

HOUSE BILL NO. 5870

March 02, 2022, Introduced by Reps. Berman, Bezotte, Brixie and Green and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3142 and 3157 (MCL 500.3142 and 500.3157), as amended by 2019 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3142. (1) Personal protection insurance benefits are
2 payable as loss accrues.

3 (2) Subject to subsection (3), personal protection insurance
4 benefits are overdue if not paid within 30 days after an insurer
5 receives reasonable proof of the fact and of the amount of loss
6 sustained. Subject to subsection (3), if reasonable proof is not

1 supplied as to the entire claim, the amount supported by reasonable
2 proof is overdue if not paid within 30 days after the proof is
3 received by the insurer. Subject to subsection (3), any part of the
4 remainder of the claim that is later supported by reasonable proof
5 is overdue if not paid within 30 days after the proof is received
6 by the insurer. For the purpose of calculating the extent to which
7 benefits are overdue, payment must be treated as made on the date a
8 draft or other valid instrument was placed in the United States
9 mail in a properly addressed, postpaid envelope, or, if not so
10 posted, on the date of delivery.

11 (3) For personal protection insurance benefits under section
12 3107(1)(a), if a bill for the product, service, accommodations, or
13 training is not provided to the insurer within 90 days after the
14 product, service, accommodations, or training is provided, the
15 insurer has 60 days in addition to 30 days provided under
16 subsection (2) to pay before the benefits are overdue.

17 (4) ~~An~~ **If a payment is** overdue ~~payment bears simple interest~~
18 ~~at the rate of 12% per annum.~~ **under this section and if the insurer**
19 **has acted in bad faith in not making the payment in a timely**
20 **manner, the insurer shall pay the claimant 3 times the amount of**
21 **the overdue payment and any reasonable attorney fee actually**
22 **incurred. For purposes of this subsection, all of the following**
23 **apply:**

24 (a) **Whether the insurer acted in bad faith is a factual**
25 **determination to be made based on an analysis of the totality of**
26 **the evidence available at or before the time when the claim became**
27 **overdue.**

28 (b) **If a payment is more than 90 days overdue, there is a**
29 **rebuttable presumption that the insurer has acted in bad faith.**

1 (c) If an action is filed for payment of overdue benefits, the
2 claimant is not entitled to a duplicate attorney fee for the same
3 services or expenses under this subsection and section 3148.

4 Sec. 3157. (1) Subject to subsections (2) to ~~(14)~~, **(15)**, a
5 physician, hospital, clinic, or other person that lawfully renders
6 treatment to an injured person for an accidental bodily injury
7 covered by personal protection insurance, or a person that provides
8 rehabilitative occupational training following the injury, may
9 charge a reasonable amount for the treatment or training. The
10 charge must not exceed the amount the person customarily charges
11 for like treatment or training in cases that do not involve
12 insurance.

13 (2) Subject to subsections (3) to ~~(14)~~, **(15)**, a physician,
14 hospital, clinic, or other person that renders treatment or
15 rehabilitative occupational training to an injured person for an
16 accidental bodily injury covered by personal protection insurance
17 is not eligible for payment or reimbursement under this chapter for
18 more than the following:

19 (a) For treatment or training rendered after July 1, 2021 and
20 before July 2, 2022, 200% of the amount payable to the person for
21 the treatment or training under Medicare.

22 (b) For treatment or training rendered after July 1, 2022 and
23 before July 2, 2023, 195% of the amount payable to the person for
24 the treatment or training under Medicare.

25 (c) For treatment or training rendered after July 1, 2023,
26 190% of the amount payable to the person for the treatment or
27 training under Medicare.

28 (3) Subject to subsections (5) to ~~(14)~~, **(15)**, a physician,
29 hospital, clinic, or other person identified in subsection (4) that

1 renders treatment or rehabilitative occupational training to an
2 injured person for an accidental bodily injury covered by personal
3 protection insurance is eligible for payment or reimbursement under
4 this chapter of not more than the following:

5 (a) For treatment or training rendered after July 1, 2021 and
6 before July 2, 2022, 230% of the amount payable to the person for
7 the treatment or training under Medicare.

8 (b) For treatment or training rendered after July 1, 2022 and
9 before July 2, 2023, 225% of the amount payable to the person for
10 the treatment or training under Medicare.

11 (c) For treatment or training rendered after July 1, 2023,
12 220% of the amount payable to the person for the treatment or
13 training under Medicare.

14 (4) Subject to subsection (5), subsection (3) only applies to
15 a physician, hospital, clinic, or other person if either of the
16 following applies to the person rendering the treatment or
17 training:

18 (a) On July 1 of the year in which the person renders the
19 treatment or training, the person has 20% or more, but less than
20 30%, indigent volume determined pursuant to the methodology used by
21 the department of health and human services in determining
22 inpatient medical/surgical factors used in measuring eligibility
23 for Medicaid disproportionate share payments.

24 (b) The person is a freestanding rehabilitation facility. Each
25 year the director shall designate not more than 2 freestanding
26 rehabilitation facilities to qualify for payments under subsection
27 (3) for that year. As used in this subdivision, "freestanding
28 rehabilitation facility" means an acute care hospital to which all
29 of the following apply:

1 (i) The hospital has staff with specialized and demonstrated
2 rehabilitation medicine expertise.

3 (ii) The hospital possesses sophisticated technology and
4 specialized facilities.

5 (iii) The hospital participates in rehabilitation research and
6 clinical education.

7 (iv) The hospital assists patients to achieve excellent
8 rehabilitation outcomes.

9 (v) The hospital coordinates necessary post-discharge
10 services.

11 (vi) The hospital is accredited by 1 or more third-party,
12 independent organizations focused on quality.

13 (vii) The hospital serves the rehabilitation needs of
14 catastrophically injured patients in this state.

15 (viii) The hospital was in existence on May 1, 2019.

16 (5) To qualify for a payment under subsection (4) (a), a
17 physician, hospital, clinic, or other person shall provide the
18 director with all documents and information requested by the
19 director that the director determines are necessary to allow the
20 director to determine whether the person qualifies. The director
21 shall annually review documents and information provided under this
22 subsection and, if the person qualifies under subsection (4) (a),
23 shall certify the person as qualifying and provide a list of
24 qualifying persons to insurers and other persons that provide the
25 security required under section ~~3101(1)~~. **3101**. A physician,
26 hospital, clinic, or other person that provides 30% or more of its
27 total treatment or training as described under subsection (4) (a) is
28 entitled to receive, instead of an applicable percentage under
29 subsection (3), 250% of the amount payable to the person for the

1 treatment or training under Medicare.

2 (6) Subject to subsections (7) to ~~(14)~~, **(15)**, a hospital that
3 is a level I or level II trauma center that renders treatment to an
4 injured person for an accidental bodily injury covered by personal
5 protection insurance, if the treatment is for an emergency medical
6 condition and rendered before the patient is stabilized and
7 transferred, is not eligible for payment or reimbursement under
8 this chapter of more than the following:

9 (a) For treatment rendered after July 1, 2021 and before July
10 2, 2022, 240% of the amount payable to the hospital for the
11 treatment under Medicare.

12 (b) For treatment rendered after July 1, 2022 and before July
13 2, 2023, 235% of the amount payable to the hospital for the
14 treatment under Medicare.

15 (c) For treatment rendered after July 1, 2023, 230% of the
16 amount payable to the hospital for the treatment under Medicare.

17 (7) If Medicare does not provide an amount payable for a
18 treatment or rehabilitative occupational training under subsection
19 (2), (3), (5), or (6), the physician, hospital, clinic, or other
20 person that renders the treatment or training is not eligible for
21 payment or reimbursement under this chapter of more than the
22 following, as applicable:

23 (a) For a person to which subsection (2) applies, the
24 applicable following percentage of the amount payable for the
25 treatment or training under the person's charge description master
26 in effect on January 1, 2019 or, if the person did not have a
27 charge description master on that date, the applicable following
28 percentage of the average amount the person charged for the
29 treatment on January 1, 2019:

1 (i) For treatment or training rendered after July 1, 2021 and
2 before July 2, 2022, 55%.

3 (ii) For treatment or training rendered after July 1, 2022 and
4 before July 2, 2023, 54%.

5 (iii) For treatment or training rendered after July 1, 2023,
6 52.5%.

7 (b) For a person to which subsection (3) applies, the
8 applicable following percentage of the amount payable for the
9 treatment or training under the person's charge description master
10 in effect on January 1, 2019 or, if the person did not have a
11 charge description master on that date, the applicable following
12 percentage of the average amount the person charged for the
13 treatment or training on January 1, 2019:

14 (i) For treatment or training rendered after July 1, 2021 and
15 before July 2, 2022, 70%.

16 (ii) For treatment or training rendered after July 1, 2022 and
17 before July 2, 2023, 68%.

18 (iii) For treatment or training rendered after July 1, 2023,
19 66.5%.

20 (c) For a person to which subsection (5) applies, 78% of the
21 amount payable for the treatment or training under the person's
22 charge description master in effect on January 1, 2019 or, if the
23 person did not have a charge description master on that date, 78%
24 of the average amount the person charged for the treatment on
25 January 1, 2019.

26 (d) For a person to which subsection (6) applies, the
27 applicable following percentage of the amount payable for the
28 treatment under the person's charge description master in effect on
29 January 1, 2019 or, if the person did not have a charge description

1 master on that date, the applicable following percentage of the
2 average amount the person charged for the treatment on January 1,
3 2019:

4 (i) For treatment or training rendered after July 1, 2021 and
5 before July 2, 2022, 75%.

6 (ii) For treatment or training rendered after July 1, 2022 and
7 before July 2, 2023, 73%.

8 (iii) For treatment or training rendered after July 1, 2023,
9 71%.

10 (8) For any change to an amount payable under Medicare as
11 provided in subsection (2), (3), (5), or (6) that occurs after ~~the~~
12 ~~effective date of the amendatory act that added this subsection,~~
13 **June 11, 2019**, the change must be applied to the amount allowed for
14 payment or reimbursement under that subsection. However, an amount
15 allowed for payment or reimbursement under subsection (2), (3),
16 (5), or (6) must not exceed the average amount charged by the
17 physician, hospital, clinic, or other person for the treatment or
18 training on January 1, 2019.

19 (9) An amount that is to be applied under subsection (7) or
20 (8), that was in effect on January 1, 2019, including any prior
21 adjustments to the amount made under this subsection, must be
22 adjusted annually by the percentage change in the medical care
23 component of the Consumer Price Index for the year preceding the
24 adjustment.

25 (10) For attendant care rendered in the injured person's home,
26 an insurer is only required to pay benefits for attendant care up
27 to the hourly limitation in section 315 of the worker's disability
28 compensation act of 1969, 1969 PA 317, MCL 418.315. This subsection
29 only applies if the attendant care is provided directly, or

1 indirectly through another person, by any of the following:

2 (a) An individual who is related to the injured person.

3 (b) An individual who is domiciled in the household of the
4 injured person.

5 (c) An individual with whom the injured person had a business
6 or social relationship before the injury.

7 (11) An insurer may contract to pay benefits for attendant
8 care for more than the hourly limitation under subsection (10).

9 (12) A neurological rehabilitation clinic is not entitled to
10 payment or reimbursement for a treatment ~~or rehabilitative~~
11 **occupational** training ~~, product, service, or accommodation~~ unless
12 the neurological rehabilitation clinic is accredited by the
13 Commission on Accreditation of Rehabilitation Facilities or a
14 similar organization recognized by the director for purposes of
15 accreditation under this subsection. This subsection does not apply
16 to a neurological rehabilitation clinic that is in the process of
17 becoming accredited as required under this subsection on July 1,
18 2021, unless 3 years have passed since the beginning of that
19 process and the neurological rehabilitation clinic is still not
20 accredited.

21 (13) Subsections (2) to (12) do not apply to emergency medical
22 services rendered by an ambulance operation. As used in this
23 subsection:

24 (a) "Ambulance operation" means that term as defined in
25 section 20902 of the public health code, 1978 PA 368, MCL
26 333.20902.

27 (b) "Emergency medical services" means that term as defined in
28 section 20904 of the public health code, 1978 PA 368, MCL
29 333.20904.

1 (14) Subsections (2) to (13) apply to treatment or
2 rehabilitative occupational training rendered after July 1, 2021.

3 **(15) Subsections (2) to (9) apply only if payment of the**
4 **benefits is not overdue under section 3142.**

5 **(16) A payment rate under subsections (2) to (9) is not**
6 **admissible in an action against an insurer for overdue benefits.**

7 (17) ~~(15)~~As used in this section:

8 (a) "Charge description master" means a uniform schedule of
9 charges represented by the person as its gross billed charge for a
10 given service or item, regardless of payer type.

11 (b) "Consumer Price Index" means the most comprehensive index
12 of consumer prices available for this state from the United States
13 Department of Labor, Bureau of Labor Statistics.

14 (c) "Emergency medical condition" means that term as defined
15 in section 1395dd of the social security act, 42 USC 1395dd.

16 (d) "Level I or level II trauma center" means a hospital that
17 is verified as a level I or level II trauma center by the American
18 College of Surgeons Committee on Trauma.

19 (e) "Medicaid" means a program for medical assistance
20 established under subchapter XIX of the social security act, 42 USC
21 1396 to ~~1396w-5~~.**1396w-6**.

22 (f) "Medicare" means fee for service payments under part A, B,
23 or D of the federal Medicare program established under subchapter
24 XVIII of the social security act, 42 USC 1395 to 1395III, without
25 regard to the limitations unrelated to the rates in the fee
26 schedule such as limitation or supplemental payments related to
27 utilization, readmissions, recaptures, bad debt adjustments, or
28 sequestration.

29 (g) "Neurological rehabilitation clinic" means a person that

1 provides post-acute brain and spinal rehabilitation care.

2 (h) "Person", as provided in section 114, includes, but is not
3 limited to, an institution.

4 (i) "Stabilized" means that term as defined in section 1395dd
5 of the social security act, 42 USC 1395dd.

6 (j) "Transfer" means that term as defined in section 1395dd of
7 the social security act, 42 USC 1395dd.

8 (k) "Treatment" includes, but is not limited to, products,
9 services, and accommodations.