



STATE OF MICHIGAN
LANSING

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

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SECTION 271 (MCL 500.271) REPORT: 2022

I. INTRODUCTION

On May 30, 2019, Governor Whitmer signed Public Acts 21 and 22 of 2019 (the Acts). The amendments to Michigan's auto no-fault law were intended to lower costs, maintain the highest Personal Injury Protection (PIP) coverage options in the country, and strengthen consumer protections.

The Acts included amendments to Section 3157 of the Insurance Code (MCL 500.3157), which added a fee schedule that sets forth the maximum reimbursement amounts for treatment, products, services, accommodation, or training (collectively herein, "treatment") provided to insured individuals injured in automobile accidents.

MCL 500.271, added by the Acts, requires the Department of Insurance and Financial Services (DIFS) to "review the effect of changes made to Section 3157 by [the Acts] and provide a report to the legislature on the Department's findings". This report is required to be completed by December 31 of each year between 2022 and 2030. This report will review the following:

- Quantifiable Effects on Auto Insurance Rates/Assessments;
- Effects on Claims Costs; and
- Effects on Administrative Actions.

II. QUANTIFIABLE EFFECTS OF SECTION 3157 ON AUTO INSURANCE RATES/ASSESSMENTS

A. 2111f(8) Rate Filings

Section 2111f(8) of the Insurance Code, MCL 500.2111f(8), states:

An insurer shall pass on, in filings to which this section applies, savings realized from the application of section 3157(2) to (12) to treatment, products, services, accommodations, or training rendered to individuals who suffered accidental bodily injury from motor vehicle accidents that occurred before July 2, 2021. An insurer shall provide the director with all documents and information requested by the director that the director determines are necessary to allow the director to evaluate the insurer's compliance with this subsection. After July 1, 2022, the director shall review all rate filings to which this section applies for compliance with this subsection.

As of December 29, 2022, 2111f(8) rate filings representing 47% of the personal auto insurance market have been reviewed by DIFS' outside actuaries and approved by the Department. Those filings reflect \$106 million in savings passed on to consumers as the result of the application of

the fee schedule provisions contained in Section 3157(2) to (12). Rate filings representing the remaining 53% of the market are in the process of being reviewed by DIFS' staff and outside actuaries and are expected to be completed in the first quarter of 2023.

B. Michigan Catastrophic Claims Association (MCCA) Assessments and Refund

In response to changes made to Section 3157, the Michigan Catastrophic Claims Association (MCCA) announced the following in its press releases:

- In a November 13, 2019 press release ([MCCA Sets 2020 – 2021 Insurance Company Assessment](#)) the MCCA announced that primarily as a result of savings created by Section 3157 changes and other changes in Michigan's no-fault insurance reform, the MCCA deficit of approximately \$2.0 billion had been eliminated and the MCCA assessment could be reduced by \$1 billion, resulting in a 55% reduction to the annual assessment. The assessment was reduced from \$220 per year to \$100 per year.
- A press release issued November 25, 2020 by the MCCA ([MCCA Sets 2021 – 2022 Insurance Company Assessment](#)) announced that primarily as a result of the savings created by Section 3157 changes and other changes in Michigan's no-fault insurance reform, the MCCA reduced its assessment by another 14%, from \$100 per year to \$86 per year. The MCCA stated that the no-fault reform changes had resulted in an estimated reduction in MCCA liabilities of \$3.5 billion.
- A November 3, 2021 press release ([MCCA Board Announces Support for Consumer Refunds Resulting from Auto No-fault Reforms](#)) announced that the MCCA Board unanimously voted to support issuing refund checks to Michigan consumers. In supporting the decision to refund money to consumers, the MCCA cited savings created by the Section 3157 changes and other changes to Michigan's no-fault insurance law.
- The MCCA's December 13, 2021 press release ("[Michigan Catastrophic Claims Association announces \\$400 per-vehicle refund](#)") announced that Michigan consumers would receive \$400 per-vehicle refund checks. The MCCA cited as reasons for the refund the Section 3157 changes, other changes included in Michigan's no-fault insurance reform, and "sound financial returns on investments made by the MCCA."

III. EFFECTS OF SECTION 3157 ON CLAIM COSTS

C. Utilization Review

Utilization review is defined by statute as "the initial evaluation by an insurer or the association established under Section 3104 (the MCCA) of the appropriateness in terms of both the level and the quality of treatment.... based on medically accepted standards."

Under MCL 500.3157a(5), DIFS was required to establish a utilization review process by which a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment or that the cost of the treatment was inappropriate under Chapter 31 of the Code.

MCL 500.3157 governs the maximum cost of treatment. Under that section, a provider may charge a reasonable amount, which must not exceed the amount the provider customarily

charges for like treatment in cases that do not involve insurance. Further, a provider is not eligible for payment or reimbursement for more than specified amounts. For treatment that has an amount payable under Medicare, the specified amount is based on the amount payable under Medicare. If Medicare does not provide an amount payable for a treatment under MCL 500.3157(2) through (6), the provider is not eligible for payment or reimbursement of more than a specified percentage of the provider's charge description master in effect on January 1, 2019 or, if the provider did not have a charge description master on that date, an applicable percentage of the average amount the provider charged for the treatment on January 1, 2019.*

Utilization Review Statistics, 2021-2022 (as of 12/21/2022):

- Total orders issued: 1159
- Cost cases: 544
- Medical necessity cases: 613
- Hybrid cases: 2

IV. EFFECTS OF SECTION 3157 ON ADMINISTRATIVE ACTIONS

A. Utilization Review Rules

As required by MCL 500.3157a, the Department promulgated administrative rules related to utilization review, R 500.61-R 500.69, that became effective December 18, 2020.

These rules do the following:

- Establish criteria and standards for utilization review that identify utilization of treatment, training, products, services, and accommodations provided to an injured person for the injured person's care, recovery, or rehabilitation as required under Section 3107(1)(a) of the Insurance Code (MCL 500.3107(1)(a)), above the usual range of utilization, based on medically accepted standards.
- Establish procedures for all of the following:
 - Acquisition of necessary records, medical bills, and other information concerning the treatment, training, products, services, and accommodations provided to an injured person.
 - For an insurer and for the association to request an explanation for, and requiring a provider to explain, the reasonable necessity or indication for treatment, training, products, services, and accommodations provided to an injured person.
 - Provider appeals to the department from an insurer's or the association's determination that the provider overutilized or otherwise rendered or ordered inappropriate treatment, training, products, services, and accommodations, or

* On August 25, 2022, the Michigan Court of Appeals decision in *Andary v. USAA Casualty Insurance Company* held that some sections of the medical fee schedule contained in Section 3157 cannot be applied to losses occurring prior to June 11, 2019. On September 29, 2022, the Michigan Supreme Court denied a motion to stay the *Andary* decision but agreed to hear the case and scheduled oral arguments for March 2023.

that the cost of the treatment, training, products, services, and accommodations was inappropriate under Chapter 31 of the Insurance Code, and rules promulgated thereunder.

B. Fee Schedule Rules

The Department promulgated administrative rules related to MCL 500.3157, R 500.201-R 500.206, that became effective October 1, 2021.

These rules do the following.

- Define the applicable Medicare fee schedule.
- Establish procedures for determining which providers are eligible for enhanced reimbursement.
- Establish procedures for the Department to collect information related to amounts charged by providers as of January 1, 2019, for the purposes of resolving provider appeals under R 500.65.
- Establish a date and methodology for determining the adjustment of payment or reimbursement under section 3157(9) of the Insurance Code (MCL 500.3157).
- Establish procedures for the department to administer the accreditation requirements under section 3157(12) of the Insurance Code (MCL 500.3157).

C. Administrative Bulletins

In response to changes made to Section 3157 of the Insurance Code, DIFS issued the following bulletins:

Attendant Care Hourly Limitations (Bulletin 2019-22-INS)

Section 3157(10) of the Insurance Code, MCL 500.3157(10), provides that an auto insurer is only required to pay benefits for attendant care in an injured person's home for up to 56 hours per week for care provided by an individual related to the injured person, domiciled in the injured person's household, or with whom the injured person had a business or social relationship before the injury.

DIFS was informed that some auto insurers were applying Section 3157(10) in advance of its effective date. DIFS responded by issuing Bulletin 2019-22-INS, which prohibited auto insurers from applying the limits established in Section 3157(10) prior to July 2, 2021.

Accreditation Requirements for Neurological Rehabilitation Facilities (Bulletin 2020-27-INS)

Section 3157(12) of the Insurance Code, MCL 500.3157(12), provides that a neurological rehabilitation clinic is not entitled to payment or reimbursement for a treatment, training, product, service, or accommodation unless the neurological rehabilitation clinic is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) or a similar organization recognized by the Director for purposes of accreditation under this subsection.

Bulletin 2020-27-INS clarified that the Director would recognize accreditation by either CARF or The Joint Commission as satisfying the accreditation requirement under Section 3157(12). Additionally, Bulletin 2020-27-INS clarified that accreditation by CARF or The Joint Commission is not required to the extent an individual or entity is providing ancillary or other services that do not constitute post-acute brain or spinal rehabilitation care.

Requirements Applicable to Auto Insurance Rate, Rule, and Form Filings (Bulletin 2021-07-INS)

Section 3157(10) of the Insurance Code, MCL 500.3157(10), provides that an auto insurer is only required to pay benefits for attendant care in an injured person's home for up to 56 hours per week for care provided by an individual related to the injured person, domiciled in the injured person's household, or with whom the injured person had a business or social relationship before the injury.

Section 3157(11) of the Insurance Code, MCL 500.3157(11), provides that an insurer may contract to pay benefits for attendant care for more than the hourly limitation under subsection (10).

Bulletin 2021-07-INS requires all companies to submit a form filing to be effective no later than July 2, 2021 that adds a provision to the policy or an amendatory endorsement to notify the policyholder of the 56-hour limitation that applies to certain attendant care benefits beginning on July 2, 2021 under MCL 500.3157(10). If the company exercises its option to contract with policyholders for additional attendant care benefits, as permitted by MCL 500.3157(11), the company must submit the contract form for DIFS' review and approval.

Auto Insurance: Fee Schedule CPI Adjustment (Bulletin 2021-10-INS)

Section 3157(9) of the Insurance Code, MCL 500.3157(9), provides that an amount that is to be applied under subsection (7) or (8), that was in effect on January 1, 2019, including any prior adjustments to the amount made under this subsection, must be adjusted annually by the percentage change in the medical care component of the Consumer Price Index for the year preceding the adjustment.

Bulletin 2021-10-INS informs interested parties that any amount payable under a charge description master on January 1, 2019, that is payable under MCL 500.3157(7) or MCL 500.3157(8), shall be increased by 4.11% for dates of service July 2, 2021 through July 1, 2022.

Designated Freestanding Rehabilitation Facilities Pursuant to MCL 500.3157(4)(b) (Bulletin 2021-24-INS)

Section 3157(4)(b) of the Insurance Code, MCL 500.3157(4)(b), requires the Director to designate, on an annual basis, not more than two freestanding rehabilitation facilities to qualify for enhanced reimbursement under Section 3157(3) of the Insurance Code, MCL 500.3157(3).

Bulletin 2021-24-INS provides notice that Mary Free Bed Rehabilitation Hospital and DMC Rehabilitation Institute of Michigan have met the requirements for designation as freestanding rehabilitation facilities and are therefore considered to be freestanding rehabilitation facilities eligible for enhanced reimbursements.

Eligibility for Reimbursement under MCL 500.3157(4)(a), MCL 500.3157(5), and MCL 500.3157(6) (Bulletin 2021-26-INS)

Bulletin 2021-26-INS provides interested parties with a link to lists of providers eligible for enhanced reimbursement under Sections 3157(4)(a), 3157(5), and 3157(6) of the Insurance Code, MCL 500.3157(4)(a), MCL 500.3157(5), and MCL 500.3157(6).

The “Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement” list and the “Level I or II Trauma Centers Entitled to Enhanced Auto Insurance Reimbursement” list can be found on DIFS’ [Auto Insurance Fee Schedule Resources web page](#).

Family-Provided Attendant Care (Bulletin 2021-31-INS)

Section 3157(10) of the Insurance Code, MCL 500.3157(10), provides that an auto insurer is only required to pay benefits for attendant care in an injured person’s home for up to 56 hours per week for care provided by an individual related to the injured person, domiciled in the injured person’s household, or with whom the injured person had a business or social relationship before the injury.

Bulletin 2021-31-INS addresses a misconception that the 2019 no-fault reforms placed a 56-hour “cap” on attendant care. Consumers are entitled to as many hours of attendant care as are reasonably necessary. For hours of attendant care in excess of 56 hours per week, the injured person may be able to enter into a contract with their insurer for more than 56 hours of “family-provided” attendant care or the care may be provided by persons other than those described above.

Contracts for Attendant Care (Bulletin 2021-33-INS)

Under Section 3157(11) of the Insurance Code, MCL 500.3157(11), for hours of medically appropriate attendant care in excess of 56 hours per week, the insurer has the option of entering into a contract with the injured person for more than 56 hours of “family-provided” attendant care. Insurers submitted sample contracts to the Department for review as required under Bulletin 2021-07-INS.

To the extent any auto insurer has interpreted the Department’s review and/or approval of the sample contract as an approval of particular contract language or terms, or that any such terms are enforceable or nonnegotiable, Bulletin 2021-33-INS reminds insurers that the Department’s authority to review and approve policy forms is directed at ensuring compliance with applicable law. Furthermore, this Bulletin advises insurers and consumers with questions or concerns about negotiating contracts for family-provided attendant care for more than 56 hours per week to consider consulting legal counsel.

Update to “Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement” List (Bulletin 2021-34-INS)

Bulletin 2021-34-INS advises interested parties of an addition to the “Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement” list. The updated list adds the University of Michigan Hospitals to the list of hospitals with indigent volume between 20.0% and 29.9%. Auto insurers were advised that this designation is retroactive for dates of service beginning July 2, 2021, and that some bills may need to be re-processed to reflect the correct reimbursement amount.

Timely Payment of PIP Benefits (Bulletin 2021-35-INS)

Bulletin 2021-35 sets forth the Department's expectations for providers and insurers to ensure timely and appropriate payment of benefits. In the case of 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 that is payable under Medicare, the provider may need to re-submit the bill to the insurer with the appropriate code.

The Department advised that it expects providers and insurers to attempt to resolve billing and coding disputes informally, as they have customarily done prior to the implementation of the fee schedule. In addition, insurers were instructed to provide reasonable assistance to ensure that the insurer's billing and coding requirements are clearly conveyed to providers and their billers.

No-Fault Billing Disputes (Bulletin 2021-36-INS)

Bulletin 2021-36-INS reminds insurers that payments are due to providers upon receipt of reasonable proof of loss, and addresses three common situations:

- 1) Preferred Billing Format:
The Insurance Code does not mandate that a provider use a particular billing format to be entitled to reimbursement, and a provider's failure to use the insurer's preferred billing format is not, itself, failure to provide "reasonable proof of loss."
- 2) Adequate Documentation:
If an insurer disputes whether the provider has submitted adequate documentation for the insurer to calculate the appropriate reimbursement under MCL 500.3157(7) an insurer may request a charge description master or "average amount" from a provider in order to calculate the amount of the provider's reimbursement.
- 3) Coding Disputes:
If the insurer and provider disagree that the claims have been billed using the appropriate code, an insurer is expected to engage in a dialogue with providers to assist them in understanding the insurer's review of the provider's bills; and to expedite bills resubmitted with corrected codes.

The bulletin also states that if an insurer is liable for at least some of a disputed bill, the insurer must at least pay that amount prior to the expiration of the time frame for payment under MCL 500.3142 while they investigate whether they are liable for more than the amount paid.

No-Fault Fee Schedule Resources (Bulletin 2021-37-INS)

This bulletin notifies interested parties of resources the Department has made available as a convenience to assist providers and auto insurers in applying the fee schedule set forth in MCL 500.3157. These resources can be found here: [Auto Insurance Fee Schedule Resources](#).

One of the resources the Department is making available is an online bulletin board where non-hospital providers may post their charge description masters and average amounts charged as of January 1, 2019, in order to facilitate payment under MCL 500.3157(7).

Fee Schedule Applicability ([Bulletin 2021-38-INS](#))

This bulletin addresses the applicability of the fee schedule in MCL 500.3157 to certain treatments that are allowable expenses under PIP coverage.

For dates of service after July 1, 2021, MCL 500.3157 establishes a “fee schedule” applicable to treatment that is or can be rendered by physicians, hospitals, clinics, and other like persons.

Treatments that are not provided by physicians, hospitals, clinics, or other like persons, but which are otherwise compensable as “allowable expenses” under PIP, are not subject to MCL 500.3157. They are instead subject to MCL 500.3107(1)(a), which requires that these charges be “reasonable.”

The bulletin clarified that treatments that are reimbursed under the “reasonable” standard include, but are not limited to, services related to guardianship or conservatorship, vehicle modifications, home modifications, computer equipment and supplies, generators, non-emergency medical transportation, non-prescription drugs and over-the-counter medical supplies, and certain case management services.*

Auto Insurance: Fee Schedule CPI Adjustment ([Bulletin 2021-04-INS](#))

Section 3157(9) of the Insurance Code, MCL 500.3157(9), provides that an amount that is to be applied under subsection (7) or (8), that was in effect on January 1, 2019, including any prior adjustments to the amount made under this subsection, must be adjusted annually by the percentage change in the medical care component of the Consumer Price Index for the year preceding the adjustment.

Bulletin 2021-04-INS informs interested parties that any amounts payable that were in effect on January 1, 2019 for the purposes of MCL 500.3157(7) or MCL 500.3157(8) shall be increased by 5.39% for dates of service July 2, 2022 through July 1, 2023.

D. Website Resources

Section 261 of the Acts requires that the Department maintain an internet webpage that provides consumers with information regarding the reforms. That website can be accessed at www.michigan.gov/autoinsurance. Additionally, in response to changes made to Section 3157, DIFS made the following information available on its website.

Industry Frequently Asked Questions Web Page

Implementation guidance for insurance companies regarding certain provisions of 500.3157 was provided through the [Auto Insurance Reform FAQ webpage](#) under the “Fee Schedule” tab.

Auto Insurance Fee Schedule Resources Web Page

To assist insurers and providers with the effect of changes made to section 3157, the following resources were aggregated on this web page.

- [Bulletin 2021-26-INS - Hospitals entitled to enhanced reimbursement](#)

* Whether a case management service is subject to MCL 500.3107(1)(a) instead of MCL 500.3157 will depend on whether it is payable under Medicare.

- Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement List
- Level I or II Trauma Centers Entitled to Enhanced Auto Insurance Reimbursement List
- Bulletin 2021-24-INS - Designated Freestanding Rehabilitation Facilities Pursuant to MCL 500.3157(4)(b)
- Industry FAQs
- Forms
- Billing and Coding Education and Resources
- Non-Hospital Charge Description Masters
- Hospital Charge Description Masters