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Bill to overhaul no-fault may be in jeopardy now

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BY: [Gary Gosselin](#)

The bill that would make drastic changes to Michigan's no-fault law is now in doubt and at the very least likely headed for compromise.

Since it was presented to the full House on May 2, the bill to overhaul no-fault insurance has been the subject of much lobbying and backroom discussions.

[House Bill 4612](#) would cap the current unlimited benefits for catastrophic no-fault claims at \$1 million, along with other major changes (see sidebar, "Highlights of the no-fault bill," [below](#)).

Opponents — mainly Democrats, health care organizations and the plaintiff's bar — have squared off against proponents that mainly include Republicans and the insurance industry.

"There is clear bipartisan opposition of this bill, and there is no clear bipartisan support of this bill," said George T. Sinas, general counsel for the Coalition Protecting Auto No-Fault. "But until it's clear they don't have the votes and won't get the votes, they won't sit down and talk turkey."

"We counted at least 10 'no' votes when it was voted out of committee," said Farmington Hills attorney David E. Christensen, chair of the Michigan Association for Justice's no-fault insurance committee. Some have said there are as many as 20 no votes.

"I don't know any more developments since it was voted out of committee, so it's impossible to know what's happening inside the [Republican] caucus and how they are reacting to the 'no' votes."

The tone by Republicans in public comments has been more conciliatory, but they are still pushing strongly for movement on the bill.

"Our effort so far has been trying to educate the Legislature why the \$1 million cap is appropriate," said Peter Kuhnmuensch, executive director of the Insurance Institute of Michigan. "This issue is easy to demagogue, and the other side has been good at doing that."

Much of the testimony at the two days of Insurance Committee hearings was emotional, coming from families and victims of auto accidents with catastrophic claims. Kuhnmuench said the challenge for proponents of the bill is two-fold.

First, cost control is almost nonexistent with unlimited benefits: “It discourages natural cost controls,” he said, explaining that if you know you only have \$1 million or \$2 million, you are likely to spend it more wisely than if you had an open pocketbook.

In addition, once those benefits run out, there is still private insurance and/or Medicaid or Medicare.

Second, he said, is that with no-fault claims, payment for services is at the higher level that noninsureds are charged, not the lower rates that insurers have negotiated.

“We end up paying hospital charges and emergency room rates at three, four or five times the rate” insurers normally pay, Kuhnmuench said.

“That’s a fallacy,” Christensen countered, adding that the No-Fault Act says insurers must only pay reasonable costs and that the insurance companies determine what is a reasonable charge.

He added that they may be billed for the full amount, but, as with other claims, they pay substantially less, usually the going rate for that service — just like other claims.

“[The legislation] is such an overreach; there is nothing in the bill to negotiate,” Christensen said. “The only things that could survive [are] some kind of cap and some kind of balanced fraud program — it would have to be balanced and must address fraud by the public but also must address fraud by the [insurance] industry.

“I think it’s going to lie on the floor for the rest of the term,” he added.

The no-fault system was set up in 1972, and a lot has changed since then, Kuhnmuench said, noting the next highest payout for no-fault benefits is in New York, at \$50,000. Most no-fault states (12) are like Massachusetts, he said, with caps around \$8,000.

He said 38 states rely on the tort system, and only 11 require some level of coverage, ranging from \$3,000 to \$25,000.

But, he said, because the system has been in place for 40 years, it’s not unexpected to see resistance, and he said the sides are talking to try to keep the legislation moving.

Kuhnmuench wouldn’t discuss specifics of any compromise, but reports have noted that a compromise to increase caps to \$2 million or even \$5 million are not out of the question.

Christensen said he's unhappy that the bill has become framed as simply a bill to cap no-fault, citing a number of other restrictions and saying that it doesn't serve anyone well except insurance executives.

Gov. Rick Snyder's office did not return calls for comment. Rep. Pete Lund, R-Shelby Township, who chairs the Insurance Committee and sponsored the legislation declined to comment.

Tom Shields, spokesman for the Michigan Insurance Coalition and the Coalition for Auto Insurance Reform did not return calls for comment.

If you would like to comment on this column call Gary Gosselin at (248) 865-3103 or email gary.gosselin@mi.lawyersweekly.com.

Highlights of the no-fault bill

- The proposed House bill would cap Michigan's unlimited, lifetime benefit for those with catastrophic auto injuries at \$1 million.
- HB 4612 would eliminate the Michigan Catastrophic Claims Association, and create a new nonprofit entity with appointees and meetings open to the public.
- The bill would eliminate the ability to go to jury trial in the event the insurer discontinues payment.
- The measure includes cost controls to reduce payments to medical providers proponents have said it would lower insurance premiums by \$125 per vehicle.
- The legislation also would establish a fraud authority funded by insurance providers, which will provide grant funding to agencies charged with combating fraud and will establish a central repository for fraud data.
- The package would include a \$25 Medicaid tax to pay for the \$1.2 billion Medicaid deficiency created by the shortfall and sunset of the Health Insurance Claims Assessment. It would extend the sunset for HICA.
- Some of the difference in the \$176 charged to drivers now and the \$125 lower premiums would go to pay for an estimated \$2 billion deficit in the \$14 billion Michigan Catastrophic Claims Fund, which will have to continue paying for those being cared for now.
- The bill would cap payments for home and car modifications at \$50,000.

- Physical therapy would be covered only if there were perceived progress by the patient, effectively warehousing many of those with catastrophic injuries.

— *Gary Gosselin*