

OVERDUE PERSONAL INJURY PROTECTION PAYMENTS

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House Bill 5870 as introduced

Sponsor: Rep. Ryan Berman

1st Committee: Insurance

2nd Committee: Rules and Competitiveness

Complete to 5-24-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5870 would amend the Insurance Code to require an insurer to pay three times the amount of a payment for a personal injury protection (PIP) claim under a no-fault auto insurance policy that is more than 30 days overdue if the insurer has acted in bad faith in not paying the claim in a timely matter. An insurer would be rebuttably presumed to have acted in bad faith if payment is more than 90 days overdue. The bill would eliminate the rate of interest that an overdue payment now generally bears. In addition, certain reimbursement limits would not apply if payment of the benefits is overdue, and those limits would not be admissible in an action against an insurer for overdue benefits.

In general under the code, PIP benefits are payable as loss accrues and, subject to certain conditions and exceptions, are *overdue* if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. An overdue payment bears simple interest at the rate of 12% per year.

The bill would remove the last provision described above (regarding the interest borne by an overdue payment) and instead would provide that if a payment is overdue and the insurer has acted in bad faith in not making the payment in a timely manner, the insurer must pay the claimant three times the amount of the overdue payment and any reasonable attorney fees actually incurred. Whether the attorney acted in bad faith would be a factual determination to be made based on an analysis of the totality of the evidence available at or before the time the claim became overdue. However, there would be a rebuttable presumption that the insurer has acted in bad faith if a payment is more than 90 days overdue.

In addition, if an action were filed for payment of overdue benefits, the claimant would not be entitled to a duplicate attorney fee for the same services or expenses under the above provisions and section 3148 of the code (which addresses attorney fees for advising and representing a claimant in an action for personal or property auto insurance benefits that are overdue).

Finally, the bill would provide that subsections (2) to (9) of section 3157 do not apply if payment of the benefits is overdue as described above and that a payment rate under those provisions is not admissible in an action against an insurer for overdue benefits. (As described in **Background**, below, subsections (2) to (9) of section 3157 provide caps on reimbursement for certain treatment or services rendered to an injured person for an accidental bodily injury covered by PIP.)

MCL 500.3142 and 500.3157

BACKGROUND:

Subsections (2) to (9) of section 3157 establish reimbursement limits for treatment (including products, services, accommodations, and rehabilitative occupational training) provided to an injured person for an injury covered by PIP.

[Note: In the descriptions below, the percentage of “the amount the provider charged for the treatment on January 1, 2019” applies *only* if Medicare does not have an amount payable for the treatment in question, and “the amount the provider charged for the treatment on January 1, 2019” refers to the amount payable for the treatment on the provider’s **charge description master**¹ on that date or, if the provider did not have a charge description master, to the average amount that the provider charged for the treatment on that date. These 2019 amounts are adjusted annually for inflation based on the medical care component of the Consumer Price Index for Michigan for the year preceding the adjustment.]

Under those provisions, unless higher reimbursements apply as described below, a medical provider (a physician, hospital, clinic, or other person) that renders treatment to an injured person for an injury covered by PIP is eligible for reimbursement for up to the following:

- For treatment rendered after July 1, 2021, and before July 2, 2022:
 - 200% of the amount payable for the treatment under Medicare.
 - 55% of the amount the provider charged for the treatment on January 1, 2019.
- For treatment rendered after July 1, 2022, and before July 2, 2023:
 - 195% of the amount payable for the treatment under Medicare.
 - 54% of the amount the provider charged for the treatment on January 1, 2019.
- For treatment rendered after July 1, 2023:
 - 190% of the amount payable for the treatment under Medicare.
 - 52.5% of the amount the provider charged for the treatment on January 1, 2019.

A **freestanding rehabilitation facility**² or a medical provider that had 20% but less than 30% **indigent volume**³ on July 1 of the year the treatment was rendered is eligible for reimbursement for up to the following:

- For treatment rendered after July 1, 2021, and before July 2, 2022:
 - 230% of the amount payable for the treatment under Medicare.
 - 70% of the amount the provider charged for the treatment on January 1, 2019.
- For treatment rendered after July 1, 2022, and before July 2, 2023:
 - 225% of the amount payable for the treatment under Medicare.
 - 68% of the amount the provider charged for the treatment on January 1, 2019.

¹ **Charge description master** means a uniform schedule of charges represented by the provider as its gross billed charge for a given service or item, regardless of payer type.

² **Freestanding rehabilitation facility** means an acute care hospital that serves the rehabilitation needs of catastrophically injured patients in Michigan and meets other requirements detailed in the code. Each year the director of the Department of Insurance and Financial Services (DIFS) must designate up to two facilities to qualify for payments under this provision for that year.

³ **Indigent volume** is determined using the methodology used by the Department of Health and Human Services in determining inpatient medical/surgical factors used in measuring eligibility for Medicaid disproportionate share payments. The director of DIFS must determine and certify which providers qualify using this measure and provide a list of qualifying providers to insurers.

- For treatment rendered after July 1, 2023:
 - 220% of the amount payable for the treatment under Medicare.
 - 66.5% of the amount the provider charged for the treatment on January 1, 2019.

A medical provider that had 30% or more *indigent volume* on July 1 of the year the treatment was rendered is eligible for reimbursement of 250% of the amount payable for the treatment under Medicare or 78% of the amount the provider charged for the treatment on January 1, 2019.

A hospital that is a *Level I or Level II trauma center*⁴ that rendered treatment for an emergency medical condition before the patient was stabilized and transferred⁵ is eligible for reimbursement for up to the following:

- For treatment rendered after July 1, 2021, and before July 2, 2022:
 - 240% of the amount payable for the treatment under Medicare.
 - 75% of the amount the provider charged for the treatment on January 1, 2019.
- For treatment rendered after July 1, 2022, and before July 2, 2023:
 - 235% of the amount payable for the treatment under Medicare.
 - 73% of the amount the provider charged for the treatment on January 1, 2019.
- For treatment rendered after July 1, 2023:
 - 230% of the amount payable for the treatment under Medicare.
 - 71% of the amount the provider charged for the treatment on January 1, 2019.

FISCAL IMPACT:

The bill would have no fiscal impact on state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

⁴ As verified by the American College of Surgeons Committee on Trauma.

⁵ For applicable definitions of *emergency medical condition*, *stabilized*, and *transferred*, see section 1395dd of the Social Security Act: <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap7-subchapXVIII-partE-sec1395dd.pdf>