STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2023-21-INS

In the matter of:

Payment and Billing Guidance for
No-Fault Automobile Insurers and Health Care Providers
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Issued and entered
this 1st day of September 2023
by Anita G. Fox
Director

On July 31, 2023, the Michigan Supreme Court affirmed the Court of Appeals' opinion in *Andary v USAA Cas Ins Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Docket No. 356487), and held, *inter alia*, that MCL 500.3157(7) and MCL 500.3157(10) do not apply to the cost of treatment provided to persons injured in motor vehicle accidents occurring before June 11, 2019. This bulletin supersedes Bulletin 2022-17-INS (issued October 5, 2022) to update the following in light of the Michigan Supreme Court's opinion. This bulletin also reiterates the guidance previously set forth in Bulletin 2022-17-INS regarding provider and insurer obligations related to re-processing claims and the applicability of MCL 500.3157(1) to all claims.

Claim Re-Processing and Timely Payment

Providers who believe that they are due additional reimbursement for claims subject to the *Andary* 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.

Under MCL 500.3142, PIP benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If a bill is not provided to an insurer within 90 days after the product, service, accommodation, or training is provided, the insurer has 90 days to pay before the benefits are overdue. MCL 500.3142(3). Overdue payments bear simple interest at the rate of 12% per annum. MCL 500.3142(4). Accordingly, insurers are reminded to consider providers' requests for reprocessing of claims as expeditiously as possible. Insurers may require providers to submit reasonable proof of the fact and the amount of loss sustained (see MCL 500.3142(2)) but may not impose an undue burden on the provider by unreasonably requiring the provider to resubmit any information previously submitted when the claim was originally processed.

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, the provider may need to re-submit the bill to the insurer with the appropriate code. Insurers are 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. Insurers are advised that the Department will carefully scrutinize complaints in which an insurer has repeatedly rejected a provider's bills without offering assistance.

Insurers must provide reasonable assistance to ensure that the insurer's billing and coding requirements are clearly conveyed to providers and their billers.

Utilization Review Orders

Providers who filed an appeal with the Department's Utilization Review unit involving claims that are subject to the *Andary* decision, and whose appeals were resolved in an order issued prior to August 25, 2022, should first attempt to resolve any reimbursement disputes with their insurer. If the provider and insurer cannot resolve their dispute, the provider may request that the Department consider modifying the Utilization Review order in their case by submitting their request in writing to DIFS-URAppeals@michigan.gov.

Applicability of MCL 500.3157(1)

Although MCL 500.3157(7) and (10) cannot be applied to claims that are subject to the *Andary* decision, those claims remain subject to the remainder of MCL 500.3157, including the "reasonableness" standard set forth in MCL 500.3157(1), which was not substantively changed by Public Acts 21 and 22 of 2019. Charges must be reasonable and the services provided must be reasonably necessary.

Under MCL 500.3157(1), insurers may only pay a provider a "reasonable amount" which "must not exceed the amount the [provider] customarily charges for like treatment or training in cases that do not involve insurance." Insurers "must determine in each instance whether a charge is reasonable in light of the service or product provided." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 379; 670 NW2d 569 (2003). Michigan courts have expressly approved an insurer's determination of reasonableness when the insurer reimbursed 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. *Id*. at 381-382.

Billing and Coding Disputes

Providers and insurers are reminded to refer to Bulletin 2021-36-INS, issued October 5, 2021, which governs billing disputes related to no-fault claims. Bulletin 2021-36-INS remains in force in its entirety; however, insurers are reminded that its provision regarding charge description masters should be viewed in light of the fact that MCL 500.3157(7) and (10) may only be applied to claims related to accidents occurring on or after June 11, 2019.

Insurers that fail to comply with this bulletin, or who are found to have a pattern of improperly denying claims or delaying claim payments, may be subject to appropriate administrative action.

The Department will provide updated guidance as necessary. Any questions regarding this Bulletin should be directed to:

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/s/

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