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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 1739

March 16, 2009
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The bill was read for the first time and referred to the Committee on Commerce and Labor

A bill for an act

relating to commerce; reforming no-fault auto insurance; increasing certain first-party benefits; regulating certain arbitration awards; prohibiting balance billing by health care providers; regulating the furnishing of certain accident record information; clarifying civil liability with respect to recovery of medical and health care expenses; amending Minnesota Statutes 2008, sections 65B.44, subdivisions 2, 3, 4; 65B.51, subdivisions 1, 3; 65B.525, by adding a subdivision; 65B.54, by adding a subdivision; 169.09, subdivision 13; 604.01, by adding a subdivision; 604.02, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 65B.44, subdivision 2, is amended to read:

Subd. 2. **Medical expense benefits.** (a) Medical expense benefits shall reimburse all reasonable expenses for necessary:

(1) medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices;

(2) prescription drugs;

(3) ambulance and all other transportation expenses incurred in traveling to receive other covered medical expense benefits;

(4) sign interpreting and language translation services, other than such services provided by a family member of the patient, related to the receipt of medical, surgical, x-ray, optical, dental, chiropractic, hospital, extended care, nursing, and rehabilitative services; and

(5) hospital, extended care, and nursing services.

(b) Hospital room and board benefits may be limited, except for intensive care facilities, to the regular daily semiprivate room rates customarily charged by the institution in which the recipient of benefits is confined.

(c) Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of this state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with that person's religious beliefs.

(d) Medical expense loss includes medical expenses accrued prior to the death of a person notwithstanding the fact that benefits are paid or payable to the decedent's survivors.

(e) Medical expense benefits for rehabilitative services shall be subject to the provisions of section 65B.45.

(f) In addition to any other limitation under law, medical expense benefits are limited to the amount actually paid or actually incurred by or on behalf of the claimant, whichever amount is lower.

Sec. 2. Minnesota Statutes 2008, section 65B.44, subdivision 3, is amended to read:

Subd. 3. **Disability and income loss benefits.** Disability and income loss benefits shall provide compensation for 85 percent of the injured person's loss of present and future gross income from inability to work proximately caused by the nonfatal injury subject to a maximum of ~~$250~~ $500 per week. Loss of income includes the costs incurred by a self-employed person to hire substitute employees to perform tasks which are necessary to maintain the income of the injured person, which are normally performed by the injured person, and which cannot be performed because of the injury.

If the injured person is unemployed at the time of injury and is receiving or is eligible to receive unemployment benefits under chapter 268, but the injured person loses eligibility for those benefits because of inability to work caused by the injury, disability and income loss benefits shall provide compensation for the lost benefits in an amount equal to the unemployment benefits which otherwise would have been payable, subject to a maximum of ~~$250~~ $500 per week.

Compensation under this subdivision shall be reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which the injured person was capable of performing but unreasonably failed to undertake.

For the purposes of this section "inability to work" means disability which prevents the injured person from engaging in any substantial gainful occupation or employment on a regular basis, for wage or profit, for which the injured person is or may by training become reasonably qualified. If the injured person returns to employment and is unable by reason of the injury to work continuously, compensation for lost income shall be reduced by the income received while the injured person is actually able to work. The weekly

maximums may not be prorated to arrive at a daily maximum, even if the injured person does not incur loss of income for a full week.

For the purposes of this section, an injured person who is "unable by reason of the injury to work continuously" includes, but is not limited to, a person who misses time from work, including reasonable travel time, and loses income, vacation, or sick leave benefits, to obtain medical treatment for an injury arising out of the maintenance or use of a motor vehicle.

Sec. 3. Minnesota Statutes 2008, section 65B.44, subdivision 4, is amended to read:

Subd. 4. **Funeral and burial expenses.** Funeral and burial benefits shall be reasonable expenses not in excess of ~~$2,000~~ $5,000, including expenses for cremation or delivery under the Darlene Luther Revised Uniform Anatomical Gift Act, chapter 525A.

Sec. 4. Minnesota Statutes 2008, section 65B.51, subdivision 1, is amended to read:

Subdivision 1. **Deduction of basic economic loss benefits.** With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which security has been provided as required by sections 65B.41 to 65B.71, the court shall deduct from any recovery the value of basic or optional economic loss benefits actually paid ~~or~~, actually payable, or which would be actually payable but for any applicable deductible. In any case where the claimant is found to be at fault under section 604.01, the deduction for basic economic loss benefits must be made before the claimant's damages are reduced under section 604.01, subdivision 1.

Sec. 5. Minnesota Statutes 2008, section 65B.51, subdivision 3, is amended to read:

Subd. 3. **Limitation of damages for noneconomic detriment.** In an action described in subdivision 1, no person shall recover damages for noneconomic detriment unless:

(a) The sum of the following exceeds $4,000:

(1) reasonable medical expense benefits actually paid, actually payable, or actually payable but for any applicable deductible, plus

(2) the value of free medical or surgical care or ordinary and necessary nursing services performed by a relative of the injured person or a member of the injured person's household, plus

(3) the amount by which the value of reimbursable medical services or products exceeds the amount of benefit paid, payable, or payable but for an applicable deductible

for those services or products if the injured person was charged less than the average reasonable amount charged in this state for similar services or products, minus

(4) the amount of medical expense benefits actually paid, actually payable, or actually payable but for an applicable deductible for diagnostic X-rays and for a procedure or treatment for rehabilitation and not for remedial purposes or a course of rehabilitative occupational training; or

(b) the injury results in:

(1) permanent disfigurement;

(2) permanent injury;

(3) death; or

(4) disability for 60 days or more.

(c) For the purposes of clause (a) evidence of the reasonable value of medical services and products shall be admissible in any action brought in this state.

For the purposes of this subdivision disability means the inability to engage in substantially all of the injured person's usual and customary daily activities.

Sec. 6. Minnesota Statutes 2008, section 65B.525, is amended by adding a subdivision to read:

Subd. 3. **Award of medical expense benefits; fraud.** An arbitrator shall not award medical expense benefits to the claimant if the reparation obligor offers credible evidence of fraud in connection with this claim.

Sec. 7. Minnesota Statutes 2008, section 65B.54, is amended by adding a subdivision to read:

Subd. 7. **Balance billing by health care providers prohibited.** (a) This subdivision applies to charges for medical expense benefits as defined in section 65B.44, subdivision 2, to the extent that a reparation obligor has rejected them under subdivision 5 on the basis that the health care was not medically necessary or on the basis that the charges exceed the usual and customary rate.

(b) If it is determined by arbitration or court proceeding that the level, frequency, or cost of medical expense benefits described in section 65B.44, subdivision 2, is excessive, unreasonable, or unnecessary, the provider shall not be paid for the procedure, service, or cost by the reparation obligor and the provider shall not be reimbursed or attempt to collect reimbursement for the procedure, service, or cost from any other source, including the injured person, another insurer, reparation obligor, or governmental entity.

(c) A medical provider, as described in section 65B.44, subdivision 2, shall receive notice of and be given an opportunity to be heard at any arbitration or court proceeding designed to determine the reasonableness and necessity of any disputed medical expenses or costs.

(d) A health care provider shall not require an insured to waive any provision of this section, and any such attempted waiver is void and unenforceable.

EFFECTIVE DATE. This section is effective January 1, 2010, and applies to medical expense benefits provided on or after that date.

Sec. 8. Minnesota Statutes 2008, section 169.09, subdivision 13, is amended to read:

Subd. 13. **Reports confidential; evidence, fee, penalty, appropriation.** (a) All reports and supplemental information required under this section must be for the use of the commissioner of public safety and other appropriate state, federal, county, and municipal governmental agencies for accident analysis purposes, except:

(1) the commissioner of public safety or any law enforcement agency shall, upon written request of any individual involved in an accident or upon written request of the representative of the individual's estate, surviving spouse, or one or more surviving next of kin, or a trustee appointed under section 573.02, disclose to the requester, the requester's legal counsel, or a representative of the requester's insurer the report required under subdivision 8;

(2) the commissioner of public safety shall, upon written request, provide the driver filing a report under subdivision 7 with a copy of the report filed by the driver;

(3) the commissioner of public safety may verify with insurance companies vehicle insurance information to enforce sections 65B.48, 169.792, 169.793, 169.796, and 169.797;

(4) the commissioner of public safety shall provide the commissioner of transportation the information obtained for each traffic accident involving a commercial motor vehicle, for purposes of administering commercial vehicle safety regulations; and

(5) the commissioner of public safety may give to the United States Department of Transportation commercial vehicle accident information in connection with federal grant programs relating to safety.

(b) Accident reports and data contained in the reports are not discoverable under any provision of law or rule of court. No report shall be used as evidence in any trial, civil or criminal, or any action for damages or criminal proceedings arising out of an accident. However, the commissioner of public safety shall furnish, upon the demand of any person who has or claims to have made a report or upon demand of any court, a certificate

showing that a specified accident report has or has not been made to the commissioner solely to prove compliance or failure to comply with the requirements that the report be made to the commissioner.

(c) Nothing in this subdivision prevents any individual who has made a report under this section from providing information to any individuals involved in an accident or their representatives or from testifying in any trial, civil or criminal, arising out of an accident, as to facts within the individual's knowledge. It is intended by this subdivision to render privileged the reports required, but it is not intended to prohibit proof of the facts to which the reports relate.

(d) Disclosing any information contained in any accident report, except as provided in this subdivision, section 13.82, subdivision 3 or 6, or other statutes, is a misdemeanor.

(e) The commissioner of public safety shall charge authorized persons as described in paragraph (a) a $5 fee for a copy of an accident report. Ninety percent of the $5 fee collected under this paragraph must be deposited in the special revenue fund and credited to the driver services operating account established in section 299A.705 and ten percent must be deposited in the general fund. ~~The commissioner may also furnish an electronic copy of the database of accident records, which must not contain personal or private data on an individual, to private agencies as provided in paragraph (g), for not less than the cost of preparing the copies on a bulk basis as provided in section 13.03, subdivision 3.~~

(f) The fees specified in paragraph (e) notwithstanding, the commissioner and law enforcement agencies shall charge commercial users who request access to response or incident data relating to accidents a fee not to exceed 50 cents per record. "Commercial user" is a user who in one location requests access to data in more than five accident reports per month, unless the user establishes that access is not for a commercial purpose. Of the money collected by the commissioner under this paragraph, 90 percent must be deposited in the special revenue fund and credited to the driver services operating account established in section 299A.705 and ten percent must be deposited in the general fund.

(g) The fees in paragraphs (e) and (f) notwithstanding, the commissioner shall provide an electronic copy of the accident records database to the public on a case-by-case basis using the cost-recovery charges provided for under section 13.03, subdivision 3. The database provided must not contain personal or private data on an individual. However, unless the accident records data base includes the vehicle identification number, the commissioner shall include the vehicle registration plate number if a private agency certifies and agrees that the agency:

(1) is in the business of collecting accident and damage information on vehicles;

(2) will use the vehicle registration plate number only for identifying vehicles that have been involved in accidents or damaged, to provide this information to persons seeking access to a vehicle's history and not for identifying individuals or for any other purpose; and

(3) will be subject to the penalties and remedies under sections 13.08 and 13.09.

Sec. 9. Minnesota Statutes 2008, section 604.01, is amended by adding a subdivision to read:

Subd. 6. **Limitation.** In addition to any other limitation under law, recovery of medical or health care expenses is limited to the amount actually paid or actually incurred by or on behalf of the claimant, whichever amount is lower.

Sec. 10. Minnesota Statutes 2008, section 604.02, is amended by adding a subdivision to read:

Subd. 4. **Limitation.** In addition to any other limitation under law, recovery of medical or health care expenses is limited to the amount actually paid or actually incurred by or on behalf of the claimant, whichever amount is lower.