Analysis of DIFS Bulletin 2025-11-INS:

On April 25, 2025, the Department of Insurance and Financial Services (DIFS) issued Bulletin 2025-11-INS to comply with a recent judicial decision in which the Michigan Court of Appeals struck down DIFS' position regarding the applicability of the Michigan Supreme Court's landmark decision of *Andary v USAA*. In that regard, DIFS previously took the position in Bulletin 2024-06-INS that:

> *"In Andary, the Michigan Supreme Court expressly limited its holding to MCL 500.3157(7) and (10). Id. at 256-257. The remainder of the enacted provisions, including the remainder of the fee schedule, are accordingly unaffected by that decision."*

After Bulletin 2024-06 was issued, several Michigan courts expressly rejected this position, including the Michigan Court of Claims, which ruled earlier this year that DIFS incorrectly interpreted the Supreme Court's decision in *Andary*. See *Auto Owners, et al v DIFS* (with CPAN as amicus curiae). Eventually, in a recent published decision issued in the case of *Fremont Ins Co v Lighthouse Outpatient Ctr* (April 11, 2025), the Michigan Court of Appeals similarly rejected DIFS' interpretation of *Andary,* stating with conviction that:

> *"DIFS misinterpreted the holding in Andary. The reasoning of Andary is not limited to merely reimbursement issues arising under MCL 500.3157(7) (capping reimbursement for services not covered by Medicare) and (10) (limiting reimbursable hours for family-provided attendant care)."*

The Court of Appeals' decision in *Lighthouse* constitutes binding law. Accordingly, once *Lighthouse* was issued, DIFS was effectively forced to withdraw its position on *Andary* and issue a new Bulletin conforming with the court's holding in *Lighthouse.* DIFS therefore issued Bulletin 2025-11-INS, which, among other things, now recognizes that:

> *Because Fremont has precedential effect, see MCR 7 .215(C)(2), no part of the fee schedule in MCL 500.3157 applies to the cost of treatment provided to persons injured in motor vehicle accidents before June 11, 2019.*

Based on these and other new legal developments, DIFS Bulletin 2025-11-INS contains several instructions for providers. In this regard, the Bulletin provides, among other things, that:

> *1. "Providers who believe that they are due additional reimbursement for claims subject to the Fremont decision should first contact the insurer to request reprocessing of those claims. If a dispute related to a reprocessed claim cannot be*

resolved directly with the insurer, the provider may contact the Department for assistance at DIFSComplaints@michigan.gov."

2. *For treatment or training payable under MCL 500.3157, "if a provider has submitted a bill to an insurer, but has not correctly coded a particular product, service, or accommodation, the provider may need to re-submit the bill to the insurer with the appropriate code. Insurers are expected to engage constructively with providers to assist them in understanding the insurer's review of the provider's bills and to expedite bills resubmitted with corrected codes. Insurers are advised that the Department will carefully scrutinize complaints in which an insurer has repeatedly rejected a provider's bills without offering assistance."*

3. *"Providers who filed an appeal with the Department's Utilization Review unit involving claims that are subject to the Fremont decision, and whose appeals were resolved in an order issued prior to April 11, 2025, should first attempt to resolve any reimbursement disputes with the insurer."*

4. *Pursuant to the Supreme Court's recent decision in the case of Spine Specialists v MemberSelect Ins Co, all legacy patients may rely on the new one-year-back tolling provisions of MCL 500.3145(3)* ***in claims seeking payment for medical services that were rendered after June 11, 2019****, when the new no-fault law went into effect.*

There are three aspects of Bulletin 2025-11-INS that are inaccurate, or otherwise misleading, and should be identified as such. They are as follows:

1. The Bulletin states that "*[i]n Andary, the Michigan Supreme Court* ***expressly limited*** *its holding to MCL 500.3157(7) and (10)."* Bulletin, page 1 (citing pages 256-57 of the *Andary* decision). Although the Supreme Court in *Andary* applied its holding in reference to those subsections, nowhere in the pages cited by DIFS, or anywhere else in the opinion itself, did the *Andary* Court "*expressly limit*" its holding to only those subsections.

2. The Bulletin states that in order to receive payment, providers must submit their bills with "*the appropriate*" billing codes. However, there is nothing in the statutory provisions of PA 21/22 (or in any published Michigan appellate decision) that requires the use of billing codes. To the contrary, MCL 500.3142 of the no-fault act expressly provides that once an

insurer receives *"reasonable proof"* of the *"fact and amount of the loss sustained,"* the insurer must make payment within 30 days.

3. The bulletin discusses how insurers should determine the *"reasonableness"* of a provider's charge. In doing so, the Bulletin cites to *Advocacy Org for Patients & Providers (AOPP) v Auto Club Ins Ass'n*, 257 Mich App 365 (2003) and intimates that under this case, a reasonable charge may not exceed *"100% of a health care provider's charge where that charge did not exceed the highest charge for the same service charged by 80% of other providers rendering the same service."* In reality, the *AOPP* case did not hold that this formula is dispositive of what constitutes a reasonable charge under § 3107(1)(1). Rather, the court held that this formula is *"not prohibited"* by the statute—a far cry from suggesting that it is the definitive standard for determining reasonableness. In that regard, the court in *AOPP* stated, *"[thus], although defendants . . . use a formula, that formula is based on a survey of charges by other health-care providers for the same services, a sampling which we conclude is* ***not prohibited*** *by the statute for determining the reasonableness of charges for the same service." AOPP*, page 382.

Overall, Bulletin 2025-11-INS is good for providers given the fact that it now correctly applies the Supreme Court's holdings on retroactivity in *Andary,* and it recognizes that under the Supreme Court's recent decision in *Spine Specialists,* all legacy patients are protected by the new one-year-back tolling provisions of MCL 500.3145(3) in the manner stated above.