

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Insurance and Financial Services

Bureau name:

Insurance

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2020-114 IF

Title of proposed rule set:

No-Fault Fee Schedule

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

A. Are these rules required by state law or federal mandate?

No. The proposed rules are promulgated under Section 210 of the Insurance Code of 1956, 1956 PA 218, MCL 500.210, which requires the Director of the Department to promulgate rules necessary to effectuate the purposes and execute and enforce the provisions of insurance laws of Michigan. These proposed rules implement MCL 500.3157, which establishes a fee schedule applicable to health care providers that provide services to people injured in motor vehicle accidents.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed any federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Other states have promulgated administrative rules implementing medical fee schedules pertaining to personal injury protection benefits. For example, New York has administrative rules in effect for no-fault fee schedules applicable to personal injury protection benefits, which adopts the state's worker's compensation board's medical fee schedule. New York's rules are substantially more detailed and are specifically established by the chairman of its worker's compensation board, as required by New York statute. New Jersey and Florida also have rules in effect implementing medical fee schedules pertaining to personal injury protection benefits. New Jersey and Florida rules are also more detailed due to the requirements set forth in New Jersey and Florida's enabling statutes. Michigan's statute differs from New York, New Jersey's, and Florida's enabling statutes, and the states' rules therefore also differ.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

DIFS is not aware of any provision in the proposed rules that exceed standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

These proposed rules do not duplicate, overlap, or conflict with any other laws, rules, or legal requirements. The requirement of applying a fee schedule to treatment, services, and supplies provided by health care providers to people injured in motor vehicle accidents is a new statutory requirement established by Public Act 21 of 2019, which substantially amended the provisions of the Insurance Code related to no-fault automobile insurance.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

There are no other federal, state, or local laws applicable to the implementation of a fee schedule for the administration of personal injury protection benefits.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply to the proposed rules.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply to the proposed rules.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules are designed to implement the provisions of MCL 500.3157 by doing the following: a) defining the applicable Medicare fee schedule; b) establishing procedures for determining which health care providers are entitled to enhanced reimbursement rates; c) establishing procedures for the department to collect information related to rates charged by health care providers as of January 1, 2019, for the purposes of calculating reimbursement rates; d) establishing a date and methodology for determining the adjustment of reimbursement rates; and e) establishing procedures for the department to administer the accreditation requirements under MCL 500.3157. Thus, the proposed rules are intended to ensure consistency in provider reimbursements pertaining to the administration of no-fault benefits provided to individuals injured in motor vehicle accidents.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules are intended to ensure greater consistency in provider reimbursements for services rendered or supplies provided to people injured in motor vehicle accidents. The proposed rules may also result in fewer disputes between providers and insurers because DIFS will issue orders that resolve provider appeals based upon the implementation of the fee schedules contained in the proposed rules.

B. Describe the difference between current behavior/practice and desired behavior/practice.

At present, there are no fee schedules applicable to services rendered or supplies provided to people injured in motor vehicle accidents. As of July 2, 2021, MCL 500.3157 applies such a fee schedule. The proposed rules establish processes for calculating reimbursement rates and determining enhanced reimbursement rates, and establish a date and methodology for determining the adjustment of reimbursement rates, all of which is required under MCL 500.3157.

C. What is the desired outcome?

The desired outcome is to ensure consistency in provider reimbursements stemming from the administration of no-fault benefits to individuals injured in motor vehicle accidents, which, it is anticipated, will result in cost-containment, consistent with the general intent of PA 21 and 22 of 2019.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Independent of the statute, the proposed rules are intended to clarify substantive provisions of MCL 500.3157. The proposed rules establish procedures to be followed for calculating reimbursement rates and administering the accreditation requirements under MCL 500.3157.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The proposed rules do not amend an existing rule set.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules help implement MCL 500.3157, which was intended to contain costs pertaining to no-fault benefits. Toward that end, the processes established by the proposed rules are intended to allow for consistency in reimbursement for no-fault benefits without unnecessarily burdening healthcare providers or automobile insurers.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The proposed rules are new rules; therefore, there is no affected rule set that is obsolete or unnecessary or that can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rules are projected to have no fiscal impact on DIFS.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

DIFS has not made an agency appropriation for any expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary and suitable to accomplish the purposes set forth above in response to item 6 because they set forth a procedure and process for implementing the various applicable fee schedules and to provide clarity on the procedures to be followed for calculating provider reimbursement rates, and administering the accreditation requirements under MCL 500.3157. Thus, the proposed rules are intended to minimize burdens by providing a clear process and predictable fee schedules rather than placing additional burdens on providers or insurers.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

As explained above, these rules are necessary and reasonable to implement the provisions of MCL 500.3157 because they define the applicable Medicare fee schedule, establish processes for calculating reimbursement rates and determining enhanced reimbursement rates, and establish a date and methodology for determining the adjustment of reimbursement rates, all of which is required under the law.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

DIFS estimates that there will be no increase or decrease in revenues to other state or local governmental units as a result of the proposed rules, independent of any statutory impact.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

No program, service, duty or responsibility will be imposed upon any city, county, town, village, or school district by the proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

Upon request by DIFS, the Department of Health and Human Services (DHHS) will need to provide DIFS with indigent volume data for purposes of determining which entities are entitled to enhanced reimbursement under MCL 500.3157(4)(a) and MCL 500.3157(5), and the Department of Licensing and Regulatory Affairs (LARA) will need to provide DIFS with Level I/II trauma center lists to determine reimbursement under MCL 500.3157(6). The cost of compliance with these requests is expected to be negligible.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There are no additional expenditures associated with the proposed rules, so no appropriation has been made and no funding sources has been identified.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules will not have a specific impact on rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

Providers and insurers located in rural areas will be affected by the rules to the same degree as providers and insurers in non-rural areas. A provider's or insurer's location will not have any bearing on the degree to which the rules affect it.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules will not have any impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

DIFS did not consider exempting small businesses from the proposed rules.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

A reduction in the economic impact of the proposed rules on small businesses is not lawful or feasible. Exempting small businesses from the proposed rules is not feasible because uniformity in reimbursement rates related to the administration of no-fault benefits is essential to the purpose and intent of MCL 500.3157. In addition, exempting small businesses from the proposed rules would also exempt them from the benefits of the proposed rules, which would be inconsistent with the law.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

DIFS does not collect data on which health care providers or insurers are “small businesses.” However, during the promulgation of the Department’s Utilization Review Rules, stakeholders previously identified small businesses in the following categories: physicians, nurse practitioners, physician’s assistants, chiropractors, physical therapists, occupational therapists, rehabilitation providers, community hospitals, and auto insurance companies. The precise number of small businesses is not known but is estimated to be in the tens of thousands, as it will affect every health care provider who provides care to persons injured in automobile accidents. There are approximately 43,000 licensed allopathic and osteopathic licensed physicians in Michigan, of which approximately 65% are active in providing patient care. This number does not include health care professionals other than physicians.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

DIFS did not establish differing compliance or reporting requirements or timetables for small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

DIFS did not consolidate or simplify the compliance and reporting requirements for small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not include any design or operation standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules, independent of statutory impact, would not have any disproportionate impact on small businesses due to their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no reports required by the proposed rules.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no expected costs of compliance for small businesses, independent of statutory impact, as a result of the proposed rules

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules are not intended to cause small businesses to incur any legal, consulting, or accounting services.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

DIFS does not anticipate that the proposed rules, independent of statutory impact, will cause economic harm or adversely affect competition in the marketplace.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Administering and enforcing rules that exempt or set lesser standards for small businesses would result in increased costs to DIFS because DIFS would have to establish a separate reimbursement process applicable to small businesses, which would be inconsistent with the purpose and intent of MCL 500.3157.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Because the goal of the rules is to provide a clear and consistent process to administer predictable fee schedules pursuant to MCL 500.3157, the public interest would not be served by exempting or setting lesser standards of compliance for small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

DIFS has not specifically involved small businesses in the development of these proposed rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

DIFS has not specifically involved small businesses in the development of these proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

DIFS does not collect data on compliance costs associated with health care providers, as those providers are not regulated by DIFS. Providers may incur some negligible costs associated with providing DIFS with requisite information submissions or insurers responding to DIFS' inquiries pursuant to the proposed rules. However, most insurance companies already have personnel to handle these tasks, and virtually all providers have billing personnel.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Health care providers and automobile insurers will be directly affected by, bear the cost of, and in some cases directly benefit from the proposed rules. However, these impacts are negligible independent of the statutory impact.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Additional costs imposed on regulated entities or healthcare providers to comply with the proposed rules will be associated primarily with information submission. However, any such additional costs should be relatively minimal because most providers and insurers already have personnel that handle these tasks.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

As noted above in response to item 28, there will likely be negligible compliance costs associated with the proposed rules. The proposed rules will not impose costs on the general public.

A. How many and what category of individuals will be affected by the rules?

Individual health care providers providing health or medical care to those injured in motor vehicles accidents will be most affected by the rules. DIFS does not collect specific data on how many individual health care providers practice in Michigan. However, during the promulgation of the Department's Utilization Review Rules, it was determined that there are approximately 43,000 licensed allopathic and osteopathic licensed physicians in Michigan, of which approximately 65% are active in providing patient care. This number does not include health care professionals other than physicians.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed rules, independent of statutory impact, should have minimal qualitative and quantitative impact on these individuals.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules, independent of statutory impact.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary and direct benefit of the proposed rules is to provide a clear and consistent process to administer the fee schedules set forth in MCL 500.3157. The proposed rules provide a process to determine eligibility for enhanced reimbursement rates.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules, independent of statutory impact, are not expected to impact business growth and job creation or elimination.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Health care providers and automobile insurers will be disproportionately affected by the proposed rules due to the subject matter of MCL 500.3157, which the proposed rules implement.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

DIFS relied on the following sources to compile the Regulatory Impact Statement:

- 1) Other states' laws and regulations governing no-fault fee schedules;
- 2) MCL 500.3157; and
- 3) Stakeholder feedback during the promulgation of the Department's Utilization Review Rules

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

In providing the above estimates, DIFS relied on the assumption that entities and agencies affected by the proposed rules should not have appreciable additional costs associated with the promulgation of the proposed rules independent of statutory impact.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules because DIFS is statutorily required to administer fee schedules as MCL 500.3157 dictates, and the proposed rules are necessary to satisfy that obligation. Informal guidance would be an insufficient alternative.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no statutory amendments that would be necessary to achieve an alternative to these proposed rules.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There are no private market-based mechanisms appropriate to create the uniform process and procedure for the administration of fee schedules established by the proposed rules. DIFS is not aware of any private market-based systems utilized by other states.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

DIFS did not consider significant alternatives during the development of the proposed rules.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

After the rules have been promulgated, DIFS will issue guidance to affected entities regarding compliance, including but not limited to instructions on viewing the applicable fee schedule, forms for submitting charge description masters and other information, and applications to determine eligibility for enhanced reimbursement.