

HB0361S01 compared with HB0361

~~{deleted text}~~ shows text that was in HB0361 but was deleted in HB0361S01.

inserted text shows text that was not in HB0361 but was inserted into HB0361S01.

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Representative Stephen G. Handy proposes the following substitute bill:

PERSONAL INJURY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: ~~{~~ Lyle W. Hillyard }

LONG TITLE

General Description:

This bill amends provisions related to motor vehicle insurance.

Highlighted Provisions:

This bill:

- ▶ includes a bone fracture as an injury that allows a person who has or is required to have direct benefit coverage under a policy that includes personal injury protection to maintain an action for damages;~~}~~
- ▶ ~~modifies the showing required to establish the qualifying injury in an action for damages;}~~ and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

31A-22-307, as last amended by Laws of Utah 2006, Chapter 197

31A-22-309, as last amended by Laws of Utah 2017, Chapter 363

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-307** is amended to read:

31A-22-307. Personal injury protection coverages and benefits.

(1) Personal injury protection coverages and benefits include:

(a) up to the minimum amount required coverage of not less than \$3,000 per person,

the reasonable value of all expenses for necessary:

(i) medical services;

(ii) surgical services;

(iii) X-ray services;

(iv) dental services;

(v) rehabilitation services, including prosthetic devices;

(vi) ambulance services;

(vii) hospital services; and

(viii) nursing services;

(b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for the injured person's household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

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(c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to the person's heirs, in the total of \$3,000.

(2) (a) (i) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309(1)(a)~~(v)~~(vi), the commissioner shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and determine the 75th percentile charge for each type of service and accommodation.

(ii) The relative value study shall be updated every other year.

(iii) In conducting the relative value study, the department may consult or contract with appropriate public and private medical and health agencies or other technical experts.

(iv) The costs and expenses incurred in conducting, maintaining, and administering the relative value study shall be funded by the tax created under Section 59-9-105.

(v) Upon completion of the relative value study, the department shall prepare and publish a relative value study which sets forth the unit value and the 75th percentile charge assigned to each type of service and accommodation.

(b) (i) The reasonable value of any service or accommodation is determined by applying the unit value and the 75th percentile charge assigned to the service or accommodation under the relative value study.

(ii) If a service or accommodation is not assigned a unit value or the 75th percentile charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state.

(c) This Subsection (2) does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this Subsection (2).

(d) Every insurer shall report to the commissioner any pattern of overcharging, excessive treatment, or other improper actions by a health provider within 30 days after the day on which the insurer has knowledge of the pattern.

(e) (i) In disputed cases, a court on its own motion or on the motion of either party,

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may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses.

(ii) An impartial medical panel designated under Subsection (2)(e)(i) shall consist of a majority of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309(1)(a)~~(v)~~(vi) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) The insured may waive for the named insured and the named insured's spouse only the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

(a) within 31 days of applying for coverage, neither the insured nor the insured's spouse received any earned income from regular employment; and

(b) for at least 180 days from the date of the writing and during the period of insurance, neither the insured nor the insured's spouse will receive earned income from regular employment.

(5) This section does not:

(a) prohibit the issuance of a policy of insurance providing coverages greater than the minimum coverage required under this chapter; or

(b) require the segregation of those minimum coverages from other coverages in the same policy.

(6) Deductibles are not permitted with respect to the insurance coverages required under this section.

Section 2. Section **31A-22-309** is amended to read:

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) (a) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person ~~{presents prima facie evidence that the person }~~ has sustained one or more of the following:

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- (i) death;
- (ii) dismemberment;
- (iii) permanent disability or permanent impairment based upon objective findings;
- (iv) permanent disfigurement; [~~or~~]
- (v) a bone fracture; or
- ~~[(v)]~~ (vi) medical expenses to a person in excess of \$3,000.

(b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to the person's injury:

(A) by intentionally causing injury to the person; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) This Subsection (2) does not limit the exclusions that may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United

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States or any of its agencies because that person is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred.

(b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer.

(c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

(d) The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) (a) Except as provided in Subsection (6)(b), every policy providing personal injury protection coverage is subject to the following:

(i) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(ii) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

(b) There shall be no right of reimbursement between insurers under Subsection (6)(a) if the insurer of the person who would be held legally liable for the personal injuries sustained has tendered its policy limit.

(c) (i) If the insurer of the person who would be held legally liable for the personal

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injuries sustained reimburses a no-fault insurer prior to settling a third party liability claim with an injured person and subsequently determines that some or all of the reimbursed amount is needed to settle a third party claim, the insurer of the person who would be held legally liable for the personal injuries sustained shall provide written notice to the no-fault insurer that some or all of the reimbursed amount is needed to settle a third party liability claim.

(ii) The written notice described under Subsection (6)(c)(i) shall:

(A) identify the amount of the reimbursement that is needed to settle a third party liability claim;

(B) provide notice to the no-fault insurer that the no-fault insurer has 15 days to return the amount described in Subsection (6)(c)(ii)(A); and

(C) identify the third party liability insurer that the returned amount shall be paid to.

(iii) A no-fault insurer that receives a notice under this Subsection (6)(c) shall return the portion of the reimbursement identified under Subsection (6)(c)(ii) to the third party liability insurer identified under Subsection (6)(c)(ii)(C) within 15 business days from receipt of a notice under this Subsection (6)(c).

Section 3. Effective date.

This bill takes effect on January 1, 2021.