIP claimants by requiring members to submit proposed settlement agreements to the MCCA for approval. The Court stated as follows:

The MCCA has the power to step in before a settlement has been reached and adjust situations that it anticipates might otherwise expose it to unreasonable indemnification costs. By requiring submission of proposed settlement agreements for approval, the MCCA can protect itself against later having to pay unreasonable claims from member insurers. The exercise of these powers is the MCCA's protection against a member's neglect of its duties.

All three dissenting Justices agreed with the four Justices in the majority that the MCCA could protect itself in this fashion. Thus, all seven Justices of the Michigan Supreme Court concur that the MCCA should require member insurers to submit proposed settlements to the MCCA for approval before they become binding.

New Reporting Requirement

This Bulletin announces a new reporting requirement for member carriers. Through this change in procedure, the MCCA intends to foster a closer working relationship between the MCCA and its members. The MCCA's goal is to share its expertise and experience with members as they approach certain stages in the claims handling process, and to ensure

consistency in the use of best practices. To facilitate this partnership between the MCCA and its members, the MCCA has amended its procedures as follows:

Members are required to submit to the MCCA for pre-approval all proposed PIP claim settlements that involve (1) any written settlement agreement of a disputed claim, (2) any agreement setting an attendant care rate, or (3) any agreement to purchase or modify a home or a van, with respect to any PIP claim that a member reasonably anticipates will involve the MCCA if the member insurer is ultimately held legally liable for the injuries or damages. Members must submit all such agreements before they become binding.

Members should submit requests for approval of any written agreement covered by this reporting requirement to the MCCA in writing so that the MCCA has a fair opportunity to review the terms of the agreement and the facts and circumstances relevant to it. The MCCA staff will consult with members or their legal counsel about possible settlements of claims. Members should not seek to compel the MCCA's attendance at court-ordered settlement conferences. Nor should members name the MCCA as a third-party defendant to first-party disputes in an effort to comply with this reporting requirement.

Effective Date

This new reporting requirement is effective immediately. The MCCA will incorporate this new procedure into its next updated Claim Guide. The MCCA intends to provide further guidance on this procedure in the future. In the meantime, you may contact the MCCA directly with any questions you have.
