



# Michigan no-fault order of priority guide

*December 2019*

**Description and Disclaimer** – This material is based on the recently enacted Michigan Public Acts 21 and 22 of 2019 and is provided for informational purposes only. It does not provide any coverage. The material herein represents our current understanding of the law, which may be subject to change if additional guidance is provided by the Legislature, DIFS, or the courts. This document is not intended to render legal advice, which you should seek from your own counsel.

Unless otherwise noted herein, references to “sections” of the statute (e.g. “Sec. 3111” or “3114” ) refer to the provisions of the Michigan Insurance Code, which is found in Title 500. All of these sections are preceded by “MCL 500.xxxx” but have been abbreviated to just the chapter and/or the section reference.



## No-fault: order of priority

- The term “order of priority” (OOP) refers to the set of rules that outline which no fault insurer or entity has primary responsibility for payment of personal injury protection (PIP) benefits arising out of a motor vehicle accident in Michigan or another state.
- The rules for passengers in motor vehicles for hire are complex and can lead to situations where the named insured’s policy isn’t first in the OOP. Therefore, it is important to know the type and ownership of the vehicle involved in the accident.
- In most situations one policy applies. However, where more than one policy applies the relevant statutes (MCL 500.3114(1) and 500.3107(6)) provide guidance and will likely be clarified overtime by case law.
- For ease of use, an OOP chart is attached. Following the chart are slides setting forth each vehicle type in more detail. These slides contain some notes and examples based on common questions we receive from our agents. It may not contain all possible scenarios.



# Order of priority chart

Effective 7/2/2020

Private vehicles 3114(1), (4)	Vehicles for hire – operator 3114(2)	Vehicles for hire – passengers – Veh Type A* 3114(2)	Vehicles for hire – passengers – Veh Type B** 3114(2)	Employer furnished 3114(3)***	Motorcycle 3114(5)	Non-occupant (pedestrian/ bicyclists) 3115
Your own policy	Insurer of vehicle owner	Your own policy	Insurer of vehicle owner	Employer's insurer*	Insurer of the owner of motor vehicle involved	Your own policy
Insurer(s) of spouse and resident relative domiciled in same household	Your own policy	Insurer(s) of spouse and resident relative domiciled in same household	Your own policy	Insurer of injured person	Insurer of the operator of motor vehicle involved	Insurer(s) of spouse and resident relative domiciled in same household
Michigan Assigned Claims Plan	Insurer(s) of spouse and resident relative domiciled in same household	Insurer of motor vehicle	Insurer(s) of spouse and resident relative domiciled in same household	Insurer(s) of spouse and resident relative domiciled in same household	Insurer of motorcycle operator	Michigan Assigned Claims Plan
	Michigan Assigned Claims Plan	Michigan Assigned Claims Plan	Michigan Assigned Claims Plan	Michigan Assigned Claims Plan	Insurer of motorcycle owner	
					Michigan Assigned Claims Plan	

\*Type A: school bus, city bus, non-profit bus, taxis, transportation network, bus used to transport passengers to a destination

\*\* Type B: ambulance, non-emergency medical transport, limo, airport shuttle and party bus

\*\*\* 3114(3) applies to an employee, his or her spouse or domiciled resident relative of either. All other occupants fall under private vehicle analysis.



# Order of priority

## *Private vehicles*

### *Drivers or passengers:*

1. Injured person's own policy – Sec. 3114(1)
2. Policy insuring any relative resident in the same household – Sec. 3114(1)
3. Michigan Assigned Claims Plan (MACP) – Sec. 3114(4)

### Notes:

- Under the old priority, uninsured occupants and non-occupants could seek PIP benefits from the owner/operator of the vehicle. The new statutory framework, combined with our revised definition of “insured” will result in a new “order of priority.” These claimants will no longer seek PIP benefits from the owner/operator of the vehicle.
- In most situations, injured parties will get coverage from their own policy, even when the named insured has selected the QHC Exclusion or the Medicare Opt-Out. However, there are certain exceptions:
  - Motorcycles. Occupants or operators of motorcycles first go to the owner of the vehicle. See motorcycle slide for more details.
  - Certain vehicles for hire. Examples: ambulance, limo, airport shuttle. See “Vehicle Type B” on the vehicles for hire slide. For more details.
- QHC Exclusion and Medicare Opt-Out. Policies not maintaining PIP Allowable Expense coverage (Medicare Opt-Out or QHC Exclusion) do not go to MACP.
- Uninsured occupants injured in a motor vehicle accident will make claims to the MACP for benefits. This does not apply to those insured on a policy with a QHC Exclusion or Medicare opt-out policy (with no coverage).



# Order of priority

## Drivers of vehicles for hire (including Uber/Lyft) -

*While they are “on the clock” (logged on or engaged in a pre-arranged ride - 3114(2))*

1. Insurer of the owner of the vehicle occupied
2. Injured person’s own policy
3. Policy insuring any relative residents in the same household
4. Michigan Assigned Claims Plan

### Notes:

- Citizens does not provide coverage in any phase of transportation network (e.g. Uber/Lyft) usage. As soon as the insured is “on the clock” (is logged on or engaged in a pre-arranged ride), the insured is excluded from coverage under our policy.
- Our position is documented in our agent guide – unacceptable business use section.
- Our form excludes all coverage for usage “on the clock.” Here is an excerpt from the liability section:
  - We do not provide liability coverage for any “insured”:
    - For that “insured’s” liability arising out of the ownership or operation of an “auto” while it is being used as a public or livery conveyance. This exclusion (A.5.) does not apply to a share-the-expense car pool or the use of the “auto” for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.



# Order of priority

## Passengers in vehicles for hire/public transportation – 3114(2)

*Depends on the type of vehicle*

### **Order of priority (Vehicle Type A):**

1. Injured person's own policy
2. Policy insuring any relative domiciled in the same household
3. Insurer of motor vehicle
4. Michigan Assigned Claims Plan

### *Vehicle Type A:*

- a) School bus
- b) A bus certified by the Department of Transportation
- c) A government transportation program bus
- d) A non-profit bus
- e) A taxi
- f) A bus used only to transport passengers to/from a destination point (canoe, horse livery)
- g) A transportation network company vehicle (while driver is logged on or engaged in a pre-arranged ride)
- h) A motor vehicle where the named insured has elected to opt out of PIP

**Note: Most vehicles for hire fall under this category**

### **Order of priority (Vehicle Type B):**

- Insurer of the owner of the vehicle occupied
- Injured person's own policy
- Policy insuring any relative domiciled in the same household
- Michigan Assigned Claims Plan

### *Vehicle Type B = all other*

### *Common examples include:*

- Ambulance
- Non-emergency medical transport
- Limo
- Airport shuttle
- "Party buses"

**Note: These vehicles are more of the "exception," but important to know**



# Order of priority

## *Employer furnished vehicles 3114(3)*

- Applicable only to employee, employee's spouse and resident relatives.
  - For other occupants, use the private vehicle order of priority.
1. Insurer of the employer furnished vehicle
  2. Injured person's own policy
  3. Policy insuring any relative resident in the same household
  4. Michigan Assigned Claims Plan



# Order of priority

## *Motorcycles 3114(5)*

*Applicable to occupants or passengers of motorcycles:*

1. Insurer of the owner or registrant of the motor vehicle
2. Insurer of the operator of the motor vehicle
3. Insurer of motorcycle operator
4. Insurer of motorcycle owner
5. Michigan Assigned Claims Plan

Notes:

- If an auto policy in this order of priority, contains either a QHC Exclusion or a Medicare Opt-Out, the injured person shall seek benefits in the next order of priority until a policy with coverage other than opt-out has been selected. If no such policy applies, the injured person may seek benefits from the Assigned Claims Plan.





# Order of priority

*Non-occupants (such as pedestrians and bicyclists) – Sec. 3115*

1. Injured person's own policy
2. Policy insuring any relative resident in the same household
3. Michigan Assigned Claims Plan

## Notes:

- Under the old order of priority, uninsured non-occupants would seek benefits from the owner, and then operator of the vehicle. This will no longer be the case with the new definition of insured.



# Order of priority

## *Out-of-state residents and out-of-state accidents*

Coverage for out-of-state residents will depend on where the accident occurred:

- If the accident occurs in MI, out-of-state residents are excluded from PIP (unless the person owned a motor vehicle that was registered and insured in MI) - Sec. 3113(C)
- If the accident occurs outside of MI, *and* the out-of-state resident is an occupant of a vehicle owned/registered by a MI resident with a valid MI PIP policy, they are entitled to PIP under Sec. 3111.

Michigan insureds remain liable for economic damages to out-of-state residents – Section 3135

- However, for the out-of-state resident to recover economic losses, a “threshold injury” is needed (death, permanent serious disfigurement or serious impairment of body function).

Notes:

- Under the old law out-of-state residents would receive no-fault benefits from their out-of-state policy if their insurer was certified to do business (Sec. 3163)