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NO-FAULT: COORDINATION OF MEDICAL BENEFITS

House Bill 4471 (Substitute H-2) First Analysis (5-19-98)

Sponsor: Rep. James McNutt
Committee: Insurance

THE APPARENT PROBLEM:

Under Michigan's no-fault auto insurance system, policyholders who have other medical coverage can reduce their auto insurance premiums by coordinating the no-fault policy with the other coverage. When coverages are coordinated, the motorist looks first to the medical or health care coverage and the no-fault policy is secondary. Representatives of some health care provider groups, including chiropractors and dental specialists, have complained that some no-fault policyholders who are also members of health maintenance organizations (HMOs) are being told by their insurers or claims adjusters that the no-fault policy will not pay for care outside the health care plan until coverage under the plan has been exhausted, even when the health care plan does not include the services needed by the injured person. This, critics say, is contrary to the intent of the law and leaves injured victims of auto accidents without care they need.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to specify that an auto insurer providing personal injury protection (PIP) benefits under a policy that was coordinated with a health insurance policy, certificate, or contract, or health benefit plan is liable for allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation under Section 3107.

The bill also states, "This amendatory act does not alter or affect the decision rendered in *Tousignant v. Allstate Insurance Company*, 444 Mich 301 (1993)."

MCL 500.3109a

BACKGROUND INFORMATION:

In the Michigan Supreme Court case cited in the bill, *Tousignant v Allstate Insurance Company*, a woman

with a coordinated policy who was injured in an auto accident sought payment for services provided by a physician and a dentist who were not affiliated with her health maintenance organization, and her auto insurer refused to pay bills of non-HMO providers without a referral from the HMO. (The insured acknowledged the auto insurer had told her this and did not contend that necessary medical care was unavailable or of inadequate quality at the HMO.) The circuit court granted summary disposition for the auto insurer, but the Michigan Court of Appeals reversed. Subsequently, the state supreme court reversed the court of appeals.

The supreme court held the following (quoting the decision summary):

"A no-fault insurer is not subject to liability for medical expense that an insured's coordinated health care insurer is required by contract to pay for or provide.

1. Where, as in this case, no-fault and health care coverages are coordinated and, as in this case, the health care insurer also is a health care provider [an HMO], and a no-fault insured obtains medical care for injuries sustained in an automobile accident from or through the health care insurer, the legislative purpose underlying [coordination of benefits] of avoiding duplicative payment is achieved because the no-fault insurer is relieved of liability for payment. That purpose requires an insured who chooses to coordinate benefits to obtain payment and services from the health care insurer to the extent of the health care coverage available.

2. Coordination of benefits is optional, with resultant lower premiums. When elected, health insurance provides the primary coverage. Where the coordinated health care coverage chosen is provided by an employer through a health maintenance organization, a no-fault insured will be limited in the

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choice of physicians and facilities to those provided by the HMO. Section 3109a does not require that a no-fault insured be afforded a wide choice of physicians or facilities. In choosing coordination with an HMO, the no-fault insured agrees to relinquish the choice of physicians and facilities.

The Insurance Bureau is neutral on the bill. (5-18-98)

The Michigan Insurance Federation is opposed to the bill. (5-15-98)

3. Allstate's no-fault policy provides that only those expenses that the health care insurer is not obligated to pay for or provide will be paid by it, and is a fair construction of the meaning of primary coverage under [section 3109a] as construed in case law. Where, as in this case, there is no claim that the health care insurer would not or could not provide the necessary medical treatment, there is no basis for a finding that health care benefits were not available from the health care insured." (Emphasis added)

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no impact on the state or on local units of government. (Fiscal Note dated 5-18-98)

ARGUMENTS:

For:

The bill would ensure that people injured in auto accidents will get the care they need and will not be denied necessary care because they have coordinated their no-fault policy with other health care coverage. The bill would reinforce what the current law intends, that the no-fault policy covers care that the health care policy or plan does not cover or provide. The no-fault act intends that people injured in motor vehicle accidents get care; the purpose of the coordination-of-benefits option is to see that injured persons not receive duplicate payments.

Response:

There is some concern that the bill, which appears to reinforce the intent of current law, will instead lead courts to search for some additional legislative purpose and expand insurance coverage as a result.

POSITIONS:

The Michigan Chiropractic Society has indicated support for the bill. (5-13-98)

The Michigan Association of Orthodontists has indicated support for the bill. (5-13-98)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.