STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
LANSING
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DIRECTOR

SECTION 271 (MCL 500.271) REPORT: 2023

UPDATE: January 7, 2024

NOTE: Section III.A. of this report has been updated to correct the utilization review statistics contained in the original report. No other changes have been made to the original report.

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.

The 2023 report includes data from the 2023 calendar year, as well as cumulative data from past reports, when appropriate.

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.

Auto insurers have demonstrated compliance with 2111f(8) by passing along savings in rate filings submitted after July 1, 2022. Since July 2, 2022, the total reported savings passed on to consumers is $186.3 million.

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

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

- A September 22, 2022 press release (ASSESSMENT RELEASE NOTICE – September 22, 2022) announced the MCCA's 2023-2024 assessments. For anticipated new claims, the assessment was lowered to $74 per vehicle per year, down from $86 per vehicle. An additional assessment of $48 per vehicle per year for all Michigan drivers was also established to address an estimated $3.7 billion deficit. The MCCA cited higher-than-anticipated claims costs resulting from the decision in *Andary v USAA Casualty Insurance Co.* and lower-than-expected investment returns as reasons contributing to the deficit A deficit assessment is required by statute whenever there is a deficit in the catastrophic fund.

- A December 4, 2023 press release (ASSESSMENT RELEASE NOTICE – December 4, 2023) announced a reduction in the MCCA assessments for new claims and deficit recoupment for 2024-2025. The MCCA assessment for anticipated new claims will decrease from $74 to $70 per vehicle per year. The deficit recoupment assessment will decrease from $48 to $20 per vehicle per year. The MCCA reported it is projecting better-than-expected loss development as a result of the fee schedule and utilization review processes. The MCCA also reported it factored into its calculations the Supreme Court's ruling in *Andary*, which dismissed constitutional challenges to the prospective application of the fee schedule.

III. EFFECTS OF SECTION 3157 ON CLAIM COSTS

A. 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

Disclaimer: The information provided in this section has been accurately published on the DIFS website. However, the counts reported in the initial 2023 report were inaccurate and are corrected in this updated version of the report.

January 1, 2023 to December 21, 2023:

Total orders issued: 394

Cost cases: 117

Medical necessity cases: 272

Hybrid cases*: 5

July 2, 2020 to December 21, 2023:

Total orders issued: 1,594

Cost cases: 687

Medical necessity cases: 902

Hybrid cases*: 5

** Hybrid cases contain elements of both cost cases and medical necessity cases.*

[*] On August 25, 2022, the Michigan Supreme 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 July 31, 2023, the Michigan Supreme Court upheld the Court of Appeals decision as it relates to the retroactivity of the fee schedule.

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 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 in 2023:

Auto Insurance: Fee Schedule CPI Adjustment (*Bulletin 2023-13-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 2023-13-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 9.66% for dates of service July 2, 2023 through July 1, 2024.

Eligibility for Reimbursement under MCL 500.3157(4)(a), MCL 500.3157(4)(b), MCL 500.3157(5), and MCL 500.3157(6) (*Bulletin 2023-19-INS*)

This bulletin superseded Bulletin 2021-24-INS and Bulletin 2021-26-INS.

Bulletin 2023-19-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 (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.

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 2023-19-INS further provides notice that the designated freestanding rehabilitation facilities under Section 3157(4)(b) of the Insurance Code, MCL 500.3157(4)(b), have not changed. Mary Free Bed Rehabilitation Hospital and DMC Rehabilitation Institute of Michigan have met the requirements for designation as freestanding rehabilitation facilities and are considered to be freestanding rehabilitation facilities eligible for enhanced reimbursements.

Update to “Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement” List (*Bulletin 2023-20-INS*)

Bulletin 2023-20-INS advised interested parties of two changes to the list of hospitals entitle to enhanced reimbursement under MCL 500.3157(4)(a) and MCL 500.3157(5) after the Michigan Department of Health and Human Services (DHHS) notified DIFS that the data used to calculate

the indigent volume percentages in 2023-19-INS required updates. The updated data resulted in the removal of Aspirus Keweenaw Hospital from the enhanced reimbursement list and the addition of Michigan BH JV, LLC as a hospital entitled to enhanced reimbursement. The bulletin further advised auto insurers that some bills may need to be reprocessed to reflect the correct reimbursement amount.

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 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, DIFS provided the following resources on the Auto Insurance Fee Schedule Resources webpage in 2023:

- Bulletin 2023-20-INS – Update to "Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement" List
- Bulletin 2023-19-INS – Eligibility for Reimbursement under MCL 500.3157(4)(a), MCL 500.3157(4)(b), MCL 500.3157(5), and MCL 500.3157(6)
- Hospitals with Indigent Volume Entitled to Enhanced Auto Insurance Reimbursement List
- Level I or II Trauma Centers Entitled to Enhanced Auto Insurance Reimbursement List
- Industry FAQs
- Forms
- Billing and Coding Education and Resources
- Non-Hospital Charge Description Masters
- Hospital Charge Description Masters