

## **No fault? Personal injury protection limits said to be good for insurers, but others question proposals**

*BY: Carol Lundberg  
September 16, 2011*

No-fault reforms being considered by House and Senate committees could bring treatment costs in line with those paid by other carriers.

Republican State Rep. Pete Lund has introduced a bill that could be the grand compromise necessary to unburden no-fault insurance carriers from lifetime personal injury protection coverage, while still protecting medical providers and people injured in car crashes.

The Senate Committee on Insurance has, since March, been sitting on two bills, SB293 and SB294, which would significantly reform no-fault.

But the bills have been widely criticized as leaving too many catastrophically injured people without adequate coverage, and rustling the feathers of the health care lobby that has become accustomed to the high fees paid by no-fault.

Peter A. Kuhnmuensch, director of the Insurance Institute of Michigan, said he doubts both bills could pass, despite the Republican majority in both houses, and a Republican governor.

But House Bill 4936, he said, is less Draconian, and stands a better chance of passage, and would implement some reforms the insurance industry has been wanting for years.

The bill, like SB293, would allow insurance buyers to purchase less-than-unlimited lifetime personal injury protection (PIP) coverage. The Senate bill allows coverage to be as low as \$50,000. The House version sets the lower limit at \$250,000, and sets the upper cap at \$5 million.

That would bring Michigan in line with other no-fault states, none of which have unlimited lifetime benefits, Kuhnmuensch said.

He said the \$250,000 minimum would be large enough to cover nearly 99 percent of all claims, noting that only 124 claims in the history of the no-fault system have exceeded \$5 million.

The House bill represents just the kind of compromise all three communities — the plaintiff's bar, medical providers, and the insurance industry — have been saying is needed, said Farmington Hills-based personal injury lawyer Mark J. Bernstein.

Bernstein is an unlikely champion of limiting PIP coverage, which is at the heart of most auto no-fault personal injury cases.

But without change, he said he fears the impact on the system, and ultimately on his own business.

“The plaintiff’s bar is dancing on the deck of the Titanic. Everyone is drunk on *McCormick* [v. *Carrier*]. But it’s likely that the music will stop,” Bernstein said. “As soon as the right case comes up, the Michigan Supreme Court will weigh in this, and will likely adopt the *McCormick* dissent. And we’ll be unable to fix that for a very long time, if ever.”

### **‘All over the road’**

He predicts that there is some desire on the Michigan Supreme Court to overturn *McCormick* and return to a serious-impairment threshold the Court established in *Kreiner v. Fischer*.

That would be detrimental to plaintiff’s attorneys as well as insurance defense lawyers and medical providers.

He’s encouraged that House Bill 4936 defines serious impairment.

“That is the political math,” Bernstein said. “It’s not good for us to be all over the road with this serious-impairment threshold. At the same time, it’s not good for auto insurance companies to have become health insurance companies. ...”

Even on the insurance defense side, lawyers are well aware that overly ambitious reforms might not do them any good. Troy-based attorney Ronald M. Sangster Jr. knows that the Senate bills would probably make his clients, auto no-fault insurance carriers, happy.

But Sangster said that some key elements of the proposed reforms would be bad for him — both as a lawyer and as a motorist.

Some elements common to the Senate and House bills are necessary and would be helpful, he said. For example, adopting the workers’ compensation fee schedule for no-fault would help get at the root of the skyrocketing costs of caring for the catastrophically injured (See “Comparison of Reimbursement” on page 3).

No-fault fees dwarf those paid by every other carrier in the state, which Bernstein said has led to Michigan carriers having the dubious distinction of paying claims that are four times higher than those in other no-fault states.

But he’s not in favor of the \$5 million limit on coverage.

“The unlimited medical benefit has been the touchstone of Michigan’s no-fault system,” he said.

But the bill includes items that will curb some of the abuses that Sangster said have burdened the no-fault system, such as, for instance, attendant care.

The House bill would limit attendant care to \$11 for unskilled care, \$17 for skilled, and a maximum of 56 hours per week.

“No longer would we be arguing over 24 hours a day at \$25 per hour to provide care for a relative,” Sangster said.

The bill also limits who can collect on a policy’s PIP coverage. It would limit coverage to “the insured named in the policy, the insured’s spouse, and any relative of either domiciled in the same household. A person who is not an insured named in a policy, not the insured’s spouse, and not a relative of either ... is entitled only to the coverage in the limit set forth in subsection (1) (A) (i),” which is the minimum, \$250,000.

Motorcyclists who are not wearing a helmet would be excluded from being paid any PIP benefits.

### **A ‘boondoggle’ for carriers**

[Personal-injury attorney Steven M. Gursten](#) of Michigan Auto Law in Farmington Hills calls some of the reform measures a “boondoggle for the insurance companies and terrible for everyone else.”

He said he’s concerned that the Michigan Catastrophic Claims Association would no longer have to pay lifetime benefits as it does now on all claims in excess of \$500,000.

“As people stop paying into the system there will be less money to pay for catastrophic claims,” Gursten said. “No matter what we’re paying for insurance, that doesn’t change the fact that 700-800 people every year will be catastrophically injured.”

Gursten noted that a recent study by Anderson Economic Group — commissioned by the Coalition Protecting Auto No-Fault, which is strongly opposed to the reforms — stated that between 75 percent and 90 percent of drivers would elect lower, even inadequate, coverage to save money on their premiums.

Kuhnmuensch noted that the driver who’s not at fault could sue the at-fault motorist to make up for shortfalls in coverage.

That’s cold comfort to Gursten.

“So now you’re saying that I have to sue to get someone to pay for an X-ray or MRI? And how is that a good thing?” Gursten said. “The insurance lawyers should be careful what they’re asking for. They might get it.

“If [PIP](#) becomes worthless and *McCormick* is overturned by the Court or by the Legislature, then what system do we have that’s worth fighting for?” he asked. “Then I would be in favor of just abolishing no-fault and go with a pure tort liability system where at least clients stand a chance of getting an adequate recovery. If insurance companies aren’t careful, they’ll kill the golden goose.”

Wayne J. Miller, of Southfield-based Miller & Tischler PC, represents catastrophically injured patients and facilities that treat them. He admitted being worried what could happen to either type of client if coverage limits don't go far enough in some of the most serious injury cases.

"Where does the money come from?" he said.

Miller said the Legislature is "directed at something that's not the problem" if the real concern is the high cost of insurance premiums.

"There's no effort at all to bring down the costs on the most expensive part of the coverage. No one even tries to touch collision and comprehensive," he said.

But the focus has been on the PIP cost to the insurance companies, which affects their high profits, he said.

"The tort reformers have been ruthlessly and brilliantly effective," he said.

Though Miller acknowledged that few voters and insurance buyers would lose one wink of sleep over a trial lawyer going out of business as the result of the reforms, he said: "We go out of business because we can't vindicate our clients' rights. This could be devastating to my clients, and I'm right behind them."

*If you would like to comment on this story, please contact Carol Lundberg at (248) 865-3105 or [carol.lundberg@mi.lawyersweekly.com](mailto:carol.lundberg@mi.lawyersweekly.com).*