

April 13, 2020

COVID-19 INFORMATIONAL MEMORANDUM FOR THE AAIS MULTISTATE PERSONAL AUTO PROGRAM

The purpose of this memorandum is to provide guidance under the AAIS Personal Auto Program (PA)¹ in connection with issues arising out of or related to Coronavirus Disease 2019 (COVID-19). This memorandum is in response to member inquiries and calls from state regulators to address coverages impacted by the COVID-19 pandemic.

I. Disclaimer

This document does not constitute legal advice and should not be relied upon as such. This document is solely for informational purposes and should not be cited in support or as part of any particular claim resolution, coverage decision, or legal proceeding. AAIS and its staff are unable to provide claims-handling advice, both with respect to actual claims and those that are hypothetical in nature (including "how to cover it" inquiries). Each AAIS member company has the obligation and the authority to interpret policy language as it sees fit, in accordance with state and federal law.

AAIS recognizes that any determination of insurance coverage is highly fact-dependent and claim-specific. Most coverage decisions are incomplete before an actual claim is made. First-party claims and third-party allegations must be considered in the context of the policy language to determine whether coverage is available. As such, the following information is intended to assist member companies when considering coverage issues.

The forms, endorsements, and coverage issues discussed in this memorandum may be subject to adjustments required by regulatory authorities. Please consult [AAISdirect](#) for the specific forms and endorsement list and amendatory endorsement that apply to the state in which coverage was issued when considering the information provided herein.

II. COVID-19

Coronavirus disease, also known as COVID-19, is a severe respiratory illness caused by the novel coronavirus (Severe Acute Respiratory Syndrome Coronavirus 2 or "SARS-Cov-2") that was first detected in Wuhan, Hubei Province, China. SARS-Cov-2 is a rapidly spreading virus that can be transmitted between humans. The virus was first reported in the United States on January 21, 2020 with the first confirmed report of person-to-person spread in the United States on January 30, 2020. The first death in the United States as a result of the virus was reported on February 28, 2020. On March 11, 2020, the World Health Organization characterized the virus SARS-Cov-2 and the resulting illness COVID-19 as a pandemic.

¹ This memorandum focuses on personal auto liability and physical damage issues. Separate materials may be provided, as appropriate, to address issues specific to commercial auto and business interruption coverage.

Transmission of SARS-Cov-2 / COVID-19 most frequently occurs in situations of close contact, within about 6 feet, via respiratory droplets. Transmission to persons from contaminated surfaces or food has not yet been documented. The viability of the virus on surfaces is uncertain. However, there are indications based upon early research that the virus is detectable for up to 3 hours in the air, 4 hours on copper, 24 hours on cardboard, and up to 3 days on plastic and stainless steel.

The full impact of the SARS-Cov-2 / COVID-19 pandemic is not yet known. Multiple countries and localities have imposed travel restrictions, business and school closures, and shelter-in-place orders. Government responses have already caused significant disruptions in distribution chains and business operations and have contributed to numerous event cancellations. Consumers have been urged to self-quarantine or practice social distancing, leading to widespread panic followed by sharp decreases in economic activity. Many face-to-face businesses and service providers have been forced to limit hours or, in some cases, completely shut down.

First- and third-party claims stemming from SARS-Cov-2 / COVID-19 and its economic impact are anticipated to increase significantly as the pandemic evolves. Lawsuits have already been filed for instances of negligent exposure to the coronavirus and more will follow. Breach of contract claims are expected to arise from businesses unable to fulfill contractual terms due to diminished operations, staff, and output. First-party property claims concerning contaminated or spoiled property are likely. Similarly, related first-party business interruption claims for loss of income, supply chain fractures, necessary expenses, and civil authority orders will be made. This memorandum discusses the potential COVID-19 claims and how they may be considered under the AAIS Personal Auto Program.

III. Personal Auto Program

The Personal Auto Program provides forms and rules for writing personal automobile policies, including liability coverages, physical damage coverages, and other mandatory and optional coverages, for individuals who own and operate an eligible vehicle. Coverage can also be provided for individuals who operate certain non-owned vehicles.

For more information on PA forms, coverages, structure, and features, refer to the following documents and resources available on [AAISdirect](#):

- [PA Program Page](#)
- [PA Multistate Form and Endorsement List](#)

IV. COVID-19 Coverage Considerations

The following sections highlight various coverage issues that may arise in connection with claims arising out of or related to the COVID-19 pandemic and set forth the responsive policy provisions, conditions, and exclusions. This is not intended to be an exhaustive list of coverage considerations. Additional policy provisions may apply depending on the context or allegations of a claim and jurisdictional precedent.

A. Part A. Liability Coverage

The PA Program affords coverage for Part A -- Liability Coverage. Part A provides payment of compensatory damages for which an "insured" is legally liable because of "bodily injury" or "property damage". However, the damages must be caused by an auto accident to be subject to coverage.

"Bodily injury" means bodily harm, sickness, or disease sustained by a person, including death that results from any of these. However, "bodily injury" does not include mental or emotional injury, suffering, or distress that does not result from physical injury to a person.

"Covered auto" means a vehicle shown on the "declarations", an "additional auto", a "replacement auto", a "trailer" that "you" own, or an auto or a "trailer" that "you" do not own while being used on a temporary basis as a substitute for a vehicle described above that is not available for use due to its breakdown, repair, servicing, loss, or destruction.

"Property damage" means physical injury to or destruction of tangible property, or the loss of use of tangible property, whether or not it is physically damaged.

Part A excludes coverage for "property damage" to property that is owned by or being transported by the "insured". Further, coverage is excluded for "bodily injury" to an employee of the "insured" that occurs during the course of employment. However, this exclusion does not apply to "bodily injury" to a domestic employee unless a workers' compensation policy covers the "bodily injury", or benefits are provided or required to be provided under a workers' compensation or like law.

Even if a COVID-19 claim could allege "bodily injury" or "property damage" caused by an auto accident, the liability coverage is subject to various exclusions.

i. "Covered Auto Exclusions"

Liability coverage is excluded for the ownership, maintenance, or use of any vehicle other than a "covered auto", that is owned by "you" or a "family member", or furnished or available for "your" regular use or the regular use of a "family member". In addition, liability coverage is excluded for the ownership, maintenance, or use of a "covered auto" while it is enrolled in a personal vehicle sharing program under a written agreement and being used in connection with such a program.

Therefore, to the extent COVID-19 claims are based on the ownership, maintenance, or use of any vehicle other than "covered auto", the claims would likely not be subject to liability coverage.

ii. Livery Or Conveyance, Delivery Or Transport, And Transportation Network Programs

Liability coverage is excluded for the "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes, but is not limited to, any period of time that an "insured" is using a vehicle while logged into a "transportation network program" as a driver, with or without a passenger "occupying" the vehicle. However, this exclusion does not apply to the use of a vehicle for a shared-expense carpool or volunteer or charitable activity for which an "insured" receives no compensation (or where an "insured's" only compensation is the reimbursement of expenses incurred to carry out the activity).

In addition, liability coverage is excluded for the "insured's" liability arising out of the ownership or operation of a vehicle while it is being used in commerce for the delivery or transport of food or other goods. This includes but is not limited to any period of time that an "insured" is using a vehicle while logged into a "transportation network program" as a driver, with or without food or other goods for delivery or transport present in the vehicle. This exclusion similarly does not apply to the use of a vehicle for a volunteer or charitable activity for which an "insured" receives no compensation (or where an "insured's" only compensation is the reimbursement of expenses incurred to carry out the activity).

For these reasons, the PA program would likely exclude coverage for COVID-19 related claims involving public or livery conveyance, delivery services, or transportation network programs. This is the most anticipated COVID-19 related issue within the PA Program. As a result of state-wide stay-at-home orders, many retail stores, restaurants, and other businesses have engaged employees (who might not otherwise have delivery experience) to assist in delivery services and operations during the COVID-19 pandemic. In response, various departments of insurance and state officials are expecting an increase in delivery-related claims and have requested carriers add or expand coverage to both personal auto policies and business commercial policies to address this shift in business operations. As is discussed later, some endorsements may apply to remove the exclusions noted above and provide coverage for delivery services.

B. Medical Payment Coverage

Part B -- Medical Payments Coverage provides payment for reasonable expenses for necessary medical and funeral services that result from "bodily injury" sustained by an "insured" and caused by an auto accident. As noted above, most COVID-19 claims will likely not allege "bodily injury" caused by an auto accident. Therefore, it is unlikely that medical payments coverage will be applicable to COVID-19 claims.

C. Uninsured Motorist Coverage

Part C under the PA program provides Uninsured Motorist Coverage². Uninsured Motorist Coverage pays compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury" sustained by an "insured" and caused by an auto accident. In order for a claim to be subject to coverage, the owner's or operator's liability for the "bodily injury" must arise out of the ownership, maintenance, or use of the "uninsured motor vehicle". As previously stated, it is likely that most COVID-19 claims will not involve "bodily injury" caused by an auto accident. Therefore, it is unlikely that PA uninsured motorist coverage will be applicable to COVID-19 claims.

D. Physical Damage Coverage

Part D under the PA Program provides coverage for direct and accidental loss to a "covered auto" caused by "collision" (when applicable) or "comprehensive loss" (when applicable). The term "collision" means the upset or overturn of a vehicle or its impact with another vehicle or object. "Comprehensive loss" means loss to a vehicle that is caused by an event other than a "collision". "Comprehensive loss" includes but is not limited to: fire or lightning; windstorm or hail; explosion; riot or civil commotion; falling objects or missiles; vandalism or malicious mischief; theft; earthquake or sinkhole collapse; water or flood; contact with a bird or animal; or glass breakage.

Virus contamination is not expressly discussed in the physical damage coverage. Some jurisdictions may consider virus contamination comprehensive loss. Jurisdictional precedent should be consulted when coverage is being considered. Virus contamination in the context of physical damage coverage may present a question of fact.

Similar to Part A, coverage is excluded under Part D for loss to a "covered auto" or to a "non-owned auto" while it is being used as a public or livery conveyance. This includes but is not limited to any period of time that a person is using the "covered auto" or the "non-owned auto" while logged into a "transportation network program" as a driver, with or without a passenger "occupying" the "covered auto" or the "non-owned auto". However, this exclusion does not apply to the use of a "covered auto" or a "non-owned auto" for a shared-expense car pool, or volunteer or charitable activity for which that person receives no compensation (or where that person's only compensation is the reimbursement of expenses incurred to carry out the activity).

² State-specific endorsements, to the extent applicable, are available on AAISDirect.

Physical damage coverage is also excluded for loss to a "covered auto" or to a "non-owned auto" while it is being used in commerce for the delivery or transport of food or other goods. This includes but is not limited to any period of time that a person is using the "covered auto" or the "non-owned auto" while logged into a "transportation network program" as a driver, with or without food or other goods for delivery or transport present in the "covered auto" or the "non-owned auto". Again, this physical damage coverage exclusion does not apply to the use of a "covered auto" or a "non-owned auto" for a volunteer or charitable activity for which that person receives no compensation (or where that person's only compensation is the reimbursement of expenses incurred to carry out the activity).

E. Endorsements

Transportation Network Program and Vehicles Used For Delivery Or Transport endorsements serve to give back coverage in specific factual scenarios. These optional endorsements remove various exclusions and provide coverage which was not otherwise provided. The potential application of transportation network program coverage and endorsements to COVID-19 will be fact specific and dependent upon the precedent law of the applicable jurisdiction.

i. Transportation Network Program Coverage

The optional Transportation Network Program (TNP) Coverage endorsements extend coverage for the period of time that an "insured" is using the "covered auto" while logged into a scheduled "transportation network program" as a driver. The TNP endorsements have three variations to progressively address each of the three commonly recognized phases of TNP activity.

Under Phase 1, the driver is logged into the TNP application but has not yet accepted a passenger. Endorsement PA 6602 addresses this first phase only, extending coverage when a passenger is not "occupying" the "covered auto" and the "insured" has not accepted a request through the "transportation network program" to transport a passenger.

In Phase 2, the driver has accepted a passenger and is en route to pick them up. Endorsement PA 6603, building on the coverage provided under PA 6602, eliminates the "no accepted passenger" restriction and applies to all TNP activity so long as a passenger is not "occupying" the "covered auto".

Finally, under Phase 3, a passenger has entered the vehicle. Accordingly, PA 6604 eliminates the occupancy restrictions in PA 6602 and PA 6603 to extend coverage for the entire TNP activity (i.e. while a "covered auto" is being used as a public or livery conveyance).

ii. Vehicles Used For Delivery Or Transport

Optional endorsement PA 6605, Vehicles Used For Delivery Or Transport, extends liability, medical payments, uninsured motorist, physical damage, and (optionally) underinsured motorist coverages for an "insured's" liability arising out of the ownership or operation of a vehicle while it is being used in commerce for the delivery or transport of food or other goods (including but not limited to any period of time that an "insured" is using a vehicle while logged into a "transportation network program" as a driver) with or without food or other goods for delivery or transport present in the vehicle. Endorsement PA 6605 is intended to apply to activities conducted in connection with traditional delivery services (e.g. food delivery for a single employer) as well as popular delivery platforms such as Uber Eats, Postmates, DoorDash, Instacart and others.

F. Summary Of Coverage Considerations

The PA Program is intended to provide coverage for "bodily injury" and "property damage". This coverage is generally triggered by an auto accident. It is AAIS's position that most virus-related claims are not generally covered under the PA Program. Ultimately, coverage determinations are highly fact-dependent and claim-specific, which is why it is important for carriers to review pertinent policy language and the individual facts and circumstances presented by each claim before reaching a coverage decision.

In addition to these coverage considerations, the COVID-19 pandemic has triggered a variety of responses from state departments of insurance. Actions taken by regulators have varied from seeking lower or refunded premiums due to COVID-19 related lockdowns, to extending coverage options under personal automobile and commercial policies for employees engaged in delivering food and other goods. AAIS will continue to monitor these issues and publish compliance alerts and bulletins where appropriate.

G. Responsive AAIS Forms

Refer to the following multistate forms on [AAISdirect](#) in connection with the coverage issues discussed herein:

PA 0001	07 16	Personal Automobile Policy
PA 6602	07 16	Transportation Network Program Coverage -- No Accepted Passenger
PA 6603	07 16	Transportation Network Program Coverage -- No Passenger
PA 6604	07 16	Transportation Network Program Coverage
PA 6605	07 16	Vehicles Used For Delivery Or Transport

V. Additional Resources

For additional COVID-19 guidance, coverage issues, and questions:

- Visit <https://www.aaisonline.com/>;
- Follow AAIS GLC on [Twitter](#); or
- Email Joanne Burns (joanneb@AAISonline.com).