

HOUSE BILL No. 4997

June 28, 2007, Introduced by Rep. Virgil Smith and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3107 (MCL 500.3107), as amended by 1991 PA 191,
and by adding section 3107c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3107. (1) Except as provided in subsection (2), personal
2 protection insurance benefits are payable for the following:

3 (a) Allowable expenses consisting of all reasonable charges
4 incurred for reasonably necessary products, services and
5 accommodations for an injured person's care, recovery, or
6 rehabilitation. Allowable expenses within personal protection
7 insurance coverage shall not include charges for a hospital room in
8 excess of a reasonable and customary charge for semiprivate
9 accommodations except if the injured person requires special or

1 intensive care, or for funeral and burial expenses in **EXCESS OF** the
2 amount set forth in the policy which shall not be less than
3 \$1,750.00 or more than \$5,000.00. **ALLOWABLE EXPENSES INCLUDE, BUT**
4 **ARE NOT LIMITED TO, CHARGES FOR CASE MANAGEMENT SERVICES BY A CASE**
5 **MANAGER SELECTED OR APPROVED BY THE INJURED PERSON OR A PERSON**
6 **AUTHORIZED TO ACT ON THE INJURED PERSON'S BEHALF AND CHARGES FOR**
7 **HOME CARE SERVICES AS DESCRIBED IN SECTION 3107C. IF THE INJURED**
8 **PERSON, OR A PERSON ACTING ON HIS OR HER BEHALF, SUBMITS REASONABLE**
9 **PROOF THAT PRODUCTS, SERVICES, OR ACCOMMODATIONS ARE REASONABLY**
10 **NECESSARY FOR THE INJURED PERSON'S CARE, RECOVERY, OR**
11 **REHABILITATION AND THE INJURED PERSON CONSENTS TO BE PROVIDED WITH**
12 **THE PRODUCTS, SERVICES, OR ACCOMMODATIONS IN QUESTION, AN INSURER**
13 **SHALL ISSUE WRITTEN NOTIFICATION TO BOTH THE INJURED PERSON, OR A**
14 **PERSON ACTING ON HIS OR HER BEHALF, AND TO THE PROVIDER OF THE**
15 **PRODUCTS, SERVICES, OR ACCOMMODATIONS IN QUESTION, THAT THE INSURER**
16 **WILL GUARANTEE PAYMENT WHEN THE PRODUCTS, SERVICES, OR**
17 **ACCOMMODATIONS ARE PROVIDED TO THE INJURED PERSON. CHARGES FOR**
18 **PRODUCTS, SERVICES, OR ACCOMMODATIONS ARE CONSIDERED INCURRED UNDER**
19 **THIS SECTION AS FOLLOWS:**

20 (i) WHEN THE PRODUCTS, SERVICES, OR ACCOMMODATIONS ARE PROVIDED
21 TO THE INJURED PERSON.

22 (ii) WHEN THE INJURED PERSON PAYS OR BECOMES LIABLE OR IN SOME
23 WAY OBLIGATED OR CONDITIONALLY OBLIGATED TO PAY FOR THE PRODUCTS,
24 SERVICES, OR ACCOMMODATIONS.

25 (iii) WHEN AN INSURER GAVE OR SHOULD HAVE GIVEN A GUARANTEE OF
26 PAYMENT UNDER THIS SUBDIVISION.

27 (b) Work loss consisting of loss of income from work an

1 injured person would have performed during the first 3 years after
2 the date of the accident if he or she had not been injured. Work
3 loss does not include any loss after the date on which the injured
4 person dies. Because the benefits received from personal protection
5 insurance for loss of income are not taxable income, the benefits
6 payable for such loss of income shall be reduced 15% unless the
7 claimant presents to the insurer in support of his or her claim
8 reasonable proof of a lower value of the income tax advantage in
9 his or her case, in which case the lower value shall apply.

10 ~~Beginning March 30, 1973~~ **FOR THE PERIOD BEGINNING OCTOBER 1, 2006**
11 **THROUGH SEPTEMBER 30, 2007**, the benefits payable for work loss
12 sustained in a single 30-day period and the income earned by an
13 injured person for work during the same period together shall not
14 exceed ~~\$1,000.00~~ **\$4,589.00**, which maximum shall apply pro rata to
15 any lesser period of work loss. Beginning October 1, ~~1974~~ **2007**, the
16 maximum shall be adjusted annually to reflect changes in the cost
17 of living under rules prescribed by the commissioner but any change
18 in the maximum shall apply only to benefits arising out of
19 accidents occurring subsequent to the date of change in the
20 maximum. **NOTWITHSTANDING ANY OTHER PROVISION IN THIS ACT, WORK LOSS**
21 **BENEFITS SHALL NOT BE REDUCED BY AMOUNTS PAID BY THE INJURED**
22 **PERSON'S EMPLOYER OR PAID UNDER A WAGE CONTINUATION PLAN**
23 **ESTABLISHED BY A COLLECTIVE BARGAINING AGREEMENT.**

24 (c) Expenses not exceeding \$20.00 per day, reasonably incurred
25 in obtaining ordinary and necessary services in lieu of those that,
26 if he or she had not been injured, an injured person would have
27 performed during the first 3 years after the date of the accident,

1 not for income but for the benefit of himself or herself or of his
2 or her dependent.

3 (2) A person who is 60 years of age or older and in the event
4 of an accidental bodily injury would not be eligible to receive
5 work loss benefits under subsection (1)(b) may waive coverage for
6 work loss benefits by signing a waiver on a form provided by the
7 insurer. An insurer shall offer a reduced premium rate to a person
8 who waives coverage under this subsection for work loss benefits.
9 Waiver of coverage for work loss benefits applies only to work loss
10 benefits payable to the person or persons who have signed the
11 waiver form.

12 (3) SUBJECT TO SUBSECTION (1)(A), AN INSURER SHALL NOT ISSUE A
13 POLICY OR IMPOSE ANY CONDITIONS UPON THE PAYMENT OF CLAIMS THAT IN
14 ANY WAY LIMITS OR RESTRICTS A PERSON'S SELECTION OF A PROVIDER OR
15 THE NATURE AND EXTENT OF THE TREATMENT OR SERVICES RENDERED BY A
16 PROVIDER. THIS PROHIBITION APPLIES REGARDLESS OF WHETHER AN INSURED
17 HAS RECEIVED A REDUCED PREMIUM RATE FOR DEDUCTIBLES AND EXCLUSIONS
18 REASONABLY RELATED TO OTHER HEALTH AND ACCIDENT COVERAGE ON THE
19 INSURED UNDER SECTION 3109A AND REGARDLESS OF WHAT OTHER HEALTH AND
20 ACCIDENT COVERAGE OR BENEFITS COVER, OR ARE AVAILABLE TO, THE
21 INSURED.

22 (4) A PROVIDER RENDERING SERVICES TO AN INJURED PERSON THAT
23 ARE COMPENSABLE UNDER SUBSECTION (1) IS ENTITLED TO COLLECT, FROM
24 THE PERSON'S INSURER, ANY BALANCE OF THE PROVIDER'S CHARGES THAT
25 WAS NOT PAID BY OTHER HEALTH AND ACCIDENT COVERAGE OR BENEFITS,
26 EVEN WHEN A PORTION OF THE PROVIDER'S CHARGES WERE PAID TO THE
27 PROVIDER UNDER A PARTICIPATING AGREEMENT OR OTHER SIMILAR

1 RELATIONSHIP.

2 (5) AN INSURER MAY REVIEW A PERSONAL PROTECTION INSURANCE
3 CLAIM TO DETERMINE THE REASONABLENESS OF A CHARGE AND THE
4 REASONABLE NECESSITY OF A PRODUCT, SERVICE, OR ACCOMMODATION. IN
5 PERFORMING A REVIEW, AN INSURER MAY REQUEST OR CONDUCT EXPENSE
6 AUDITS PROVIDED, HOWEVER, THAT AN INSURER SHALL NOT CONSIDER OR
7 IMPLEMENT ANY FEE SCHEDULES OR OTHER REIMBURSEMENT METHODOLOGIES
8 USED UNDER ANY GOVERNMENTAL PROGRAM, PRIVATE CONTRACT, OR THIRD
9 PARTY PAYOR RELATIONSHIP. IF AN INSURER REVIEWS A CLAIM TO
10 DETERMINE THE REASONABLENESS OF A CHARGE OR THE REASONABLE
11 NECESSITY OF A PRODUCT, SERVICE, OR ACCOMMODATION, THE INSURER
12 SHALL TAKE INTO CONSIDERATION ALL FACTORS RELEVANT TO THE
13 DETERMINATION, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

14 (A) THE NATURE, SEVERITY, AND COMPLEXITY OF THE INJURY AND THE
15 TREATMENT OR SERVICE RENDERED WITH RESPECT TO THE INJURY.

16 (B) THE SKILL, TRAINING, EXPERTISE, AND REPUTATION OF THE
17 PROVIDER RENDERING THE TREATMENT OR SERVICE.

18 (C) THE CHARGES OF OTHER PROVIDERS RENDERING SIMILAR TREATMENT
19 OR SERVICES IN THE SAME OR SIMILAR GEOGRAPHIC LOCALITY WITHIN WHICH
20 THE CLAIMED TREATMENT OR SERVICE HAS BEEN RENDERED.

21 (D) THE FACTS AND CIRCUMSTANCES SURROUNDING THE TREATMENT OR
22 SERVICES RENDERED.

23 (6) IF AN INSURER DENIES ALL OR PART OF A PERSONAL PROTECTION
24 INSURANCE CLAIM BASED UPON THE REASONABLENESS OF THE CHARGE OR THE
25 REASONABLE NECESSITY OF THE PRODUCT, SERVICE, OR ACCOMMODATION, THE
26 INSURER SHALL FULLY DISCLOSE TO THE CLAIMANT AND THE CLAIMANT'S
27 PROVIDER THE BASIS FOR THE DENIAL AND ALL FACTS, EVIDENCE, AND DATA

1 SUPPORTING THE INSURER'S POSITION WITH RESPECT TO THE DENIAL AND
2 SHALL SUBMIT THIS INFORMATION WITHIN 30 DAYS OF RECEIVING PROOF OF
3 THE FACT AND AMOUNT OF THE CLAIM. FAILURE TO PROVIDE THE DISCLOSURE
4 CREATES A PRESUMPTION OF AN UNREASONABLE DELAY OR REFUSAL OF A
5 CLAIM UNDER SECTION 3148.

6 (7) IF AN INSURER ENTERS INTO AN AGREEMENT WITH AN INJURED
7 PERSON OR A PERSON AUTHORIZED TO ACT ON HIS OR HER BEHALF
8 CONCERNING THE PAYMENT OF A PERSONAL PROTECTION INSURANCE CLAIM,
9 ALL OF THE FOLLOWING APPLY:

10 (A) THE INSURER, PRIOR TO PAYING ANY AGREED UPON AMOUNT OR
11 UNDERTAKING TO PERFORM ANY AGREED UPON OBLIGATION, MAY SEEK A FULL
12 AND FINAL DISCHARGE OF THE INSURER'S LEGAL OBLIGATION TO PAY THE
13 SPECIFIC CLAIM THAT IS THE SUBJECT OF THE AGREEMENT FOR THE PERIOD
14 OF TIME SPECIFIED IN THE AGREEMENT BY OBTAINING AN ORDER FROM A
15 COURT OF APPROPRIATE JURISDICTION FINDING THAT THE AGREEMENT IS
16 FAIR, REASONABLE, AND APPROPRIATE UNDER ALL THE CIRCUMSTANCES.

17 (B) IF THE CLAIM IS ONE FOR WHICH THE INSURER IS ELIGIBLE TO
18 RECEIVE INDEMNIFICATION FROM THE CATASTROPHIC CLAIMS ASSOCIATION
19 BECAUSE THE THRESHOLD UNDER SECTION 3104(2) HAS BEEN EXCEEDED, THE
20 INSURER PAYING THE CLAIM OR PERFORMING AN AGREED UPON OBLIGATION
21 AFTER RECEIVING A COURT ORDER UNDER SUBDIVISION (A) SHALL RECEIVE
22 FULL INDEMNIFICATION FROM THE CATASTROPHIC CLAIMS ASSOCIATION FOR
23 THE TOTAL AMOUNT PAID BY THE INSURER IN ACCORDANCE WITH THE COURT
24 ORDER THAT IS IN EXCESS OF THE THRESHOLD AMOUNTS LISTED IN SECTION
25 3104(2).

26 (C) IF THE AGREEMENT INVOLVES, IN ANY WAY, PAYMENT FOR PAST
27 SERVICES RENDERED TO THE INJURED PERSON BY PROVIDERS WHOSE SERVICES

1 HAVE NOT YET BEEN FULLY PAID BY THE INJURED PERSON OR BY A PERSON
2 OR ENTITY ACTING ON HIS OR HER BEHALF, THEN ALL SUCH PROVIDERS
3 SHALL BE GIVEN WRITTEN NOTICE OF THE AGREEMENT BEFORE A COURT ORDER
4 UNDER SUBDIVISION (A) CAN BE ENTERED AND SHALL BE GIVEN A
5 REASONABLE OPPORTUNITY TO APPEAR AND PROTECT THEIR RESPECTIVE
6 INTERESTS REGARDING THE AGREEMENT.

7 (D) IF THE AGREEMENT INVOLVES, IN ANY WAY, PAYMENT FOR FUTURE
8 SERVICES THAT MAY BE RENDERED TO THE INJURED PERSON, THE INSURER
9 SHALL SEND A COPY OF THE COURT ORDER APPROVING THE AGREEMENT TO ALL
10 PROVIDERS KNOWN TO THE INSURER WHO HAVE RENDERED SERVICES OR WHO
11 ARE CURRENTLY RENDERING SERVICES TO THE INJURED PERSON.

12 (8) ALL COSTS OF OBTAINING ANY ORDER UNDER SUBSECTION (7) ARE
13 THE SOLE RESPONSIBILITY OF THE INSURER. AN INSURER'S REQUEST FOR AN
14 ORDER UNDER SUBSECTION (7) DOES NOT LIMIT, QUALIFY, DIMINISH, OR
15 ALTER THE INSURER'S DUTY TO PAY CLAIMS UNDER THIS ACT, INCLUDING,
16 BUT NOT LIMITED TO, SECTIONS 3142 AND 3148 CONCERNING THE TIMELY
17 PAYMENT OF CLAIMS. IN ADDITION, REGARDLESS OF WHETHER AN INSURER
18 HAS OBTAINED A COURT ORDER WITH RESPECT TO AN AGREEMENT TO PAY A
19 CLAIM FOR ALLOWABLE EXPENSES UNDER SUBSECTION (7), ANY AGREEMENT
20 NEGOTIATED BETWEEN AN INSURER AND AN INJURED PERSON OR HIS OR HER
21 AUTHORIZED REPRESENTATIVE CONCERNING THE PAYMENT OF ALLOWABLE
22 EXPENSES INCURRED IN THE FUTURE MAY PERIODICALLY BE JUDICIALLY
23 REVIEWED IN ORDER TO ENSURE THAT THE AGREEMENT IS FAIR, REASONABLE,
24 AND APPROPRIATE UNDER ALL OF THE CIRCUMSTANCES EXISTING AT THE TIME
25 OF THE REVIEW.

26 SEC. 3107C. (1) AS USED IN SECTION 3107 AND THIS SECTION,
27 "HOME CARE SERVICES" INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING

1 ENUMERATED SERVICES OR TREATMENT WHEN RENDERED IN A HOME SETTING TO
2 AN INJURED PERSON BY NONCOMMERCIAL PROVIDERS FOR THE INJURED
3 PERSON'S CARE, RECOVERY, OR REHABILITATION, REGARDLESS OF WHETHER
4 THE PROVIDER IS LICENSED, CERTIFIED, OR REGISTERED OR IS A RELATIVE
5 OR NONRELATIVE OF THE INJURED PERSON, EXCEPT WHEN THE SERVICES ARE
6 OTHERWISE PROHIBITED BY LAW IF RENDERED BY PERSONS WHO ARE NOT
7 LICENSED, CERTIFIED, OR REGISTERED BY THIS STATE:

8 (A) ATTENDANT OR PERSONAL CARE.

9 (B) MEDICAL CARE.

10 (C) NURSING CARE.

11 (D) ASSISTANCE WITH ACTIVITIES OF DAILY LIVING.

12 (E) CASE MANAGEMENT.

13 (F) PHYSICAL, OCCUPATIONAL, SPEECH, OR OTHER THERAPY.

14 (G) MONITORING OR CUING OF THE INJURED PERSON.

15 (H) ON-CALL ASSISTANCE.

16 (I) NUTRITIONAL AND MEAL SERVICES.

17 (J) PERSONAL HYGIENE.

18 (K) PSYCHOLOGICAL COUNSELING.

19 (L) BEHAVIORAL MANAGEMENT.

20 (M) ROOM AND BOARD AND ACCOMMODATIONS IF THE INJURED PERSON
21 WOULD OTHERWISE REQUIRE INSTITUTIONALIZATION.

22 (N) SUPERVISION OF OTHERS PROVIDING SERVICES OR TREATMENT
23 DESCRIBED IN THIS SUBSECTION.

24 (2) IN DETERMINING THE REASONABLENESS OF CHARGES FOR HOME CARE
25 SERVICES, THE FOLLOWING FACTORS MAY BE CONSIDERED:

26 (A) THE NATURE AND SEVERITY OF THE INJURY.

27 (B) THE NATURE AND LEVEL OF DISABILITY OF THE INJURED PERSON.

1 (C) THE NATURE AND COMPLEXITY OF THE SERVICE OR TREATMENT AND
2 THE QUALIFICATIONS AND EXPERIENCE OF THE PERSON RENDERING THE
3 SERVICE OR TREATMENT.

4 (D) THE INJURED PERSON'S NEEDS AND DESIRES FOR THE SERVICE OR
5 TREATMENT.

6 (E) THE BENEFIT AND VALUE OF THE SERVICE OR TREATMENT TO THE
7 INJURED PERSON.

8 (F) THE COMMERCIAL RATES CHARGED BY COMMERCIAL AGENCIES OR
9 PROFESSIONAL PROVIDERS TO RENDER A SIMILAR SERVICE OR TREATMENT.

10 (G) THE WAGES AND FRINGE BENEFITS PAID BY COMMERCIAL AGENCIES
11 OR PROFESSIONAL PROVIDERS TO THEIR EMPLOYEES TO RENDER A SIMILAR
12 SERVICE OR TREATMENT.

13 (H) THE ACTUAL COST INCURRED BY THE PROVIDER IN RENDERING THE
14 SERVICE OR TREATMENT.

15 (I) THE MARKET VALUE OF THE SERVICE OR TREATMENT.

16 (J) THE VALUE OF THE ECONOMIC OPPORTUNITY LOST BY THE PROVIDER
17 IN RENDERING THE SERVICE OR TREATMENT, INCLUDING, BUT NOT LIMITED
18 TO, LOST BUSINESS OPPORTUNITIES, LOST EMPLOYMENT OPPORTUNITIES, AND
19 LOST EDUCATIONAL OPPORTUNITIES.

20 (K) ANY OTHER RELEVANT FACTOR.

21 (3) AN INSURER MAY REQUIRE 1 OR MORE OF THE FOLLOWING IN
22 PROCESSING A CLAIM FOR HOME CARE SERVICES:

23 (A) A NOTARIZED STATEMENT ON A FORM APPROVED BY THE
24 COMMISSIONER IN WHICH THE INJURED PERSON OR A PERSON AUTHORIZED TO
25 ACT ON HIS OR HER BEHALF DESCRIBES THE SERVICE FOR WHICH PAYMENT IS
26 SOUGHT AND AFFIRMS, UNDER OATH, THAT THE SERVICE WAS PROVIDED AS
27 DESCRIBED.

1 (B) WRITTEN VERIFICATION FROM A PROVIDER KNOWLEDGEABLE ABOUT
2 THE CLAIM THAT THE CARE RENDERED TO THE INJURED PERSON WAS
3 REASONABLY NECESSARY FOR THE INJURED PERSON'S CARE, RECOVERY, OR
4 REHABILITATION.

5 (C) A WRITTEN AUTHORIZATION SIGNED BY THE INJURED PERSON OR A
6 PERSON AUTHORIZED TO ACT ON HIS OR HER BEHALF PERMITTING THE
7 RELEASE, TO THE INSURER, OF ANY MEDICAL RECORDS RELEVANT TO THE
8 CLAIM FOR HOME CARE SERVICES.

9 (4) NEITHER THE MAKING OF A REQUEST FOR 1 OR MORE OF THE
10 DOCUMENTS DESCRIBED IN SUBSECTION (3) NOR THE FAILURE TO MAKE A
11 REQUEST FOR 1 OR MORE OF THE DOCUMENTS DESCRIBED IN SUBSECTION (3)
12 PRECLUDES AN INJURED PERSON FROM SEEKING JUDICIAL ENFORCEMENT OF A
13 CLAIM FOR HOME CARE SERVICES UNDER THIS ACT OR ALTERS AN INSURER'S
14 RESPONSIBILITY TO PAY A CLAIM FOR HOME CARE SERVICES UNDER THIS
15 ACT.