

SENATE BILL NO. 426

INTRODUCED BY JENT, K. PETERSON, O'NEIL, LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT AN INSURER PAY COSTS AND ATTORNEY FEES FOR DENIAL OR TERMINATION OF MEDICAL BENEFITS THAT ARE LATER DETERMINED COMPENSABLE BY THE WORKERS' COMPENSATION COURT; AMENDING SECTIONS 39-71-611 AND 39-71-612, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. 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) (A) For medical benefits, the insurer shall pay reasonable costs and attorney fees if:

~~(a)(i) 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; or

~~(b)(ii) the insurer denies liability for a claim for medical benefits or terminates medical benefits and the~~ insurer subsequently accepts liability for medical benefits.

(B) FOR PURPOSES OF THIS SUBSECTION (3), IF REASONABLE COSTS AND ATTORNEY FEES WOULD OTHERWISE BE PAYABLE UNDER SUBSECTION (3)(A) AND THE CLAIMANT IS NOT REPRESENTED BY AN ATTORNEY, THE CLAIMANT MUST BE PAID THE CLAIMANT'S REASONABLE COSTS AND, IN LIEU OF ATTORNEY FEES, AN AMOUNT EQUAL TO \$50 PER HOUR FOR THE CLAIMANT'S TIME SPENT ON THE MATTER.

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

~~(3)~~(5) 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.

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

Section 2. 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, the case is brought before the workers' compensation judge for adjudication of the controversy, and 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 award of attorney fees under subsection (1) may be made ~~only~~ 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 ~~chapter 71 or 72 of this title~~ THIS CHAPTER, but there is controversy related to the amount of benefits due;

(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) 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.

(C) FOR PURPOSES OF THIS SUBSECTION (4), IF REASONABLE COSTS AND ATTORNEY FEES WOULD OTHERWISE

BE PAYABLE UNDER SUBSECTION (4)(A) AND THE CLAIMANT IS NOT REPRESENTED BY AN ATTORNEY, THE CLAIMANT MUST BE PAID THE CLAIMANT'S REASONABLE COSTS AND, IN LIEU OF ATTORNEY FEES, AN AMOUNT EQUAL TO \$50 PER HOUR FOR THE CLAIMANT'S TIME SPENT ON THE MATTER.

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

(4)(6) 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.

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

NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective July 1, 2007, and applies to accidents occurring on or after July 1, 2007.

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