

HOUSE BILL NO. 5170

June 29, 2021, Introduced by Rep. Wozniak and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3151 and 3153 (MCL 500.3151 and 500.3153),
section 3151 as amended by 2019 PA 22, and by adding section 3151a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3151. (1) If the mental or physical condition of a person
2 is material to a claim that has been or may be made for past or
3 future personal protection insurance benefits, at the request of an
4 insurer the person shall submit to mental or physical examination

1 by ~~physicians.~~ **a physician as provided in this section and section**
2 **3151a.** A personal protection insurer may include reasonable
3 provisions that are in accord with this section **and section 3151a**
4 in a personal protection insurance policy for mental and physical
5 examination of persons claiming personal protection insurance
6 benefits.

7 (2) A physician who conducts a mental or physical examination
8 under this section **and section 3151a** must be licensed as a
9 physician in this state or another state and meet the following
10 criteria, as applicable:

11 (a) If care is being provided to the person to be examined by
12 a specialist, the examining physician must specialize in the same
13 specialty as the physician providing the care, and if the physician
14 providing the care is board certified in the specialty, the
15 examining physician must be board certified in that specialty.

16 (b) During the year immediately preceding the examination, the
17 examining physician must have devoted a majority of his or her
18 professional time to either or both of the following:

19 (i) The active clinical practice of medicine and, if
20 subdivision (a) applies, the active clinical practice relevant to
21 the specialty.

22 (ii) The instruction of students in an accredited medical
23 school or in an accredited residency or clinical research program
24 for physicians and, if subdivision (a) applies, the instruction of
25 students is in the specialty.

26 **Sec. 3151a. (1) The no-fault independent medical examination**
27 **board is created within the department.**

28 (2) **The board consists of the following members, appointed by**
29 **the governor:**

1 (a) A member of the state bar who is familiar with and
2 experienced in practice under this chapter.

3 (b) A physician who is a specialist in orthopedic medicine.

4 (c) A physician who is a specialist in neurosurgery.

5 (d) A physician who is a specialist in neurology.

6 (e) A physician who is a specialist in neuropsychiatry.

7 (f) A physician who is a specialist in psychiatry.

8 (g) A physician who is a specialist in physical medicine and
9 rehabilitation.

10 (3) The governor shall appoint, as physician members of the
11 board, physicians who are licensed in this state and the majority
12 of whose professional practice consists of the active clinical
13 practice of the applicable specialty and not the examination of
14 individuals who are litigants or potential litigants in lawsuits
15 under this chapter.

16 (4) The governor shall appoint the first members to the board
17 within 90 days after the effective date of this section. Members of
18 the board shall serve for terms of 4 years or until a successor is
19 appointed, whichever is later, except that of the members first
20 appointed, 2 of the physician members shall serve for 1 year, 2 of
21 the physician members shall serve for 2 years, and the final 2
22 physicians and the lawyer members shall serve for 3 years.

23 (5) If a vacancy occurs on the board, the governor shall make
24 an appointment for the unexpired term in the same manner as the
25 original appointment.

26 (6) The governor may remove a member of the board for
27 incompetence, dereliction of duty, malfeasance, misfeasance, or
28 nonfeasance in office, or any other good cause.

29 (7) The director shall call the first meeting of the board. At

1 the first meeting, the board shall elect from among its members a
2 chairperson and other officers as it considers necessary or
3 appropriate. After the first meeting, the board shall meet at least
4 quarterly, or more frequently at the call of the chairperson or if
5 requested by 3 or more members.

6 (8) A majority of the members of the board constitute a quorum
7 for the transaction of business at a meeting of the board. A
8 majority of the members present and serving are required for
9 official action of the board.

10 (9) The board shall conduct its business at public meetings
11 held in compliance with the open meetings act, 1976 PA 267, MCL
12 15.261 to 15.275. However, the board may go into executive session
13 to discuss any matters related to matters that are protected by the
14 physician-patient privilege, including matters that are required to
15 be disclosed in the course of an action under this chapter.

16 (10) A writing prepared, owned, used, in the possession of, or
17 retained by the board in the performance of an official function is
18 subject to the freedom of information act, 1976 PA 442, MCL 15.231
19 to 15.246. This subsection does not apply to a writing that is
20 protected by the physician-patient privilege, including a writing
21 that is required to be disclosed in the course of an action under
22 this chapter.

23 (11) The director shall determine the amount of compensation
24 for the members of the board. From appropriations for the purpose,
25 the department shall compensate members of the board, reimburse the
26 members for their actual and necessary expenses incurred in the
27 performance of their official duties as members of the board, and
28 provide the board with offices and staff as necessary to perform
29 the board's duties under this section.

1 (12) The board shall do all of the following:

2 (a) Select and appoint physicians who are licensed to practice
3 medicine in this state and, as necessary, other individuals who are
4 licensed under article 15 of the public health code, 1978 PA 368,
5 MCL 333.16101 to 333.18838, to conduct examinations under section
6 3151. The board shall use a random selection process in selecting
7 and appointing individuals to conduct examinations under section
8 3151.

9 (b) Approve examination fees to be charged by individuals who
10 conduct examinations under section 3151.

11 (c) As the board determines to be necessary and appropriate,
12 adopt procedures and standards to be used by individuals who
13 conduct examinations under section 3151.

14 (d) Review reports of individuals who conduct examinations
15 under section 3151 as the board determines necessary to maintain
16 quality and independence of the individuals who conduct
17 examinations under section 3151.

18 (e) Investigate and take action on complaints about the
19 quality and independence of examinations conducted by the
20 individuals selected by the board.

21 (f) Anything else that is necessary to carry out the board's
22 duties under this section.

23 (13) A person that wishes to have an injured person examined
24 under section 3151 shall have the examination conducted only by an
25 individual appointed by the board under subsection (12).

26 (14) An examination fee charged by an individual who conducts
27 an examination under section 3151 must be equally divided between
28 both of the following:

29 (a) The person that wishes to have an injured person examined

1 under section 3151.

2 (b) The injured person.

3 (15) As used in this section, "board" means the no-fault
4 independent medical examination board created by this section.

5 Sec. 3153. A court may make ~~such~~ orders in regard to ~~the a~~
6 refusal to comply with sections 3151 ~~and to~~ 3152 ~~as that~~ are just,
7 except that **the court shall not enter** an order ~~shall not be entered~~
8 directing the arrest of a person for disobeying an order to submit
9 to a physical or mental examination. The orders that may be made in
10 regard to ~~such a the~~ refusal include, but are not limited to:

11 (a) An order that the mental or physical condition of the
12 disobedient person ~~shall be~~ **is** taken ~~to be as~~ established for the
13 purposes of the claim in accordance with the contention of the
14 party obtaining the order.

15 (b) An order refusing to allow the disobedient person to
16 support or oppose designated claims or defenses, or prohibiting him
17 **or her** from introducing evidence of mental or physical condition.

18 (c) An order rendering judgment by default against the
19 disobedient person as to his **or her** entire claim or a designated
20 part of it.

21 (d) An order requiring the disobedient person to reimburse the
22 insurer for reasonable attorneys' fees and expenses incurred in
23 defense against the claim.

24 (e) An order requiring delivery of a report, in conformity
25 with section 3152, on ~~such~~ terms ~~as that~~ are just, and if a
26 physician fails or refuses to make the report, ~~a the~~ court may
27 exclude ~~his the~~ **physician's** testimony if offered at trial.

28 Enacting section 1. This amendatory act takes effect 90 days
29 after the date it is enacted into law.