

# APM&R

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October 4, 2011

House Insurance Committee Members:

Thank you for the opportunity to publicly comment on House Bill 4936, proposing legislative changes to Michigan's Auto No-Fault Insurance Act.

I would like to comment as an experienced Physical Medicine & Rehabilitation specialist providing medical care for catastrophically-injured individuals with traumatic brain injuries and spinal cord injuries, as well as being an experienced Medical Administrator and a concerned citizen wishing to act as a steward concerned with the state's finances and the Health Status of its communities.

Briefly, I have been a practicing physician in the State of Michigan for over 30 years. My focus has been on the treatment of catastrophically-injured individuals with traumatic brain injuries and spinal cord injuries and the development and supervision of inpatient rehabilitation programs and post-acute rehabilitation programs that are cost-effective, subject to rigorous utilization review, and are CARF (Commission on Accreditation of Rehabilitation Facilities) accredited.

I would like to acknowledge the current Michigan No-Fault Insurance Act of 1973. This act established lifetime coverage for reasonable and necessary expenses and accommodations for the patient's care, recovery, and rehabilitation. This outstanding vision of Republican Governor William Milliken was a brilliant piece of legislation that assured that these services would be provided through the private sector and not burden the public sector.

At this time, when Michigan is getting poorer, as 2010 Census data shows, this concept of keeping these expenses in the private sector could not be more important.

Between 2009 – 2010 Michigan residents sustained a 1.4% drop in median household income. More Michigan residents are living in poverty. Michigan is last in the nation with a rate of in-migration. Specifically, people moving into the state at an average of 1.2% in 2010 compared to the national average of 2.2%. This, of course, is tied in with employment. Job opportunities are not here. The proposed changes of House Bill 4936 will only exacerbate this problem.

On October 1<sup>st</sup>, up to 12,000 residents statewide lost welfare assistance.

The poverty rate has increased to 16.8% in Michigan and 37.8% in Detroit. The national average is 15.3%.

Michigan residents with some form of health insurance coverage currently, is at 87.6%. Those with private insurance have dropped to 68.6%, while public health insurance coverage has

increased to 33.2%. In Detroit 79% have insurance – driven by a decline in private health insurance coverage from 42.8% to 39.1%. This implies that public assistance will need to keep increasing. Vocational services through agencies such as Michigan Works! will need to have increased budgets.

Catastrophic injuries, such as traumatic brain injury and spinal cord injuries, are defined that way because they are, indeed, catastrophic in terms of the severity of the injury, the trajectory of a person's life, the impact on their families and communities, and the costs associated with them. In many cases these injuries are "a life sentence." Thus, rehabilitation support efforts do not end after short periods of time. I will discuss this further later.

Currently, insurance companies selling no-fault insurance in Michigan have a "stop-loss" at \$500,000 per case. The Michigan Catastrophic Claims Association (MCCA) acts as a reinsurer to protect the no-fault carriers for expenses greater than \$500,000. The MCCA covers the remainder of the lifetime benefit. Michigan no-fault auto insurance carriers are not "an endangered species." It is my understanding that their current profit is in the range of 22%.

The Auto No-Fault insurance carriers have ample recourse to assure that they are paying only for reasonable and necessary expenses. They can ask the prescribers for clarification. They can require letters of medical necessity for products and services. They have the right to obtain Independent Medical Evaluations from other physicians to help them clarify the case or an expense. They can hire nurse case managers to assist them. They already utilize Bill and Review Units to assess expenses. They have the ability to issue denials until information is clarified to their satisfaction. They also have the ability to request judicial reviews.

The MCCA was initiated in 1978. The current rate of \$145 per vehicle is an outstanding value for the peace of mind and the services it provides. Any time a driver gets into a vehicle alone or with multiple people, they have the peace of mind that if there is an accident, whether they are at fault or not, their expenses will be covered as a lifetime benefit.

Currently there is lifetime coverage without a ceiling for reasonably necessary products, services, and accommodations. This will be eliminated. No one will be able to buy this coverage any longer. Coverage for such expenses will only be available in incremental coverage levels of \$250,000, \$500,000, \$1,000,000, or \$5,000,000. If a person incurs medical expenses in excess of the selected PIP coverage, then the victim would have no recourse other than to file a lawsuit against the at-fault party to recover the unpaid balance. Currently drivers cannot sue for medical expenses because they are reimbursable. When that is no longer the case, they will have no recourse but to file a lawsuit.

At this point, then, this insurance can no longer be considered "no-fault insurance."

It is anticipated that 95% or more of drivers will choose the \$250,000 level. Unfortunately, the savings to consumers are minimal. The cost to the driver, if they are injured significantly, may be catastrophic. The cost to the taxpayers in the State of Michigan will be catastrophic.

Those who want more than \$250,000 coverage will end up paying more than what they are paying for unlimited coverage at the current time.

Employees driving vehicles furnished by their employers will be limited to the coverages selected by the employer, regardless of whether the injured employee purchased higher coverages on their own personal vehicle.

The legislation contains no guidelines regulating how insurance companies can price the reduced PIP coverages.

The Workers Compensation Fee Screen has been proposed to be applied to Personal Injury Protection (PIP) benefits. This is regardless of the severity of the injury. I can attest to you that very few doctors actively participate with Michigan no-fault insurance at the current time. The demands of documentation and paperwork are extensive for the current level of reimbursement. Rehabilitation physicians at Beaumont Hospital in Royal Oak have chosen over the last several years to no longer see accident victims with no-fault insurance. I can only imagine how difficult it will be to have injured patients gain access to services after the acute phase.

Historically, Workers Compensation was developed in 1912 without fee screens. The fee screens were added in the 1980s. They were developed to protect the manufacturing industry in the State of Michigan. At the time they were implemented, there was a risk of manufacturing companies relocating to states such as Indiana, Tennessee, Alabama, and Texas, as well as to Mexico. Of course, there is also a greater risk of manufacturing workers becoming injured. The fee screens were put in place to save the manufacturing companies money and to protect jobs. It was not taxpayer funded, as the film industry credits have been. It was funded by hospital systems and healthcare workers as a "loss leader" to attract and maintain manufacturing business.

The No-Fault insurance business has nothing in common with the manufacturing business. It is not a case of attempting to attract or maintain business in Michigan. The Auto No-Fault insurance business is thriving in Michigan, as attested to by the current profit levels. The MCCA is robust, with \$400 million in receipts over expenses in 2010 (see MCCA report).

There are no provisions as to how the MCCA will be maintained for those currently having their expenses reimbursed by it. Currently it is the reinsurer for expenses greater than \$500,000. Very few people will be purchasing greater than \$500,000 in the future. Therefore, it is not clear how the MCCA will continue to fund those already receiving lifetime benefits. This is a defined benefit plan without a method to continue to fund it once PIP benefits may be reduced.

One can only assume, then, that the taxpayers will be obligated to fund it.

The taxpayers of the State of Michigan are at great risk of taking on incremental funding expenses. With this change from the private sector to the public sector, it is estimated that the incremental cost to Medicaid will be \$30 million dollars per year at least over the first 2 years. When people exhaust their healthcare benefits, Medicaid is the safety net.

When this legislation was proposed, there was a misconception that an individual's private health insurance would be able to step in and provide necessary funding. This is not accurate. First of all, as we have seen above, not everyone has private health insurance.

Medicare is excluded from paying auto no-fault benefits in the State of Michigan. A recent review of a Citizens Insurance Health Insurance Verification Form confirms this. However, without adequate rehabilitation, injured individuals will more likely become disabled and qualify for Medicare after 24 months. This will be because more people will be unable to be rehabilitated and more will require Social Security Disability, increasing the tax burden on Michigan residents.

A traumatic brain injury is an alteration in "brain-behavior" relationships. Thus, it may impact a person physically, cognitively, emotionally, and behaviorally. Thus, we can anticipate increased expenses with Community Mental Health; the Judicial System as more of these patients are unsupervised, do something impulsive and become arrested; the Corrections System as more become incarcerated; the Educational System as students need more support that they cannot get privately; and the Vocational Rehabilitation system, as most will have long exhausted their benefits by the time they are capable of being considered for vocational rehabilitation or work reintegration. Guardians do not want to have legal responsibility for active TBI patients on the streets with no funding. They do not fit into AFC homes and end up with legal problems.

All of these will increase the tax burden on the citizens of Michigan.

Additionally, according to the Citizens Insurance form several large employers have health plans that do not provide primary coverage for injuries resulting from motor vehicle accidents. These include federal employees such as postal workers or military employees. The following large employers also have exclusions: Wal-Mart, Target, Meijer, Dow, and Nissan. The following hospital groups also have exclusions in their private healthcare policies, including Beaumont, Allegiance in Jackson, St. John's Providence, Trinity, Sparrow, Port Huron, and McLaren.

Even when individuals have private insurance, there may be significant limitations in coverage that would have a negative impact on individuals injured in motor vehicle accidents. Specifically, Blue Cross/Blue Shield and Blue Care Network do not provide outpatient coverage for cognitive therapy (therapy aimed at improving the deficits brain-injured patients have with attention, concentration, memory, planning, organization, planning, problem-solving and self-awareness). Most private health plans offer a total of 60 visits per year of occupational therapy, physical therapy, and speech therapy. This is grossly insufficient to meet the needs of these catastrophically injured individuals who may need therapies for several years. Most plans have limited mental health coverage. They have limits on durable medical equipment. They do not provide for home modifications to make a home accessible for a paralyzed individual. They do not provide for vans or van modifications similarly. They may provide no coverage for high-tech prosthetics or orthotics.

There are significant adverse "unintended consequences" from the proposed legislation that will impact the state. When looking at the impact of PIP "choice" and fee screens, this will have a significant impact on the finances of healthcare systems, particularly those with trauma centers. Nick Vitale, CFO for the 3 hospital Beaumont system, noted in March of this year that the Beaumont system could lose up to \$25 million in the first year. You can multiply this by the DMC, Henry Ford Hospital, St. John Providence, Trinity, Oakwood, University of Michigan, McLaren, Spectrum, etc.

It is clear that under such circumstances the impact would be the cutting of services and cutting of staff. This would lead to more errors and decreased satisfaction. There is a possibility of a drain of physicians from the state under those circumstances.

As an example, Oakland County has at least 5 of the large healthcare systems represented within the county. The impact would be enormous. This would also have an impact on the new Oakland University Medical School, which Oakland County executive, Brooks Patterson, was quoted as saying would bring \$3.2 billion into Oakland County over the next several years.

The only way to make up this shortfall will be to increase the cost of private health insurance.

Today I spoke with one of the largest Blue/Cross Blue Shield managing agencies in the state. I learned that there was no question that this would drive costs up. He noted that as the risk goes up the cost goes up.

When there are increased benefit costs, they have to be shifted. Employers will sustain some of the costs, but it will shift a portion onto employees. Additionally, this will have a negative impact on providing raises. Individuals will have less discretionary income. Companies will limit their hiring. They will raise prices, which will be inflationary.

Therefore, we will saddle residents within the State of Michigan to higher taxes, as well as higher benefit expenses with limited hope for increased wages.

Recently, General Motors and the UAW reached agreement on a 5-year contract. This contract was based on benefit surety. The unintended consequences of House Bill 4936, if passed, would increase the cost of those benefits, making the success of General Motors more tenuous. Currently the UAW is negotiating with Ford and Chrysler, and with this bill getting public scrutiny they will have to consider these risks in their negotiations, as well.

One can only imagine how any company considering relocating to Michigan will respond to this inappropriate attempt to move expenses from the private sector to the public sector.

There have been discussions that there needs to be no-fault reform because premiums are unaffordable for some. Specifically, premiums are unaffordable in Detroit.

Unfortunately, unless there is a significant slashing of premiums, it is not going to become affordable.

40% of people in Detroit may not have auto insurance. 40% of people in Detroit are also currently unemployed. 37.8% are residing at the poverty level. Thus, auto insurance would be unaffordable at any rate.

The state cannot sustain further loss of jobs. Globally I spoke about the impact on the healthcare industry in Michigan. Looking at the Rehabilitation industry as a subset of this, there is the potential for loss of 5,000 jobs and \$200 million. These jobs provide the major support in many communities. Not only do they provide direct healthcare services, but also support pharmacies, durable medical equipment suppliers, contractors, accountants, attorneys, and public relations professionals. The loss of up to \$200 million dollars of corporate revenue

translates to approximately \$72 million dollars of reduced payroll taxes to Michigan. As facilities close there will also be the loss of property taxes which will but more pressure on Education.

The expertise developed for traumatic brain injury rehabilitation in the State of Michigan is recognized nationally. Recently, the United States Government awarded 4 of 22 national contracts for support of treating veterans to facilities within the state of Michigan.

There would also be increased litigation costs. Victims incurring medical expenses in excess of their selected PIP coverages will be forced to sue at-fault drivers to recover the unpaid costs, thereby unnecessarily increasing litigation throughout the Michigan court system. The court reform brought on by the Michigan No-Fault Act in 1973 had been able to manage this.

House Bill 4936 proposes to fix a system that is not broken. It currently provides the best coverage in the nation, with premiums only 5% higher than the national average. It is a system for drivers and their passengers paid for only by drivers and not by taxpayers. Other states without no-fault insurance have higher tax burdens, as described above.

The liability portion of the expense for PIP medical benefits is 16<sup>th</sup> in the nation at \$493.56. The average is \$471.09. Thus, it is really only \$22.47 more than the national average. The collision expense alone is 30% higher than the national average. Contrast this to the 5% for PIP, and it is difficult to understand why the reform is on the PIP side and not on the collision side. Even with the combined expense of PIP along with Comprehensive and Collision, Michigan drivers pay only the 11<sup>th</sup> highest fees in the nation.

Allstate Insurance recently published a study last month noting that the accident rate in Detroit was 12.5% higher than the national average. Thus, it is not surprising that costs are higher. There are issues, reportedly, that relate to fraud regarding Comprehensive and Collision. These need to be dealt with directly. Such abuse impacts the state.

As a concerned citizen, I am concerned about increased taxes, increased health benefit costs, increased costs for No-Fault insurance at safe levels of coverage, decreased services for injured auto victims, decreased services available from health care institutions and the health status of our communities.

As a physician with a long history of treating and directing the rehabilitation needs of our citizens, I can tell you that a cap of \$250,000, which most will purchase, will be exhausted in the first few weeks or months, and they would have no access to funds to meet their needs subsequently.

The majority of injured drivers are in their teens and early 20s. Thus, we will be sentencing them and their families and the taxpayers of the State of Michigan to be burdened for 40 to 60 years. Inpatient rehabilitation alone for a paraplegic can be 6 to 8 weeks. For a quadriplegic it can be 3 to 4 months. They will continue to require lifetime services.

A traumatic brain injured patient may have a brain injury, crushed face, require mechanical ventilation, tracheostomy, and feeding tube, as well as dealing with paralysis, cognitive and behavioral deficits. This will impact them for a lifetime.

October 4, 2011

Page | 7

Attendant care benefits are being limited. Family members not certified or registered or licensed under Article 15 of the Public Health Code would be limited to providing services no more than 56 hours per week. For people living in a small house who are not comfortable with outsiders coming into their home, this will have an impact on them. This portion of the proposed bill is retroactive for current and future accident victims. Many family members have given up their jobs to help their injured family members. Some did this years ago. If they are not able to continue this beyond the 56 hours per week, they will not be able to return to the workforce.

The proposed legislation is a "sentence" of bankruptcy for many patients and their families.

There is no confirmed cost savings with the reduced benefits. The proposed formula has never been clarified for confirmed.

The proposed legislation offers no benefits for injured drivers or their families. It only limits benefits. It provides only burdens for the healthcare system, already poorly-funded state agencies, and increased taxes for residents of the state of Michigan.

This legislation does not pass "The Compass for Responsible Government." It will make it more difficult for us to create more and better jobs. It increases the price of government. It increases the cost of living. It increases the cost of doing business. It does not seek to secure our rights to life, liberty, and the pursuit of happiness.

Thank you for the opportunity of sharing my thoughts with you. I am available to discuss these issues with you at any time that is convenient for you.

Respectfully yours,



Owen Z. Perlman, M.D.  
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Chairman, Legacy Society, Brain Injury Association of Michigan  
Medical Director, Rainbow Rehabilitation Centers  
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## RE: SUMMARY OF PUBLIC COMMENTS ON HOUSE BILL 4936

From: Owen Z. Perlman, M.D. 

- Michigan No-Fault Insurance Act of 1973 established Lifetime coverage for reasonable and necessary expenses and accommodations for the patient's care, recovery, and rehabilitation.
- Governor Milliken- brilliant piece of legislation assuring services would be provided through the **private sector**, and not burden the **public sector**.
- Michigan getting poorer – 1.4% drop in median household income/more residents living in poverty/last in nation in in-migration at 1.2%/decreased job opportunities.
- October 1: 12,000 statewide lose welfare assistance.
- Michigan poverty rate 16.8%/Detroit 37.8%.
- Michigan residents with some health insurance coverage – 87.6%/private insurance 68.6%/public health insurance coverage 33.2%.
- Detroit 79% some health insurance/private health insurance coverage 39.1%.
- Implies public assistance will need to keep increasing/vocational service budgets will need to increase.
- Traumatic brain injury and spinal cord injury may be catastrophic injuries and a "life sentence." – rehab efforts do not end after short periods of time.
- Auto no-fault in Michigan has "stop-loss" at \$500,000.00 per case/MCCA acts as re-insurer to protect no-fault carriers for expenses greater than \$500,000.00.
- MCCA responsible for remainder of lifetime benefit/auto no-fault carrier is not an endangered species/22% profit margin.
- Auto carriers have ample recourse to assure they are paying reasonable and necessary expenses: Bill Review Units/Ins. Nurse case managers/IMEs/Letters of medical necessity/Denials-Litigation.
- MCCA rate of \$145.00 per vehicle – outstanding value for peace of mind and services it provides .
- Lifetime coverage without a ceiling would be eliminated. Medical expenses in excess of selected PIP coverage will bankrupt the patient/family and increase lawsuits against the at-fault party to recover the unpaid balance/injured drivers currently cannot sue for medical expenses because they are reimbursable.
- Anticipate 95% or more of drivers will choose the \$250,000.00 level.
- Consumer savings minimal/cost of the injured driver/passengers if insured significantly will be catastrophic/taxpayer cost will be catastrophic.
- Those who choose greater than \$250,000.00 coverage will end up paying more than what they are paying for unlimited coverage at the current time.

RE: SUMMARY OF PUBLIC COMMENTS ON HOUSE BILL 4936

- Workers comp fee screens proposed to be applied to PIP benefits – very few doctors actively participate with Michigan No-Fault Insurance under current reimbursement structure/it will only get worse.
- Workers Compensation developed without fee screens (1912)/fee screens added (1980s) to protect manufacturing industry from relocating/non-tax payer funded by hospital systems and healthcare workers to help the state attract and maintain manufacturing business.
- No-Fault insurance business has nothing in common with the manufacturing business/Auto No-Fault business thriving in Michigan, not looking to leave the State.
- MCCA Robust with \$13 billion in reserves.
- No provisions to fund the MCCA when no longer need stipend for re-insurance.
- Not clear how this defined benefit plan will be closed down without contributions from the drivers – likely taxpayer funded.
- Michigan taxpayers at great risk of taking on incremental funding expenses – change from private sector to public sector. Incremental cost to Medicaid 30 million dollars per year over the first two years.
- When people exhaust their healthcare benefits and their savings, Medicaid is the safety net.
- Misconception that private health insurance will step in and provide necessary funding – not accurate/not everyone has private health insurance – Medicare is excluded from paying auto No-Fault benefits in State of Michigan/Federal employees/Military personnel, and employees of many large employers have exclusions for coverage for injuries resulting from motor vehicle accidents in their policies.
- Less rehabilitation means more people on Social Security Disability, increasing tax burden.
- Despite access to private insurance, significant limitations in coverage has a negative impact on treatment/rehabilitation/BCBS and BCN do not provide outpatient coverage for cognitive therapy/most private health plans offer only a total of 60 visits per year of OT, PT, and speech therapy – grossly insufficient to meet the needs of catastrophically injured individuals who need many more therapies per year and for many more years/limited mental health coverage/limits on durable medical equipment, no coverage for home modifications or for vans or van modifications.
- **Significant adverse unintended consequences for proposed legislation will impact the state.** Impact of PIP choice and fee screen will result in significant decrease in reimbursement for healthcare systems. Beaumont estimates up to \$25 million loss in first year/multiply by all other large healthcare/trauma systems.
- Result is cutting of services and cutting of staff/more errors and decreased satisfaction/drain of physicians from State.
- Make up shortfall by increasing cost of private health insurance/employers pay a portion and shift rest to employees/no raises/less discretionary income/limited hiring/increased pricing – inflationary.
- **Saddle State residents to higher taxes, as well as higher benefit expenses with limited hope for increased wages.**
- Impact on UAW contract negotiations with Ford and Chrysler.

RE: SUMMARY OF PUBLIC COMMENTS ON HOUSE BILL 4936

- Negative impact on companies considering relocating to Michigan.
- Affordability/unaffordable in Detroit for many at any rate.
- Loss of jobs statewide as above/rehab industry subset loss of 5,000 jobs, \$200 million/jobs that provide the major support in many communities and impact non-medical personnel such as contractors, accountants, attorneys, public relations professionals, television and radio commercials/reduce payroll taxes/reduce property taxes putting more pressure on Education.
- Loss of Auto Insurance industry jobs-adjustors-decreased length of claims; decreased need for Bill Review Unit staff
- No significant savings guarantee to subscribers
- Traumatic brain injury rehabilitation expertise recognized nationally/4 of 22 national contracts for support of treating veterans, 4 facilities in Michigan.
- Liability portion for PIP expense 60<sup>th</sup> in nation and only \$22.47 more than national average. *WJM*
- Collision expense alone 30% higher than national average contrasted to 5% for PIP. Combined expense only 11<sup>th</sup> highest fees in nation.
- Allstate Insurance study – accident rate in Detroit 12.5% higher than national average.
- Cap of \$250,000.00 for catastrophic injury exhausted in the first few weeks or months with no access to funds to meet needs subsequently/majority of injuries occur to individuals in their teens and early 20s/sentence them and their families and the taxpayers of the State of Michigan to be burdened for 40-60 years.
- Attendant care benefits limited/family members 56 hours per week/push them to bankruptcy/those family members unable to return to jobs in the workforce.
- Proposed legislation a "sentence" of bankruptcy for many patients and their families.
- No confirmed cost savings with reduced benefits/any cost savings wiped out by increased taxes, private health insurance costs, and out-of-pocket expenses.
- Legislation does not pass "The Compass For Responsible Government." /difficult to create more and better jobs/increases the price of government/increases the cost of living/increases the cost of doing business/**does not seek to secure our rights to life, liberty, and the pursuit of happiness.**