

PERSONAL INJURY PROTECTION (PIP) COVERAGE

What is PIP coverage?

Personal Injury Protection (PIP) coverage, also known as No-Fault Coverage, is one of two types of automobile insurance coverage that is mandatory in the State of Florida (the other mandatory coverage is property damage coverage). PIP coverage is used to pay your medical bills and lost wages following an accident regardless as to who is at fault for the accident (hence the term No-Fault coverage). Essentially what this means is that regardless as to who's at fault for an accident, your own insurance company will pay your medical bills and lost wages up to the maximum coverage amount. Florida requires a minimum of \$10,000 in PIP coverage, although many companies allow a person to buy additional PIP coverage beyond \$10,000.

Generally, PIP coverage pays your medical bills at 80% and your lost wages at 60%. The other 20% of your medical bills and 40% of your lost wages not paid by PIP is something your attorney will attempt to collect from the at-fault driver's insurance company, or in certain circumstances from your own insurance company under your uninsured motorist (UM) coverage in the even the at-fault driver did not have bodily injury/liability coverage.

Most people who have never been involved in an accident or never received medical treatment or lost wages as a result of an accident are surprised to hear that their own insurance company is the one responsible for paying their medical bills and lost wages. As a result, people sometimes question whether or not they want to proceed with medical treatment for fear that their insurance rates will increase. However, keep in mind that PIP coverage is mandatory coverage that is required in order to operate a motor vehicle in the State of Florida. Thus, if you are injured in an accident the law requires your insurance company to pay your bills, since Florida is what is referred to as a No-Fault State (a state that requires its drivers to maintain PIP, or No-Fault coverage on their policies). As a result, your insurance company should pay your medical bills and lost wages without issue since you paid for this coverage and it is the law, right? Unfortunately, that's not always the case.

Since PIP coverage is mandatory in the State of Florida, it is the primary source of insurance coverage for medical bills. What this means is that if you receive medical treatment as a result of an automobile accident, your doctor is required to bill your automobile insurance company first in order to receive payment. In the event you also have health insurance, your doctor may bill your health insurer as well, however, your health insurer will require your automobile insurance company to pay their 80% of the medical bill before health insurance benefits are paid. So it is very important that your medical bills are being paid under your PIP coverage as required by the terms and conditions of your policy and according to Florida law. Otherwise, it is possible for a situation to arise where no health insurance company and possibly not even the other driver's insurance company will consider your outstanding medical bills unless and until the first 80% is paid by PIP coverage.

As mentioned above, all too often insurance companies fail to pay medical bills and lost wages under PIP coverage despite the hundreds or thousands of dollars you have paid in insurance premiums for your coverage and regardless of the intent of the PIP statute (law) (which is to provide swift payment of medical bills regardless as to who's at fault for an accident). Again, insurance companies are "for profit" companies whose number one priority is to make money. Thus, the more they have to pay out for medical bills and lost wages, the less money they make. This is something to keep in mind as we move throughout not only our discussion of your PIP coverage, but also in considering any first party coverage (meaning the coverage provided to you by your own insurance company – clearly the other driver's insurance company is going to do everything they can to minimize their payment to you as well).

Compulsory Medical Examinations (CME)

There are numerous ways your insurance company will look to limit the payment of your medical bills and lost wages under your PIP coverage. The most common way for your insurance company to do this is by sending you to see one of their doctors who will most likely say you do not need any additional medical treatment, or that your injuries are not related to the accident. The appointment they make for you to see one of their doctors is known as a Compulsory Medical Examination (CME). Although the PIP statute requires mandatory payment of medical bills regardless as to who's at-fault for an accident, it does contain provisions that allow an insurance company to avoid paying medical bills and lost wages for certain reasons (After all, the insurance industry has some of the most powerful lobbyists that exist. You didn't think they would allow the Legislature to pass a bill that does not give them plenty of opportunities to avoid paying benefits under a mandatory coverage that all automobile owners are required to purchase, did you?). One of those provisions in the PIP statute that allows them to avoid paying bills is by sending you to a CME. If the CME doctor's opinion is that you do not need any further treatment, or your injuries were not caused by the accident and therefore, you did not need any of the treatment you received, then your insurance company can rely on the CME doctor's opinion as a basis for not paying your medical bills and lost wages.

Since the PIP statute states that an insurance company has the right to request a CME (and so does your insurance policy), you are required to attend the CME if requested by your insurance company. A CME is normally unilaterally scheduled by your PIP adjuster (you most likely will have one specific adjuster at your insurance company assigned to monitor your PIP claim regarding the amount of treatment you are receiving, the amount of bills they have paid, the type of doctor you are treating with, how long you've been treating, the injuries you are claiming, etc.). Scheduling the CME is usually done by your insurance company contacting a third party vendor and requesting that the vendor hire a doctor to perform a CME. The insurance company will then pay the vendor for the CME and the vendor will then pay the doctor that performs the CME. This is supposedly done to eliminate any influence the insurance company might have on the doctor's opinion following his examination. In reality it's really just a lot of smoke and mirrors. Clearly the CME doctor (the doctor being hired by the

insurance company to perform the examination) knows who's ultimately paying her. Furthermore, that doctor also knows what the insurance company wants her to say, which is that you do not need any further treatment. That doctor also knows that if she says otherwise, there is a strong likelihood the insurance company will request she not be used again in the future, and many of these CME doctors could not make a living without the income they receive from doing CMEs.

When your PIP adjuster contacts a vendor, she will request the vendor schedule the CME with a specific type of doctor (chiropractor, medical doctor, dentist, etc.) depending on the type of treatment you are receiving. The reason for this is that an insurance company must have a report from each type of doctor whose treatment they want to limit. In other words, they cannot use a CME with a chiropractor to limit your treatment with a medical doctor and vice versa. Thus, your insurance company may even schedule you to attend more than one CME if you are treating with more than one type of doctor.

You or your attorney will likely receive notice of the CME in the mail. The CME is required to take place within the county where you reside. Since most of the CME doctors travel throughout a specific geographic area in the State, the CME normally is performed at a location other than the CME doctor's office. Once you receive the notice, if you cannot make the CME on the unilaterally scheduled date and time, then you can call the phone number on the notice (which is probably for the vendor as opposed to your insurance company) and request the CME be rescheduled. However, most CME notices require you to reschedule at least 72 hours in advance of the CME. Therefore, you should not wait until the last minute to reschedule.

It is important to not only discuss your upcoming CME with your attorney, but also with your treating doctor. Ideally, you should try to see your treating doctor on the same day as your CME. This way you can compare your treating doctor's examination and findings with the CME doctor's examination and findings, which unsurprisingly will normally be strikingly different. Having a report from your treating doctor for an examination that took place on the same date as the CME can be helpful later on in the event your insurance company decides to "suspend" your PIP benefits, which is discussed in further detail below.

Most likely the CME will be very quick and not very thorough. Be aware that no patient/physician privilege exists between you and the CME doctor, meaning nothing you tell the CME doctor is confidential. However, that does not mean that you should not express to the CME doctor where your pain is located during the examination. Remember, the CME doctor is looking for reasons why you do not need further medical treatment. While it is certainly not suggested that you embellish in any way your symptoms or injuries, you should also not take the "tough guy" approach during the CME and act as though certain tests or movements don't hurt if they really do. Also, it is important to keep in mind that the CME doctor most likely has copies of your medical records. Your PIP adjuster most likely sent the vendor a copy of your records (that your treating doctor is required to submit to your insurance company along with her bills),

which the vendor then forwarded on to the CME doctor. So chances are the CME doctor already knows quite a lot about you before you even arrive. Despite your best efforts to explain to the CME doctor your symptoms and injuries during the examination, chances are she will still opine that you do not need any further treatment. Your insurance company will then subsequently send you a letter stating that no further treatment with that type of doctor (no further chiropractic treatment, orthopedic treatment, etc.) will be covered by your PIP benefits. If this happens, not only will your insurance company stop paying your treating doctor's bills, but they will also stop paying your lost wages if that type of doctor (chiropractor, medical doctor, dentist, etc.) was the one that wrote you the disability slip stating you were unable to work. However, not to fear, there are ways to overcome this and you should never stop treating with your doctor without first discussing this with your attorney.

Peer Reviews

As discussed above, a CME is the most common method used by insurance companies to not pay PIP benefits for medical bills and lost wages. However, there are other techniques insurance companies use to deny payment for medical bills and lost wages. Instead of actually requiring you to attend a CME with a doctor, an insurance company may also simply gather the medical records your treating doctor has been submitting with her bills and send those medical records to a doctor they hire (through a third party vendor just like they do when scheduling a CME) and request that doctor to render an opinion on your need for further care and treatment. This is known as a Peer Review. The insurance company may even ask that doctor to render an opinion as to whether or not the treatment you've received up until that point has been reasonable, related to the accident, and medically necessary. Of course, a Peer Review is even less reliable than a CME because the doctor performing the Peer Review does not actually perform any kind of physical examination and in fact never even sees you. Nonetheless, the insurance company will rely on her opinion (which I'm sure you've realized by now will most likely be that the treatment you received thus far was not necessary, or that no further treatment is necessary) in denying your medical bills.

Enforcing PIP Coverage

So what happens if your insurance company decides to stop paying your medical bills or lost wages? If this happens, you will normally receive a letter from your insurance company telling you that they will no longer pay for medical or chiropractic treatment (depending on the type of doctor they sent you to for the CME or the type of doctor they sent your records to for a Peer Review) effective a certain date. This is known as a suspension of your (PIP) benefits. Your treating doctor(s) and attorney will also likely receive a copy of that letter. Further action against your insurance company will then need to be taken as discussed below. However, in the event you receive notification from your insurance company to this effect, you should immediately contact your attorney to discuss future medical treatment. Your attorney will most likely instruct you to continue treating with your doctor until the doctor releases you from treatment.

Your attorney can also then address this matter with your insurance company and your doctor.

If your insurance company decides to stop paying your bills based on a CME or Peer Review, your doctor may decide to file a lawsuit against the insurance company for any future treatment you receive from that doctor that does not get paid. In order for your doctor to be able to sue your insurance company, you must sign a document at your doctor's office known as an "Assignment of Benefits". Most doctors require their patient's to sign an Assignment on the first date of treatment. The Assignment actually has two purposes. First, it gives them the right to be paid directly from the insurance company for their bills as opposed to the doctor billing you, then you submitting the bill to your insurance company and then having the insurance company reimburse you. Obviously having the doctor submit the bill directly to the insurance company and the insurance company paying the doctor directly is a much more efficient process. Second, the Assignment gives the doctor the right to sue your insurance company in the event their bill is not paid. This does not require you to be part of the lawsuit, which is nice for you. Instead, the doctor hires an attorney of their choosing (which may be an attorney other than the attorney representing you for your injuries from the accident) to sue the insurance company based on the non-payment of their bills. As part of the lawsuit, you may be asked by your doctor's attorney or your insurance company to answer questions about your injuries and the treatment you received from your doctor. The purpose of asking you questions is to determine whether or not you were in fact injured as a result of the accident, whether or not your injuries required medical treatment, and whether or not the treatment you received from your doctor helped improve your symptoms and condition.

If the doctor then prevails in that lawsuit your bills are paid and the insurance company may lift the "suspension" and continue paying any future bills. Your insurance company will also be required to pay your doctor's attorney's fees. Please be advised that a lawsuit by your doctor's office should not affect your premium whatsoever. After all, it was your insurance company's decision to suspend your benefits.

If your insurance company decides to suspend your benefits for further medical treatment, then they will also stop paying lost wages for any time you miss at work. If this happens, then you will be required to file your own lawsuit against your insurance company. This of course is something your attorney will handle for you, or your attorney may contact another attorney to handle this matter for you. If another attorney is contacted for this purpose, you will be notified and most likely will need to meet briefly with the other attorney. Either way, the purpose of the lawsuit is to overcome your insurance company's decision to suspend your benefits by proving that you are still injured and remain unable to work. This is proven by statements made by you as part of the lawsuit, as well as statements made by your treating doctor on your behalf in the lawsuit. Again, if your attorney prevails in the lawsuit, then their fees are paid by your insurance company (which most likely is different than the way your attorney's fees are paid in your injury case against the at-fault driver, which is likely a percentage of the

recovery obtained for you). So as you can see, it is possible that more than one lawsuit may be necessary should your insurance company suspend your benefits.

It seems like quite a risk and expense for your insurance company to go the process necessary to suspend your benefits, but unfortunately it happens on a regular basis. Their hope, of course, is that if they tell you they are not going to pay for anymore treatment or lost wages, that you'll stop going to the doctor and just live with your symptoms and injuries. That means less bills the insurance company has to pay and more money they keep in their pocket.

Recent Changes in the Law Regarding PIP Coverage

As you've most likely heard in the news lately, Florida apparently has a staged accident epidemic that is causing Floridians' insurance premiums to skyrocket. At least that's what the insurance companies want you to believe. No doubt there are staged accidents that occur. However, the reasons insurance premiums have increased over the years is far more complicated than just an increase in staged accidents. Nonetheless, the insurance companies needed something to justify why the law needed to be changed (to better protect them and reduce the amount they are required to pay in PIP benefits following an accident), so they decided to convince the Legislature that staged accidents were out of control resulting in an uncontrollable increase in fraudulent PIP claims. As a result, the Legislature passed a bill in 2012 that changed the law regarding PIP coverage.

14 Days to Get Treatment Following an Accident **(Effective January 1, 2013)**

Probably the most significant change to the PIP law is the requirement that a person seek medical treatment within 14 days following an accident in order to be entitled to PIP benefits. Basically what this means is that if you do not go see a doctor for your injuries within the first 14 days following an accident, then you will not be entitled to have any of your medical bills paid by your PIP coverage. Thus, it is important to at least get checked out by a doctor within the first two weeks following an accident to at least preserve your right to your PIP coverage.

Coverage Is Either \$2,500 OR \$10,000 – No Longer Automatic \$10,000 **(Effective January 1, 2013)**

The amount of PIP coverage a person is entitled to has also changed. The law still requires that you buy \$10,000 in PIP coverage from your insurance company. However, you are only entitled to the full \$10,000 in coverage for your medical bills and lost wages if a medical doctor (not a chiropractor) determines that you had an "Emergency Medical Condition". If a medical doctor determines that you do not have an "Emergency Medical Condition", then you are only entitled to \$2,500 in PIP coverage for your medical bills and lost wages.

The term “Emergency Medical Condition” is defined as a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

- a.) Serious jeopardy to patient health.
- b.) Serious impairment to bodily functions.
- c.) Serious dysfunction of any bodily organ or part.

At first glance this appears to be a tough standard to meet. However, keep in mind that the definition basically requires two things: 1.) “severe pain”, although the term “severe pain” is not defined and is something that most accident victims experience following an accident, which is why they seek medical treatment; and 2.) “medical attention” that without it could result in “serious jeopardy to patient health”. Keep in mind that the definition does not state that the “severe pain” must result in “serious injury to patient health”. It only says that the “severe pain” “could reasonably be expected to result in” “serious jeopardy to patient health”. Most injuries that occur from an accident have the potential to result in “serious jeopardy to patient health”. If that potential didn’t exist then most people would not seek medical treatment. With the amount of PIP coverage (i.e. amount of bills the insurance companies have to pay for) differing between \$2,500 and \$10,000 depending on whether or not a person has an “Emergency Medical Condition”, this will clearly be something the insurance companies focus on by using the IME and Peer Review strategies discussed above to overcome the determination by the person’s doctor that they sustained an “Emergency Medical Condition”. If this happens, a lawsuit most likely will become necessary, since there’s a big difference between having \$2,500 in PIP coverage and \$10,000 in PIP coverage.

Who Can You Treat With Following an Accident? **(Effective January 1, 2013)**

The new changes to the PIP statute still allow a person to treat with a chiropractor or medical doctor. Unfortunately, the new PIP statute no longer covers massage therapy or acupuncture. Furthermore, although a person is still allowed to treat with a chiropractor, as mentioned above a chiropractor cannot be the one to determine whether or not you sustained an “Emergency Medical Condition”. That must be done by either a medical doctor (M.D.) or an osteopathic doctor (D.O.). Thus, if you start your treatment with a chiropractor then you will also need to see a medical doctor or osteopathic doctor in order for them to determine whether or not you had an “Emergency Medical Condition”. Also, although you may go to the emergency room for your injuries following an accident this does not automatically mean that you had an “Emergency Medical Condition” thereby entitling you to \$10,000 in PIP coverage as opposed to \$2,500 in PIP coverage. The safest thing to do is to see a medical doctor or osteopathic doctor and allow that doctor to make a definitive determination as to whether or not you had an “Emergency Medical Condition”. If you start your treatment with a chiropractor, then your chiropractor will most refer you to a medical doctor or osteopathic doctor. If

that does not happen shortly after beginning your treatment, then you should contact your attorney to discuss the need to see a medical doctor or osteopathic doctor.

Tell Your Doctor About All of Your Symptoms At Your First Visit
(Effective January 1, 2013)

It is very important that you tell your doctor about ALL of your symptoms and injuries at the time of your initial visit. The new PIP law states that only medical conditions diagnosed during the first visit will be covered thereafter. As a result, if you fail to tell your doctor that a certain part of your body was injured in the accident during your first visit, then chances are if you mention it later the doctor's treatment for that part of your body will not be covered by your PIP benefits. However, you should always mention all complaints and symptoms you are having each time you see your doctor. So if you happen to forget to mention something during the first visit, or if something starts bothering you later on in your treatment you should still mention it to your doctor. Even if your PIP carrier will not cover it, chances are it will be covered eventually by the at-fault driver's insurance carrier or by your own insurance carrier, but instead under your underinsured motorist coverage as opposed to your PIP coverage.

Examination Under Oath (EUO)
(Effective January 1, 2013)

Another additional provision in the new PIP statute states that a person seeking PIP coverage must submit to an Examination Under Oath (EUO) if so requested by the insurance company. This is a condition precedent to receiving PIP benefits. An EUO is a situation where a representative from the insurance company, often times an attorney hired by the insurance company, asks a person seeking PIP coverage a series of questions. A court reporter is present and asks the person being questioned to raise their right hand and swear to tell the truth. The court reporter then records everything that is said. Since appearing for an EUO is a condition precedent to receiving PIP benefits, if your insurance company requests you appear for an EUO, then you must comply with their request before your medical bills will be paid. It is always a good idea to have your attorney attend the EUO with you. Normally EUOs are done in a conference room at a court reporter's office or possibly at your attorney's office and are not cause for concern. It allows the insurance company to buy some additional time before paying your bills. However, if you are notified by your insurance company that they are requesting your EUO be sure to contact your attorney to discuss the situation in further detail.

Independent Medical Examination (IME) – Failure to Appear
(Effective January 1, 2013)

The IME is explained in detail above. However, there is a new provision that states if you fail to appear at two scheduled IMEs, then there is a rebuttable presumption that your failure to attend was "unreasonable". This is significant because the law allows your insurance company to deny PIP coverage to you if you "unreasonably" fail to appear at a scheduled IME. Now the failure to appear at two scheduled IMEs is a "rebuttable

presumption” meaning if you fail to appear at two scheduled IMEs that you can overcome the presumption that it was “unreasonable” provided you have a valid explanation for not attending. Again, if you receive a notice scheduling you for an IME, the best thing to do is contact your attorney about the IME in hopes of avoiding any missed appointments anyway.