

Protecting Michigan Auto No-Fault Insurance

By John Cornack

In the 2011-12 legislative session, insurance companies promoted legislation that sparked a statewide debate on the future of Michigan's no-fault auto insurance system. On one side, the insurance industry argued the current no-fault system is costly and unsustainable. The other side was led by the Coalition Protecting Auto No-Fault (CPAN), of which MSMS is a member, along with other health care providers, consumer advocates, patients and the legal community. Together, CPAN advocated that Michigan's no-fault system provides the best insurance value in the country and needs to be maintained.

Once again, however, auto insurance is shaping up to be a hotly debated topic for the new legislature in 2013. Unbeknownst to many is the fact that this legislative debate is not years old, but decades old. Since the early 1990s, insurance companies have been attempting to impose strict cost controls, reduce benefits and promote other reforms that would eliminate no-fault insurance as it is known in Michigan today. Each attempt has ended with the same result: with lawmakers and the public reaffirming their support for a system that provides quality benefits at a value that is second to none.

History of Auto No-Fault in Michigan

Michigan's current auto insurance system was adopted by the Michigan Legislature in 1972 under the guidance of Gov. William Milliken and went into effect in October of 1973. This law was created to achieve three basic goals:

1. To help injured persons achieve maximum recovery after accidents;
2. To ensure that auto accident victims were reimbursed promptly for costs related to their accidents; and
3. To reduce legal and administrative costs by avoiding time-consuming and unnecessary lawsuits.

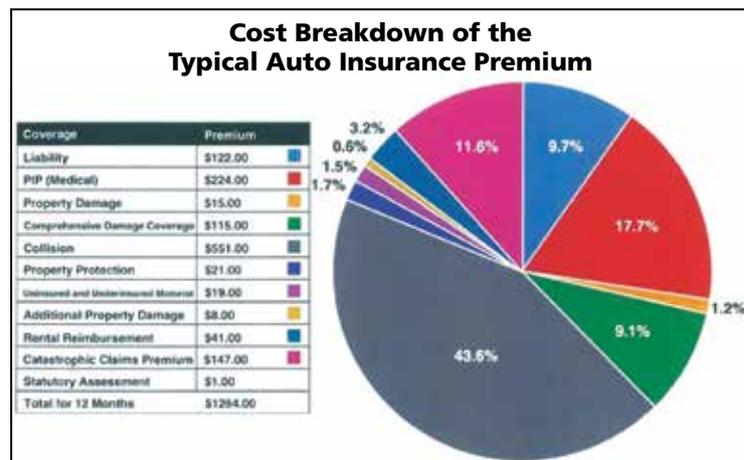
In exchange for these generous benefits, Michigan motorists gave up the right to sue the at-fault driver except in the case of death or severe injury.

Under this no-fault system, all drivers are required by law to carry three basic forms of insurance:

Personal Injury Protection (PIP): This part of an auto insurance policy pays all medical costs related to an auto accident. There are no caps on PIP benefits, commonly referred to as "no-fault benefits," but insurance companies are only required to pay for "reasonable and necessary" medical treatments and expenses. PIP also pays up to three years of lost wages that an injured person would have earned had he or she not been hurt.

- **Property Protection Insurance (PPI):** This coverage pays up to \$1 million for damage the driver's vehicle does in Michigan to other people's property, such as buildings or fences.

- **Residual Liability and Property Damage Liability (RI/PD):** In the few cases where a driver is found to be at fault in Michigan, this coverage pays for defense costs and any damages for which the driver is found liable.



Because Michigan's PIP insurance is not capped but rather a lifetime benefit, the legislature created the Michigan Catastrophic Claims Association (MCCA) in 1978 as a fund that would reimburse auto insurance companies for claims that exceed a certain amount, which is currently set at \$500,000. This reinsurance fund, which currently covers about 13,000 severely injured accident survivors, is critical to the functionality and sustainability of the Michigan no-fault system.

To fund the MCCA, insurance companies are charged an annual assessment on every vehicle they insure in the state of Michigan. That assessment has ranged from \$110 in 1992 to \$175 per vehicle today. Insurance companies pass this assessment on to policyholders.

The MCCA is managed by a five-member board of directors made up entirely of insurance companies, with the Michigan Insurance Commissioner serving as a non-voting, ex-officio member. And although it was created by an act of the Michigan Legislature, the MCCA contends it is not subject to the Open Meetings or Freedom of Information Acts.

Michigan No-Fault: The Best Value in the Nation

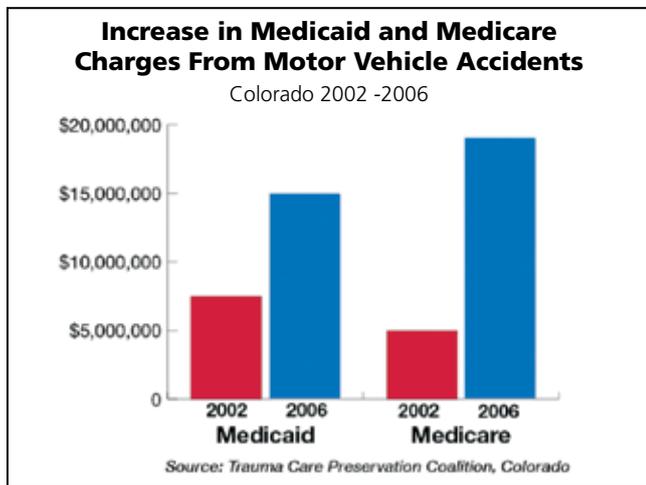
The most recent data from National Association of Insurance Commissioners ranks the average cost of a Michigan auto insurance policy as the eighth highest in the country. However, when examining at each portion of the costs of an insurance policy, it becomes clear that no-fault is not the driving factor.

The average uncapped, lifetime PIP benefit costs Michigan drivers \$544.20 per year, just \$60 above the national average of \$484.03. In fact, the most expensive portion of an auto insurance policy in Michigan is collision, not PIP. States like New York,

where PIP benefits are capped at \$50,000 (some cap benefits even lower), actually pay more for medical benefits than drivers in Michigan. Given Michigan's far superior medical benefits, it's clear that our auto insurance system does a good job of providing the care needed at a reasonable cost.

Michigan is also one of the few states in the country where an accident survivor can be assured to receive immediate care. In all other states, surviving accident victims must either sue to gain reimbursement for care or they end up on Medicaid because the PIP caps are so low, which does not cover the post-acute rehabilitation benefits needed by many auto accident victims. In Michigan, however, lifetime injury benefits are paid for by drivers through fees paid into the MCCA.

Colorado is an example of a state that realized the benefits of auto no-fault too late. In 2003, its legislature, in an effort to lower the cost of auto insurance, switched from a no-fault to a tort system. Five years later, the costs to taxpayers and health care providers were devastating. Medicaid costs in Colorado increased a staggering 205 percent from care resulting from motor vehicle accidents alone.



The Current No-Fault Proposal

Despite the lessons learned from Colorado and the nation-leading value of Michigan's auto insurance system, auto insurance companies continue their attempts to end auto no-fault in Michigan.

Recently, Senators Joe Hune (R-Howell) and Virgil Smith (D-Detroit) introduced Senate Bill 251, which would cap PIP benefits at \$50,000 and eliminate the MCCA. Senator Smith contends this legislation would reduce costs for drivers, despite the fact that insurance companies have also refused to guarantee any savings would be passed on to Michigan drivers if the legislation is approved.

While lawmakers such as Sen. Smith want to reduce costs for drivers, the insurance industry is advocating for this and similar yet-to-be-introduced proposals, such as applying a workers' compensation fee schedule to no-fault claims. Insurers argue these changes are needed to keep the MCCA financially viable, but they have yet to disclose the economic and actuarial assumptions on which the MCCA's projections are based.

The Need for MCCA Transparency

Because the insurance industry is basing its arguments for no-fault reform on information from the MCCA that cannot be publically verified, CPAN and the Brain Injury Association of Michigan

have engaged in a legal battle with the MCCA to disclose the fund's financial information.

The combined lawsuit argues that the MCCA is subject to the Freedom of Information Act and should be considered a public body because it was created by an act of the Michigan Legislature and is funded by Michigan drivers through assessments on their auto insurance policies. CPAN's position was supported by two excellent amicus curiae briefs, including a joint brief by the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Orthopedic Society, and the Michigan Association of Chiropractors.

"A well-functioning MCCA is critical to the existence of our state's auto insurance system and for the care of seriously injured accident victims," said Michael Dabbs, president of the Brain Injury Association of Michigan. "The Circuit Court judge ruled in our favor and issued an order that would bring long-awaited transparency to the MCCA, but the MCCA filed to have the case heard in the Court of Appeals."

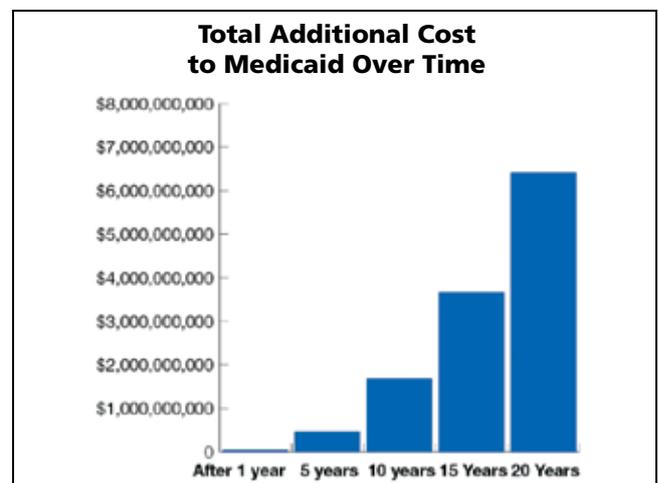
He adds, "But until now insurance companies have kept the MCCA hidden from the public. There has been no way to verify whether drivers were being charged appropriate rates to sustain the MCCA or whether Michigan insurance companies were properly managing the more than \$13 billion held in MCCA funds."

The specific information CPAN is seeking from the MCCA includes economic projections, actuarial assumptions and calculations, and other information used by the MCCA to project its long-term financial needs. This information is critical to the public's understanding of Michigan's no-fault system and lawmakers' ability to make sound public policy decisions on the subject.

Unintended Consequences of Proposed Reforms

While the proposed \$50,000 PIP cap would not be retroactive, applying only to auto insurance policies issued or renewed after December 31, it would have several unintended consequences that would be devastating to Michigan.

A 2011 study by Public Sector Consultants found that more than 500 people every year will require long-term care as a result of suffering traumatic brain injuries in car accidents. If the PIP benefits are capped at \$50,000, as proposed in SB 251, the total cost to the Michigan Medicaid budget could increase \$30 million in the first year, roughly \$61,000 per traumatic brain injury. And because an additional 500 people will suffer similar injuries each year, the costs to the state's Medicaid budget could grow exponentially, as illustrated in the graph below.



“Early health care support and intensive rehabilitation is vital to helping brain-injured accident victims regain their skills and become productive citizens,” said Lynn Brouwers, president of the Michigan Brain Injury Provider Council, which paid for the study. “Any cuts to auto injury benefits will leave a huge population of accident victims without adequate care and reliant on the state’s welfare system.”

Cuts to PIP benefits and the elimination of the MCCA also would severely threaten Michigan’s economy, especially the post-acute rehabilitation industry. An Anderson Economic Group study, also conducted in 2011, found that a \$50,000 cap on PIP would result in the loss of up to 5,000 rehabilitation jobs and up to \$150 million in lost earnings.

No-fault fee schedules supported by insurance companies would compound the negative impacts created by a cap on no-fault benefits. The Michigan Health and Hospital Association estimated that applying the workers’ compensation fee schedule to auto accident victims would cost the average health care system \$10 million in reduced revenue. For large systems, such as Beaumont in Royal Oak, the cost would be upwards of \$25 million.

Estimated Loss in Hospital Resources by Michigan Region (2011 data):

Another Michigan Recession? Expected Annual Loss with a Fee Schedule and Caps	
Bay Regional Medical Center	\$.88 million
Beaumont Health System, Royal Oak	\$26 million
Borgess Health	\$4.3 million
Bronson Methodist Hospital	\$7.2 million
Bronson Battle Creek Hospital	\$1.2 million
Central Michigan Community Hospital	\$.4 million
Detroit Medical Center	\$24 million
Genesys Regional Medical Center.	\$.9 million
Henry Ford Health System, Detroit	\$9.5 million
Hurly Medical Center	\$14.4 million
Ingham Regional Medical Center	\$.54 million
Lapeer Regional Medical Center	\$1.3 million
Mid-Michigan Health	\$.2 million
Mount Clemens Regional Medical Center	\$3.7 million
Munson Medical Center.	\$6.5 million
Oakwood Healthcare, Dearborn	\$18.3 million
Saint Joseph Mercy Health System, Ann Arbor	\$12.7 million
Sparrow Hospital	\$15.3 million
Spectrum Health	\$20 million
St. John Providence Health System, Warren	\$9.3 million
St. Mary’s of Michigan	\$.3 million

Source: Michigan Hospital Association

If a no-fault fee schedule proposal becomes law, current hospital service levels would be cut and trauma units that care for those with catastrophic injuries would be in jeopardy. Ultimately,

these changes would cost jobs and threaten health care access for every Michigan resident.

Above all, the no-fault reform proposals being advanced by the insurance industry simply do not provide the level of care needed by Michigan’s severely injured accident victims.



Protecting Michigan’s Model No-Fault System

Through its partnership with organizations like the Michigan State Medical Society, the Coalition Protecting Auto No-Fault has been able to successfully oppose attempts to dismantle auto no-fault in Michigan. But with an insurance industry-friendly legislature, court system and governor, the 2013-14 legislative session threatens to be CPAN’s most challenging year.

As health care providers, you know the impacts that proposed reforms like SB 251 will have on the quality of life of seriously injured people. It’s also clear that any possible cost savings – none are guaranteed – will also be completely eroded by the impacts to hospitals, post-acute rehabilitation providers, and the Medicaid system.

Rather than dismantling the best auto insurance system in the country, CPAN will be working with lawmakers to promote alternative reforms that will improve auto no-fault. Proposals will be introduced this year that will aim to help **MM**

The author is President of the Coalition Protecting Auto No-Fault and of the Eisenhower Center.

For More Information

MSMS members are encouraged to individually support CPAN’s efforts to protect auto no-fault by staying in close communication with their lawmakers in the House and Senate and by writing letters to their local newspapers. Information and advocacy will also be posted regularly on CPAN’s website **ProtectNoFault.org** and social media pages: **Facebook.com/ProtectNoFault** and **Twitter.com/ProtectNoFault**.