NEW NO-FAULT CAPS

CAP ON POLICY	*BASIC RULES*	*AVAILABILITY AND RULES*	*ATTENDANT CARE RIDER*	*MANAGED CARE ISSUE*
$50,000	CAP APPLIES TO MEDICAL ONLY; DN APPLY TO LOE, RS or SURVIVORS LOSS CAP APPLIES TO EACH INDIVIDUAL; IT IS NOT AN AGGREGATE CAP IF THERE ARE DIFFERENT LEVELS OF COVERAGE IN THE HOUSEHOLD, THEN THE HIGHER LEVEL OF COVERAGE APPLIES; THERE IS NO STACKING THE INSURED CUSTOMER MUST BE PRESENTED WITH DIFS-APPROVED FORMS, EXPLAINING THE "BENEFITS & RISKS" OF SELECTING ANY PARTICULAR LEVEL OF COVERAGE OR OPT-OUT MCLA §3107c(2) RATE REDUCTIONS ONLY APPLIES TO THE COST OF THE PIP COVERAGE BY ITSELF; IT DN GUARANTEE THAT THE OVERALL COST OF THE INSURANCE WILL GO DOWN RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019	AVAILABLE ONLY TO THE FOLLOWING PERSONS PERSON IS COVERED UNDER MEDICAID AND THE PERSONS SPOUSE AND ALL RESIDENT RELATIVES ARE ON MEDICAID, HAVE OTHER HEALTH INSURANCE, OR HAVE PIP COVERAGE THROUGH A DIFFERENT POLICY THIS LEVEL OF CHOICE APPLIES TO THE PERSON, THE PERSON'S SPOUSE, OR ANY RESIDENT RELATIVES. MCLA §3107C(1)(a)	INSURERS SELLING THESE POLICIES WITH THESE LIMITS MUST OFFER: "A RIDER THAT WILL PROVIDE COVERAGE FOR ATTENDANT CARE IN EXCESS OF THE APPLICABLE LIMIT" THIS RIDER DOES NOT REQUIRE THE SALE OF ATTENDANT CARE COVERAGE IN EXCESS OF THE 56 HOURS/WEEK LIMITATION, SET FORTH IN MCLA §3157(10) & MCLA §3107c(8)	FOR ALL LEVELS OF POLICIES, CAPPED OR NOT: LEGISLATION ALLOWS INSURERS TO OFFER "MANAGED CARE OPTION", WHICH INCLUDES BUT IS NOT LIMITED TO, "THE MONITORING AND ADJUDICATION OF AN INJURED PERSON'S CARE, THE USE OF A PREFERRED PROVIDER PROGRAM, OR OTHER NETWORK, OR SIMILAR OPTION" MCLA §3181 (ISNT THIS AN EXCEPTION, WHICH SWALLOWS UP NO-FAULT, EVEN ON UNLIMITED POLICIES? DOES THIS REQUIRE SOME UP-FRONT DUE DILIGENCE, RE"MANAGED CARE" V "NON MANAGED CARE" IN THE NO-FAULT POLICY? INSURERS WHO OFFER MANAGED CARE OPTIONS, MUST ALSO OFFER NON-MANAGED CARE OPTIONS MCLA §3184 NOT APPLICABLE TO EMERGENCY MEDICAL CARE ("ALL CARE NECESSARY TO THE POINT WHERE NO MATERIAL DETERIORATION OF CONDITION IS LIKELY, WITHIN REASONABLE MEDICAL PROBABILITY, TO RESULT FROM OR OCCUR DUING THE TRANSFER OF THE PATIENT.") MCLA §3183(c) MANAGED CARE OPTIONS MUST BE UNIFORMLY OFFERED IN ALL AREAS WHERE MANAGED CARE OPTION IS AVAILABLE [NO DEFINITION OF "AREAS"] MCLA §3183(a) INSURERS OFFERING MANAGED CARE PLANS MUST DO SO AT A DISCOUNTED PREMIUM THAT "REFLECTS REASONABLY ANTICIPATED REDUCTIONS IN LOSSES OR EXPENSES, OR BOTH" MCLA §3183(b) HOUSEHOLD APPLICATION: THE MANAGED CARE OPTION APPLIES TO THE INSURED WHO SELECTED THE MANAGED CARE OPTION, AND ANY PERSON WHO RESIDES IN AN AREA, WHERE THE MANAGED CARE OPTION IS AVAILABLE, AND WHO IS CLAIMING BENEFITS UNDER THE MANAGED CARE POLICY. MCLA §3185 MUST BE PRIMARY MANAGED CARE PLANS MUST BE PRIMARY AND CANNOT BE COORDINATED WITH OTHER HEALTH AND ACCIDENT COVERAGE ON A PERSON CLAIMING PIP BENEFITS UNDER THE PLAN.

				S3187(a) EXHAUSTION OF BENEFITS PIP BENEFITS MUST BE EXHAUSTED BEFORE A PERSON CAN SEEK BENEFITS FROM AN OTHER HEALTH AND ACCIDENT COVERAGE PROVIDER. MCLA §3187(b) IS THERE A PROHIBITION ON PAYING OTHER PROVIDERS?
$250,000	CAP APPLIES TO MEDICAL ONLY; DN APPLY TO LOE, RS or SURVIVORS LOSS CAP APPLIES TO EACH INDIVIDUAL; IT IS NOT AN AGGREGATE CAP IF THERE ARE DIFFERENT LEVELS OF COVERAGE IN THE HOUSEHOLD, THEN THE HIGHER LEVEL OF COVERAGE APPLIES; THERE IS NO STACKING THE INSURED CUSTOMER MUST BE PRESENTED WITH DIFS-APPROVED FORMS, EXPLAINING THE "BENEFITS & RISKS" OF SELECTING ANY PARTICULAR LEVEL OF COVERAGE OR OPT-OUT MCLA §3107c(2) RATE REDUCTIONS ONLY APPLIES TO THE COST OF THE PIP COVERAGE BY ITSELF; IT DN GUARANTEE THAT THE OVERALL COST OF THE INSURANCE WILL GO DOWN RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019 *CONCEPT (NOT RULE):* IF A PERSON SELECTS THIS LEVEL OF COVERAGE, AND IF HE/SHE/SPOUSE/ALL RESIDENT RELATIVES HAVE HEALTH & ACCIDENT COVERAGE EXTENDING TO AUTO ACCIDENT RELATED INJURIES, THEN THAT INSURER MUST OFFER AN EXCLUSION AT LEAST EXCLUDING MEDICAL, AND SUCH AN EXCLUSION MAY WELL APPLY TO ALL PIP BENEFITS (AS LONG AS THE OTHER POLICIES COVER THESE NEEDS)	THIS OPTION IS OPEN TO ANYONE, WITHOUT LIMITATION. THIS LEVEL OF CHOICE APPLIES TO THE PERSON, THE PERSON'S SPOUSE, OR ANY RESIDENT RELATIVES. MCLA §3107C(1)(a)	INSURERS SELLING THESE POLICIES WITH THESE LIMITS MUST OFFER: "A RIDER THAT WILL PROVIDE COVERAGE FOR ATTENDANT CARE IN EXCESS OF THE APPLICABLE LIMIT" THIS RIDER DOES NOT REQUIRE THE SALE OF ATTENDANT CARE COVERAGE IN EXCESS OF THE 56 HOURS/WEEK LIMITATION, SET FORTH IN MCLA §3157(10) & MCLA §3107c(8)	SEE ABOVE
$250,000 EXCLUDER OPT-OUTS	CAP APPLIES TO MEDICAL ONLY; DN APPLY TO LOE, RS or SURVIVORS LOSS CAP APPLIES TO EACH INDIVIDUAL; IT IS NOT AN AGGREGATE CAP IF THERE ARE DIFFERENT LEVELS OF COVERAGE IN THE HOUSEHOLD, THEN THE HIGHER LEVEL OF COVERAGE APPLIES; THERE IS NO STACKING THE INSURED CUSTOMER MUST BE PRESENTED WITH DIFS-APPROVED FORMS, EXPLAINING THE "BENEFITS & RISKS" OF SELECTING ANY PARTICULAR LEVEL OF COVERAGE OR OPT-OUT MCLA §3107c(2) RATE REDUCTIONS ONLY APPLIES TO THE COST OF THE PIP COVERAGE BY ITSELF; IT DN GUARANTEE THAT THE OVERALL COST OF THE INSURANCE WILL GO DOWN RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019	EXCLUDER OPT-OUT RULES: THE LANGUAGE IN THIS SECTION SEEMS TO SUGGEST THAT THE $250K PIP EXCLUSION IS ONLY INTENDED TO APPLY TO ALLOWABLE EXPENSE BENEFITS UNDER MCLA §3107(1)(a) A PERSON SELECTING THIS LEVEL OF PIP COVERAGE, WHO HIM/HERSELF/ALL RESIDENT RELATIVES HAS OTHER HEALTH AND ACCIDENT COVERAGE – MUST OFFER AN EXCLUSION APPLYING TO MEDICAL BENEFITS THE LANGUAGE PERTAINING TO THIS EXCLUSION STATES: "A PERSON SUBJECT TO AN EXCLUSION UNDER THIS SUBSECTION IS NOT ELIGIBLE FOR PIP BENEFITS UNDER THE POLICY." PROBLEM: VERY BROAD LANGUAGE; DOES THIS EXCLUDE ALL	INSURERS SELLING THESE POLICIES WITH THESE LIMITS MUST OFFER: "A RIDER THAT WILL PROVIDE COVERAGE FOR ATTENDANT CARE IN EXCESS OF THE APPLICABLE LIMIT" THIS RIDER DOES NOT REQUIRE THE SALE OF ATTENDANT CARE COVERAGE IN EXCESS OF THE 56 HOURS/WEEK LIMITATION, SET FORTH IN MCLA §3157(10) & MCLA §3107c(8)	SEE ABOVE

		PIP COVERAGE, AND NOT JUST MEDICAL OTHER LANGUAGE SUGGESTS THAT THIS IS INTENDED TO EXCLUDE MEDICAL COVERAGE ONLY. SPECIFICALLY, (FOR "$250K EXCLUDERS) THE PREMIUM FOR PIP COVERAGE UNDER MCLA §3107(1)(a) [REFERRING TO MEDICAL COVERAGE UNDER PIP] MUST BE REDUCED BY 100%" MCLA §3109a(2)(a) $250K EXCLUDERS ARE NOT ENTITLED TO COVERAGE THROUGH THE ASSIGNED CLAIMS PLAN (ACP), WHILE AN OCCUPANT OF THE MOTOR VEHICLE HOWEVER, THESE $250K EXCLUDERS MIGHT WELL BE ENTITLED TO NON-COVERAGE, IF THEY ARE OCCUPANTS, AND THERE IS NO OTHER INSURER IN THE LINE OF PRIORITY, FROM WHICH PIP WOULD BE AVAILABLE RULES FOR LAPSES IN OTHER HEALTH AND ACCIDENT COVERAGE (*LAPSE BEFORE INJURY*) PERSON IS OBLIGATED TO NOTIFY PIP WITHIN 30DAYS OF THE LAPSE, AND MUST BUY UNCOORDINATED COVERAGE. MCLA §3109a(2)d) INJURIES DURING THE LAPSE PERIOD WILL BE COVERED BY ACP. MCLA §3109a(2)(d)(ii); PERSONS CLAIMING BENEFITS THROUGH ACP IN THIS SITUATION WILL BE CAPPED AT $2MILLION. MCLA §3172(7)(b) WHAT IF EXCLUDER IS INJURED, *AND THEN* LOSES THEIR OTHER HEALTH AND ACCIDENT COVERAGE? EXCLUDER WOULD NOT BE ENTITLED TO PIP, AND WOULD NEED TO GO BUY OTHER HEALTH AND ACCIDENT COVERAGE OR GO ON MEDICAID/MEDICARE TORT/3DP IMPLICATIONS: THESE PEOPLE ARE ENTITLED TO RECOVER THE FULL AMOUNT OF THEIR MEDICAL EXPENSES FROM THE TORTFEASOR HOWEVER, THIS WILL SUBJECT THEIR RECOVERIES TO LIENS, THAT MAY		

		NOT HAVE EXISTED BEFORE SHOULD EXCLUDERS/OPT-OUTS BE GIVEN THE IMMUNITIES OF A NO-FAULT SYSTEM THEY ARE NOT PAYING INTO? CAN THESE PEOPLE BE HELD LIABLE FOR NON-ECONOMIC LOSS (SEMINAR QUESTION ONLY; PRACTICALLY SPEAKING, THESE PEOPLE MAY NOT HAVE ANY MONEY ANYWAY)		
$500,000	CAP APPLIES TO MEDICAL ONLY; DN APPLY TO LOE, RS or SURVIVORS LOSS CAP APPLIES TO EACH INDIVIDUAL; IT IS NOT AN AGGREGATE CAP IF THERE ARE DIFFERENT LEVELS OF COVERAGE IN THE HOUSEHOLD, THEN THE HIGHER LEVEL OF COVERAGE APPLIES; THERE IS NO STACKING THE INSURED CUSTOMER MUST BE PRESENTED WITH DIFS-APPROVED FORMS, EXPLAINING THE "BENEFITS & RISKS" OF SELECTING ANY PARTICULAR LEVEL OF COVERAGE OR OPT-OUT MCLA §3107c(2) RATE REDUCTIONS ONLY APPLIES TO THE COST OF THE PIP COVERAGE BY ITSELF; IT DN GUARANTEE THAT THE OVERALL COST OF THE INSURANCE WILL GO DOWN RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019	THIS OPTION IS OPEN TO ANYONE, WITHOUT LIMITATION. THIS LEVEL OF CHOICE APPLIES TO THE PERSON, THE PERSON'S SPOUSE, OR ANY RESIDENT RELATIVES. MCLA §3107c(1)(c)	INSURERS SELLING THESE POLICIES WITH THESE LIMITS MUST OFFER: "A RIDER THAT WILL PROVIDE COVERAGE FOR ATTENDANT CARE IN EXCESS OF THE APPLICABLE LIMIT" THIS RIDER DOES NOT REQUIRE THE SALE OF ATTENDANT CARE COVERAGE IN EXCESS OF THE 56 HOURS/WEEK LIMITATION, SET FORTH IN MCLA §3157(10) & MCLA §3107c(8)	SEE ABOVE
LIFETIME – NO CAP	RATE REDUCTIONS ONLY APPLIES TO THE COST OF THE PIP COVERAGE BY ITSELF; IT DN GUARANTEE THAT THE OVERALL COST OF THE INSURANCE WILL GO DOWN RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019	THIS OPTION IS OPEN TO ANYONE, WITHOUT LIMITATION. THIS LEVEL OF CHOICE APPLIES TO THE PERSON, THE PERSON'S SPOUSE, OR ANY RESIDENT RELATIVES. MCLA §3107C(1)(d) (Shouldn't these people – and the persons buying $500k capped PIP coverage - pay much less for UM/UIM, than people who buy capped or lesser capped PIP policies?)	INSURERS SELLING THESE POLICIES WITH THESE LIMITS MUST OFFER: "A RIDER THAT WILL PROVIDE COVERAGE FOR ATTENDANT CARE IN EXCESS OF THE APPLICABLE LIMIT" THIS RIDER DOES NOT REQUIRE THE SALE OF ATTENDANT CARE COVERAGE IN EXCESS OF THE 56 HOURS/WEEK LIMITATION, SET FORTH IN MCLA §3157(10) & MCLA §3107c(8)	SEE ABOVE
MEDICARE OPT OUT	THE INSURED CUSTOMER MUST BE PRESENTED WITH DIFS-APPROVED FORMS, EXPLAINING THE "BENEFITS & RISKS" OF SELECTING ANY PARTICULAR LEVEL OF COVERAGE OR OPT-OUT MCLA §3107c(2) RATE REDUCTIONS ARE NOT BASED ON THE INDIVIDUAL CONSUMER, BUT INSTEAD, ON THE "AVERAGE REDUCTION PER VEHICLE FOR PIP PREMIUMS, IN EFFECT FOR THAT PARTICULAR INSURER ON 5/1/2019	COMPLETE OPT-OUT FROM NO-FAULT MEDICAL IS AVAILABLE FOR THE FOLLOWING PERSONS: COVERED BY PART A & PART B OF MEDICARE AND PERSON'S SPOUSE AND ANY RESIDENT RELATIVE HAS: MEDICARE "QUALIFIED HEALTH COVERAGE" OR HAS NO-FAULT PIP COVERAGE UNDER A SEPARATE		

		POLICY. MCLA §3107d(1) AND MCLA §3107d(8)(b-c) MEDICARE OPT-OUTS ARE NOT ENTITLED TO COVERAGE THROUGH THE ACP WHEN INJURED AS OCCUPANTS OF MOTOR VEHICLES HOWEVER, THEY WILL LIKELY BE ENTITLED TO COVERAGE UNDER THE ACP, WHEN THEY ARE NON-OCCUPANTS, AND THERE IS NO OTHER PIP CARRIER PREMIUM CHARGED FOR MEDICARE OPT-OUTS MUST REFLECT A ZERO PREMIUM CHARGE FOR MEDICAL (THIS MAKES NO SENSE; THESE PEOPLE NEED LOE COVERAGE, OR RSS COVERAGE?)		

Questions for clients to ask their agent

Questions For Clients to Ask Their Agent	***For Clients to Discuss With The Frank Law Firm, PC***
What are the price differential between and among the various caps $50K – Medicaid $250K – Plain $250K Limit $250K – Excluder Opt-Out $500K – Plain $500K Limit Lifetime – No Cap Medicare Opt-Out Does the policy you are selling me have a managed care option? What does that mean? What is the effect of a managed care option? What is meant by "monitoring and adjudication" of my care, as the law says? MCLA §500.3181 Every insurer is required to offer a non-managed care option (MCLA §500.3184) What is the price differential? Managed care v non-managed care	What is your cap? Affected by the accident facts (uninsured pedestrian, e.g.,) What is status of other health and accident coverage Yours? Others in your household? If $250K – did you choose "excluder"? What are your medical bills Did you select the managed care option? Do you have the plan booklet, outlining the parameters of the managed care plan, under your no-fault policy; (they may be getting screwed by the managed care portion of their no-fault policy) The managed care option does apply to ER care

Advice for Clients – Random Thoughts

New higher limits 50/100 v 20/40
Default limits of 250/500……. unclear what "default" means; drivers can still choose as low as 50/100

Insurance companies will typically not sell you UM/UIM higher than your residual bodily insurance (RBI), so get high RBI

Select the unlimited no-fault; simplest and best coverage

Capped policies – excess medical can now be sued upon
The limits of the at-fault driver, become more important……. What happens in an accident between two very tightly capped drivers, with big injuries?

Do not just default to cheap no-fault coverage. The really expensive coverage, is typically collision

Do not select the managed care option, under any circumstance
It will be the exception that swallows up your coverage, and renders it illusory ("… and adjudication")
It will take your choice of doctors away

Make sure that you have UM/UIM coverage

Avoid step-down clauses, which allow for lesser payments to be made by insurers, when liability claims are presented by family/household members

There will still be MCCA assessments for drivers who decide to cap their policies, or opt out; the MCCA assessment for unlimited no-fault remains the same

DME's (Defense Medical Examinations – referred to misleadingly, by insurers, as "Independent Medical Exams"; the doctors are not "independent")

(1) The IME doctors must be licensed in Michigan;

(2) If care is being provided to the person to be examined by a specialist, the examining IME physician must specialize in the same specialty as the physician providing the care, and if the physician providing the care is board certified in the specialty, the examining IME physician must be board certified in that specialty;

(3) During the year before an IME, the IME doctor must have devoted a majority of professional time to clinical practice of medicine/specialty or teaching in an accredited medical school. It is expected that these rules will take immediate effect.

(4) Unless you have another lawyer, for example if you are unrepresented, call Jon Frank at 586-727-1900, before you going to this very adversarial “trap for the unwary”. As long as you do not have another lawyer, I will guide you through the process of a defense medical examination, ***at no charge.***

If you do have another lawyer, ask him/her why they are not advising you, as to how you should conduct yourself at a defense medical examination (DME), given the damage it could do to your case.