



AN ACT GENERALLY REVISING WORKERS' COMPENSATION STATUTES; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE INSURER; AMENDING SECTIONS 39-71-107, 39-71-418, AND 39-71-2215, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims -- in-state claims examiners -- third-party agents -- penalties. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must

be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) (a) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.

(b) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.

(c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).

~~(5)(6)~~ An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

~~(6)(7)~~ An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless

the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.

~~(7)~~(9) The department may adopt rules to implement this section.

~~(8)~~(10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 2. Section 39-71-418, MCA, is amended to read:

"39-71-418. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) ~~provided~~ made misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; ~~or~~

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate; or

(d) does not have an independently established business as required by 39-71-417(4).

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department's independent contractor central unit to suspend or revoke an independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2)."

Section 3. Section 39-71-2215, MCA, is amended to read:

"39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer. (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

- (a) becomes insolvent;
- (b) is placed in receivership;
- (c) declares bankruptcy;
- (d) seeks protection from its creditors; or
- (e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from \$25,000 to \$250,000. The security deposit must be posted in the form of:

- (a) a certificate of deposit;
- (b) a United States treasury note; or
- (c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the ~~security deposit insurer~~.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release

part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section."

Section 4. Effective date. [This act] is effective July 1, 2011.

- END -

I hereby certify that the within bill,
HB 0110, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 110
INTRODUCED BY J. WELBORN
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT GENERALLY REVISING WORKERS' COMPENSATION STATUTES; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE INSURER; AMENDING SECTIONS 39-71-107, 39-71-418, AND 39-71-2215, MCA; AND PROVIDING AN EFFECTIVE DATE.