

Senate Bill 411 Brings Significant Changes to Oregon UM/UIM and PIP Coverage

Senate Bill (“SB”) 411 passed the 2015 Regular Session of the Oregon Legislature and will take effect on January 1, 2016. The amendments apply to policies issued or renewed *after* the effective date. As discussed below, the bill significantly changes uninsured motorist (“UM”) coverage, underinsured motorist (“UIM”) coverage, and PIP subrogation rights.

A. UM/UIM Coverage

1. What the Bill Changes

SB 411 changes the way Oregon treats UM/UIM. Under the current statutory scheme, UIM coverage fills the gap, if any, between the limit of the at-fault party’s liability limit and the limit of the claimant’s UM coverage. In other words, for policies issued or renewed before January 1, 2016, UIM coverage is only available to the claimant if the claimant’s UM limit exceeds the at-fault party’s liability limit. Therefore, in cases where the claimant’s damages exceed his or her UM limit, the UIM benefits available equal the difference between the claimant’s UM limit and the at-fault party’s liability limit. See ORS 742.502(2) (“Underinsurance coverage shall be equal to uninsured motorist coverage less the amount recovered from other motor vehicle liability insurance policies”).

Section 2 of SB 411 modified ORS 742.502 and makes UM/UIM coverage “stackable” with any other insurance available, including the at-fault party’s insurance. Thus, payments the claimant received from the at-fault party’s insurer do not reduce an insured’s underinsurance payments if the claimant’s damages are large enough.

2. Potential Consequences

Opponents to the bill pointed out that SB 411 effectively increases UIM coverage, which will result in higher insurance premiums for consumers. Additionally, this higher-premium impact may disproportionately affect those with the lowest limits of coverage, because this group will be more likely to have claims that will be covered under the new stacking approach, but that would not have been covered under the current gap-filling approach to UIM coverage.

Opponents also argued that under the new provisions created in SB 411, a claimant alleging injuries in excess of the at-fault party’s insurance will now always trigger a UIM claim, where under the current law, a UIM claim is only triggered when the claimant alleges injuries in excess of the at-fault party’s liability insurance limits *and* the claimant’s UM limits are higher than the at-fault party’s limits.

Also of note, the legislature did not remove the protective requirements in the UM/UIM statute, which allows a consumer to elect lower UM/UIM coverage after the insurer takes certain steps to make sure the insured is adequately informed. See SB 411, § 2 (no substantive changes to requirements for electing lower UM/UIM coverage); ORS 742.502(2) (current statute). Since the coverage now “stacks,” insureds may decide to choose lower UM/UIM coverage given that they need less UIM coverage after SB 411 to be covered for the same amount as before SB 411 (though this is not the case for UM coverage, and thus is riskier). The lower-limits election in ORS 742.502(2) may be used more frequently as a result, especially for consumers who are looking for policies with the lowest premiums. Finally, the statute requires equal UM and UIM coverage limits.

B. PIP

1. What the Bill Changes

SB 411 makes the following changes to the current PIP statutory scheme:

- Increases the amount of time covered post-incident for reasonable and necessary expenses from one year to two years after the date of injury. SB 411, § 4.
- A PIP provider after SB 411 is only allowed to recover PIP payments made to the extent the PIP payments paid exceed the “damages” (no longer “economic damages”) to the claimant. *Id.* § 5.
- Changes the presumption of reasonableness requirement based on the provider *receiving*, rather than being *given*, notice of denial within 60 days (timeframe unchanged). *Id.*

2. Potential Consequences

While the dollar limits on PIP coverage and the types of damages recoverable do not change under the new law, the increased time period for making PIP claims will ostensibly result in higher-value PIP claims for injuries which were not fully resolved in one year. This will likely increase premiums and delay the PIP insurer’s ability to seek subrogation for claims with injuries not fully resolved in one year.

The changes will also significantly negatively affect a PIP insurer’s ability to seek and obtain subrogation. A PIP insurer will only be able to recover for payments made when the PIP payments (along with UIM benefits and other payments by the at-fault party) exceed not just those damages PIP was designed to cover, but also all of the claimant’s damages, including noneconomic damages. Since noneconomic damages are difficult to quantify, pursuing subrogation may not make economic sense for PIP insurers.

This amendment also seems to chip away at PIP's purpose of providing timely benefits for verifiable injuries without first needing to determine fault. While PIP insurers must still provide benefits, the claimant may effectively use PIP payments as payment for noneconomic injuries if some of the initial PIP payments were for non-compensable injuries, and PIP insurers have no recourse. This may incentivize PIP insurers to perform more investigation before providing PIP benefits, which could delay PIP payments to injured claimants.