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STATE OF MICHIGAN
IN THE SUPREME COURT

Ellen M. Andary, et al.,

Plaintiffs-Appellees,

v.

USA Casualty Insurance Company and Citizens Insurance Company of America,

Defendants-Appellants.

Supreme Court No. 164772

COA No. 356497

Case No. 19-738-CZ

CITY OF DETROIT'S AMICUS BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS'APPLICATION FOR LEAVE TO APPEAL, AND IN SUPPORT OF DEFENDANTS-APPELLANTS' MOTION TO STAY PRECEDENTIAL EFFECT OF THE COURT OF APPEALS' DECISION

FILED WITHOUT MOTION PURSUANT TO MCR 7.312(H)(2)

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I. Introduction and amicus statement of interest[1]

The no-fault act and recent reforms impact the City of Detroit in two critically important ways. First, the no-fault act produced in Michigan the highest auto insurance rates in the nation. In Detroit, where some 40% of the population lives in poverty, the rates were much higher than state-wide and made mandatory no-fault auto insurance unaffordable for a high percentage of the population. Because many jobs were not accessible by the limited public transportation options, unaffordable auto insurance prevented many Detroiters from being able to own and operate a private vehicle. That, in turn, prevented those individuals from obtaining employment, driving to buy groceries or to medical appointments, etc. The no-fault reforms which are at issue in this case are designed to make auto insurance affordable to Detroiters.

Second, the Detroit Department of Transportation operates what is by far the largest public transportation system in the state. Annual ridership was 8,465,800 in 2021. Insurance – even excess insurance – is so expensive and limited that it does not make economic sense. The City therefore is self-insured.

[1] MCR 7.312(H)(4) does not apply to this filing by the City of Detroit. However, the brief was authored solely by the undersigned and no party or any other attorney authored any portion of the brief or made any monetary contribution in support of its preparation.

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Since the undersigned joined the City in 2014 the City has paid out tens of millions in dollars for no-fault claims, including catastrophic claims, arising from bus accidents. Because bus riders are entitled to PIP benefits from the City regardless of fault, the City pays regardless of whether the bus driver was at fault. Self-insured entities such as the City cannot participate in the Michigan Catastrophic Claims Association. All no-fault payments come directly out of the City's general fund, and are monies not available for public safety, blight remediation etc. The issues raised in this case have significant financial implications for the City.

II. Facts.

On May 25, 2019, Michigan enacted a series of statutory reforms to the State's no-fault insurance law. For many years, Michigan held the unenviable title of having the most expensive auto insurance in the Nation.[2] The reforms were designed to lower the price of premiums, primarily by addressing the single biggest cost driver—Personal Injury Protection (PIP) benefits.

PIP benefits cover a broad range of accident-related expenses. This includes medical treatment, vocational rehabilitation, and in-home attendant care, among other items.[3] Many of these benefits are mandatory and unlimited. If an injury

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[2] Patrick Cooney et al., *Auto Insurance and Economic Mobility in Michigan: A Cycle of Poverty*, M Poverty Solutions 1 (2019).

[3] The Zebra, *How Michigan Car Insurance Will Change in 2020—and What You Can Do Now to Prepare*, theZebra.com (Jun. 25, 2019), https://www.thezebra. com/resources/research/Michigan-car-insurance-crisis/.

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warrants it, PIP pays for life with no maximum cap on expenditures. PIP accounts for the majority of the cost of Michigan's no-fault insurance.[4] Michigan's benefits were, and still are, far more generous than any other state.[5]

The statutory reforms target PIP costs in two primary ways. First, by introducing tiered coverage. Starting on July 1, 2020, drivers were able to choose from unlimited to no coverage,[6] or several options in between. Second, starting on July 1, 2021, the reforms limited most medical billings to 200% of Medicare reimbursement. The act also places limits on attendant care and on facilities whose services are not subject to the fee schedule. These second set of reforms are the statutory provisions challenged in this lawsuit.

Detroit residents have long paid outrageous auto insurance premiums that caused widespread and serious economic and social harm to the City and its residents. Michigan drivers paid eighty-three percent more a year than the national average—$2,693 vs. $1,470[7]—but Detroiters paid the most, with annual premiums approaching or, in some cases exceeding, $6,000.[8] As a consequence, many

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[4] Chad Livengood, *How Michigan's auto insurance premiums became the highest in the country*, CrainsDetroit.com (Oct. 22, 2017), https://www.crainsdetroit. com/article/20171022/news/642726/how-michigans-auto-insurance-premiums-became-the-highest-in-the-country.

[5] *Id.*

[6] The no-coverage option will only be available to individuals with qualifying healthcare coverage. Zebra, *supra* note 3.

[7] Cooney et al., *supra* note 2 at 1.

[8] Zebra, *supra* note 3.

Detroiters could not afford to own a car,[9] and were prevented from reaching a wealth of regional job opportunities inaccessible by public transit.[10] Many were forced to drive without insurance, leaving them with no protection and making them criminals under the mandatory no-fault law. That contributed greatly to Detroit's high rates of unemployment and poverty. Meanwhile, an entire community of doctors and lawyers grew rich by abusing the no-fault law and profiting via medical fees which were, in some cases, exponentially higher than what was reasonable. For one example, MRI scans normally cost $1,000 or less. An entire industry was created of MRI providers who catered exclusively to no-fault patients and received patients by attorney referrals. These providers would often charge $5,000 or more for a single MRI.

The Duggan administration tried for years to achieve a legislative solution to this problem. Finally, Mayor Duggan, together with several Michigan citizens who could not afford insurance, filed a federal court lawsuit challenging the constitutionality of the no-fault law.

The complaint, exhibit 1, lays out in detail the cruel consequences of the law and the lawyer and physician abuse that fueled the crisis. Paragraphs 27 – 34

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[9] Peter J. Hammer, *Detroit 1967 and Today: Spatial Racism and Ongoing Cycles of Oppression*, 18 J. L. Society 227, 232 (2018).

[10] Camille A. McBride, *Health Implications of Transportation: A Detroit Case Study*, Agora J. of Ur. Plan. and Design 61–63 (2018).

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described the circumstances of the eight plaintiffs (other than the Mayor) and, for example, paragraph 30 addressed Peggy Noble:

> "Plaintiff Gladys "Peggy" Noble is a resident of the City of Detroit, County of Wayne, and a citizen of the State of Michigan. Ms. Noble, age 76, is a retired social worker who obtained her Master's Degree in Social Work at the age of 65. An active member of her community, Ms. Noble serves as president of her neighborhood community association and as a mentor to young mothers. She has periodically had to forego driving because she could not afford to pay for both auto insurance and basic necessities such as food and medication. Her car insurance payment is over $210 each month, for basic coverage without collision and comprehensive. This is almost 20% of her monthly income. Ms. Noble has had a spotless driving record for 60 years, and she drives a 16-year old vehicle."

The circumstances of the other plaintiffs were equally compelling and there were innumerable more individuals just like them.

The complaint went on to lay out in detail how no-fault rates were unconstitutionally excessive (¶¶ 62-77) and the reasons for the excessive fees (¶¶ 78-98). The many reasons included, *inter alia*, out of control attendant care benefits. (¶96).

The case was assigned to Judge George Steeh. At the initial hearing, and after reviewing the pleadings and hearing arguments, Judge Steeh commented that new leadership in Lansing "may be in a position to address what really is a shameful situation as it relates to the cost of our insurance coverage." Ex. 2, Detroit News article. The Legislature and Governor answered that call in enacting the statutory

reforms. Plaintiffs – appellees, having failed at the democratic process, now seek to have the judiciary substitute that policy determination with their own.

Finally, in July 2021 the Michigan Legislature addressed plaintiffs' concerns by establishing a $25 million fund to supplement payments for catastrophic cases. See section III(E) of the City's argument below.

III. Argument in support of defendants – appellants

A. The reforms are not retroactive and plaintiffs had no legitimate expectation in the continuation of their payment arrangements.

Defendants' application demonstrates that the plain language of the reform act confirms it is not retroactive because it applies only to services rendered after the act's effective date. The appellate court's majority opinion does not refute that fact. Nor does it recognize that the relevant reforms did not change the benefits or services to which accident victims are entitled but, rather, the cost that providers may charge for that care on the date of service. Instead, the majority relies on straw man arguments, misstatements of law and ad hominem attacks against the Director of the Department of Insurance and Financial Services (DIFS).[11]

The dissenting appellate opinion, in contrast, properly explains that the reform act expressly expected premium savings from reductions in future medical billings

[11] Contrary to the majority's assertion (opinion, fn 6), the DIFS Director's comments at a town hall explaining the difference between auto and health insurance are fully consistent with the position taken by DIFS in its amicus. The relevant reforms did not change the scope of coverage for those injured before the act's effective date but rather the cost that providers may charge for services subsequently rendered.

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for accidents that pre-dated the act; further confirming the Legislature clearly intended the reforms to apply to past auto accidents. The City will not repeat these arguments, but does want to alert the Court to the following very serious misstatement of prior no-fault law by the majority.

The majority discusses *Romein v Gen Motors Corp*, 436 Mich 515 (1990) at pages 9-11 of its opinion. The majority states that the injured workers' reliance interest in continuation of prior benefits was less than plaintiffs here because, based on amendments to the workers compensation act and related court decisions, the act was in a "state of flux." The majority concludes that provider reimbursement under no-fault was not in a state of flux at the time of the reform act. It supports that conclusion by stating: "And Michigan appellate courts routinely rejected challenges to limit charges based on amounts paid under workers' compensation, Medicare, Medicaid, or by private insurers." Opinion, pp. 10-11. That statement was supported by footnote 16 which cited four court of appeals decisions from the 1990s.

The statements from the 1990s cases upon which the majority relied were at most obiter dictum and have been rejected. *Spectrum Health v Farm Bureau*, 333 Mich App 457, 497 (2020). There, Farm Bureau contested amounts charged by Spectrum Health. The trial court denied Spectrum's attempt to use evidence of amounts paid for the same services by third parties such as Medicare and Medicaid. The court of appeals reversed and held that while such evidence was not dispositive,

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"the amount that third parties pay is nevertheless evidence bearing on the reasonableness of a healthcare provider's fees." Id at p. 499.

The *Spectrum* court began its analysis by noting the two primary goals of the no-fault act: ensuring prompt medical treatment for auto accident victims and ensuring "an affordable system that would restrain insurance premiums." Id at p. 479. To support the goal of affordability, the relevant statutes provided "that an insurance carrier need pay no more than a reasonable charge and a health care provider can charge no more than that." Id at p. 480. The statutes separately provided an absolute cap on provider's charges, namely, it could not bill more than its "customary" charge. Id.

The *Spectrum* court carefully analyzed the 1990s cases cited by the majority in its footnote 16. Those cases had focused on whether the provider's charges were **customary**. They did not address whether evidence of what Medicare (for example) paid for the same service was relevant to the **reasonableness** of the charge. Id at pp. 486-497. *Spectrum* held such evidence was relevant.

From its inception to the date of the reform act, the no-fault law was in a constant "state of flux" as to both reasonableness of providers fees and whether specific provider services and treatment were "reasonably necessary." The no-fault act did not define "reasonableness" in the context of a provider's charge, nor did it provide any fee schedule or other criteria for doing so. Nor did the case law. Even

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as of the *Spectrum* decision in 2020, "the method of determining reasonableness is unclear." Id at p. 483. Instead, there were literally thousands of fee dispute lawsuits every year.

Likewise, auto accident victims were entitled to recover "allowable expenses * * * incurred for **reasonably necessary** products, services and accommodations for an injured person' case, recovery, or rehabilitation." Former MCL 500.3107(1)(a), emphasis added. The no-fault act did not define what services were "reasonably necessary" or how to make such a determination. Such determinations were made on a case-by-case basis in litigation. See *Krohn v Home-Owners Ins Co*, 490 Mich 145 (2011), (experimental surgical procedure was not "reasonably necessary;" sharp dissent). Likewise, whether, and the extent to which, attendant care was "reasonably necessary" were litigated constantly.

Legislative efforts to reform the act were routinely beaten back by coalitions of medical providers, hospitals and trial lawyers, who likewise vehemently opposed the reform act at issue here. Mayor Duggan expended enormous resources and efforts to make his case to the public and Legislature and, together with the federal court lawsuit and many newspaper articles, finally exposed the system as fundamentally and completely broken.

The Legislature properly addressed the chaos by imposing a fee schedule and related provisions designed to make no-fault premiums affordable and reign in the

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never-ending litigation. Those reforms are critical to the City of Detroit and its residents.

B. The high cost of auto insurance prevented Detroiters from taking advantage of regional job opportunities and contributes to the City's high rate of poverty.

Many Detroiters struggle to meet their basic needs. Approximately forty percent of Detroiters live in or on the cusp of poverty;[12] the City has the fourth highest poverty rate among large cities.[13] These individuals are engaged in a constant struggle to balance housing costs with other essentials such as food and healthcare. But the truth is they are fighting a losing battle. A third of Detroiters spend more than fifty percent of their income on housing alone.[14] Families are left with two hundred dollars a month to spend on other items, be it toilet paper, soap, or life-saving medications.[15]

Poverty in Detroit is driven by unemployment. The City has lost hundreds of thousands of jobs over the years, as urban manufacturing has declined and related

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[12] Madeline Sinkovich, *Detroit's Movement for a Community Benefits Ordinance*, 18 J. L. & Soc'y 315, 315, 319 (2018). This equates to approximately 300,000 Detroiters. *Id.*

[13] Julie Mack, *Flint and Detroit among nation's top 5 poorest cities, new census data shows*, MLive.com (Sept. 26, 2019), https://www.mlive.com/news/2019/09/flint-and-detroit-among-nations-top-5-poorest-cities-new-census-data-shows.html.

[14] City of Detroit, *Multifamily Affordable Housing Strategy* 11 (2018). The median household income in Detroit is under $30,000. United States Census Bureau, *Quick Facts: Detroit city, Michigan*, Census.gov (Jul. 1, 2018), https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,MI/PST04-5218.

[15] *See* Violet Ikonomova, *Higher rents, 'massive displacement': The unknown cost of Detroit's landlord crackdown*, MetroTimes.com (Aug. 29, 2018), https://www.metrotimes.com/detroit/higher-rents-and-massive-displacement-the-hidden-cost-of-detroits-landlord-crackdown/Content?oid=15129860.

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investment left the City.[16] Until recently, the unemployment rate in Detroit was almost nine percent,[17] double the national average.[18] And although downtown Detroit has seen an impressive resurgence since the City's exit from bankruptcy, the rest of Detroit continues to struggle.[19] Make no mistake: Detroiters want to work. But the jobs created downtown are inaccessible to many. They primarily represent openings for colleague-educated graduates, and the majority of Detroiters have at most a high-school diploma.[20] Although downtown represents sixty percent of the City's payrolls,[21] seventy percent of all jobs in Detroit are held by suburban residents.[22]

Conversely, the wider Detroit Metropolitan Area is full of opportunity for high school-educated individuals. The catch: these jobs are generally accessible to those with access to a personal automobile.[23] Seventy-seven percent of the region's jobs exist in the suburbs.[24] And although the metropolitan region is well served by

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[16] Hammer, *supra* note 9 at 231–32.

[17] Christine Ferretti, *Duggan touts Detroit's high unemployment rate as 'competitive advantage'*, DetroitNews.com (May 30, 2019), https://www.detroitnews. com/story/news/local/detroit-city/2019/05/30/duggan-touts-unemployment-rate-competitive-advantage-detroit/1287802001/.

[18] *Id.*

[19] Hammer, *supra* note 9 at 232.

[20] United States Census Bureau, *American Community Survey Data*, Census.gov (Jul. 1, 2018), https://www.census.gov/programs-surveys/acs/data.html.

[21] Hammer, *supra* note 9, at 231.

[22] *Id.* at 232.

[23] *See* McBride, *supra* note 10 at 61.

[24] *Id.* at 61–63. Of the new jobs projected for the region in the upcoming years, only two percent will be in Detroit. Hammer, *supra* note 9, at 232.

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interstates and highways, public transit is very limited.[25] Thus, without access to a car, Detroiters cannot reach many suburban destinations, and are excluded from regional jobs when compared with car-owning individuals.[26] The City recognizes this problem and is working hard to solve it.[27] But the reality is that public transit is so poor in the region that no amount of investment can quickly address this issue.[28] A long-term solution will take time. For now, the reality is that Detroiters need a car to access the region's job opportunities.

Yet the high-cost of auto insurance has prevented Detroiters from owning a car. At almost $6,000 a year prior to the reforms, auto insurance in Detroit is the highest in the Nation by a long way.[29] To the average Detroiter, this cost presents an insurmountable barrier.[30] So low-income Detroiters wishing to work their way out

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[25] Joe Grengs, *Job accessibility and the modal mismatch in Detroit*, 18 J. of Transport Geography 42, 45 (2018). Detroit recently ranked third for most car dependent among the fifteen most populous urbanized areas nationwide. Detroit also ranked first for share of workers commuting by car. Detroit is the largest urban area in the US without heavy or light rail transit. *Id.*

[26] *Id.* at 42. Detroiters are not disadvantaged by the distance to suburban jobs, but the need for a car in a metropolis designed for personal transportation. *Id.* at 43.

[27] *See* Eric D. Lawrence, *More than 10K Detroiters register for FCA expansion jobs*, Freep.com (Aug. 9, 2019), https://www.freep.com/story/money/cars/chrysler/2019 /08/09/fiat-chrysler-detroit-jobs/1936567001/.

[28] Grengs, *supra* note 25 at 52.

[29] "Detroit has the most-expensive annual car insurance rate at $5,464 per year, which is almost $2,000 higher than New Orleans, which has the second-highest rates." WXYZ Detroit, *Michigan has the highest car insurance rates in the country, report says*, WXYZ.com (Feb. 11, 2019), https://www.wxyz.com/getting-around-metro-detroit/michigan-has-the-highest-car-insurance-rates-in-the-country-report-says.

[30] Those that do spend on average eighteen percent of their income on the cost of insurance. In some Detroit ZIP codes, auto insurance amounts to thirty-six percent of a driver's income. But according to the United States government, anything more than two percent is "unaffordable." Steve Neavling, *Study: High auto insurance rates lock Detroiters into 'cycle of poverty'*, MetroTimes.com (Mar. 25, 2019), https://www.metrotimes.com/news-hits/archives/2019/03/25/study-high-auto-insurance-rates-lock-detroiters-into-cycle-of-poverty.

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of poverty face a no-win situation. Either they forgo access to suburban job opportunities, or they drive without insurance and risk criminal penalties. This could include up to a year in jail and $500 in fines.[31] Compounding this problem: the decision to drive without insurance creates a vicious cycle: Uninsured Detroiters' get stopped and arrested; they find themselves in jail, lose their job, and incur fines in the process. In order to pay off these fines and have their licenses reinstated, they have to continue to drive without insurance.[32] Detroiters want to work, but the available options work against them.[33]

C. The challenged statutory provisions will lower the cost of auto insurance, increase economic mobility, and place downward pressure on poverty.

The high-cost of auto insurance in Michigan has been driven in large part by grossly inflated rates of medical billing and over-treatment, abuses that benefit well-off stakeholders and that are effectively and disproportionately subsidized by high rate-paying drivers like those in Detroit.[34] The cost per injury in auto accidents has

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[31] Cooney, et al., *supra* note 2 at 3.

[32] Uninsured driving is a major issue in Michigan but particularly in Detroit. Nationally, thirteen percent of drivers are uninsured. In Michigan, it is twenty percent. In Detroit, it is sixty percent. *Id.* at 3.

[33] In other ways too, the high-cost of insurance harms Detroiters. Many neighborhoods suffer from extreme disinvestment. Jobs have left, and common amenities have vanished. This includes access to fresh food and healthcare. Carless Detroiters are often forced to get sustenance from gas stations and go without filling prescriptions. Forced to live off processed food and without access to healthcare, many Detroiters suffer from classic markers of modern scarcity like chronic heart disease and diabetes. *See generally* McBride, *supra* note 10.

[34] Citizens Research Council of Michigan, *Medical Costs of No-Fault Automobile Insurance* 6 (2013) [hereinafter CRCM.

tripled in recent years, outstripping standard healthcare inflation by ninety percent.[35] Auto insurers were routinely charged many multiples of fees charged by Medicare or private insurers for the exact same procedures.[36] There is no evidence to suggest that injuries resulting from auto accidents justify this dramatic divergence.[37] When compared to similar injuries sustained at home or in the workplace, there is nothing unique about the types of harm that result from car accidents.[38]

Medical service providers have long been free to inflate billing rates because the law sets no clear standards. Prior to the reforms, auto insurers had to reimburse providers for all "reasonable" costs. MCL 500.3157(1). But the term "reasonable" was not defined, leaving providers to charge what they want. Auto insurers are a small segment of the healthcare market when compared to Medicare and private insurers.[39] And no-fault patients are free to choose their own providers – typically those referred by their lawyers. Insurers cannot curb billing rates using market power,[40] leaving them to use the courts as an arbitrator, with the associated cost passed onto consumers. *See Bronson Methodist Hosp. v. Auto-Owners Ins. Co.*, 295

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[35] Livengood, *supra* note 4.

[36] Cooney et al., *supra* note 2 at 4. For example, auto insurers may pay up to $5,000 for an MRI; Medicare pays ten times less for the equivalent service. Matthew Coffey, *Mackinac Center for Public Policy*, What's Wrong With Michigan's No-Fault Automobile Insurance 4 (2017).

[37] CRCM, *supra* note 34 at 6.

[38] This is further supported by looking at the medical billing rates in other no-fault states. Michigan medical service providers charge auto insurers twenty four percent more than the providers in other states for the equivalent services. *Id.*

[39] CRCM, *supra* note 34 at 9.

[40] *Id.*

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Mich. App. 431, 448 (2012). Obviously, medical service providers have every incentive to maximize treatment and inflate billing rates.[41] It allows them to shift costs and maximize profits. Providers offer large healthcare insurers discounts in order to secure a high volume of sales. They then protect profit margins by charging auto insurers exponentially more for the same exact services.[42]

In the context of medical billing, attendant care presents a particularly acute problem. Prior to the reforms, auto insurers were often required to reimburse for up to twenty-four hours of care a day, seven days a week. But no formal contract was required between caregiver and patient, and services were often provided at a patient's home by friends or family.[43] As a result, it was difficult or impossible for auto insurers to verify the scope and extent of at-home attendant care.[44] A family member with no formal medical training could charge a daily rate of $300 with little or no oversight. It was not uncommon for these lay caregivers to receive reimbursements of over $100,000 a year,[45] much more than the salary of their

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[41] Additionally, they have every incentive to push unnecessary medical services. For example, Michigan auto-accident victims were twice as likely to get an MRI and fifty percent more likely to get a CT scan in 2011 compared to 2002. Mack, *supra* note 13.

[42] CRCM, *supra* note 40 at 9. Medicare does not negotiate with providers. Instead, it pays in accordance with a fee schedule. The amount Medicare pays is almost always lower than the amount a private insurer will pay. So here too, up charging auto insurers permits a provider to shift costs.

[43] Coffey, *supra* note **Error! Bookmark not defined.** at 5.

[44] *Id.*

[45] *See Id.*

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professional counterpart.[46] In conjunction with the overall problem of inflated rates of medical billing and over-treatment, attendant care costs have helped Michigan attain another unenviable title: the highest injury cost per claim: 57% higher than the next highest state in the Nation.[47]

The challenged statutory provisions address these issues. First, they set a fee schedule to define a "reasonable" cost. Starting on July 1, 2021, "reasonable" will typically mean 200% of that payable for the equivalent service under Medicare. MCL 500.3157(2).[48] And in cases where Medicare does not provide an equivalent service, it will mean fifty-five percent of the average amount charged by a provider as of January 1, 2019. *Id.* at (7).[49] Additionally, the provisions will place a fifty-six hour a week cap on mandatory at-home attendant care. *Id.* at (10). An insurer may choose to pay for more, but will no longer be required. *Id.* at (11). Instead, an insurer may decide to pay for attendant care delivered in a professional facility. Studies have indicated that these types of reforms will result in total PIP premium savings of thirty-four percent.[50] As such, the challenged statutory provisions lower the cost of

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[46] According to ZipRecruiter, the average annual salary for a live in caregiver in Michigan is $31,371. *See* https://www.ziprecruiter.com/Salaries/How-Much-Does-a-Live-In-Caregiver-Make-a----Year--in-Michigan.

[47] CRCM, *supra* note 34 at 6.

[48] This is set to decrease to 190% by July 1, 2023. MCL 500.3157(2). There are also other exceptions. *See id.* at (3)-(6).

[49] Or the amount payable under a provider's charge description master in effect on January 1, 2019. *Id.* at (7). This is set to decrease to 52.5% by July 1, 2023. *Id.* There are also other exceptions. *See id.* at (7)-(9).

[50] CRCM, *supra* note 34 at 18. Note that the Legislature has adopted the same fee schedule used in Michigan's system of workers' compensation.

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auto insurance for Detroiters and improve their access to job opportunities outside the reach of public transit.

D. The reforms are working.

While the fee reforms are just now taking effect, there is overwhelming evidence they are working. For example, Detroit Free Press reported on March 20, 2021, that "New auto insurers flocking to Michigan after no-fault overhaul." Ex. 3. The article reported that 26 new companies or new affiliates had applied to enter Michigan's auto insurance market since the reforms were passed in June 2019.

On July 9, 2021, the Free Press published a story titled "New Michigan auto insurer doesn't use credit scores, charges lower rates." Ex. 4. The story explained that CURE Auto Insurance, one of the new insurers, lowered Detroiter Patrick Palmer's insurance bill from $295 to $128 per month. Palmer is quoted saying "Man, it's a blessing." The story reported that CURE does not use credit scores and had entered the Michigan auto insurance market only because of the reform legislation.

E. The legislature has addressed plaintiffs' concerns.

Exhibit 5 is Michigan PA No. 65 that took effect in July 2021 and exhibit 6 is the Senate's analysis. The bill provides a $25 million fund to assist providers of care for catastrophic auto accident victims whose reimbursement was reduced to 55% of the provider's charges as of January 1, 2019.

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The City is aware of news reports in which providers have criticized the legislation as making it too difficult for providers to access the funds. But the critical point is that complaints about the reform legislation have been, and should be, addressed to the Legislature. The majority below were clearly dissatisfied that the reform act, under its plain language, applied to all provider charges after the date of the act – regardless of when the accident occurred. Under our system of government that decision was for the Legislature to make, and it did so. To the extent the reforms are causing hardship, that likewise raises policy issues within the sole province of the Legislature which has acted and is free to act further on the subject.

IV. Conclusion

For the reasons stated, the City of Detroit fully supports the defendants' application for leave to appeal and, if granted, the request to reverse the lower court's decision and reinstate the circuit court's decision. The City also fully supports defendants' motion to stay the precedential effect of the court of appeals' decision.

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WORD COUNT STATEMENT

This document complies with the type-volume of Michigan Court Rules 7.312(A) and 7.212(B) because, excluding the parts of the document exempted, this amicus brief contains 4,983 words.

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September 19, 2022

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was e-filed on September 19, 2022, thereby effecting service on all counsel of record.

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STATE OF MICHIGAN
IN THE SUPREME COURT

Ellen M. Andary, et al.,

Plaintiffs-Appellees,

v.

USA Casualty Insurance Company and Citizens Insurance Company of America,

Defendants-Appellants.

Supreme Court No. 164772

COA No. 356497

Case No. 19-738-CZ

EXHIBITS IN SUPPORT OF CITY OF DETROIT'S AMICUS BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS'APPLICATION FOR LEAVE TO APPEAL, AND IN SUPPORT OF DEFENDANTS-APPELLANTS' MOTION TO STAY PRECEDENTIAL EFFECT OF THE COURT OF APPEALS' DECISION

Ex.1 – August 2018 federal court lawsuit seeking to declare the Michigan no-fault act unconstitutional (Duggan et al v McPharlin)

Ex. 2- February 2019 article reporting that Judge Steeh called the no-fault act "shameful"

Ex. 3 – March 2021 article "new auto insurers flocking to Michigan after no-fault reforms"

Ex. 4 – July 2021 article "new Michigan auto insurer doesn't use credit scores, charges lower rates"

Ex. 5 – Mich PA 65, effective July 2021, creating $25 million fund to assist providers caring for patients with catastrophic claims

Ex. 6 – Senate analysis of PA 65

EXHIBIT 1

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Mike Duggan, Mayor of the City of Detroit, Carrol Lockett, Haley Roell, Joseph Vaughn, Gladys Noble, Stephanie Huby, Ian Davis, Jacintha Pittman and Clayton Wortmann,

Plaintiffs,

v.

Patrick McPharlin, in his official capacity as Director of the Michigan Department of Insurance and Financial Services,

Defendant.

Case No:

Hon.:

/

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"Michigan motorists are constitutionally entitled to have no-fault insurance made available on a fair and equitable basis .... [D]ue process, at a minimum, requires that rates are not, in fact, excessive, inadequate or unfairly discriminatory...."

Michigan Supreme Court, *Shavers v. Kelley*, 402 Mich. 554, 600-01 (1978).

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COMPLAINT

NOW COME Plaintiffs, by and through their attorneys, Fink + Associates Law as counsel for all Plaintiffs and the City of Detroit Law Department as co-counsel for Mayor Mike Duggan, and for their Complaint, state as follows:

INTRODUCTION

1. Michigan's mandatory No-Fault automobile insurance system violates the constitutional rights of Michigan's citizens. Once the State issues a driver's license, it cannot deprive a citizen of the primary benefit of the license – the ability to drive a motor vehicle – without first providing constitutional due process. Unfortunately, countless Michigan residents are deprived of that due process because No-Fault insurance is not available at fair and equitable rates.

2. Michigan's average annual auto insurance premium of $3,059 is more than double the average annual premium in neighboring states: Ohio ($1,236); Illinois ($1,158); and, Indiana ($1,365). The national average cost for auto insurance is $1,512.

3. The high cost of auto insurance in Michigan puts significant economic pressure on an already financially-strapped population. A 2016 United Way Report found that, while 15% of Michigan households live below the Federal Poverty Level, an additional 25% live above the poverty level but still struggle to afford basic household needs such as housing, childcare, food and transportation.

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4. With so many of the State's residents struggling financially, and the cost of insurance premiums so high, it is no wonder that Michigan has one of the highest rates of uninsured motorists in the country, with more than 20% of drivers lacking coverage.

5. The extremely high cost of No-Fault insurance coverage in Michigan is a statewide issue that is particularly acute in the Detroit Metropolitan area. Over 50% of Detroit workers commute to jobs that are outside the City limits, and almost 75% of the jobs within the City are held by workers who commute in from the suburbs.

6. Detroit drivers pay an average of $6,197 annually for auto insurance coverage, a figure that is 4 times the national average. In fact, Detroit has the highest auto insurance rates of any city in the nation.

7. Residents of many other Metro Detroit communities also pay exorbitant auto insurance premiums. In Dearborn, the average annual premium is $5,135; in Southfield, the average premium is $4,443; the average premium in Warren is $3,446; and Roseville residents pay an average of $3,378 for auto insurance. Residents in each of these communities pay, on average, 2 or 3 times the national average for insurance coverage.

8. By contrast, the average premium in Cleveland, Ohio is $1,674; in Chicago, Illinois, the average premium is $1,765; and, in Indianapolis, Indiana, the average driver pays $1,538.

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9. Excessive insurance premiums have a catastrophic impact for many Detroit residents. The average household income in Detroit is just over $26,000, which is less than half the national average of $55,322. Almost 40% of the City's residents are living in poverty.

10. Financial experts recommend allocating roughly 15% of a household budget to transportation expenses. These expenses include the costs of purchasing, financing or leasing a vehicle, costs of gas and motor oil, costs for repairs and other vehicle expenses, and costs for alternate transportation. Between 2013 and 2016, the average U.S. consumer spent $3,550 on vehicle purchase costs and $2,200 on gas and motor oil expenses each year. Adding these average expenses to the average Detroit auto insurance premium would result in $11,947 in transportation costs. For a driver with a household income equal to the Detroit average ($26,249), these expenses for one driver would consume over 45% of total household income, before factoring in any public transportation costs or other vehicle related expenses.

11. The natural consequence of the high cost of No-Fault insurance is that Detroit area drivers are faced with a no-win situation. Many drivers who must rely on personal automobiles for transportation are forced to make difficult cuts to other household expenses, such as housing, food, or healthcare in order to afford their auto insurance. Some vehicle owners are forced to give up driving because they

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cannot legally register their vehicles, while others are forced to break the law and drive without insurance.

12. According to reports, nearly half of Detroit's drivers are uninsured. In 2017, the Detroit Police Department issued 23,087 citations to motorists for driving without insurance.

13. The U.S. Department of Housing and Urban Development considers any family spending more than 30% of its annual income on housing to be "cost burdened." Many Michigan families are "cost burdened," not because of unaffordable housing, but because of unfair auto insurance premiums.

14. No-Fault insurance has not achieved the state-wide cost savings initially promised in the 1970s. Instead, the volume of auto accident related litigation, which was expected to decrease under No-Fault, is out of control, bogging down Michigan's courts more than ever. Insurance rates, which were supposed to decrease, have grown dramatically. Michigan is the state with the most expensive auto insurance in the United States, and no city in the United States has auto insurance rates as high as the rates in Detroit.

15. Michigan's mandatory No-Fault insurance has become unconstitutionally unaffordable for several reasons, including:

a. Michigan No-Fault coverage must include **unlimited** statutory personal injury protection ("PIP") benefits, when the state with the second highest

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mandatory coverage, New York, caps non-emergency medical coverage at $50,000;

b. There is no fee schedule for auto accident-related medical services, such as the fee schedule for medical services reimbursed under Workers' Compensation;

c. Medical providers are allowed to charge exorbitant fees for medical procedures and services normally priced at a fraction of No-Fault rates;

d. Insurance companies are not permitted to create closed medical benefit networks with physicians who would agree to reduced fees for various medical services;

e. There are no effective protections against those auto accident attorneys who encourage over-treatment and who pursue large PIP recoveries for minor injuries;

f. There are no meaningful limitations on attendant care coverage, with non-professional providers allowed to charge high hourly rates and to provide unnecessary "services" 24 hours a day;

g. There are few protections against health care, attendant care and transportation providers who provide unnecessary and over-priced services.

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16. The No-Fault Act has failed Michigan residents at every turn. This lawsuit seeks a declaration that the law is unconstitutional. The State should be given 6 months to repair the automobile insurance scheme. If that deadline is not met, the No-Fault Act should be deemed null and void and the tort system should be reinstated.

NATURE OF THE ACTION

17. This is an action seeking a declaration that the Michigan No-Fault Insurance Act (the "No-Fault Act"), M.C.L. § 500.3101 *et seq.,* is unconstitutional in its current form and in its application under the U.S. and Michigan Constitutions.

18. Michigan, like most states, requires vehicle owners to obtain insurance prior to registering or operating their vehicles. Driving without insurance is a misdemeanor with penalties of up to 1-year imprisonment.

19. With mandatory no-fault insurance, people who are injured recover their losses from their own insurance company.

20. In the 1970s, when many states experimented with the no-fault concept, proponents believed it would reduce automobile insurance costs. Unfortunately, those states soon discovered that the promised cost savings did not materialize. Instead, premiums increased. That has been Michigan's experience.

21. After Michigan adopted the No-Fault Act in 1972, the Michigan Supreme Court ruled that because the State chose to make no-fault insurance

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compulsory for all motorists, the State must ensure that coverage is available at fair and equitable rates.

22. If insurance rates become excessive, unfair or inequitable, the No-Fault law becomes unconstitutional.

23. It is indisputable that Michigan's insurance rates have become unconstitutionally excessive, unfair, and inequitable. Michigan residents universally pay more for auto insurance than do residents of any other state.

24. The problem is worse in the City of Detroit and other urban areas. Detroit residents pay, on average, $6,197 annually, including collision and comprehensive coverage.

25. A significant number of Michigan car owners cannot afford to purchase auto insurance, preventing them from pursuing employment and educational opportunities, traveling freely, shopping for groceries, taking their children to school or child care, visiting friends and family, patronizing local businesses, or otherwise attending to the numerous things made possible by driving a motor vehicle.

PARTIES

26. Plaintiff Mike Duggan is a resident of the City of Detroit, County of Wayne, and a citizen of the State of Michigan. He is also the elected Mayor of the City of Detroit. Mayor Duggan joins the other Plaintiffs in this lawsuit to protect the rights of all Detroit residents who are being charged excessive, unfair and

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inequitable premiums, and to obtain a declaration that the No-Fault Act is unconstitutional.

27. Plaintiff Carrol Lockett is a resident of the City of Oak Park, County of Oakland, and a citizen of the State of Michigan. Ms. Lockett, age 69, volunteers at her local church and at a large community activities center, where she operates the neighborhood hotline. Ms. Lockett pays an insurance premium of $329 per month, including collision and comprehensive coverage. She has not been involved in an auto accident in over 20 years, has a clean driving record and only drives 10-15 miles daily, yet her auto insurance payment is almost as much as her car payment, comprising nearly 15% of her monthly income. Ms. Lockett has periodically had to give up driving because she could not afford insurance.

28. Plaintiff Haley Roell is a resident of the City of Ann Arbor, County of Washtenaw, and a citizen of the State of Michigan. Ms. Roell, age 20, is a senior at the University of Michigan, where she also works as a student research assistant. Recently, Ms. Roell, who has never received a ticket or been in an auto accident, was required to pay more than $400 per month for car insurance. She was unable to meet her monthly payments and was forced to periodically forgo driving when her insurance coverage lapsed. As of the date of this Complaint, Ms. Roell's temporary research assistant position allows her to obtain low-cost insurance. Thus, she is

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currently able to use her car, but, when her short-term employment ends, she will, once again, face unaffordable insurance rates.

29. Plaintiff Joseph Vaughn is a resident of the City of Detroit, County of Wayne, and a citizen of the State of Michigan. Mr. Vaughn, age 53, owns several businesses and is heavily involved in community service, including serving as a Detroit Police Department reservist, volunteering as a mentor in the Man to Man mentorship program, and coordinating a mentorship program through Detroit Mumford High School. Mr. Vaughn is currently uninsured because he cannot afford the cost of No-Fault insurance. He was recently quoted a price of $4,000 for six months of insurance coverage, a total that equates to 15% of his income, even though he has never had a ticket or been in an auto accident.

30. Plaintiff Gladys "Peggy" Noble is a resident of the City of Detroit, County of Wayne, and a citizen of the State of Michigan. Ms. Noble, age 76, is a retired social worker who obtained her Master's Degree in Social Work at the age of 65. An active member of her community, Ms. Noble serves as president of her neighborhood community association and as a mentor to young mothers. She has periodically had to forego driving because she could not afford to pay for both auto insurance and basic necessities such as food and medication. Her car insurance payment is over $210 each month, for basic coverage without collision and comprehensive. This is almost 20% of her monthly income. Ms. Noble has had a

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spotless driving record for 60 years, and she drives a 16-year old vehicle.

31. Plaintiff Stephanie Huby is a resident of the City of Eastpointe, County of Macomb, and a citizen of the State of Michigan. Ms. Huby, age 49, has been employed by the same employer for more than 18 years. Ms. Huby has a perfect driving record, yet she pays $250 per month for automobile insurance. Ms. Huby's monthly insurance payment, which is more than twice the national average, is also more expensive than the monthly lease payment on her vehicle. In the past, Ms. Huby has been forced to let her insurance coverage lapse because she could not afford the monthly payments.

32. Plaintiff Ian Davis is a resident of the City of Oak Park, County of Oakland, and a citizen of the State of Michigan. Mr. Davis, age 27, is employed by a non-profit organization focusing on low income senior housing. Mr. Davis has never been involved in an auto accident, and he has not received a traffic ticket in nearly five years. He drives a 2012 Honda Civic and pays nearly $2,400 annually for insurance coverage.

33. Plaintiff Jacintha Pittman is a resident of the Village of New Haven, County of Macomb, and a citizen of the State of Michigan. Mrs. Pittman, age 39, is employed as an esthetician. Mrs. Pittman drives a 2008 Saturn Vue. She has never been in an auto accident and does not have a single moving violation on her traffic record. However, as of September 1, 2018, her insurance premium will be $325 per

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month.

34. Plaintiff Clayton "Clay" Wortmann, is a resident of the City of Detroit, County of Wayne, and a citizen of the State of Michigan. Mr. Wortmann, age 25, works as a tutor for high school students and as a respite care provider for people with special needs. He also volunteers with Auntie Na's House, a community outreach center that provides support to low-income families in Detroit. He drives a 2015 Chevrolet Cruze and has never received a traffic ticket. Mr. Wortmann's monthly insurance premium is $280, more than twice the national average.

35. Defendant Patrick McPharlin is the Director of Michigan's Department of Insurance and Financial Services, which is charged with the regulation and enforcement of Michigan's No-Fault insurance system. He is being sued solely in his official capacity.

JURISDICTION AND VENUE

36. This matter arises under the constitutions and laws of the United States and the State of Michigan.

37. Jurisdiction is proper in this Court pursuant to Article III of the United States Constitution, 28 U.S.C. § 1331, 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

38. Venue is proper in the Eastern District of Michigan, Southern Division, because Plaintiffs are residents of counties in this District and the action is being pursued against the Director of the Michigan Department of Insurance and Financial

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Services.

39. Plaintiffs seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*.

40. Plaintiffs do not have an adequate remedy in state court. The Michigan Court of Claims has exclusive jurisdiction over all claims brought against the State, including federal or state statutory or constitutional claims. M.C.L. § 600.6419(1). However, a claimant is not permitted to file a claim against the State in the Court of Claims (or any other Michigan state court) if, as here, the claimant has an adequate remedy in the federal courts. M.C.L. § 600.6440.

GENERAL ALLEGATIONS

The Enactment of the No-Fault Act and the Seminal Michigan Supreme Court Opinion on its Constitutionality

41. The No-Fault Act was enacted in October of 1973. Michigan was among 19 states that adopted no-fault insurance by 1976, after which no additional state chose to do so.

42. The preamble to the Michigan Insurance Code of 1956 states the law is intended "to provide for the continued availability and affordability of automobile insurance … in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates …."

43. The No-Fault Act, like the no-fault laws adopted in other states, was intended to provide victims of automobile accidents with faster and more adequate

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compensation than was offered under the previous common law tort system. The No-Fault Act abandoned the common law fault determination, eliminating the right to sue the responsible party in most motor vehicle accidents, but allowing accident victims to seek compensation through their own insurance companies. This was expected to decrease premium costs and lessen litigation costs statewide.

44. The constitutionality of the No-Fault Act was addressed in 1978 by the Michigan Supreme Court in *Shavers v. Kelley*, 402 Mich. 554 (1978) ("*Shavers*"). The *Shavers* decision set forth the test for determining the constitutionality of the No-Fault Act.

45. First, the Supreme Court upheld the concept of no-fault insurance, because insurance protects "not only the driver of a motor vehicle, but also passengers, pedestrians, owners of fixed property, and owners of properly parked vehicles." *Shavers* at 596. Thus, "those who use the public highways may properly be required to provide security for loss that may predictably be suffered by others on account of such use …." *Shavers* at 596-97.

46. The Court then analyzed whether the law contained adequate constitutional protections. The Court stated, "the concepts of liberty and property protected by due process are not to be defined in a narrow or technical sense but are to be given broad application." *Shavers* at 598 (citations and internal punctuation omitted). "The existence of interests or benefits entitled to due process protection

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depends on the extent to which government activity has fostered citizen dependency and reliance on the activity." *Shavers* at 598. "It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Shavers* at 598 (citing, among other things, the U.S. Supreme Court case of *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

47. In *Shavers*, the Michigan Supreme Court recognized the critical importance of the automobile to transportation in the State. "In Michigan the independent mobility provided by an automobile is a crucial, practical necessity; it is undeniable that whether or not a person can obtain a driver's license or register and operate his motor vehicle profoundly affects important aspects of his day-to-day life." *Shavers* at 598.

48. Of paramount importance, a "driver's license, once issued, is a significant interest subject to constitutional due process protections." *Shavers* at 599 (citation omitted). The Court stated:

> Although the compulsory insurance requirement of the No-Fault Act does not directly affect the issuance of a driver's license, it directly affects the use of such a license: a licensee may not register or operate a motor vehicle in Michigan without no-fault insurance. A driver's license is, clearly, of little use unless a licensee can register and operate a motor vehicle. We believe that the interest in registering and operating a motor vehicle is as significant as the interest in the use of a driver's license.
>
> In choosing to make no-fault insurance compulsory for all motorists,

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> the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates. Consequently due process protections under the Michigan and United States Constitutions (Const.1963, art. 1, s 17; U.S. Const. Am. XIV) are operative.

Shavers at 599.

49. Furthermore, the Supreme Court held that the No-Fault Act "fostered the expectation that no-fault insurance will be available at fair and equitable rates," because the Act "states that Rates shall not be excessive, inadequate or unfairly discriminatory" and because it "provides the guarantee that no-fault insurance coverage will be available to any person who is unable to procure such insurance through ordinary methods." *Shavers* at 599. (citations to statutes omitted).

50. The Court then stated "[w]e therefore conclude that Michigan motorists are constitutionally entitled to have no-fault insurance made available on a fair and equitable basis." *Shavers* at 600.

51. Having found that the "availability of no-fault insurance and the no-fault insurance rate regulatory scheme" are "subject to due process scrutiny," the Supreme Court then examined the law to determine whether it satisfied that scrutiny by ensuring that Michigan motorists would have no-fault insurance available to them on a fair and equitable basis. *Shavers* at 600.

52. The Court gave clear guidance regarding the minimum requirements of due process: "due process, at a minimum, requires that rates are not, in fact,

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excessive, inadequate or unfairly discriminatory ..." *Shavers* at 601 (citations omitted).

53. The Supreme Court held that the law did not provide adequate mechanisms to ensure that no-fault insurance would be available on a fair and equitable basis. *Shavers* at 580. Simply put, the law was "inadequate to protect individual motorists, who must purchase no-fault insurance from private insurers, from potentially unfair insurance rates, insurance refusal or cancellation." *Shavers* at 580.

54. The Supreme Court thus came to the inevitable conclusion that while the No-Fault Act was generally constitutional, it was rendered unconstitutional by its failure to ensure that rates would be fair and equitable. The Court stated:

> [t]he constitutional status of the No-Fault Act places this Court in an extraordinary jurisprudential position: the No-Fault Act, which has substantially affected every Michigan motorist, every insurance company underwriting motor vehicle insurance in Michigan, and our entire system of civil justice for nearly five years, is constitutional in its general thrust but unconstitutionally deficient in its mechanisms for assuring that compulsory no-fault insurance is available to Michigan motorists at fair and equitable rates.

Shavers at 581.

55. Despite finding the No-Fault Act unconstitutional, the Supreme Court did not strike down the law. Instead, the State Legislature and the Governor were given 18 months to correct the constitutional deficiencies.

56. In response to the *Shavers* decision, the State Legislature passed the

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Essential Insurance Act ("EIA") of 1979.

57. The EIA contained various provisions that were supposed to address the Supreme Court's decision that the law lacked genuine mechanisms to ensure that rates would be fair and equitable.

58. In 1982, the Michigan Supreme Court entered an order regarding the constitutionality of the No-Fault Act, subsequent to the legislative "fixes" in the EIA. The Order read, in its entirety:

> [o]n order of the Court, the opinion in *Shavers* [], subsequent legislation [the EIA], the briefs of the parties, the oral argument in this Court, and the opinion of the Wayne Circuit Court after our November 21, 1979, order of remand are considered. Because there has been no further claim that this act, as recently amended, is unconstitutional, we decline to so hold. **However, this order should not be construed as foreclosing future attacks on the constitutionality of the act based upon the concerns expressed in our opinion.**

Shavers v. Attorney Gen of State, 412 Mich. 1105 (1982) (citations to EIA omitted; emphasis added).

59. Importantly, the Supreme Court never evaluated the question of whether the 1979 EIA statutory changes corrected the constitutional deficiencies of the No-Fault Act, because, at the time, there was no further challenge to the law.

60. Instead of addressing the constitutionality of the No-Fault Act, with the statutory changes in the EIA, the Supreme Court explicitly held that it was not foreclosing future challenges to the No-Fault Act based on the deficiencies identified in the earlier Opinion.

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61. Subsequent to the Supreme Court's decision not to further review the constitutionality of the No-Fault Act, the State repealed certain EIA provisions, which had been adopted in response to the first *Shavers* decision.

No-Fault Rates Are Unconstitutionally Excessive

62. The no-fault experiment has failed. Currently, only 12 states continue to have no-fault laws. Most of those states have substantially modified their statutes. Even with those modifications, on average, rates are significantly higher in no-fault states. The states that completely abandoned no-fault have experienced substantial decreases in premiums.

63. Michigan's No-Fault law has failed, by a wide margin, to achieve one of its central goals, a reduction in the volume of litigation. Auto accident related litigation in the State has skyrocketed. Prior to enactment of the No-Fault Act, automobile personal injury cases accounted for a relatively small percentage of all civil litigation in Michigan. Today, auto accident litigation accounts for over 40% of the civil litigation filed in the State. The percentage is even higher in Wayne and Macomb County.

64. It has been reported that the average costs claimed per accident victim in Michigan is more than 5 times higher than the next highest state, even though there is no evidence that injuries incurred by Michigan accident victims are more severe than injuries incurred anywhere else.

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65. Of constitutional import, automobile insurance rates charged to or offered to the Plaintiffs and others throughout the State, are excessive, unfair and inequitable. For far too many Michigan residents, the rates are simply unaffordable.

66. Michigan auto insurance premiums are the highest in the nation, with Michigan car owners paying well above the national average.

67. The numbers are worse in the City of Detroit and other urban areas, where the average auto insurance premiums are far higher than the national average and significantly higher than the State average.

68. According to the Federal Insurance Office, the average U.S. household spends approximately 2% of its annual income on personal auto insurance.

69. A 2017 study by the Federal Insurance Office measured auto insurance affordability in zip codes where the majority of residents were "traditionally underserved communities and consumers, minorities, and low-and moderate-income persons." The study presumed that auto insurance was unaffordable in any zip code where the average insurance premium exceeded 2% of average annual income.

70. Many Michigan motorists are forced to pay premiums that exceed 15-20% of their annual income.

71. Using the Federal Insurance Office standard, auto insurance is unaffordable in **every** zip code located within the City of Detroit.

72. In fact, it has been reported that all of the nation's 25 priciest auto

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insurance zip codes are in the City of Detroit.

73. The cost of insurance policies available to Michigan motorists and to the Plaintiffs in this lawsuit is excessive, unfair and inequitable.

74. Shortly before this lawsuit was filed, rate quotes were obtained for a driver in Northwest Detroit. Coverage was for a 2010 Chevrolet Equinox driven 15,000 miles per year for work commute and pleasure, in a single-driver household, with basic coverage and **without** collision and comprehensive coverage. The quotes obtained for a one-year policy were:

Insurance Company A	**Annual Premium**
Bodily Injury Liability	$266
Property Damage Liability	$28
Property Protection	$74
Personal Injury Protection	$3,046
Uninsured Motorist	$120
Fees	$226
Total	**$3,760**

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Insurance Company B	**Annual Premium**
Bodily Injury Liability	$708
Property Damage Liability	$48
Property Protection	$54
Personal Injury Protection	$2,853
Uninsured Motorist	$98
Fees	$120
Total	**$3,881**

75. The harm caused by unfair and inequitable insurance rates is significant. Because insurance coverage is not available at fair, equitable and affordable rates, many people are forced to break the law and risk criminal prosecution. They also face potentially crippling economic loss because in the event of an accident, they receive no insurance benefits, and they forfeit the right to sue responsible parties.

76. The fact that so many drivers are forced to drive without insurance further exacerbates the problem, causing premiums to increase even more.

77. It is common for many people to purchase insurance policies for approximately $250-$275 that are only effective for one week, so that they can register a vehicle or retrieve it from an impound lot. Those people then drive uninsured during most of the year. One insurance company that sells these policies currently has over 70 locations in the Detroit area.

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Reasons for Excessive Insurance Costs

78. There are many popular myths and false assumptions regarding the reason for the high cost of insurance in Michigan.

79. The most common misconception is that rates are higher in urban areas, or even statewide, because of auto theft. In fact, theft comprises, on average, approximately 18% of a premium with comprehensive coverage. Moreover, that amount is not included in the premium for a basic no-fault policy.

80. Michigan Auto Theft Prevention Authority statistics show that vehicle theft in Michigan dropped 70% between 1986 and 2015. During that time, the cost of comprehensive coverage dropped, but, because of the No-Fault law, the cost of statutorily-mandated coverages went up. In fact, Michigan insurance rates **increased** dramatically as vehicle theft **decreased** dramatically.

81. Another misconception is that premiums are higher because of higher collision rates. However, in June 2017, one national study reported that Metro Detroit drivers were the best drivers out of the nation's 75 largest metropolitan areas. The authors noted that Metro Detroit had the lowest accident rate out of all 75 areas reviewed.

82. Experts agree that the largest contributor to the cost of Michigan's no-fault insurance is first-party personal injury protection coverage and the lawsuits related to those PIP benefits.

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83. Michigan's No-Fault law is unique. Michigan is the only state that mandates unlimited PIP medical and attendant care benefits. New York offers the second most comprehensive No-Fault medical coverage, with non-emergency medical benefits capped at $50,000.

84. A *Detroit Free Press* investigation found that the "number of lawsuits generally filed by motorists and passengers in accidents who are seeking benefits from their own auto insurance companies … have nearly quadrupled in Wayne County since 2004, even as accidents have dropped."

85. Michigan's No-Fault Act has created a system where certain lawyers and doctors prosper from enormous, unwarranted fees. A small number of lawyers and medical providers aggressively solicit accident victims and encourage them to seek unnecessary treatment.

86. Some attorneys work with their clients and certain doctors or chiropractors to maximize the amount of treatment provided, seeking to make injuries appear more significant for third party claims, while increasing the potential PIP benefit recovery. Attorneys often collect as much as one-third of the No-Fault expenses.

87. Some medical providers will "treat" people who were not injured, will over-treat others, and will provide unnecessary treatments (such as unneeded imaging scans).

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88. The high cost of PIP coverage is also caused by, and exacerbated by, the absence of substantive, statutory restrictions on the fees that medical providers can charge for treatment and services.

89. The absence of a fee schedule, such as the fee schedule used for Workers' Compensation benefits, means that for many common procedures, medical providers charge insurance companies two to five times more than the rates charged for the same procedures to Medicare.

90. As reported by the *Detroit Free Press* "[s]ome MRI centers that appear frequently in no-fault lawsuits in metro Detroit charge as much as $5,300 for an MRI that would cost less than $1,000 at other facilities or about $500 under Medicare." The investigation also found that people are steered to such facilities by some lawyers and medical providers.

91. The escalating costs are severe. PIP coverage accounted for roughly 20% of the cost of automobile insurance premiums in Michigan in 2000. By 2013, those benefits accounted for approximately 50% of the cost of premiums.

92. According to an analysis of data reported by the National Association of Insurance Commissioners, the average cost of medical treatment in Michigan under no-fault tripled from 2000 to 2013. This increase outpaced healthcare inflation by almost 90%.

93. While medical expenses are a key cause of skyrocketing PIP costs,

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other elements of No-Fault coverage also contribute.

94. Michigan's PIP coverage includes household replacement services, attendant care, wage loss and medical transportation costs, in addition to coverage for all reasonably necessary medical expenses. Some medical doctors will routinely declare accident "victims" disabled for months after even minor accidents, which, as reported by the *Detroit Free Press*, provides "an opportunity for relatives or friends to get paid hundreds of dollars a week" for attendant care.

95. The law limits expenses for replacement services and wage loss, but the lack of restrictions on attendant care and transportation services invites abuse, driving up the cost of No-Fault coverage.

96. Attendant care benefits allow accident victims to have in-home assistance for services such as safety monitoring, bathing, administering medicine and other personal tasks associated with daily living. Many accident victims "hire" family members or close friends to provide these attendant care services. There is little to prevent people from charging insurance companies for care that is not actually needed or care that is not being provided. In the *Detroit Free Press* investigation, some caregivers were found to have charged insurance companies for 24-hour attendant care or charged for care provided at times where the accident victims were observed grocery shopping or driving unattended. As with other No-Fault benefits, some attorneys will take 33% of the attendant care costs, even for

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care provided prior to a lawsuit being filed.

97. Michigan's No-Fault Act lacks measures to protect against fraud, such as requiring that caregivers be trained, certified or qualified in any way. Additionally, the No-Fault Act sets no limit on the hourly amount that can be charged for 24-hour a day attendant care.

98. The No-Fault Act lacks reasonable restrictions on the rates that can be charged to transport accident victims to medical appointments. As found in the *Free Press* investigation, medical transportation services "routinely charge auto insurance companies $100 to almost $200 a day to shuttle no-fault patients to and from a single medical appointment — even one just 2 miles away." Quite often, the transportation is in a standard shuttle bus or car, meaning the "patient" could just as easily have taken a taxi or a ridesharing service. One transportation company charged $100 each way to transport an individual two miles to and from medical appointments, racking up $3,500 in fees over several months.

The No-Fault Act Deprives Motorists of Due Process

99. The net outcome of No-Fault has been a disaster. The No-Fault insurance scheme, in its current form, is not just ill advised, it is unconstitutional. Mandatory insurance premiums are excessive, unfair and inequitable.

100. In order to pass constitutional muster, the No-Fault Act, or related legislation, must ensure that coverage is available at fair and equitable rates. Rates

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may not be excessive and they may not be unfairly discriminatory.

101. The State has refused to rein in No-Fault costs and to bring the No-Fault Act into compliance with the constitutional mandate that rates cannot be excessive, but must be fair and equitable.

102. The No-Fault Act does not ensure that coverage is available at fair and equitable rates, as is evidenced by the fact that rates are excessive, unfairly discriminatory and neither fair nor equitable.

103. The EIA states that "[r]ates shall not be excessive ... or unfairly discriminatory." M.C.L. § 500.2109(1)(a). However, the statute does not adequately ensure that those statutory requirements are met. Rather, for all practical purposes, the language of the EIA essentially ensures that no rate could be deemed excessive or unfairly discriminatory, no matter how excessive or discriminatory the rate actually is.

104. The EIA states, "a rate shall not be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist for the insurance to which the rate is applicable." M.C.L. § 500.2109(2). This provision has as little substantial meaning as the language in the No-Fault Act rejected by the Michigan Supreme Court, because the EIA does not define what constitutes an "unreasonably high" rate. Even if a rate could otherwise be considered "unreasonably high," the rate would not be

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considered excessive if there is a reasonable degree of competition. For practical purposes, this means that as long as there are several insurance companies in the market, no rate can be deemed excessive.

105. The EIA definition of an unfairly discriminatory rate has the same deficiency. M.C.L. § 500.2109(1)(c). In order to determine whether a rate is "unfairly discriminatory," the rate must be compared to other rates, but this is a meaningless test when the rate used for comparison is itself unfairly discriminatory.

106. Ultimately, the actual rates are the best evidence that Michigan's No-fault insurance premiums are unconstitutional. It is undeniable that actual rates in Michigan are excessive, unfair and inequitable.

COUNT I - VIOLATION OF PROCEDURAL DUE PROCESS

107. Plaintiffs repeat the preceding paragraphs as if fully alleged herein.

108. Due process enforces rights enumerated in the United States and Michigan Constitutions.

109. The United States Constitution, U.S. Const., amend. XIV, and Article I, § 17 of the Michigan Constitution of 1963 both guarantee that no state shall deprive any person of "life, liberty, or property, without due process" of law.

110. In *Shavers*, the Michigan Supreme Court unambiguously held that Plaintiffs have a constitutionally protected property interest in the use of their drivers' licenses, including the registration and operation of motor vehicles.

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111. As long as no-fault insurance is mandatory for the registration and operation of their vehicles, Plaintiffs have a constitutional right to obtain no-fault insurance at rates that are fair, equitable and not excessive.

112. Defendant has failed to ensure that auto insurance is available to Plaintiffs at non-excessive, fair and equitable rates. No-Fault rates, at the time of the filing of this Complaint, are excessive, unfair and inequitable.

113. As a direct and proximate result of Defendant's conduct, Plaintiffs are being injured by the deprivation of their rights, without procedural due process.

COUNT II - VIOLATION OF SUBSTANTIVE DUE PROCESS

114. Plaintiffs repeat the preceding paragraphs as if fully alleged herein.

115. The right to substantive due process is protected under the due process clauses of the U.S. and Michigan Constitutions.

116. The *Shavers* court imposed substantive due process requirements with respect to the No-Fault Act.

117. Insurance rates under the No-Fault Act are excessive, unfair and inequitable.

118. Plaintiffs have been, and will continue to be, injured by Defendant's violations of Plaintiffs' rights to substantive due process.

COUNT III – REQUEST FOR DECLARATORY RELIEF

119. Plaintiffs repeat the preceding paragraphs as if fully alleged herein.

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120. There is a real and actual controversy between Plaintiffs and Defendant regarding the constitutionality of the No-Fault Act and regarding Defendant's acts and practices.

121. Plaintiffs are entitled to a declaratory judgment holding that the No-Fault Act, as currently enacted and implemented, unconstitutionally deprives Plaintiffs of their rights without due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

1. Declare that the No-Fault Act is unconstitutional under the U.S. and Michigan Constitutions.

2. Grant the State 6 months to amend the No-Fault Act to cure all constitutional defects and to ensure that Michigan's automobile insurance scheme comports with the requirements of the U.S. and Michigan Constitutions.

3. Order a return to the pre-existing common law tort system, if the State is unable to cure all constitutional defects of the No-Fault Act within 6 months.

Respectfully submitted,

FINK + ASSOCIATES LAW

Dated: 8/23/2018

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EXHIBIT 2

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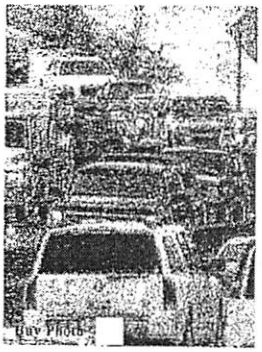
Judge calls no-fault auto law 'shameful,' urges Michigan leaders to address it

Christine Ferretti, The Detroit News Published 5:57 p.m. ET Feb. 7, 2019 | Updated 11:28 p.m. ET Feb. 7, 2019



A lawsuit, filed in August, seeks to force action on insurance rates by the Legislature or revert Michigan to a tort system in which an at-fault driver would be responsible for damages, medical expenses and other costs resulting from a crash. *(Photo: Todd Mointurf / The Detroit News)*

Detroit — A federal judge on Thursday invited state leaders to address Michigan's "shameful" no-fault auto insurance law during a hearing in a lawsuit that challenges the law's constitutionality.

U.S.District Judge George C. Steeh said he was hopeful state lawmakers would give auto insurance reform more consideration after hearing arguments on a motion to have the case tossed out.

Steeh noted new leadership in the state Legislature that he believes "have an appreciation of the problems" and "may be in a position now to address what really is a shameful situation as it relates to the cost of our insurance coverage."

"I don't know another word for it, but it is all of that, at least," said Steeh, before noting he'd take the motion under advisement. "In the meantime, I understand officials represented here are going to be talking about possible solutions to the problem. I think this is the time to strike."

Detroit Mayor Mike Duggan and several motorists sued the state last year, arguing no-fault law has led to "excessive" rates that violate the constitutional rights of Michigan citizens.

The lawsuit, filed in August, seeks to force action on insurance rates by the Legislature or revert Michigan to a tort system in which an at-fault driver would be responsible for damages, medical expenses and other costs resulting from a crash.

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The state Attorney General's Office is seeking to have the suit dismissed, claiming that there is no constitutional right to car insurance premiums that align with rates in other states. Assistant Attorney General D.J. Pascoe contends that if there is a claim in the case worth considering, it should be handled in the state courts.

On Thursday, Pascoe argued the plaintiffs' federal claim is insufficient.

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"There is no federal right to car insurance at a particular level. It doesn't exist," he told the judge. "There is no right to travel in a particular mode of transportation."

David Fink, Bloomfield Hills-based counsel for the plaintiffs, countered that the no-fault law is "on the wrong side of the constitutional line."

"We have a circumstance that the legislation is so bad and causes so much harm that it's actually unconstitutional," he said.

The state House in 2017 rejected a bipartisan plan backed by Duggan and then-House Speaker Tom Leonard that would have given motorists the choice to buy reduced-coverage auto insurance policies. Michigan is the only state that requires lifetime medical benefits for injured motorists.

Fink, after the hearing, said the judge signaled efforts to resolve the problems among state lawmakers and other parties involved in the case, shouldn't have to wait for the court's ruling.

"There's no mystery that the state has a serious problem," he said. "The only mystery is why the Legislature has waited so long to address it."

In a statement, the attorney general's office stood by its position that federal law does not support the plaintiff's case.

"If there is a question about what Michigan law requires, Michigan courts should answer that question," said Kelly Rossman-McKinney, a spokeswoman for Attorney General Dana Nessel. "Further comment on the merits of the allegations made in the complaint will be considered at the appropriate time."

Thursday's hearing comes a day after testimony before the Senate Insurance and Banking Committee in Lansing. The committee expects to debate potential reforms.

Leaders in both chambers of the Michigan Legislature have identified auto insurance reform as a top priority this session. Previous reform efforts have stalled amid intense lobbying from trial lawyers, hospitals and insurers.

The No-Fault Act took effect in October 1973, with Michigan being among 19 states to adopt the policy by 1976. It set out to provide victims of auto accidents with faster and more adequate compensation than what was offered under the prior, common law tort system.

No-Fault abandoned the common law fault determination, eliminating the right to sue the responsible party in most vehicle accidents. But it allowed accident victims to seek compensation through their own insurance companies.

The state Supreme Court rendered the law unconstitutional by its failure to ensure that rates would be fair and equitable.

Despite that, the court did not strike down the law. Instead, the state Legislature and governor were given 18 months to correct the constitutional deficiencies. In response, legislators passed the Essential Insurance Act of 1979.

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Staff writer Jonathan Oosting contributed

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EXHIBIT 3

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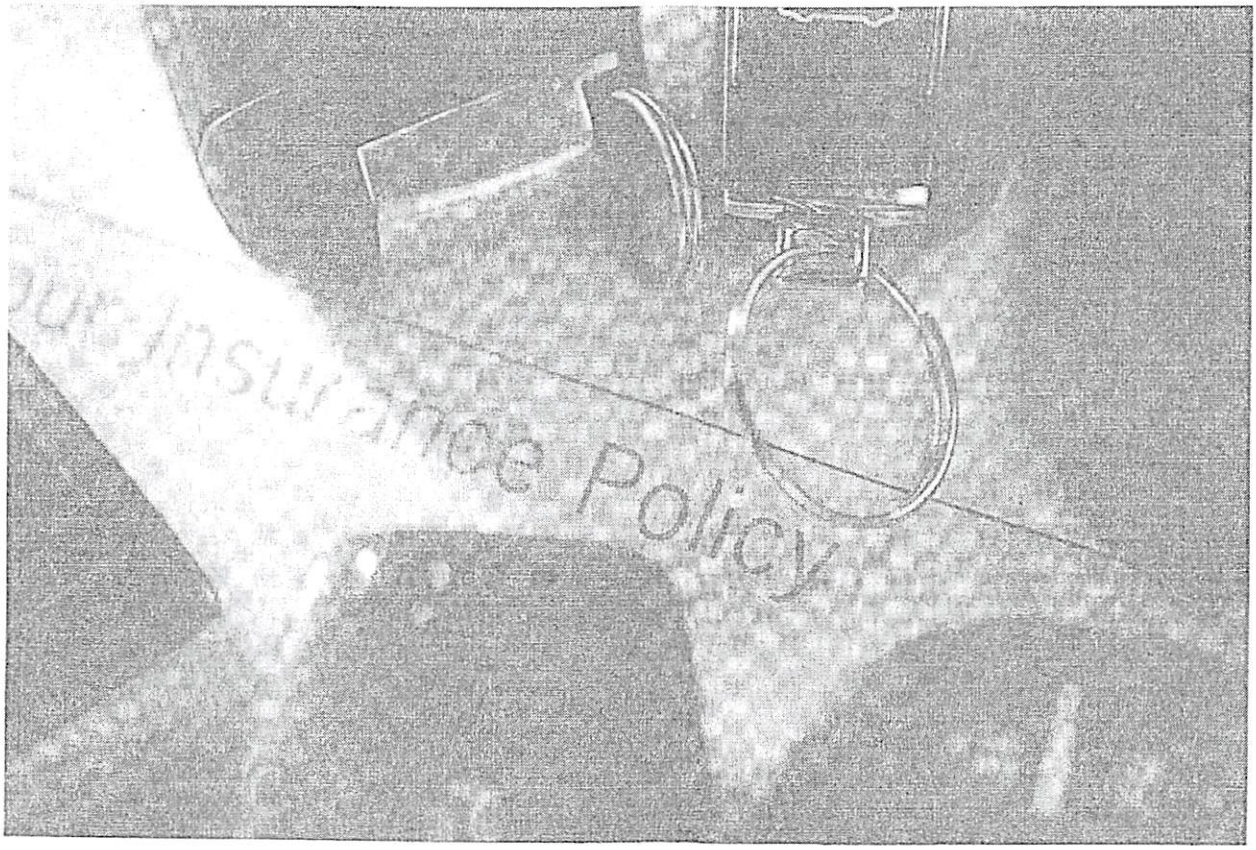
March 20, 2021

New auto insurers flocking to Michigan after no-fault overhaul

JC Reindl
Detroit Free Press



There has been a surge in interest from auto insurance companies looking to enter Michigan since passage nearly two years ago of a controversial overhaul of the no-fault system aimed at lowering rates and loosening the state's unconventional mandates.

A total of 26 new companies or new affiliates of insurance companies have applied to enter Michigan's auto insurance market since June 2019, after Gov. Gretchen Whitmer signed the overhaul into law, according to the Department of Insurance and Financial Services. Two of them have already submitted proposed rates for regulatory approval or disapproval, which must happen within 90 days.

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Prior to the overhaul, 110 companies were authorized to sell auto insurance in Michigan and critics claimed that the state's unique requirement that all auto policies offer unlimited lifetime medical benefits was limiting consumers' choices.

"We are seeing a whole influx of companies that want to write auto in Michigan," department Director Anita Fox said. "We expect over these next months and over the next year, that more and more companies will enter the market, increasing competition."

One of the newcomers is CURE Auto Insurance, a not-for-profit insurance company headquartered in New Jersey that hopes to begin writing Michigan policies in July. CURE Chief Operating Officer Eric Poe said this week that the state's new law represented "a seismic shift in the insurance environment."

"Without it, there would be zero interest in us stepping foot in Michigan," he said.

The new insurance system took effect in July, when drivers were given a first-ever choice in the amount of no-fault medical benefits, known as personal injury protection coverage or PIP, to purchase. Previously, all Michigan drivers were required to buy potentially unlimited, lifetime PIP coverage, even if their health insurance also covered auto accident injuries. Michigan was the only state with such a mandate.

Under the new system, drivers who lower their PIP coverage sometimes save hundreds of dollars a year. The biggest savings, as much as $1,000 or more, has gone to drivers in high-cost cities such as Detroit who completely dropped PIP.

To be sure, not everyone is seeing huge savings. Drivers are required to choose a lower PIP amount when signing up for a new policy, and if they don't do anything at renewal time, their policy will default to unlimited PIP.

And even though the new law mandated that insurance companies give an average 10% discount off unlimited PIP coverage and higher discounts on lower PIP, some Detroiters found themselves on the wrong side of average and had their rates go up, not down. Drivers who experienced savings while keeping some PIP

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coverage typically got that savings from decreases in Michigan's formerly $220-per-vehicle catastrophic claims fee.

Only drivers on Medicare or who have commercial health insurance that covers auto accidents are allowed to completely opt out of PIP to save the most money. However, they must show proof of health insurance to get a $0 PIP policy.

A recent "State of Auto Insurance 2021" report by The Zebra, an auto insurance comparison website, said Michigan's 18% year-over-year decrease in insurance premiums was the biggest drop among all states.

The report claims Michigan still has the highest insurance rates in the country at $2,535 a year. Zebra conducted its Michigan survey based on insurance plans with $250,000 in PIP coverage.

Drivers who choose a PIP option other than unlimited can still fall back on their health insurance or Medicare or Medicaid if they get into a crash. However, PIP covers things that even the best health insurance plans don't, such as extensive in-home attendant care and long-term care in specialized rehab centers.

Insurance industry and state officials said there is no data yet about how many Michigan drivers are choosing lower PIP coverage.

Bigger rate drop ahead?

Some industry observers are predicting further drops in Michigan auto insurance rates starting in July, when the second part of the no-fault overhaul takes effect.

This phase will introduce price controls for medical providers that treat auto accident victims using the PIP coverage in their no-fault insurance.

Most hospitals, clinics and rehabilitation centers would generally be limited to billing no more than 200% of Medicare rates, dropping to 190% in 2023. Trauma centers and hospitals with large numbers of indigent patients could charge slightly higher rates, between 240% and 230% of Medicare.

These price controls are a highly controversial part of the no-fault overhaul.

Because no-fault insurance has traditionally paid medical providers more money than all other types of insurance, providers are expected to start losing millions in annual revenue when the controls take effect.

Detroit has been home to the highest auto insurance rates in Michigan. But since last summer, drivers who have lowered or opted out of PIP coverage are seeing significant rate reductions. During his State of the City address this month, Mayor Mike Duggan said that once the new law's cost controls kick in in July, "the rates will drop again."

Poe, the CURE Auto Insurance executive, said the cost controls are critical to his company coming to Michigan because they greatly reduce the incentive for medical overbilling and no-fault fraud.

A 2017 Free Press investigation found that some metro Detroit clinics that treated auto accident victims billed no-fault insurance at prices far above what hospitals bill health insurers such as Blue Cross Blue Shield, as much as $5,300 for a single MRI image or nearly $200 a day to shuttle a patient between appointments.

"The new reform bill does not actually get its teeth until July 1 of 2021," he said. "That is why we won't step foot — and no one will step foot as a new carrier in Michigan — until July 1 of 2021."

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Although reimbursement rates for no-fault medical providers will drop with the new cost controls, the rates will still be more generous than reimbursements that have long been offered under Michigan's Workers' Compensation program.

Payments to hospitals and clinics that treat Workers' Compensation patients were, on average, 134% of Medicare rates in 2019, a state official said. By comparison, the forthcoming no-fault reimbursement rates will generally be limited to 200% to 230% of Medicare.

Also in July, the new law will begin limiting payment for in-home attendant care to no more than 56 hours per week if the care is provided by a relative. Accident victims needing more hours of insurance-paid care can still get it from a commercial provider.

The law's attendant care restrictions followed anecdotes that some relatives of car crash victims were billing for 24 hours a day and making over $100,000 a year as care providers for a patient.

More reimbursement controversy

The latest controversy with the new auto insurance law concerns planned cuts to no-fault reimbursement for specialized services often used by the most catastrophically injured crash victims who don't have Medicare codes.

Starting in July, those services are to generally be billed at 55% of whatever amount the clinic or provider billed them at in 2019. Operators of some rehab clinics contend that is too deep a cut and will force them to reduce services, lay off staff and possibly close.

The Michigan Brain Injury Provider Council announced Thursday the results of its survey of more than 110 brain injury rehab providers in which 86% have either no confidence or very little confidence that they can continue operating their business at a sustainable level if the reimbursement cuts happen.

The council is pressing state lawmakers to approve what it considers a patch to the auto law that would stop the 55% reimbursement cuts from happening and instead tie the cost of those specialized rehab services to a newly created fee schedule that the council says is calibrated to about 200% of Medicare rates.

"We're not fighting the auto no-fault reform package with this bill; it's to correct it so that we can continue to provide services," said Tom Judd, the council's president and a manager at a brain injury rehab clinic. "This is meeting the intent of the law, getting these non-coded Medicare services to the equivalent of 200% of Medicare."

Critics of the brain injury group's bill note how the proposed fee schedule was created and copyrighted by the CEO of Rainbow Rehabilitation Centers and the executive director of Hope Network, two organizations whose future reimbursement would be set by the document.

The Insurance Alliance of Michigan, an industry group, opposes the bill and claims it would allow brain injury clinics "to continue the same unscrupulous overcharging they have done for decades."

ContactJC Reindl at313-222-6631 or jcreindl@freepress.com. Follow him on Twitter @jcreindl.

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Detroit Free Press July 9, 2021

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BUSINESS

New Michigan auto insurer doesn't use credit scores, charges lower rates

JC Reindl Detroit Free Press

Published 6:04 a.m. ET Jul. 9, 2021 | Updated 9:08 p.m. ET Jul. 10, 2021

Until last week, Patrick Palmer was paying an average of $295 a month to insure his 2008 Chevy Trailblazer.

Even though he has a good driver discount, the 53-year-old Detroit resident admits to having a poor credit history, and credit history is typically a big factor in auto insurance rates in Michigan, especially high-cost urban areas like Detroit.

Now Palmer is paying $128 a month after switching insurance companies.

"Man, it's a blessing," said Palmer, who works as a manager at a pizzeria. "That's money I can keep in my pocket. I am living check to check."

His new company, a small carrier known as CURE Auto Insurance or Citizens United Reciprocal Exchange, entered Michigan last week and is an auto insurance company — possibly the only one in Michigan — that doesn't use a credit score-like metric known as an "insurance score" when setting rates for drivers.

Although studies have found a connection between lower insurance scores and the likelihood of a person filing a claim, consumer advocates say that their use is unfair and discriminatory because it makes insurance more expensive for the people who can least afford it.

According to CURE's CEO Eric Poe, the not-for-profit company also is one of the few auto insurers that fully appreciate the big changes to insurance risk that happened with Michigan's 2019 overhaul of the no-fault system, and, unlike some bigger brand-name insurance companies, CURE isn't hesitant to give customers significantly lower rates right away rather than waiting years for fuller data.

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CURE is now racing to add customers before those larger and hesitant insurance companies finally lower their rates across the state, Poe said. CURE previously only wrote policies in New Jersey and Pennsylvania, and waited until this month to enter Michigan because that is when new medical cost controls took effect as part of the 2019 overhaul.

Poe says his company wouldn't be viable in Michigan without the cost controls.

More: New auto insurers flocking to Michigan after no-fault overhaul

More: Some fear new Michigan no-fault auto insurance rule will force victims into nursing homes

"The market is not correctly reflecting what the actual reform laws are going to do in terms of losses, so, as a result, the rest of Michigan's auto insurance marketplace is not having rates that are as low as mine," Poe said. "There is only going to be a three-year window of time before all the numbers come in and everybody in the market just drops their rates."

New Jersey-based CURE is one of 28 auto insurers or new affiliates of insurers that have sought authorization to potentially join Michigan's insurance market since Gov. Gretchen Whitmer signed the no-fault overhaul. Of those, four insurers, including CURE, that are new to Michigan have been approved or are pending approval to start writing polices. The others are Arch Insurance, Berkley Insurance Co. and Branch Insurance.

Poe said that for moral and ethical reasons, CURE doesn't consider credit scores or "insurance scores" or other non-driving factors such as education credentials, and instead relies primarily on customers' driving history.

He said CURE was eager to enter Michigan because the company got its start in 1990 when New Jersey was experiencing its own auto insurance affordability crisis. The company was started by Poe's mother, an insurance actuary, and his stepfather, a former New Jersey insurance commissioner.

CURE is considered a reciprocal insurance exchange, which is when a group of people with similar backgrounds pool their premiums and share the combined risk to reduce everyone's premiums. Today, 88% of its 40,000-plus customers are in New Jersey and the others in Pennsylvania.

"The reason why we are boldly going into the state of Michigan is we are probably one of the few carriers that are small enough to know what happens with this (overhaul) bill," Poe said.

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"We are not big enough to compete with publicly traded insurance carriers, but I will tell you this, they don't take risk when they don't need to. So what you tend to see when there are reform bills of this magnitude is the market is going to be very slow to react until they see the data. That's what we experienced in New Jersey."

Since CURE launched this month in Michigan, the cheapest policy it has done was $77 for six months, Poe said. That policy went to a customer in rural Michigan who chose liability-only coverage, $0 for personal injury protection or PIP and the minimum $50,000 bodily injury coverage.

There have been multiple other policies in the $300s for six months, also with $0 PIP coverage, he said.

Prior to July 2020, all Michigan policies had to include unlimited PIP and it was the most expensive component of insurance premiums in Detroit.

For Palmer, his six-month policy for his dented 2008 Trailblazer came out to $729, plus a bit extra to pay in monthly installments.

But what's unique about his policy is that unlike the rural Michigan customer with the sub-$100 rate, Palmer did not pick the absolute cheapest coverage options. His policy has $500,000 of PIP and $250,000 per-person for bodily injury, according to a copy reviewed by the Free Press. (Like the rural customer, his policy also doesn't include collision coverage.)

Before CURE, Palmer's old insurance policy cost $378 for the first month, then $278 for each subsequent month, he said.

He could never understand why his auto insurance was so expensive for an older vehicle that wouldn't cost much to replace.

"Why should I pay that, especially for an old truck?" he asked.

Palmer said he first heard about CURE when he saw Poe giving a morning interview to a local TV station about the company arriving in Michigan.

"That was a blessing. I woke up right in time to see them talking about that on the news," he said. "I am doing my best to see if I can get some of my friends over here, because once they see what I'm paying and what they can be paying, they might switch."

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Refundable deposit

All of CURE's policies charge customers a "surplus contribution" fund deposit on their base premium. This is a refundable deposit that goes to the benefit of all CURE members, and which customers get back if and when they decide to leave CURE. The deposit equals 25% of a customer's initial base premium, which for Palmer, came out to $146 on top of his $583 base, for a total premium of $729 for six months.

So far, CURE's average Michigan six-month policy costs $758 — including the deposit, Poe said, and many of those customers aren't dropping PIP to get the lowest possible rates.

"Even with the 25% deposit, our out-of-pocket cost is still substantially lower than the market," he said.

Poe acknowledged that CURE's stance against using credit-derived insurance scores could result in adverse selection, meaning that drivers with poorer credit history and higher statistical likelihood for filing claims might be disproportionately attracted to CURE — potentially causing financial problems in the future.

But CURE has accounted for that risk, he said, and can still offer rates below what many other insurers have for good drivers with subpar credit histories.

The fine print

Michigan's 2019 overhaul of the auto no-fault system added new prohibitions against insurance companies using some non-driving factors when setting rates, specifically sex, marital status, home ownership, occupation and education level.

However, the reform still allowed insurers to use insurance scores, which are variations of credit scores that can help predict the likelihood of someone filing a claim. Even though the legislation did include a line banning the use of "credit scores," insurance companies generally don't use straight credit scores but rather "insurance scores" derived from credit scores.

Douglas Heller, a prominent national consumer advocate who has followed Michigan's no-fault changes, said he thought this small-print detail was a sneaky thing.

“The bill was written intentionally to look like it was prohibiting the use of credit while explicitly maintaining it exactly as it always was used," Heller said. "No insurance carrier in Michigan ever used credit scores, they always used credit-based insurance scores, which are

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"Like your driving record, your credit rating is a helpful tool for car insurance companies to use when assessing your risk as a driver. However, insurance scores are not the sole factor used to underwrite and price insurance," said Loretta Worters, a spokesperson for the Insurance Information Institute, an industry-funded organization.

Three states — California, Massachusetts and Hawaii — have completely banned the use of insurance scores in selling auto insurance. Nevada and Washington enacted temporary bans in response to the COVID-19 pandemic.

Heller said it is encouraging to see a new insurer in Michigan that doesn't use insurance scores, although he doubts the arrival of CURE is enough to help everyone who needs affordable insurance.

"One insurance company cannot serve the entire market of financially vulnerable consumers," Heller said. "That's not a viable spreading of risk."

ContactJC Reindl: 313-222-6631 or jcreindl@freepress.com. Follow him on Twitter @jcreindl. Read more on business and sign up for our business newsletter.

EXHIBIT 5

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Act No. 65
Public Acts of 2021
Approved by the Governor
July 15, 2021
Filed with the Secretary of State
July 15, 2021
EFFECTIVE DATE: July 15, 2021

STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Senator Stamas

ENROLLED SENATE BILL No. 28

AN ACT to make, supplement, and adjust appropriations for various state departments and agencies for the fiscal year ending September 30, 2021; and to provide for the expenditure of the appropriations.

The People of the State of Michigan enact:

PART 1

LINE-ITEM APPROPRIATIONS

Sec. 101. There is appropriated for various state departments and agencies to supplement appropriations for the fiscal year ending September 30, 2021, from the following funds:

APPROPRIATION SUMMARY		
GROSS APPROPRIATION	**$**	**25,000,000**
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers		0
ADJUSTED GROSS APPROPRIATION	**$**	**25,000,000**
Federal revenues:		
Total federal revenues		0
Special revenue funds:		
Total local revenues		0
Total private revenues		0
Total other state restricted revenues		0
State general fund/general purpose	**$**	**25,000,000**
Sec. 102. DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES		
(1) APPROPRIATION SUMMARY		
GROSS APPROPRIATION	**$**	**25,000,000**
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers		0
ADJUSTED GROSS APPROPRIATION	**$**	**25,000,000**
Federal revenues:		
Total federal revenues		0
Special revenue funds:		
Total local revenues		0
Total private revenues		0

		For Fiscal Year Ending Sept. 30, 2021
Total other state restricted revenues		0
State general fund/general purpose	**$**	**25,000,000**
(2) ONE-TIME APPROPRIATIONS		
Post-acute auto injury provider relief fund	$	25,000,000
GROSS APPROPRIATION	**$**	**25,000,000**
Appropriated from:		
State general fund/general purpose	**$**	**25,000,000**

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

GENERAL SECTIONS

Sec. 201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state sources under part 1 for the fiscal year ending September 30, 2021 is $25,000,000.00 and total state spending from state sources to be paid to local units of government is $0.00.

Sec. 202. The appropriations made and expenditures authorized under this part and part 1 and the departments, commissions, boards, offices, and programs for which appropriations are made under this part and part 1 are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 203. If the state administrative board, acting under section 3 of 1921 PA 2, MCL 17.3, transfers funds from an amount appropriated under this act, the legislature may, by a concurrent resolution adopted by a majority of the members elected to and serving in each house, inter-transfer funds within this act for the particular department, board, commission, office, or institution.

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Sec. 301. (1) The post-acute auto injury provider relief fund is created within the department of treasury.

(2) From the money appropriated in part 1 for the post-acute auto injury provider relief fund, $25,000,000.00 must be deposited into the fund.

(3) All money in the fund is appropriated and is available for expenditure. Expenditures are limited to support purposes as specified in this section. Not more than $500,000.00 may be expended from the fund by the department for administrative expenses incurred under this section.

(4) Interest and earnings from the investment of money deposited into the fund must be deposited into the general fund.

(5) A provider may receive a distribution from the fund only if the charge pertains to a service for which there is no Medicare code and the provider can demonstrate to the department that fees under section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157, have caused the provider to bill at rates that are below the cost of providing the service. To meet this standard, a provider must submit all of the following to the department with the provider's application:

(a) The total number of patients treated by the provider and the entities billed for each patient.

(b) A full list of charges and payments received in response to those charges and supporting invoices for all charges that were charged to and paid by auto insurers for motor-vehicle-accident-related care in 2019.

(c) A full list of charges and payments received in response to those charges and supporting invoices for all charges that were charged to and paid by other forms of insurance or other entities for non-motor-vehicle-accident-related care in 2019.

(d) Evidence to demonstrate that the provider attempted to bill for a service that does not have a Medicare code, has not been paid at the charged rate or otherwise reimbursed, and that adjustment has been upheld by the department during the utilization review process under the utilization review rules, R 500.61 to R 500.69 of the Michigan Administrative Code, promulgated by the department under section 3157a of the insurance code of 1956, 1956 PA 218, MCL 500.3157a.

(e) Documentation indicating a good-faith effort to alter business practices to adhere to section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157. The department may determine further requirements to achieve compliance with this subdivision.

(f) Documentation, including full financial statements, indicating a systematic deficit caused by changes to charges, as required by section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157, and payments received in response to those charges. The department may determine further requirements to achieve compliance with this subdivision.

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(g) Any other information that the department considers to be necessary to determine whether distribution of money from the fund to a provider is appropriate. The department may determine further requirements to achieve compliance with this subdivision.

(6) A provider that enters this state as a new licensee or that reorganizes, reincorporates, or otherwise reestablishes itself in the same or similar business under a new name after January 1, 2019, is not eligible to receive money from the fund. The department shall include the prohibition under this subsection in application guidance provided by the department.

(7) The department shall administer the fund, including reviewing and approving applications for funding and distributing funding to post-acute auto injury providers. Specifically, the department shall comply with all of the following requirements:

(a) The department shall develop application and review processes. These processes must include criteria established under this section. The department shall utilize data previously submitted during the utilization review process under the utilization review rules, R 500.61 to R 500.69 of the Michigan Administrative Code, to satisfy data requirements in an application.

(b) The department shall develop a process to retrieve any distributed money that is later determined to have been distributed as a result of fraudulent conditions or as a result of fraudulent information. Any fraudulent activity related to the fund constitutes fraud for purposes of the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302. Any funds retrieved under this subdivision may be dispersed according to this section, even if the fund was previously exhausted.

(c) The department shall begin accepting applications for distributions from the fund not later than 30 days after the effective date of the appropriation in part 1 described in subsection (2).

(d) The department shall review all applications and issue a determination not later than 21 days after the receipt of a completed application. A provider that submits an incomplete application is subject to a new 21-day application period after the completed application is received. If the department determines a distribution from the fund is appropriate, that distribution shall be made to the provider within 7 days of the determination.

(e) The department shall report to the legislature 15 days before the application process opens. This report must include a sample application and any corresponding guidance or rules promulgated by the department.

(f) The department shall consider how charges and payments received in response to those charges in an application relate to similar care charged to and reimbursed by other forms of insurance, including, but not limited to, Medicaid, workers' compensation, and private health insurance. The department may contract with a third party to access and use available non-motor-vehicle-accident-related health care and insurance data for the purpose of reviewing applications.

(g) The department shall use data collected, developed, and compiled as a result of the utilization review and fee schedule rules promulgated by the department, in accordance with sections 3157 and 3157a of the insurance code of 1956, 1956 PA 218, MCL 500.3157 and 500.3157a.

(h) The department shall not consider lost profits alone as a criterion for awarding money to a provider from the fund. The provider must demonstrate that the provider is experiencing a systematic deficit with respect to services offered to persons injured in motor vehicle accidents.

(i) Notwithstanding any provision of law to the contrary, the department shall document and make available on a publicly accessible website all information related to approval or denial of distributions of money to providers from the fund.

(j) The department shall award money from the fund to providers on a first-come, first-served basis. Except as otherwise provided in subdivision (b), no money may be paid from the fund after the fund is exhausted.

(k) The department shall not distribute more than $500,000.00 from the fund to a provider in a calendar year.

(8) The department shall provide a quarterly report to the legislature, and shall make the report available on a publicly accessible website, that includes all of the following:

(a) The number of providers that have applied for funding from the fund.

(b) A list of the providers that have been approved for funding and the amounts awarded.

(c) A list of providers that have been denied funding and the reason for each denial.

(d) For each provider approved for a funding distribution, metrics on all charges and payments received in response to those charges under section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157, that were determined to be inadequate.

(e) Except for information the disclosure of which is prohibited by law, information on provider charges and payments received in response to those charges and how those charges and payments compare to similar charges and payments in the non-auto insurance market.

(f) The total amount expended and remaining in the fund.

(9) One year after the department begins accepting applications for distributions from the fund or after money in the fund is exhausted, whichever occurs first, the department shall report to the legislature, and make the report available on a publicly accessible website, all of the following:

(a) Aggregated data reported in the quarterly reports under subsection (8).

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(b) Analysis of the impact of section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157, and of the distributions from the fund and any recommendations the director may wish to offer to the legislature.

(10) It is the intent of the legislature that information contained in the reports required under subsections (8) and (9) and other relevant data will be used to determine whether changes are necessary to section 3157 of the insurance code of 1956, 1956 PA 218, MCL 500.3157, to ensure adequate services in the future.

(11) A provider that avails itself of the fund and to which funds are distributed does so as their exclusive remedy and forgoes all other forms of recovery for the charges for which reimbursement is sought under this section. Any payment under this section is inadmissible for any purposes outside of claims made with the department.

(12) Funds appropriated in part 1 for the fund must be used to support distributions to providers facing systematic losses with respect to services offered to persons injured in motor vehicle accidents. The unexpended funds appropriated in part 1 for the fund are designated as work project appropriations and, subject to subdivision (d), any unencumbered or unallotted funds shall not lapse at the end of the fiscal year and are available for expenditures for projects under this subsection until the projects have been completed. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to support distributions to providers experiencing systematic losses with respect to services offered to persons injured in motor vehicle accidents.

(b) The project will be accomplished by using state employees or contracts with service providers, or both.

(c) The total estimated cost of the project is $10,000,000.00.

(d) The completion date of the work project is September 30, 2022. Any unexpended funds will lapse to the general fund.

(13) As used in this section:

(a) "Department" means the department of insurance and financial services.

(b) "Fund" means the post-acute auto injury provider relief fund created in this section.

(c) "Patient" means an injured person who is entitled to benefits under section 3107 of the insurance code of 1956, 1956 PA 218, MCL 500.3107.

(d) "Provider" means a post-acute brain or spinal injury clinic or other person that renders treatment or training, or a post-acute brain or spinal injury attendant care provider.

This act is ordered to take immediate effect.

Margaret O'Brien

Secretary of the Senate

Gary E Randall

Clerk of the House of Representatives

Approved_____

_____

Governor

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EXHIBIT 6

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Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

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Senate Bill 28 (as enacted)
Sponsor: Senator Jim Stamas
Senate Committee: Appropriations
House Committee: Appropriations

Date Completed: 7-22-21

PUBLIC ACT 65 of 2021

CONTENT

The substitute for the supplemental appropriates $25.0 million Gross and GF/GP to the Department of Insurance and Financial Services to create a post-acute auto injury provider relief fund within the Department of Treasury.

Table 1

Budget Area	Gross	GF/GP
Insurance & Financial Services	$25,000,000	$25,000,000
TOTAL	**$25,000,000**	**$25,000,000**

FISCAL IMPACT

The bill provides fiscal year (FY) 2020-21 line-item appropriations of $25.0 million Gross and GF/GP to create a fund that would provide financial support to providers of services for individuals injured in vehicular accidents to the extent that said providers can demonstrate financial losses for certain services to such individuals under certain circumstances. Table 2 summarizes the details of the appropriations in the supplemental.

FY 2020-21 BOILERPLATE LANGUAGE SECTIONS-PART 2

Sec. 201. General. Records amount of total State spending and payments to local units of government.

Sec. 202. General. Subjects appropriations and expenditures in the article to the provisions of the Management and Budget Act.

Sec. 203. General. Directs that, if the State Administrative Board transfers funds appropriated in the Act, the Legislature may, by concurrent resolution requiring a majority vote in each chamber, transfer funds within a particular department, board, commission, officer, or institution.

Sec. 301. Insurance and Financial Services. Creates the Post-Acute Auto Injury Provider Relief fund within the Department of Treasury and directs that $25.0 million be deposited in that fund. Limits the amount of the fund that may be used for administrative expenses to $500,000. Directs that interest and earnings from investment of fund revenue must be deposited in the State's General Fund. Limits distributions to providers to charges for services for which there is no Medicare code and for which the provider can demonstrate that fees under the Insurance Code have caused the provider to bill at a rate that is below the cost of providing the service. Requires the following information to be included by the provider in the

application for distribution from the fund: 1) The total number of patients treated and the entities billed for each patient. 2) A full list of charges and payments received for those charges and supporting invoices for all charges for motor vehicle accident care paid by auto insurers in 2019. 3) A full list of charges and payments for those charges and supporting invoices for all charges for motor vehicle accident care paid by other forms of insurance and other entities in 2019. 4) Evidence that the provider attempted to bill for a service that does not have a Medicare code, evidence that the provider has not been paid at the charged rate or otherwise reimbursed, and evidence that adjustment has been upheld by the Department of Insurance and Financial Services pursuant to utilization review rules. 5) Documentation indicating a good faith effort to alter business practices to adhere to the Insurance Code, with flexibility given to the Department of Insurance and Financial Services to determine further requirements to achieve compliance with the provision. 6) Documentation, including full financial statements, indicating a systemic deficit caused by changes to the Insurance Code, with flexibility given to the Department of Insurance and Financial Services to determine further requirements to achieve compliance with the provision. 7) Any other information determined by the Department of Insurance and Financial Services to determine whether distribution of money from the fund is appropriate.

Bars fund eligibility for any entity that enters the State as a new licensee or reorganizes, reincorporates, or otherwise re-establishes itself under a new name after January 1, 2019. Directs the Department of Insurance and Financial Services to 1) administer the fund and review and approve applications, 2) develop application and review processes including criteria established in Sec. 301 and utilize data previously submitted pursuant to Administrative Rules, 3) develop a process to recoup distributed money that is later determined to have been distributed fraudulently and treats fraudulent activity as fraud pursuant to the Insurance Code and allows any recouped funds to be dispersed pursuant to Sec. 301, 4) accept applications for the Fund no later than 30 days after the effective date of the appropriation, 5) review all applications and issue a determination within 21 days of receipt of a completed application, with distributions made within 7 days of that determination, 6) report to the Legislature 15 days before the application process opens including a sample application and guidance and rules, 7) consider how charges and payments received in an application relate to care charged to and by other forms of insurance with the Department authorized to contract with a third party to access health care and insurance data to review applications, 8) use data collected as a result of utilization review and fee schedule rules in accordance with the Insurance Code, 9) not consider lost profits alone as a criterion for awarding money to a provider and require a provider to demonstrate a systematic deficit with respect to services, 10) document and make publicly available on a website all information related to the approval or denial of distributions from the fund, 11) award money from the fund on a first-come first-served basis, with no money paid from the fund after appropriated or recouped revenue is exhausted, and 12) limit total distributions to any individual provider to a maximum of $500,000 in a calendar year.

Requires a quarterly report to the Legislature from the Department of Insurance and Financial Services including the number of providers that have applied for funding, a list of providers that have been approved for funding and the amounts awarded, a list of providers that have been denied funding and the reasons for the denials, and metrics for approved payments on all charges and payments received that were determined to be inadequate, information on provider charges and payments in comparison to the non-auto insurance market, and the total amount expended and remaining in the fund.

Requires a report to the Legislature one year after the Department of Insurance and Financial Services begins accepting applications or after funding is exhausted with aggregated data from the quarterly reports, analysis of the impact of the Insurance Code provisions on reimbursement and recommendations from the Department director to the Legislature.

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States intent of the Legislature that information from the reports to the Legislature shall be used in determining whether changes are needed to the Insurance Code to ensure adequate services in the future. Requires a provider that avails itself and receives revenue from the fund does so as its exclusive remedy and forgoes all other forms of recovery for any charges and makes any payment inadmissible for any purposes outside of claims made. Creates a work project for the funding. Defines "patient" as an injured person entitled to benefits under the Insurance Code and defines "provider" as a post-acute brain or spinal injury clinic or other person who renders treatment or training or a post-acute brain or spinal injury attendant care providers.

Table 2

Department/Program	Gross	GF/GP
Insurance and Financial Services		
Post-acute auto injury provider relief fund	$25,000,000	$25,000,000
Total Insurance and Financial Services	**$25,000,000**	**$25,000,000**
Total FY 2020-21 Supplemental Appropriations	**$25,000,000**	**$25,000,000**

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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