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Health law raises auto insurance concerns in Michigan

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- Patrick Dunn
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Debate is brewing over how Michiganians who are newly insured under the Affordable Care Act may affect the seemingly separate sector of auto insurance.

A recent study by the nonprofit RAND Corp. predicted Michigan auto liability claim costs will drop 1.3 percent in 2016 as a result of the federal health law's implementation.

The study identifies several ways in which the changes to health insurance will drive the downward trend. The simplest and most direct effect is that previously uninsured Michiganians will now be getting medical care when they need it, rather than leaving it to auto insurance to address pre-existing conditions when an accident happens.

"If a healthier person is in an accident, they're a lot less expensive to treat than somebody who already has a pre-existing injury," said Heather Drake, vice president of governmental affairs for AAA Michigan.

"So I think to the extent that people are going to have more health insurance and may be able to partake in more preventative care, Michiganders will be healthier across the board and that will have an impact on claims."

Insurance companies have yet to see how these effects will play out, but RAND senior policy researcher David Auerbach says they'll likely be fairly small. Auerbach, who is one of three authors of the study of the health care law, said when he began his research he expected the predicted trends to be more dramatic.

"That was just sort of anecdotal or naive thinking, but once you start really multiplying things together, you see how they're fairly small," Auerbach said. "The percent of the population that is gaining insurance under the ACA is not overwhelming, despite all the cataclysmic comments and predictions."

What's more, Auerbach said, there will likely be no appreciable change in auto insurance premiums.

"They won't notice," he said. "This is the kind of thing that is pretty much within the year-to-year kind of noise, or that would be swamped by other changes that are probably bigger."

'Not necessarily ... zero-sum'

However, there's considerable debate over where the decreased claim costs for auto insurers are ultimately going to shift — and how much the insured will pay for it. Rick Murdock is the executive director of the Michigan Association of Health Plans, a nonprofit that advocates for state health insurers.

"There should be some impact on future (auto insurance) rates," Murdock said. "Conversely, then, those costs can show up on the health insurance side. So it may not necessarily be zero-sum, but one way or the other costs are being covered by insurance where it before might have been no-fault or auto insurance."

Attorney Bobby Raitt, a partner at Michigan Auto Law, said he's concerned about a provision of Michigan's no-fault insurance law which assigns insurers no responsibility to pay for expenses covered by other benefits provided or required by state or federal law.

This is known as a "setoff" for insurance companies, and it has previously applied in cases where Social Security or workers' compensation is providing benefits. But Raitt predicts auto insurers are about to set off benefits to health care law-provided insurance.

"They're basically just going to shift hundreds of millions of dollars in costs from what would have been the insurance company's responsibility to the health insurance," Raitt said.

"And if health insurance doesn't pay it, Medicaid will pay it. So both the taxpayers and health insurance premiums will be seriously affected — and much higher, obviously."

Under Michigan's No-Fault Act, auto insurers are much more limited than health insurers in their ability to negotiate discounts on the rates hospitals charge them, so they consistently pay out more to hospitals. If auto insurers began setting off costs to health insurance provided by the health care law, hospitals would recoup significantly less money for treating accident victims.

Questions raised

However, there's nothing in the new law to indicate exactly how this is all legally supposed to work. For now, auto insurers are wary of having too much burden shifted to them as well.

"We're going to be on alert if they make us the primary coverage for auto insurance victims, because we think that would provide incentive for the medical community to push coverage towards auto insurance victims whenever they possibly can," said Tom Shields, spokesman for the Michigan Insurance Coalition, a trade association for property-casualty insurers..

Cooley Law School professor and associate dean Nelson Miller said a test case should resolve the issue, but insurance companies are waiting to see who will make the first move.

Miller, a former no-fault practitioner who now teaches no-fault law at Cooley, wrote an essay on the subject for the March issue of the Michigan Bar Journal. He said he recently discussed the article with an insurance executive, who asked Miller if he'd yet heard of any auto insurers trying a setoff under the health care law.

Long road to reform

"I'm saying, 'Well, wouldn't you be the one?' " Miller said. "And he was saying, 'Absolutely, but I'm just not sure whether I want to be the first one.' "

The question of who will handle new auto injury claims also plays into the long-running debate over reforming Michigan's no-fault insurance system.

Over the past year and a half, Michigan lawmakers have proposed reforms to the system aimed at cutting insurance premiums and reducing some benefits to the insured.

One of the most heavily discussed was HB 4612 of Rep. Pete Lund, R-Shelby Township. It was introduced in April 2013 and has lain dormant in the House since October.

The bill would have capped unlimited medical benefits for injured parties at \$1 million and created a new organization to replace the Michigan Catastrophic Claims Association, a private association that insurers pay into to fund lifetime benefits.

Crucially for auto insurers, the bill also included a provision that the amounts hospitals charge them should not exceed those customarily received from health insurers.

"It's another reason why we need reform in the state, so there's not that incentive for medical providers to push that coverage over to auto insurers," Shields said. "We need some type of cost controls in place so these two things, ACA and no-fault insurance, can work together."

Miller, however, proposed a very different kind of reform for the No-Fault Act: excepting the health care law's individual mandate from the No-Fault Act's setoff provision.

Either way, he said, the issue is increasingly on the minds of attorneys, insurance providers and medical care providers alike, and a clearer legal resolution seems likely within the next year.

"This isn't a hidden issue anymore," he said. "I think a lot of us are thinking about it, trying to figure out which way it's going to go, and we'll see."