

THE AUTO INSURANCE CONSUMERS' GUIDE TO MICHIGAN NO FAULT REFORM & HOUSE BILL 4612

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CONTENTS

1. Introduction
 2. Raw Deal
 3. Michigan No Fault is far from broken and unsustainable
 4. Michigan No Fault is the 'best' auto insurance system in the country ... Just ask Pete Kuhnmuensch and the Insurance Institute of Michigan
 5. Claims about 'skyrocketing' auto insurance rates in Michigan are misleading and false
 6. No Fault reform is based on the faulty premise that No Fault medical benefit costs are driving auto insurance rates
 7. Saving \$150 for one year does not make Michigan auto insurance affordable
 8. Consumers may pay more for auto insurance because of No Fault reform's new fees and assessments
 9. No Fault reform will increase consumers' health insurance costs
 10. No Fault reform will increase taxpayers' Medicaid and Medicare burdens
 11. Reform will generate lawsuits for 'excess' medical benefits
 12. Proposals to make Michigan auto insurance affordable
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1. INTRODUCTION

Michigan's No-Fault law was enacted in 1973 for the purpose of "righting the wrongs of the old tort liability system and ... protecting the Michigan consumer ..." "No-Fault Insurance After Three Years," Thomas C. Jones, Michigan Insurance Commissioner, October 6, 1976, Opening Letter) http://www.michigan.gov/documents/dleg/No-Fault_Insurance-After_3_Years_272412_7.pdf

Those "wrongs" of the tort liability system included: It was "incomplete, inequitable, inefficient and slow"; it did "a poor job of providing for seriously injured auto accident victims"; it had an "inequitable payment structure" because a "high percentage of persons injured in automobile accidents received no reparations under the tort system"; it "systematically undercompensated the most seriously injured" victims; and "lengthy delays existed under the tort system in compensating those injured in automobile accidents — often in cases where the need for prompt compensation was strongest." (Sources: "No-Fault Insurance After Three Years," Thomas C. Jones, Michigan Insurance Commissioner, October 6, 1976, Opening Letter, Introduction, Page 12; "No-Fault Insurance In Michigan: Consumer Attitudes And Performance," Thomas C. Jones, Michigan Insurance Commissioner, April 10, 1978, Pages iv, 3; *Shavers v. Attorney General*, 402 Mich. 554, 621-622 (Michigan Supreme Court 1978))

To correct the situation, true to its name, Michigan's No Fault Law guaranteed on a no-fault basis that auto accident victims would receive reasonably necessary and reasonably priced lifetime No Fault medical benefits as well as No Fault wage loss, replacement services and survivor benefits.

The point of No Fault was to "assure that persons injured in auto accidents are compensated ... quickly and equitably ... for medical costs and lost income ..." (Insurance Institute of Michigan: "No-Fault: An overview of Michigan's unique auto insurance law," brochure (no longer accessible on the IIM's web site))

As the Insurance Institute of Michigan has attested, No Fault did what it set out to accomplish:

"The no-fault concept has worked well. Accident victims are promptly compensated for their losses. They receive unlimited medical benefits and substantial wage loss benefits on a no-fault basis. Severely injured people no longer have to bear devastating financial burdens while waiting for lawsuits to be settled." (Insurance Institute of Michigan, "No-Fault: An overview of Michigan's unique auto insurance law," brochure (no longer accessible on the IIM's web site))

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"Under Michigan's no-fault system severely injured people receive immediate benefits instead of the previous system of having to wait for lawsuits with at-fault parties to be settled." (Insurance Institute of Michigan web site, Consumers, "Auto Insurance Facts")

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Nevertheless, Michigan's auto insurance industry has never fully accepted No Fault and the protections and benefits it guarantees to seriously injured auto accident victims.

Twice the industry has asked Michigan voters to do away with No Fault's guarantee of necessary and reasonably priced lifetime No Fault medical benefits - once in 1992 and once in 1994 - and on both occasions the public overwhelmingly voted to preserve No Fault as it was.

The auto insurance industry has also sought to advance its cause in the Michigan Legislature with House Bill 4612, introduced on April 23, 2013, by Rep. Pete Lund, R-36th District, being its latest effort.

<http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/pdf/2013-HIB-4612.pdf>

Although HB 4612 may be the industry's most ambitious effort to "reform" or dismantle No Fault, it is also its most audacious, outrageous and unacceptable attempt.

For the reasons set forth in this "Auto Insurance Consumers' Guide To Michigan No Fault Reform & House Bill 4612," no action should be taken on HB 4612.

HB 4612 should be rejected. And, Michigan No Fault should be preserved exactly as it is.

2. RAW DEAL

House Bill 4612’s proposal for reforming Michigan’s No Fault auto insurance system is a raw deal for Michigan auto insurance consumers.

The following “No Fault Reform Balance Sheet For Consumers” illustrates the point:

NO FAULT REFORM BALANCE SHEET FOR CONSUMERS

(Page Numbers Refer to House Bill 4612)

<p align="center"><u>GAINS</u> from Michigan No Fault Reform</p>	<p align="center"><u>LOSSES</u> from Michigan No Fault Reform</p>
<p>\$150 “premium” savings for one year. (Pg. 52)</p>	<ul style="list-style-type: none"> • Permanent elimination of reasonably necessary and reasonably priced lifetime No Fault medical benefits. (Pg. 32) • New, unprecedented and permanent limitations on No Fault rehabilitation benefits. (Pg. 36) • New, unprecedented and permanent limitations on No Fault attendant care benefits. (Pg. 38-39) • New, unprecedented and permanent limitations on No Fault home modifications. (Pg. 36) • New, unprecedented and permanent limitations on No Fault special motor vehicles and/or modifications for wheelchair-bound accident victims. (Pg. 37) • New, unprecedented, permanent, inconsistent and extremely restrictive eligibility standard for No Fault medical and allowable expense benefits. (Pg. 32, 35-37) • New, unprecedented and permanent restrictions on an auto accident victim’s ability to challenge an insurer’s denial of No Fault benefits. (Pg. 35-36) • Unprecedented and permanent denial of auto accident victims’ right to trial by jury. (Pg. 47) • All of the new changes and limitations, except the elimination of reasonably necessary and reasonably priced lifetime No Fault medical benefits, apply “retroactively” to existing claims. (Pg. 38) • Consumers will continue to pay MCCA assessments indefinitely. (Pg. 17). • Consumers will be required to pay the new “Catastrophic Claims Fee” indefinitely. (Pg. 25, 28, 52) • Consumers will be required to pay for the new \$21 annual assessment for the Insurance Fraud and Theft Prevention authorities until 2019. (Pg. 54) • Consumers will pay a new \$25 Medicaid Fee. (Pg. 28-29)

To illustrate how significant it is that HB 4612 eliminates reasonably necessary and reasonably priced lifetime No Fault medical benefits, consider the position that former Insurance Commissioner Thomas C. Jones took more than 30 years ago when the auto insurance industry was pushing to cap No Fault medical benefits just as HB 4612 proposes to do:

- Capping No Fault medical benefits is “destructive to the no-fault concept,” “clearly contrary to the public interest, and “actually increases the overall cost of the catastrophic loss.”
- “[Capping] benefits introduces no overall savings in the economy.”
- The cost of paying for medical benefits that will no longer be covered by No Fault “will simply be shifted forward to the injured individual through inadequate medical care, through inadequate rehabilitation, through increased health insurance costs, or through total financial ruin of some individuals, and finally onto public assistance programs.”
- Capping No Fault medical benefits “would simply result in a renewed increase in tort cases as people were required to sue for benefits denied by a limitation on medical and rehabilitation expenses.”

(Source: “No-Fault Insurance In Michigan: Consumer Attitudes And Performance,” Thomas C. Jones, Michigan Insurance Commissioner, April 10, 1978, Pages 76-77)

http://www.michigan.gov/documents/dleg/No-Fault_Insurance-Consumer_Attitudes_272413_7.pdf

3. MICHIGAN NO FAULT IS FAR FROM BROKEN OR UNSUSTAINABLE

Although the auto insurance industry's No Fault reform propaganda insists on misleading the public on this point, the following facts demonstrate that Michigan's No Fault auto insurance system is far from broken or unsustainable:

- "Michigan auto insurance companies collected more than \$2 billion more in auto premiums in 2011 than they paid out in claims. They brought in about \$6.8 billion in private passenger and commercial auto premiums and paid out some \$4.7 billion in losses on private and commercial auto claims, according to data provided to Michigan Auto Law by the National Association of Insurance Commissioners and the Michigan Office of Financial and Insurance Regulation." ("Steven M. Gursten: Profits, not medical claims, drive up cost of auto insurance in Michigan," Detroit Free Press, April 11, 2013) http://www.freep.com/article/20130411/OPINION/05304110034_auto-insurance-Michigan-no-fault-reform
- Michigan auto insurance companies have been "highly profitable" and "significantly more profitable than the national average." ("An Analysis of the Profitability and Performance of the Michigan Auto Insurance Market," Jay Angoff, May 30, 2007) <http://www.michiganautolaw.com/auto-lawyers-blog/wp-content/uploads/2011/11/Angoffs-2008-Profitability-Study-of-Michigan-auto-insurance-market-00438309.pdf>
- The Michigan Catastrophic Claims Association's assessment revenue exceeded its payouts on catastrophic claims by \$69 million in 2012, according to the MCCA's annual reports to the Insurance Commissioner. <http://www.michigancatastrophic.com/ConsumerInformation/AnnualCommissionerReport/tabid/4691/Default.aspx>
- The Michigan Catastrophic Claims Association's had approximately \$15 billion in reserves (i.e., the amount of money it sets aside or saves to pay for present and/or future open catastrophic claims) in 2012, according to the MCCA's annual reports to the Insurance Commissioner. <http://www.michigancatastrophic.com/ConsumerInformation/AnnualCommissionerReport/tabid/4691/Default.aspx>
- There were 78 auto insurance companies doing more than \$1 million in business in Michigan in 2011, and State Farm Mutual Automobile Insurance Company, alone, took in more than \$1 billion in auto premiums in 2011, according to data from the Michigan Department of Insurance and Financial Services. http://www.michigan.gov/difs/0,5269,7-303-12902_62295_12916-279632--,00.html

4. **MICHIGAN NO FAULT IS THE ‘BEST’ AUTO INSURANCE SYSTEM IN THE COUNTRY ... JUST ASK PETE KUHNMUENCH AND THE INSURANCE INSTITUTE OF MICHIGAN**

When it comes to praising Michigan’s No Fault auto insurance system, few have done so as enthusiastically and consistently as the Insurance Institute of Michigan and its Executive Director Pete Kuhnmuench.

Here’s what they have had to say:

“We save [under Michigan’s No Fault auto insurance system] because we don’t have to sue for benefits because you are self-insured and you collect from your own insurer, and **it’s a good system fundamentally.**” (Peter Kuhnmuench, Executive Director of the Insurance Institute of Michigan, quoted in WILX.com story by Brian Johnson, “Governor Working to Fix High Car Insurance Rates,” 1/25/2013) <http://www.wilx.com/news/headlines/Governor-Working-To-Fix-High-Car-Insurance-Rates-188286041.html>

Michigan’s No Fault Law is “a **pretty good system**, if you compare to other states ...” (Insurance Institute of Michigan Executive Director Peter Kuhnmuench, as quoted by MLive writer David Muller in “Insurance industry reps: Detroit auto premiums high because of crime, state coverage limits,” July 30, 2012) http://www.mlive.com/business/detroit/index.ssf/2012/07/auto_insurance_reps_detroit_pr.html

“**Auto insurance prices in Michigan are reasonable** — especially considering the high level of benefits provided to consumers. ...” (Insurance Institute of Michigan, 2012 IIM Fact Book, Page 20) <http://www.iiminfo.org/LinkClick.aspx?fileticket=M4onlg6Ptos%3d&tabid=1700>

“The **cost of Michigan’s [No Fault] auto insurance system is reasonable** — considering that Michigan has the highest level of auto insurance medical benefits in the country.” (Insurance Institute of Michigan, IIM web site, Consumers — Auto Insurance (10/25/2011))

“Michigan is fortunate to have a healthy auto insurance market where competition, safer cars and company fraud fighting efforts have resulted in **lower costs for policyholders**.” (Insurance Institute of Michigan, “National Study Shows Average Auto Insurance Premiums in Michigan Falling,” December 21, 2010, Press Release, quoting IIM Executive Director Pete Kuhnmuench (press release no longer appears on the IIM web site))

“The overall rate decreases demonstrate that insurance companies are keeping costs as low as possible even though **Michigan [No Fault] policyholders have the Cadillac of auto insurance policies**.” (Insurance Institute of Michigan, “National Study Shows Average Auto Insurance Premiums in Michigan Falling,” December 21, 2010, Press Release, quoting IIM Executive Director Pete Kuhnmuench (press release no longer appears on the IIM web site))

Michigan’s No Fault Law guarantees Michigan drivers “the **best auto insurance coverage in the country**. ... **Motorists in this state are getting a bang for their buck when it comes to protecting themselves in the case of a traffic crash**.” (Insurance Institute of Michigan, “Michigan Average Auto Insurance Premiums Drop,” December 2, 2009, Press Release, quoting IIM Executive Director Pete Kuhnmuench)

http://www.iiminfo.org/DesktopModules/Bring2mind/DMX/Download.aspx?TabId=1727&Command=Core_Download&EntryId=631&PortalId=44

“Michigan is generally recognized as having the **most efficient and effective** auto insurance law in the United States.” (Insurance Institute of Michigan, 2010 IIM Fact Book, Page 19)

“Michigan is fortunate to have a healthy auto insurance market where competition, safer cars and company fraud fighting efforts have resulted in **lower costs for policyholders**. ... The overall rate decreases demonstrate that insurance companies are keeping costs as low as possible even though Michigan policyholders have the **Cadillac of auto insurance policies**.” (Insurance Institute of Michigan, “National Study Shows Average Auto Insurance Premiums in Michigan Falling,” November 15, 2008, Press Release, quoting IIM Executive Director
Pete Kuhnmuench)

http://www.iiminfo.org/DesktopModules/Bring2mind/DMX/Download.aspx?TabId=1727&Command=Core_Download&EntryId=527&PortalId=44

Michigan's No Fault Law guarantees Michigan drivers "the **best no-fault medical benefits of any state**. ... "The good news is there are hundreds of companies offering auto ... insurance in Michigan ... The competitive market, along with less frequency of claims, has resulted in **savings for policyholders**." (Insurance Institute of Michigan, "Auto ... Insurance Rates Decrease in 2007," February 7, 2008, Press Release, quoting IIM Executive Director Pete Kuhnmuench)

http://www.iiminfo.org/DesktopModules/Bring2mind/DMX/Download.aspx?TabId=1727&Command=Core_Download&EntryId=510&PortalId=44

"Michigan is generally recognized as having the most efficient and effective auto insurance law in the United States. Michigan's no-fault law require insurance companies to provide *unlimited, lifetime medical benefits* to those injured in auto accidents. No other state in the country requires such generous auto insurance benefits. Michigan's no-fault law ... was created by the State Legislature to ... assure that persons injured in auto accidents are compensated ... quickly and equitably ... for medical costs and lost income ... **The no-fault concept has worked well.** Accident victims are promptly compensated for their losses. They receive unlimited medical benefits and substantial wage loss benefits on a 'no-fault' basis. **Severely injured people no longer have to bear devastating financial burdens while waiting for lawsuits to be settled.**" (Insurance Institute of Michigan, "No Fault: An overview of Michigan's unique auto insurance law," brochure (emphasis in original)(no longer accessible on the IIM web site))

5. CLAIMS ABOUT 'SKYROCKETING' AUTO INSURANCE RATES IN MICHIGAN ARE MISLEADING AND FALSE

Michigan auto insurance rates are **lower** than in previous years, according to data from the Insurance Institute of Michigan (IIM).

Significantly, the average automobile insurance premium in Michigan was lower in 2010 than it was in 2003, 2004, and 2005, according to the National Association of Insurance Commissioners (NAIC) data relied on and reported by the IIM:

- 2010 average Michigan auto insurance premium: \$1,073.52.
- 2003 average Michigan auto insurance premium: \$1,088.15.
- 2004 average Michigan auto insurance premium: \$1,128.16.
- 2005 average Michigan auto insurance premium: \$1,088.97.

Additionally, in a 2010 press release, the IIM stated that “Michigan’s average auto insurance premiums **declined** 9 percent from 2004 to 2008,” and the IIM’s Executive Director, Pete Kuhnmuensch, credited Michigan’s “healthy auto insurance market where competition, safer cars and company fraud fighting efforts have resulted in lower costs for policyholders.” (Insurance Institute of Michigan, “National Study Shows Average Auto Insurance Premiums in Michigan Falling,” December 21, 2010, Press Release, quoting IIM Executive Director Pete Kuhnmuensch (press release no longer appears on the IIM web site))

(Sources: Insurance Institute of Michigan’s chart, “Auto Rates – Premium Comparison by State,” 1/13 update, which is based on data from the National Association of Insurance Commissioners: <http://www.iiminfo.org/LinkClick.aspx?fileticket=GCSrMDFIVzY%3d&tabid=1729>; No Fault chart from Gov. Rick Snyder’s April 18, 2013, No Fault reform press conference: http://michigan.gov/images/snyder-premiums-no-fault_418045_7.jpg; Insurance Institute of Michigan’s 2009 “Fact Checker” report, Page 13 (“Attachment B”)(National Association of Insurance Commissioners’ “2005/2006 Auto Insurance Database Report,” “Combined Average Premium” for 2002-2006): <http://www.fmjc.com/PDF%20File%20for%20Agency.IIMFactChecker2-17-09.pdf>)

6. NO FAULT REFORM IS BASED ON THE FAULTY PREMISE THAT NO FAULT MEDICAL BENEFIT COSTS ARE DRIVING AUTO INSURANCE RATES

Comparing Michigan to other No Fault states proves that the cost of No Fault medical benefits is not to blame for the auto insurance prices that Michigan insurers choose to charge.

With its guarantee of necessary and reasonably priced lifetime No Fault medical benefits, Michigan auto insurance at \$1,073 is cheaper by at least \$100 per year than auto insurance in other No Fault states where the No Fault medical benefits are drastically lower due to benefit caps.

According to data from the IIM (which was also used in one of Gov. Snyder's exhibits at the press conference), Michigan's average annual auto insurance premium is \$1,073.

In New York, where No Fault medical benefits are capped at \$50,000, auto insurance costs \$1,207. Similarly, in the District of Columbia and in New Jersey, where No Fault medical benefits are capped at \$25,000 and \$15,000, respectively, the prices of auto insurance are \$1,277 and \$1,276, respectively.

(Sources: Insurance Institute of Michigan's chart, "Auto Rates – Premium Comparison by State," 1/13 update, which is based on data from the National Association of Insurance Commissioners: <http://www.iiminfo.org/LinkClick.aspx?fileticket=GCSrMDFIVzY%3d&tabid=1729>; No Fault Chart from Gov. Rick Snyder's April 18, 2013, No Fault reform press release: http://michigan.gov/images/snyder/medical-coverage-no-fault_418042_7.jpg)

Further proof that Michigan No Fault medical benefits are not driving Michigan auto insurance is found in the auto insurance industry's claims about increasing No Fault medical claim costs.

If, as the IIM claims, the average cost of a No Fault "medical claim" has increased 224% over the past 12 years and if No Fault medical benefit costs were actually driving auto insurance rates, then rates should have increased proportionately over the same period.

But that's not what has happened.

To the contrary, as discussed above, Michigan auto insurance rates are lower than in previous years.

7. SAVING \$150 FOR ONE YEAR DOES NOT MAKE MICHIGAN AUTO INSURANCE AFFORDABLE

\$150 in “premium” savings for one year does **not** make Michigan auto insurance affordable.

It would barely make a dent in the auto insurance prices for consumers in Detroit, Novi and Muskegon where they pay \$6,456, \$2,890 and \$2,711, respectively. (“Snyder troubled by Novi’s No. 6 ranking in car insurance rates,” Chad Livengood, The Detroit News, 2/5/2013)

Gov. Snyder focused on those cities in his January 16, 2013, State of the State address, noting “we have three of the top ten most expensive cities for auto insurance. We have Detroit at #1, we have Novi at #6 and we have Muskegon at #9.” (Page 38) (http://www.legislature.mi.gov/documents/2013-2014/Journal_house/pdf/2013-HJ-01-16-002.pdf)

Sen. Virgil Smith, D-4th District, said it best when he told MLive “he’d be ‘laughed out of the room’ if he tried selling the legislation to his constituents on the basis of saving \$125 ...” (Gov. Snyder promised \$125 in premium savings for “year one” at his 4/18/2013 press conference; HB 4612 provides for \$150 in premium savings for “year one.”) (“Proposed no-fault auto insurance changes emerge in Michigan legislature,” 4/23/2012, Melissa Anders, MLive, http://www.mlive.com/business/index.ssf:2013_04/changes_to_michigans_no-fault.html)

Under HB 4612’s promised \$150 in “premium” savings, rates would only drop from \$1,073.52 to \$923.52 for the one year that savings were guaranteed; Michigan auto insurance rates would still be higher than the national average (\$907.38); Michigan’s auto insurance rates would be 16th, rather than 8th, highest in the country.

(See Insurance Institute of Michigan’s chart, “Auto Rates – Premium Comparison by State,” 1/13 update, which is based on data from the National Association of Insurance Commissioners: <http://www.iiminfo.org/LinkClick.aspx?fileticket=GCSrMDF1VzY%3d&tabid=1729>)

8. CONSUMERS MAY PAY MORE FOR AUTO INSURANCE BECAUSE OF NO FAULT REFORM'S NEW FEES AND ASSESSMENTS

“Year One”: The “year one” savings of \$150 may be reduced, canceled out or offset by the following new fees and assessments introduced by House Bill 4612 and consumers may even end up paying more for auto insurance:

New Catastrophic Claims Fee: Points of interest concerning the new “Catastrophic Claims Fee” include:

- Consumers will be required to pay this new fee in order to providing funding for new catastrophic claims that are filed on or after January 1, 2014. (Pages 25, 28 and 52 of HB 4612)
- According to the MCCA’s Annual Reports to the Michigan Insurance Commissioner, between 2010-12, there was 1,684, 1,617 and 1,619 new catastrophic claims filed with the MCCA each year. <http://michigancatastrophic.com/ConsumerInformation/AnnualCommissionerReport/tabid/4691/Default.aspx>
- The new “Annual Catastrophic Claims Fee” will be calculated using a formula similar, if not identical, to the one used to calculate assessments by the Michigan Catastrophic Claims Association (MCCA). (Pages 25 and 28 of HB 4612) This year’s MCCA assessment was \$186 and last year’s was \$175, according to press releases from the MCCA.

New annual \$21 million assessment: Points of interest include:

- Consumers will be required to pay the new assessment, which will be used to raise \$21 million annually to pay for a newly created “Michigan Automobile Insurance Fraud Authority” and for the existing “Automobile Theft Prevention Authority.” (Pages 53-55, 59 and 65 of HB 4612)
- Although the assessment will be charged to Michigan auto insurers, the assessment will be passed along to consumers in the form of higher auto insurance rates. (According to MCL 500.3385: “Any assessments paid by participating [MAIPF] members ... may be recouped through a surcharge in the insurers’ rates for automobile insurance policies issued by the member ... A rate shall not be considered excessive because the rate includes a factor for recoupment ...”)

Beyond “Year One”: Significantly, after “year one,” HB 4612’s promised “premium” savings of \$150 will cease, but the fees and assessments that consumer will be required to pay will continue on:

- Consumers will continue to pay the MCCA assessment indefinitely to fund the hundreds of millions of dollars in catastrophic claim costs that the MCCA must continue to pay for open and existing claims. (Pages 17 and 18 of HB 4612). In 2012 and 2011, the MCCA paid out \$947 million and \$927 million, respectively, according to MCCA press releases. <http://www.michigancatastrophic.com/PressReleases/tabid/2929/Default.aspx>
- Consumers will continue to pay the Catastrophic Claims Fee indefinitely.
- Consumers will continue to pay the \$21 million annual assessment until 2019. (Page 54 of HB 4612).
- Consumers will pay a \$25 Medicaid “charge” until 2020. (Page 29 of HB 4612).

9. NO FAULT REFORM WILL INCREASE CONSUMERS HEALTH INSURANCE COSTS

Health insurance costs are already on the rise and they will likely continue going up in response to the requirements of the federal Affordable Care Act.

But that's just the tip of the iceberg.

Once health insurance companies realize the extent of the new obligations that No Fault reform is sending their way, health insurance costs are going to take off.

Whereas the Michigan Catastrophic Claims Association currently pays for the necessary and reasonably priced lifetime No Fault medical benefits of catastrophically injured auto accident victims (using funds paid for by auto insurance consumers through assessments), No Fault reform will shift that responsibility to the health insurance companies.

Specifically, an auto accident victim's health insurance company will be responsible for paying the victim's **\$1 million-plus**, necessary and reasonably priced lifetime No Fault medical benefits as soon as the victim's medical costs exceed HB 4612's proposed \$1 million cap.

Given the hundreds of millions of dollars paid out on catastrophic claims every year (\$947 million in 2012 and \$927 in 2011, according to press releases on the MCCA's web site, <http://www.michigancatastrophic.com/>) and the fact that those catastrophic claims costs will now be the responsibility of health insurers, it is reasonable expect that No Fault reform will increase consumers' health insurance costs in two ways:

1. Health insurers who specifically exclude auto coverage **now**, but choose to extend coverage post-reform coverage will naturally increase rates to account for new auto claims - for victims who have opted to coordinate medical coverage and for catastrophically injured victims whose accident-related medical costs have exceeded the \$1 million cap.
2. Health insurers who currently cover auto-accident-related injuries will increase rates in order to have the reserves to cover the claims of catastrophically injured victims whose accident-related medical costs have exceeded the \$1 million cap.

10. NO FAULT REFORM WILL INCREASE TAXPAYERS' MEDICAID AND MEDICARE BURDENS

The Medicaid and Medicare burdens on taxpayers will increase as the catastrophic claim costs that were previously covered by the Michigan Catastrophic Claims Association will now be covered by Medicaid and Medicare for auto accident victims who do not have private health insurance.

For victims who are not covered by private health insurance, when their catastrophic claim costs exceed HB 4612's proposed \$1 million cap on No Fault medical expenses, then they will have to turn to Medicaid or Medicare to cover their **\$1 million-plus**, necessary and reasonably priced lifetime No Fault medical benefits.

Medicaid and Medicare are funded by Michigan taxpayers.

11. REFORM WILL GENERATE LAWSUITS FOR ‘EXCESS’ MEDICAL BENEFITS

With HB 4612’s elimination of reasonably necessary and reasonably priced lifetime No Fault medical benefits, it is expected that once auto accident victims exceed HB 4612’s proposed \$1 million cap, they will go to court against the at-fault drivers who caused their accidents in order to collect their “excess” No Fault medical benefits.

Two insurance industry leaders predicted as much in 2011 after Rep. Pete Lund, R-36th District introduced House Bill 4936, wherein he proposed to cap No Fault medical benefits in much the same fashion as he has done in HB 4612:

Pete Kuhnmuench, Executive Director of the Insurance Institute of Michigan: “Despite what some critics claim, this legislation would not leave people out in the cold. ... [Auto accident victims with] accident-related medical claims [that exceed the new medical limits] ... can ... sue a responsible party for any excess medical losses.” (9/15/2011, Detroit Free Press, guest writer)

Gary Wolfram, President of Hillsdale Policy Group, Ltd.: “Accident victims can sue responsible parties for costs in excess of medical coverage.” (Gary Wolfram, 9/29/2011, “A Brief Analysis of the Anderson Economic Group report, Impact of Proposed ‘PIP Choice’ Law in Michigan)

Former Michigan Insurance Commissioner Thomas C. Jones recognized the same thing more than 30 years ago when the auto insurance industry wanted to cap No Fault medical benefits:

“[L]imiting first party benefits ... would simply result in a renewed increase in tort cases as people were required to sue for benefits denied by a limitation on medical and rehabilitation expenses.” (“No-Fault Insurance In Michigan: Consumer Attitudes And Performance,” Thomas C. Jones, Michigan Insurance Commissioner, April 10, 1978, Pages 76-77)

HB 4612 clearly contemplated that capping No Fault medical benefits would lead to lawsuits being filed by auto accident victims for “excess” No Fault medical benefits: The bill provides that tort liability exists for “[d]amages for allowable expenses,” which includes medical benefits, “in excess of the personal protection insurance benefits provided” under HB 4612. (Page 43 of HB 4612)

12. PROPOSALS TO MAKE MICHIGAN AUTO INSURANCE AFFORDABLE

Below are proposals that Michigan lawmakers should consider if they are truly serious about making Michigan auto insurance affordable:

1. Cap Michigan auto insurance rates (i.e., total auto insurance expenditures, which includes premiums, fees, assessments and charges) at \$200 less than the national average.
2. If an auto insurer wants to charge a rate in excess of the rate cap, then, as to that insurer, all of the “reforms” in House Bill 4612 are voided and the pre-reform No Fault Law controls.
3. Enact a No Fault 80/20 loss ratio rule. Modeled on the federal Affordable Care Act’s 80/20 Medical Loss Ratio, a No Fault 80/20 loss ratio rule would require Michigan’s No Fault auto insurance companies to spend no less than 80% of their insureds’ premium dollars on their insureds’ No Fault benefits or pay refunds to their insureds.
4. Enact “Bad Faith” Legislation which would impose on Michigan No Fault auto insurance companies a “duty to deal fairly and in good faith” with their insureds and which would hold insurers “liable for compensatory, consequential, and exemplary damages ... costs of litigation, including actual attorney fees” for failure to do so.
5. Amend the Michigan Consumer Protection Act to make it applicable to Michigan auto insurance companies. Because the Michigan Supreme Court has ruled that auto insurers are, generally, exempt from the restrictions and sanctions available under the Michigan Consumer Protection Act, Michigan auto insurance consumers have no recourse against Michigan auto insurers who engage in “[u]nfair, unconscionable, or deceptive” business practices.
6. Bring Michigan into the 21st century by allowing Michigan auto insurance consumers to collect “punitive damages” from wrongdoing auto insurance companies. Since approximately 1884, punitive damages have been forbidden under Michigan law. Michigan is one of only five states in the country that still does not allow punitive damages. In other words, 45 states allow punitive damage recovery.
([https:// www.travelers.com/business-insurance/specialized-industries/excess-casualty/docs/punitive-damages.pdf](https://www.travelers.com/business-insurance/specialized-industries/excess-casualty/docs/punitive-damages.pdf))