



October 27, 2014

TO: LMAC Members
FROM: Diana Ferriter
RE: HB87 Provisions – Not included in HB334

As you requested, we're providing you with the provisions in HB87 from 2011 that were not addressed in some manner in HB334:

Increase maximum weekly PPD rates to 75% of SAWW (now at 50%) and then increase to 100% of SAWW.

(6) (a) ~~The~~ For the dates from July 1, 2011, through June 30, 2013, the weekly benefit rate for an impairment award or a permanent partial disability award is 66 2/3% of the wages received at the time of injury, but the rate may not exceed ~~one-half~~ 75% the state's average weekly wage.

(b) Beginning July 1, 2013, the weekly benefit rate for an impairment award or a permanent partial disability award is 66 2/3% of the wages received at the time of injury, but the rate may not exceed the state's average weekly wage.

Address payment of attorney fees in medical only disputes.

Section 9. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable -- barring of attorney fees under common fund and other doctrines. (1) ~~The~~ For benefits other than medical benefits, the insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under ~~this section~~ subsection (1) does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(3) For medical benefits, the insurer shall pay reasonable costs and attorney fees if the insurer denies liability for a claim for medical benefits or terminates medical benefits and the medical benefits are later adjudged compensable by the workers' compensation court.

(4) The fees under subsection (3) must be calculated using the attorney's contract of employment filed and approved by the department under 39-71-613.

(5) An insurer may not seek reimbursement or contribution from a health care provider for any costs or fees awarded pursuant to this section.

(3)(6) Attorney fees may be awarded only under the provisions of ~~subsection~~ subsections (1) and (3) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

(7) For the purposes of subsection (3), "medical benefits" means those benefits furnished pursuant to 39-71-704."

Section 10. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge -- barring of attorney fees under common fund or other doctrines. (1) If an insurer pays or submits a written offer of payment of compensation under this chapter but controversy relates to the amount of compensation due, if the case is brought before the workers' compensation judge for adjudication of the controversy, and if the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) ~~An~~ Except as provided in subsection (4), an award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under ~~this section~~ subsection (2) does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) (a) For medical benefits, the insurer shall pay reasonable costs and attorney fees as established and ordered by the workers' compensation court if:

(i) the insurer pays or submits a written offer of payment of medical benefits under Title 39, chapter 71, but there is controversy related to the amount of benefits due. A written offer of payment made 30 days or

more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(ii) the case is brought before the workers' compensation judge for adjudication of the controversy; and

(iii) the award granted by the judge is greater than the amount paid or offered by the insurer.

(b) If the insurer denies liability for a claim for medical benefits or terminates medical benefits and the insurer subsequently accepts or settles the claim for medical benefits less than 30 days before the date of hearing, the insurer shall pay reasonable costs and attorney fees.

(5) The fees under subsection (4) must be calculated using the attorney's contract of employment filed and approved by the department under 39-71-613.

(6) An insurer may not seek reimbursement or contribution from a health care provider for any costs or fees awarded pursuant to this section.

(4)(7) Attorney fees may be awarded only under the provisions of subsections (1) ~~and~~, (2), and (4) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

(8) For the purposes of subsection (4), "medical benefits" means those benefits furnished pursuant to 39-71-704."

Section 11. Section 39-71-614, MCA, is amended to read:

"39-71-614. Calculation of attorney fees -- limitation. (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612, when the actions of the insurer were unreasonable, must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(2) The judge shall determine a reasonable attorney fee and assess costs. ~~The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.~~ The amount of attorney fees assessed against an insurer under 39-71-611 or 39-71-612 for payment of medical benefits when the actions of the insurer were not determined to be unreasonable must be based exclusively on the fee agreement approved by the department under 39-71-613.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments

received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement."

Reduce time frame for insurers' acceptance of a claim to 21 days from 30 days.

Section 7. Section 39-71-606, MCA, is amended to read:

"39-71-606. ~~Insurer to accept or deny~~ Acceptance or denial of claim within thirty days of receipt -- notice of benefits and entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer. (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within ~~30~~ 21 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer that it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court."

Increase auxiliary benefits each year based on increase in SAWW.

Section 32. Section 39-71-1025, MCA, is amended to read:

"39-71-1025. Auxiliary ~~rehabilitation~~ benefits. (1) In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000, adjusted as provided in subsection (2), may be paid by the insurer for specialized job modification, reasonable travel, and relocation expenses used ~~to~~ for any of the following:

~~(1)(a)~~ a search for new employment;

~~(2)(b)~~ a return to work but in a new location;

~~(3)(c)~~ ~~implement a rehabilitation~~ the implementation of a stay-at-work/return-to-work plan or a retraining plan that has been filed with the department; and or

~~(4)(d)~~ ~~attend~~ attendance at an on-the-job training program.

(2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the state's average weekly wage over the state's average weekly wage adopted for the previous year."