

TRIAL REPORTER

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Understanding Maryland Personal Injury Protection Coverage

by Sharon Lewis Tompkins

Maryland Personal Injury Protection (PIP) is a payment to persons injured in motor-vehicle accidents. PIP payments are covered medical expenses and lost wages.¹ PIP benefits are at least \$2,500 per person, per occurrence; and higher limits can be purchased. It also pays medical bills and lost wages within 30 days of the submission of a claim.²

PIP is no-fault insurance, meaning that all injured persons are eligible for payment regardless of who is at fault in an accident. The primary purpose for PIP coverage is to assure financial compensation to victims of motor-vehicle accidents without regard to the fault.³

PIP is Default – But Waivable – Coverage in Automobile Policies in Maryland

The “default” policy provision in Maryland is that automobile insurance policies *must* contain a minimum (\$2,500) PIP benefits.⁴ Any evaluation of whether there is PIP coverage on a policy should begin with an assumption that there *is* coverage.

The Code, however, does contemplate a potential waiver by a policyholder of PIP benefits. In order to be valid, a policyholder must sign an affirmative waiver of the required PIP benefits.⁵ A valid signed waiver binds:

Signed PIP waiver forms should be compared to Maryland Transportation Article §19-506 (c), which details the notice requirements that the insured must give as well as §19-506 (d), which details the specific form of the waiver

If a person is injured in a Maryland vehicle, unless the injured person has waived PIP, the carrier must pay PIP benefits regardless of where the accident occurred.

1. each named insured (the person listed as an insured on the policy);
2. each listed driver (anyone listed on the policy as covered drivers); and
3. each member of the first named insured’s family residing in the first named insured’s household who is at least 16 years old (also known as a “resident-relative”).

If a person has signed a valid waiver of PIP on their own automobile-insurance policy, they waive PIP on all Maryland insured vehicles. For example, if a person has validly waived PIP on their automobile-insurance policy, and is hurt while a passenger in his or her’s friend’s car (that is insured in Maryland), the passenger cannot make a PIP claim on the friend’s policy or their own.

from 10-point boldface type to exactly what the waiver must state.

A validly signed waiver is not only applicable to the initial insurance, but continues to stay in effect on all future renewals of the policy, and on all replacement policies until the policyholder notifies the insurance company **in writing** to the contrary.⁶ A written revocation is effective on the date it is received by the insurance company.

Waiver of PIP is a commonly disputed issue between attorneys and insurers. Often, insurance carriers will advise attorneys: “Your client waived PIP.” Unless the carrier can produce the validly executed waiver form that applies to your client, your client will be entitled to at least PIP benefits of \$2,500, even if no premium has been paid for the coverage.⁷

Who is Covered by PIP?

PIP coverage extends to someone

¹ Maryland Insurance Article §19-507(a) “The benefits described in 19-505 of this subtitle shall be payable without regard to...any collateral source of medical, hospital or wage continuation benefits.” See *Bishop v. State Farm*, 360 Md. 225, 238, 757 A.2d 783, 790 (Md. 2000); *except for worker’s compensation benefits*, discussed *infra*. (Maryland Transportation Article §19-513).

² Maryland Insurance Article §19-508(a). Please note that some Insurance Companies offer Medical Payment Coverages (Med-Pay) in addition to PIP coverage on the insurance policy. Generally, PIP payments are primary and the Med-Pay is secondary.

³ See, e.g. *Pennsylvania Nat’s Mut. Casualty Ins. Co. V. Gartelman*, 288 Md. 151, 154, 416 A.2d 734,736 (1980)

⁴ Maryland Insurance Article §19-505(a) Coverage required – Unless waived in accordance with 19-506 of this subtitle, each insurer that issues, sells, or delivers a motor vehicle liability policy in this State **shall** provide coverage for the medical, hospital, and disability benefits described in this section...”

⁵ Maryland Insurance Article §19-0506(a) (1).

⁶ Maryland Insurance Article §19-506(e).

⁷ Maryland Insurance Article §19-506(a) (2).

injured in an automobile or pedestrian⁸ accident that is:

1. the first named insured on the policy (also known as the policy holder); or
2. any family member of the first-named insured (policy holder) who resides in the first-named insured's household (also known as a resident relative); or
3. any other individual who is using the motor vehicle with the express or implied permission of the named insured.

If a person is injured in a Maryland vehicle, unless the injured person has waived PIP, the carrier must pay PIP benefits regardless of where the accident occurred (i.e. outside the State of Maryland). PIP covers all injured persons in

⁸ Maryland Insurance Article §19-505(a) (1). PIP covers individuals injured as a pedestrian by a motor vehicle or while in, on, or alighting from a vehicle that is operated by animal or muscular power.

the vehicle, even if the injured person resides outside the State of Maryland. If an injured person is not a resident of Maryland, PIP *automatically* covers the individual since they could not have waived PIP under the statute.

The general rule is that, absent a valid waiver, all privately owned automobiles carry PIP. There are some exceptions to this rule. Taxicabs and buses are excluded from the requirement to carry PIP as well. Buses and taxicabs are not defined as "motor vehicles;" therefore are not required to carry PIP.⁹ State-owned or operated vehicles are not required to carry PIP.¹⁰

Another important note is that rental-

⁹ Maryland Insurance Article §19-501 (b) (2)(i) buses; and (ii) taxicabs. See also Maryland Automobile Insurance Fund v. SunCab, 506 A.2d 641 (MD 1986).

¹⁰ See Harden v. Mass Transit Administration, 277 MD 399, 384 A.2d 817 (Md. 1976); see also Nationwide Insurance Company v. United States Fidelity & Guaranty Company, et al., 550 A.2d 69 (MD, 1988).

car companies do not write *policies*. Therefore, these exclusions do not apply to vehicles rented in Maryland. For example, when a Maryland resident is injured as a pedestrian in Washington, DC, and the at-fault vehicle was rented in Maryland, the rental-car company will be primarily responsible for PIP payments.

PIP benefits, and the waiver of PIP, "follows" an insured and their resident-relatives. When an insured or resident-relative of the insured is injured in a car accident in a vehicle that does not carry Maryland PIP (i.e. a government vehicle or bus), or in a vehicle that is insured in another state, or as a pedestrian in any State, the injured person can collect PIP benefits from their own policy.¹¹ In Nasseri v. Geico, 888 A.2d 284 (Md. 2005), the Court held that a cab driver was entitled to PIP on his own personal automobile policy when driving a cab that did not have PIP coverage. However, an insured that has waived PIP cannot collect PIP benefits from another vehicle, even if that policy had PIP coverages.

If a vehicle owner waives PIP, that waiver only applies to the insured, listed drivers and resident relatives 16 years of age or older. Everyone else in that vehicle owner's car is still eligible for PIP regardless of the insured's waiver. Remember, the *default* policy in Maryland is for there to be PIP coverage. Therefore, an insured can only make a *limited* waiver of PIP which binds only those three groups of people.¹²

Maryland Transportation Article §19-505 (a)(1) also provides for individuals to be **specifically excluded** under Maryland Transportation Article §27-609. Therefore, when a specifi-

(Continued on page 42)

¹¹ 19-513 (d)(1)(I) & Bishop v. State Farm Mutual Auto Insurance, 360 Md. 225 (2000)

¹² As a practical note, children under 16 always receive PIP benefits. Also, if the resident-relative is insured on *another* automobile policy (e.g. their own car insurance policy), and has not waived PIP, then they are eligible for PIP regardless of the PIP waiver of the insured.

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Personal Injury Protection

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cally-excluded driver operates a vehicle that is listed on the automobile policy for which he was excluded, regardless of whether they had the express or implied permission of the owner, then the driver will be denied PIP benefits. Passengers of the vehicle will be denied PIP coverage if they are the owner, the owner's resident relatives, or the driver's resident relatives. All other passengers will be denied PIP coverage unless PIP is not recoverable under another automobile-insurance policy.¹³

Who May Not be Covered by PIP?

Under Maryland Insurance Article §19-505(c)(1), an insurer may exclude from PIP coverage someone who falls into one of these categories:

1. Someone who **intentionally** causes the motor-vehicle accident resulting in the injury for which benefits are claimed may be excluded from coverage.¹⁴
2. Someone who is a nonresident of Maryland, and is injured as a pedestrian in a motor-vehicle accident that occurs outside the state of Maryland may be excluded from coverage.¹⁵ Pedestrians injured in a car accident in Maryland with a Maryland vehicle are entitled to recover PIP as well as Liability Bodily Injuries on the striking vehicle's Maryland automobile insurance policy **unless** the claimant/pedestrian **waived** PIP.
3. Someone who is injured in a motor-vehicle accident while operating or voluntarily riding in a motor vehicle that the individual **knows** is stolen may be excluded from PIP coverage.¹⁶
4. Someone who is injured in a motor vehicle while committing a felony or fleeing the police may be excluded from PIP coverage.¹⁷
5. The named insured or family member who resides in the named insured's household may be excluded from PIP coverage for an injury that occurs while the named insured or family member is occupying an uninsured motor vehicle owned by the named insured or a resident relative.¹⁸ This arises where there are three vehicles in a household but only one vehicle is insured. In *Unsatisfied Claim & Judgment Fund of Maryland v. Hamilton*, 259 A.2d 303 (Md. 1969), the claimant was injured while operating an uninsured motor vehicle which the claimant owned himself. The claimant (and the estate acting on his behalf) could

¹³ Maryland Transportation Article §27-609 (c) (1-4).

¹⁴ Maryland Insurance Article §19-505(c)(1)(i)(1).

¹⁵ Maryland Insurance Article §19-505(c)(1)(i)(2).

¹⁶ Maryland Insurance Article §19-505(c)(1)(i)(3).

¹⁷ Maryland Insurance Article §19-505(c)(1)(i)(4).

¹⁸ Maryland Insurance Article §19-505(c)(1)(ii).

not claim PIP coverage under the insurance policy of another vehicle that he did own and that the claimant did insure. When a claimant is injured in a resident-relative's uninsured motor vehicle, the claimant can recover PIP benefits under their own automobile insurance policy.¹⁹

6. A claimant injured while riding a motorcycle either as a passenger or driver, may be denied PIP coverage.²⁰ Insurance companies may exclude PIP benefits from motorcycle policies, or offer benefits with deductibles, options or other specific exclusions. As a practical matter, motorcycles are generally excluded from PIP coverage.²¹

Individuals who have uninsured vehicles may not be entitled to PIP coverage. However, this permissible exclusion was limited in MAIF v. Perry, 356 Md. 668 (1999). Here, the claimant owned a vehicle that was not insured and in violation of the Transportation Act. He was injured in another vehicle that he owned and that was insured with PIP coverage. The Court held that the fact that the claimant owned a vehicle without insurance coverage did not disqualify him from coverage on his insured vehicle in which he did not waive PIP coverages.

Many policies also include permissible exclusion for accidents with pedestrians that occur in other states and/or occur with nonresidents of Maryland. *You should read the policy to ensure these exclusions are included in the policy.* Re-

member, the default, regardless of what the insurance company may claim, is that there is PIP coverage.

Also, any exclusion not listed above, and not specifically permitted in the Maryland Insurance Article, is invalid. In Salamon v. Progressive Classic Insurance Company 379 Md. 301 (2004), the Maryland Court of Appeals held that the so-called "pizza exclusion" was not valid and required Progressive to pay PIP benefits to its insured. In this case, the claimant bought a policy that had PIP benefits, but subsequently obtained a job delivering pizza. After being injured in an automobile collision in his car while working, Progressive sought to deny PIP coverage under an exclusion it wrote for vehicles used for commercial purposes. The Court of Appeals held that Progressive could not deny coverage when the driver of a private automobile uses that vehicle for work.

What Does PIP Pay?

The statutory minimum PIP benefits are \$2,500 for payment of all reasonable and necessary expenses that arise from a motor-vehicle accident, and that are incurred within three years after the accident for necessary prosthetic devices, ambulance, dental, funeral and hospital, medical, professional nursing, surgical, and X-ray services, and for payment of up to 85 percent of lost income.²² "As a condition of providing loss of income benefits under this subsection, an insurer may require the injured individual to furnish the insurer with reasonable medical proof of the injury causing loss of income."²³

PIP pays medical expenses incurred as a result of an automobile collision. Except in job-related car accidents, PIP

must pay benefits regardless of whether the injured party has other coverage for the expenses.²⁴ Where an injured person is a member of an HMO and has medical expenses paid, the injured person is still entitled to PIP recovery for that medical bill.²⁵ Military personnel who have medical care provided by the government are also still entitled to PIP benefits.²⁶ PIP benefits "shall be reduced to the extent that the recipient has recovered benefits under the workers' compensation law of a state or the federal government for which the provider of the workers' compensation benefits has not been reimbursed."²⁷

PIP benefits in excess of \$2,500 can be received from an insured's own policy. When the claimant is injured in a vehicle that has \$2,500 in PIP, but his own policy has \$10,000 in PIP coverage, the claimant is entitled to \$2,500 from the first policy and an additional \$7,500 from his own policy. See Hoffman v. United Services Auto Ass'n, 522 A.2d 1320, (Md. 1985).

PIP benefits cannot be stacked.²⁸ For example, if an injured person has two cars, and two policies of insurance, the injured person cannot "stack" or make two claims for PIP of \$2,500 each.

When Does PIP Pay?

The injured person has 12 months from the date of the collision to submit a PIP claim.²⁹ Submission requires no-

¹⁹ In Pennsylvania National Mutual Casualty Insurance Company v. Gartelman, 413 A.2d 303 (Md. 1969), the claimant was injured while driving a moped that was owned by her husband but was not insured. The Court stated that she was entitled to claim PIP and UM on her own vehicle's insurance policy.

²⁰ Maryland Insurance Article §19-505(c) (2).

²¹ See Dejarnet v. Federal Kemper, 475 A.2d 454 (Md. 1983). A passenger on a motorcycle was held to not be entitled to PIP on a resident-relative's automobile insurance policy as the policy excluded "use of a motorcycle."

²² See Horace Mann Ins. Co v. Worthy, 600 A.2d 1151, 90 Md. App. 273 (Md. App., 1991). Holding that an estate can recover PIP benefits under a decedent's automobile insurance policy for post-mortem lost wages.

²³ Maryland Insurance Article §19-505(b) (3).

²⁴ Maryland Insurance Article §19-507(a) (2).

²⁵ See Dutta v. State Farm, 769 A.2d 948 (Md. 2000)

²⁶ See Plank v. Summers, 203 Md. 552, 102 A.2d 262 (1954). Although Naval servicemen injured in car accident were not required to pay for treatment received at National Naval Hospital, the Court ruled that the jury should be allowed "to consider and to award the reasonable value of the hospital and medical services rendered to them without charge or imposition of liability by a United States Navy hospital."

²⁷ Maryland Insurance Article § 19-513(e).

²⁸ See Travelers Insurance Company v. Benton, 278 MD 542 (Md. 1976); see also Hoffman v. United States Auto. Ass'n, 522 A.2d 1320, 309 Md. 167 (Md., 1985).

²⁹ Maryland Insurance Article §19-508 (a) (2)(i).

tification to the PIP insurer, as well as a completed, signed and submitted PIP application or forms to the PIP insurer.³⁰ PIP payments must be made within 30 days of an insurer receiving satisfactory proof of the claim.³¹ If PIP payments are not timely made, simple interest accrues on the unpaid benefits at a rate of 1.5 percent per month.

PIP is an important part of Maryland insurance coverage. In addition

to providing minimal protections, PIP also helps settle automobile-negligence cases. PIP alleviates some of the financial burdens on persons injured in car or pedestrian accidents. People injured in car accidents that do not have health insurance do not need to worry as much about hospitals or other medical providers turning bills over to collections and having their credit affected. Rather than waiting for the settlement and/or judgment proceeds to arrive – which can take up to two or more years – PIP can pay hospital bills and other medical providers months and possibly years before the insured receives a bodily injury recovery. One of the “fundamental aims” is the speedy provision of PIP benefits

without the lengthy delays entailed by tort litigation. Such prompt payment is a basic purpose of no-fault insurance generally.³² PIP also pays 85 percent of an injured person’s lost wages. When the financial pressure of losing a paycheck is eased, an injured person can treat until they are healed. With more of their medical bills/lost wages paid promptly, clients have less pressure to accept a low settlement offer, and can insist on fair compensation for their claim.

PIP benefits are important and should be enforced. The recently enacted First Party Good Faith statute can assist you in recovering attorney fees and costs of litigation when bringing suit to collect wrongfully denied PIP benefits.

Attorneys representing people injured in a car accident are responsible for advising the client of their rights to PIP recovery. Failing to make a timely claim for PIP benefits could leave an attorney financially responsible to the client, and may be a breached of his/her ethical duty to diligently represent a client. ■

About the Author

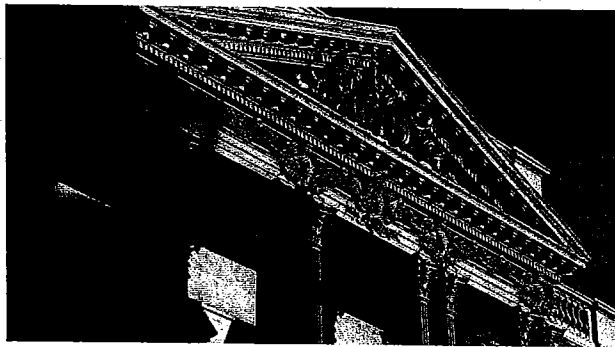
Sharon Lewis Tompkins graduated from American University in Washington, DC and from the University of Missouri School of Law. Ms. Tompkins is a member of the Board of Governors of the Trial Lawyers Association of Metropolitan Washington, D.C. Ms. Tompkins has served as the 2001, 2002, and 2007 Regional Coordinator of the American Trial Lawyers Association Student Trial Advocacy Competition in Washington, D.C. Ms. Tompkins has presented PIP/Medpay Insurance at the 2005 Trial Lawyer’s Association of Metropolitan Washington, D.C. Seminar and the 2006 Maryland Trial Lawyer’s Association Seminar. Ms. Tompkins practices in Maryland, the District of Columbia, and Missouri.

³⁰ Some insurers do not require specific forms, merely written notice of the claim.

³¹ Maryland Insurance Article §19-508(a)(1).

³² Insurance Commissioner v. Property & Casualty Insurance Guaranty Corporation, 313 Md. 518, 532, 546 A.2d 458, 465 (1988).

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