

ATTENDANT CARE 2021 PRIMER

Statutory Cap on Attendant Care Effective July 2, 2021

MCL 500.3157(10), (14), added by 2019 PA 21.

No-fault reform added an hourly limitation for certain types of attendant care. **For attendant care services rendered after July 1, 2021**, an insurer is obligated only to pay benefits up to the hourly limitation in the worker's compensation statute, MCL 418.315 (**presently 56 hours per week**).

Under the new law, No-Fault Insurers in Michigan are only required to pay 56 hours per week of in-home, **family-provided attendant care services**.

This limitation applies **ONLY** if the attendant care is provided directly, or indirectly through another person, by any of the following persons:

- (a) ... related to the injured person
- (b) ... domiciled in the household of the injured person
- (c) ... [someone] with whom the injured person had a business or social relationship before the injury

See MCL 500.3157(10).

The 56-hours-per-week limitation **does not** apply to **commercially provided services**.

Furthermore, the new law provides that auto insurance companies may contract with insureds and family members to cover services beyond the 56-hour limitation. Why would any insurer pay family members for MORE hours per week than they are required to pay under the law? The answer is simple; to cut down the number of hours the insurer must pay for commercially provided services which are typically priced at a much higher hourly rate.

Consumers can choose to purchase an attendant care rider under MCL 500.3107c(8). In addition, insurers can offer to pay more than the limit in §3157(10). MCL 500.3157(11).

Below are the specific statutory provisions implicated by the recent tort reform changes. First, Attendant Care is considered an "**Allowable Expense**" payable at a "**reasonable**" rate under Section 3107 of the Michigan No-Fault Act. Below is Section 3107:

500.3107 Expenses and work loss for which personal protection insurance benefits payable.

Sec. 3107.

(1) Subject to the exceptions and limitations in this chapter, and subject to chapter 31A, personal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.

The amended provision limiting attendant care is found at Section 3157 (10) & (11) which provides as follows:

500.3157 Charges for treatment or training for injured persons; limitation on eligibility for payment or reimbursement; applicability; "freestanding rehabilitation facility" defined; qualification for payment requirements; attendant care; neurological rehabilitation clinic; applicability to ambulance operation; definitions.

Sec. 3157. (10) & (11)

(10) For attendant care rendered in the injured person's home, an insurer is only required to pay benefits for attendant care up to the hourly limitation in section 315 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315. This subsection only applies if the attendant care is provided directly, or indirectly through another person, by any of the following:

- (a) An individual who is related to the injured person.
- (b) An individual who is domiciled in the household of the injured person.
- (c) An individual with whom the injured person had a business or social relationship before the injury.

(11) An insurer may contract to pay benefits for attendant care for more than the hourly limitation under subsection (10).

MCL 418.315. The Workers Compensation Provision limiting attendant care is found at MCL 418.315, which is highlight below:

Sec. 315.

(1) Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons. After 28 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician.

MCL 500.3107c

The No-Fault Act changes includes a provision under Section 3107c requiring insurers to offer a rider that provides coverage for attendant care in excess of the 56-hour-limit. That section is highlighted below.

Sec. 3107c.

(8) An insurer **shall offer**, for a policy that provides the security required under section 3101(1) to which a limit under subsection (1)(a) to (c) applies, a rider that will provide coverage for attendant care in excess of the applicable limit.

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