Jim Poolman
Commissioner of Insurance

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

BULLETIN 2003-4

TO: All Companies Licensed to Write Auto and Health Insurance in North Dakota

FROM: Jim Poolman, Commissioner

DATE: October 9, 2003

SUBJECT: Coordination of Benefits

SCOPE AND APPLICABILITY

This bulletin applies to basic no-fault policies of insurance issued prior to August 1, 2003, that are still in effect. Subject to the approval of the coordination plan by the Commissioner, N.D. Cent. Code § 26.1-41-13 allows a basic no-fault insurer to coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury once a threshold amount in medical expenses has been reached.

Prior to August 1, 2003, the threshold was set at amounts in excess of $5,000. Effective August 1, 2003, that threshold was raised by the 58th Legislative Assembly to amounts in excess of $10,000.

The purpose of this bulletin is to provide guidance to basic no-fault insurers on coordinating benefits under policies of insurance issued prior to August 1, 2003, in light of the $10,000 threshold that went into effect on August 1, 2003.

EFFECT ON POLICIES ISSUED PRIOR TO AUGUST 1, 2003

Basic no-fault policies of insurance entered into prior to August 1, 2003, that are still in force will be governed by the law in effect at the time the contract was made. Benefits under these policies may be coordinated by the basic no-fault insurer once medical expenses exceed $5,000. A basic no-fault policy of insurance which is renewed or entered into on or after August 1, 2003, would be governed by the $10,000 threshold.

LEGAL ANALYSIS

Article I, Sec. 16 of the North Dakota Constitution provides that "No . . . law impairing the obligations of contracts shall ever be passed." The Legislature has recognized that statutes are

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not to be construed to impair any vested right or obligation existing when it took effect. McKibben v. Grigg, 582 N.W.2d 669, 672 (ND 1998). Contractual rights are vested rights. Id. Subsequent changes or repeals of statutes cannot impair the obligations of contracts. Id. Consequently, the statutory increase of the threshold amount for coordinating benefits effective August 1, 2003, will not change a basic no-fault insurer's obligations under a contract of insurance entered prior to August 1, 2003. To the extent that a policy is silent on the threshold for coordination of benefits, it is presumed that the "existing statutes at the time the contract is entered into form a part of the contract and become a part of the contract as if incorporated therein in full." See Permann v. Knife River Coal Min. Co., 180 N.W.2d 146, 162 (N.D. 1970).

Questions regarding this bulletin may be directed to Larry Maslowski or Craig Burns of the North Dakota Insurance Department at (701) 328-2440.

JP/njb