

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

**Effective Date of the Cap on PIP Benefits
Provided Under the Michigan Assigned Claims Plan**

Order No. 19-049-M

**Issued and entered
this 24th day of September 2019
by Anita G. Fox
Director**

I. BACKGROUND

Public Acts 21 and 22 of 2019 were enacted into law on June 11, 2019. Several provisions of the Insurance Code (Code) that were amended by PA 21 and PA 22 were effective June 11, 2019; other provisions are not effective until July 2, 2020.

It has come to the Director's attention that the Michigan Automobile Insurance Placement Facility (MAIPF), which administers the Michigan Assigned Claims Plan (MACP), may attempt to impose a \$250,000 cap on benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7)(a), prior to July 2, 2020.

The authority for this order is derived from the following:

- the authority conferred upon the Department of Insurance and Financial Services (DIFS) pursuant to Section 200 of the Code, MCL 500.200, and its obligation to execute the laws of this state in relation to insurance;
- the Director's authority to issue orders in the reasonable exercise of discretion pursuant to Section 205 of the Code, MCL 500.205, with the intent to adhere to the Code's long-standing legislative purpose to protect policyholders, creditors and the public; and
- the Director's supervisory authority over the MAIPF and MACP as set forth in Sections 3171(3) and 3171(4) of the Code, MCL 500.3171(3); MCL 500.3171(4).

Pursuant to the above authority, this order notifies the MAIPF that any attempt to rely on the amendments made by PA 21 and PA 22 to cap benefits at \$250,000 prior to July 2, 2020, is prohibited.

II. ANALYSIS

Pursuant to Section 3172(7)(a) of the Code, “the [MACP] and the insurer to whom a claim is assigned by the [MACP] are only required to provide personal protection insurance benefits under section 3107(1)(a) up to ... [\$250,000].” See MCL 500.3172(7)(a); MCL 500.3107c(1)(b). An exception exists to the imposition of the \$250,000 cap if the injured person claims benefits through the MACP when, pursuant to Section 3107 or 3019a(2), the person is injured during the 30-day window in which the person had a lapse in qualified health insurance or other health and accident coverages. In that case, the capped amount totals \$2,000,000. See MCL 500.3172(7)(b).

Adherence to sound principles of statutory construction against rendering any part of a statute surplusage or nugatory requires that the effective date of the entirety of Section 3172(7) is July 2, 2020. See *Badeen v PAR, Inc*, 496 Mich 75, 81; 853 NW2d 303 (2014) (“When reviewing a statute, courts should avoid a construction that would render any part of the statute surplusage or nugatory.”).

The Code “was enacted for the benefit of the public and the insurance laws should be liberally construed in favor of policy holders, creditors and the public.” See *Murphy v Seed-Roberts Agency, Inc.*, 79 Mich App 1, 9 (1977) (citing *Dearborn National Ins Co v Comm’r of Insurance*, 329 Mich 107, 118 (1950); *Comm’r of Insurance v American Life Ins Co*, 290 Mich 33, 43-44 (1939)). See also *King v State*, 488 Mich 208, 218 (2010) (“The extensive regulation of the insurance industry provided for in [the Insurance Code] indicates a legislative purpose to protect policyholders.”) (citing *In re Certified Question*, 413 Mich 22, 38 (1982)).

Per the plain language of Section 3172(7)(b), subdivision (7)(b) applies if a person is entitled to claim benefits “under the [MACP] under section 3107d(6)(c) or 3109a(2)(d)(ii) ...” Because the effective date of Sections 3107d and 3109a(2) is expressly July 2, 2020, there is no person who can claim benefits from the MACP under those sections until July 2, 2020, which would render Section 3172(7)(b) meaningless unless its effective date is also July 2, 2020. Subdivisions 7(a) and 7(b) of Section 3172 are interdependent: 7(a) explicitly references 7(b). To avoid a meaningless interpretation of Section 3172(7)(b), the entirety of Section 3172(7) must take effect on July 2, 2020, precluding the MACP from imposing a \$250,000 cap on benefits until that date. This interpretation allows Section 3172(7) to function in a coherent manner and is consistent with the fundamental principles of statutory construction noted above.

The interpretation of Section 3172(7) as having an effective date of July 2, 2020, is further supported by reference to other amendments made by PA 21 and PA 22. In this regard, Section 3009 of the Code, MCL 500.3009, sets forth various liability coverage limits with an effective date of July 2, 2020. If the Director interpreted Section 3172(7) as having an effective date prior to July 2, 2020, pedestrians and uninsured occupants who claim benefits from the MACP subject to the \$250,000 cap, and whose expenses exceed that amount, will be able to sue an at-fault driver for the remainder. However, the defendant driver would be limited to the pre-amendment residual liability protections, and any amount of liability over those amounts could subject the defendant to significant financial harm. This potentially catastrophic exposure to residual liability—which was not contemplated by the policyholder at the time of entry into the existing insurance contract—contravenes the Code’s long-standing legislative purpose of policyholder protection.

II. FINDINGS OF FACT

The Director FINDS that:

1. Public Acts 21 and 22 of 2019 were enacted into law on June 11, 2019. Several provisions of the Insurance Code (Code) that were amended by PA 21 and PA 22 were effective June 11, 2019; other provisions are not effective until July 2, 2020.
2. It has come to the Director's attention that the Michigan Automobile Insurance Placement Facility (MAIPF), which administers the Michigan Assigned Claims Plan (MACP), may attempt to impose a \$250,000 cap on benefits prior to July 2, 2020.
3. The Code was enacted for the benefit of the public, and the Director must interpret it in favor of policyholders and the public.

II. CONCLUSIONS OF LAW

The Director CONCLUDES:

1. Implementation of the \$250,000 cap on MACP benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7), prior to July 2, 2020, would conflict with the longstanding legislative purpose of the Code to protect policyholders, creditors and the public.
2. Implementation of the \$250,000 cap on MACP benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7), prior to July 2, 2020, ignores sound principles of statutory construction.
3. Implementation of the \$250,000 cap on MACP benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7), prior to July 2, 2020, frustrates the intent of other statutory amendments, including the residual liability protections contained in Section 3009 of the Code, MCL 500.3009.

III. ORDER

Therefore, it is ORDERED that the MAIPF shall not impose a \$250,000 cap on MACP benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7)(a), prior to July 2, 2020.

The Director specifically retains jurisdiction of the matters contained herein and the authority to issue such further orders as she shall deem just, necessary and appropriate.

/s/

Anita G. Fox
Director