

# **No-Fault Auto Insurance Reform in Michigan: An Initial Assessment**

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When Michigan instituted no-fault auto insurance in 1973, its proponents argued that it would be a more efficient and less costly system for administering auto insurance claims than tort liability. Unfortunately, the opposite eventually proved to be true. Michigan's system was unique among states because it provided unlimited no-fault medical benefits, and insurers were severely constrained in their ability to control medical costs. By 2019, Michigan's auto insurance claim costs and premiums were the highest in the nation. This motivated the state's legislature and governor to significantly reform its no-fault law and tighten its regulation of auto insurance. While these reforms and regulatory changes are relatively nascent, there is considerable interest in knowing their effects, including the consequences of allowing consumers to choose their level of no-fault coverage, instituting medical cost controls for no-fault coverage, and tightening the regulation of insurance companies.

In this paper, the authors evaluate the no-fault reforms and their impacts. They find some initial evidence that claims costs and premiums for many drivers decreased substantially due to the reforms. However, medical providers and trial attorneys are advocating for legislation that tempers the cost controls, arguing that they are too harsh and arbitrary and that the adequacy and quality of care received by auto accident victims have suffered as a result. Fundamentally, there is the issue of whether it is possible to design a no-fault system that is superior to tort liability and is fair to all of state's residents in terms of the benefits it provides and its premium costs. provides benefits and fair premium costs to state residents. Michigan could be viewed as an experiment on both the promises and pitfalls of a grand vision for no-fault auto insurance. This paper contributes to an important debate on whether no-fault auto insurance can be saved and if it is worth saving.

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## **ABSTRACT**

When Michigan instituted no-fault auto insurance in 1973, its proponents argued that it would be a more efficient and less costly system for administering auto insurance claims than tort liability. Unfortunately, the opposite eventually proved to be true. Michigan's system was unique among states because it provided unlimited no-fault medical benefits, and insurers were severely constrained in their ability to control medical costs. By 2019, Michigan's auto insurance claim costs and premiums were the highest in the nation. This motivated the state's legislature and governor to significantly reform its no-fault law and tighten its regulation of auto insurance. While these reforms and regulatory changes are relatively nascent, there is considerable interest in knowing their effects, including the consequences of allowing consumers to choose their level of no-fault coverage, instituting medical cost controls for no-fault coverage, and tightening the regulation of insurance companies. In this paper, we evaluate the no-fault reforms and their impacts. We find some initial evidence that claims costs and premiums for many drivers decreased substantially due to the reforms. However, medical providers and trial attorneys are advocating for legislation that tempers the cost controls, arguing that they are too harsh and arbitrary and that the adequacy and quality of care received by auto accident victims have suffered as a result. Fundamentally, there is the issue of whether it is possible to design a no-fault system that is superior to tort liability and is fair to all of a state's residents in terms of the benefits it provides and its premium costs. Michigan could be viewed as an experiment on both the promises and pitfalls of a grand vision for no-fault auto insurance. Our paper contributes to an important debate on whether no-fault auto insurance can be saved and if it is worth saving.

## **I. Introduction**

This paper presents an initial assessment of significant changes to Michigan's no-fault auto insurance law that were enacted in 2019 and phased in from the date of their enactment through 2021. There was strong political pressure in Michigan to reform its no-fault system and tighten its regulation of auto insurance because of long-standing issues and problems with auto insurance generally and no-fault insurance specifically. These issues and problems included the high cost of coverage and a large number of uninsured drivers, among others. Very high auto insurance rates in Detroit were particularly burdensome for its residents and hampered their economic mobility.

Michigan is one of 12 states, along with Puerto Rico, that have some form of no-fault auto insurance (Insurance Information Institute, 2018).<sup>1</sup> In a mandatory no-fault system, if someone suffers bodily injuries due to the negligence of another, the injured party must meet a damage threshold to sue or file a claim against the negligent party. In a mandatory no-fault state, personal injury protection (PIP) coverage is the primary source of recovery for persons injured or killed in auto accidents. PIP provides coverage for the medical expenses and lost wages of an insured person regardless of who is at fault in an accident. In a tort liability state, injured parties can file claims against at-fault drivers and their insurers to recover their damages without having to meet a damage threshold.<sup>2</sup>

When Michigan instituted no-fault auto insurance in 1973, its proponents argued that it would be a more efficient and less costly system for administering auto insurance claims than tort liability. Unfortunately, the opposite eventually proved to be true. Michigan's system was unique among states because it provided unlimited no-fault medical benefits, and insurers were severely constrained in their ability to control medical costs. Unlimited medical benefits and the lack of medical cost controls caused auto insurance claim costs and premiums to soar to the highest level in the country. In turn, high premiums contributed to a relatively high number of uninsured motorists in the state. This motivated the state's legislature and governor to significantly reform Michigan's no-fault law and increase its regulation of auto insurance in 2019. The principal reforms included allowing consumers to choose their level of no-fault coverage, instituting medical cost controls for no-fault coverage, raising minimum liability limits, and tightening the regulation of auto insurance rates.

The data indicate that the reforms have lowered claim costs and premiums, but certain reforms have been challenged by medical providers and trial attorneys who argue that they are too severe and have caused some accident victims to receive inadequate medical care. Consequently, legislation has been introduced that would temper certain cost controls enacted in 2019; the changes that will be enacted to the 2019 reforms are uncertain as of the writing of this paper.

How recent legislation has affected and might further affect the cost of auto insurance is a topic of considerable interest and the main question we explore in this paper. We examine the costs of auto insurance in Michigan relative to other states and how its no-fault system have affected these costs. We review several elements of the reform

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1. In states with choice systems, car owners can either opt in or opt out of no-fault insurance.

2. In some tort liability states, PIP coverage also is provided on a mandatory basis or is optional for a car owner to purchase.

legislation and evaluate its likely effects. We also discuss the issues surrounding the changes to PIP coverage and discuss the motivation for further legislation that would temper the reforms.

In the next section, we review the high premiums and problems with uninsured drivers that motivated the push for no-fault reforms. In Section III, we review the fundamental elements and issues associated with no-fault insurance generally and in Michigan, specifically, prior to and after the 2019 reforms. Section IV follows with an examination of the claim costs of PIP and bodily injury liability (BIL) coverages, as these two coverages are affected by Michigan's no-fault system and affect premium rates. In Section V, we evaluate key provisions of the reform legislation and consider how it may be affecting the cost of auto insurance and other aspects of the market. Our discussion considers criticisms of the changes that were enacted and how certain cost controls may be relaxed because of these criticisms. We conclude with a summary of our findings and discuss further research that could be conducted.

## **II. High Premiums and Uninsured Drivers**

To understand the strong political motivations that eventually led Michigan to enact reform legislation, it is helpful to review the market problems that existed prior to the reforms. These problems were high premiums for many drivers, particularly in Detroit, and a large number of uninsured drivers.

### **A. High Statewide Premiums**

According to Insure.com, Michigan had the highest auto insurance premiums in the country in 2019.<sup>3</sup> In Table II.1, we show estimated average auto insurance premiums by state in 2019, 2021, and 2022 and each state's ranking based on the information provided by Insure.com. This auto insurance cost measure for consumers is for a hypothetical driver and controls for the amount of insurance coverage purchased and the risk characteristics of the insured.

Table II.1 indicates that the average premium in Michigan was \$2,611 in 2019, which was 79% higher than the national average. Michigan also ranked first among the states with the highest average premium. The average auto premium in Michigan then fell by 19.1% to \$2,112 in 2021 and then rose slightly to \$2,133 in 2022. Using this metric, Michigan's rank among states moved from first to fourth over this same period.<sup>4</sup> Note that Insure.com does not include PIP coverage in its premium comparisons; in other surveys that include a designated level of PIP coverage (e.g., Value Penguin), Michigan's average premium is much higher and still ranks first among all states.

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3. Available at <https://www.insure.com/car-insurance/car-insurance-rates.html>. Insure.com commissioned Quadrant Information Services to calculate auto insurance rates for seven large carriers in 29,162 U.S. cities and 34,523 ZIP codes. The rates are based on full coverage for a single, 40-year-old male who commutes 12 miles to work each day, with policy liability limits of \$100,000/\$300,000/\$50,000 and \$500 deductibles on collision and comprehensive coverages. The estimated premiums do not include PIP coverage. The hypothetical driver has a clean record and good credit. Rates were averaged in each state for the cheapest-to-insure 20 best-selling vehicles.

4. There are different ways to estimate or calculate the average auto insurance premium for a state. An alternative approach would be to divide the amount of auto insurance premiums written by the number of insured vehicles. Other sources of these estimates may yield results that differ somewhat from those provided by Insure.com. Regardless of the source and the methodology, prior to the enactment of the reform legislation, Michigan would have had the highest or near the highest auto insurance premiums in the country.

**Table II.1:** Average Auto Insurance Premiums by State: 2019, 2021, and 2022

State	2019		2021		2022	
	Premium	Rank	Premium	Rank	Premium	Rank
Alabama	\$1,287	32	\$1,358	27	\$1,542	30
Alaska	\$1,183	40	\$1,175	41	\$1,359	41
Arizona	\$1,449	22	\$1,417	18	\$1,617	23
Arkansas	\$1,566	17	\$1,462	15	\$1,597	26
California	\$1,846	6	\$1,966	4	\$2,115	5
Colorado	\$1,761	12	\$1,574	14	\$1,940	11
Connecticut	\$1,640	13	\$1,580	12	\$1,750	18
DC	\$1,876	5	\$1,881	6	\$1,858	15
Delaware	\$1,828	8	\$1,443	17	\$2,137	3
Florida	\$2,219	3	\$2,082	3	\$2,560	1
Georgia	\$1,777	11	\$1,705	10	\$1,647	21
Hawaii	\$1,275	34	\$1,254	34	\$1,306	45
Idaho	\$1,040	49	\$985	48	\$1,121	49
Illinois	\$1,296	30	\$1,205	39	\$1,578	29
Indiana	\$1,181	41	\$1,189	40	\$1,256	46
Iowa	\$1,047	48	\$1,032	45	\$1,321	42
Kansas	\$1,398	26	\$1,454	16	\$1,594	27
Kentucky	\$1,594	16	\$1,321	29	\$2,105	6
Louisiana	\$2,298	2	\$2,839	1	\$2,546	2
Maine	\$845	51	\$858	51	\$1,116	50
Maryland	\$1,546	18	\$1,410	19	\$1,640	22
Massachusetts	\$1,245	37	\$1,314	31	\$1,538	31
Michigan	\$2,611	1	\$2,112	2	\$2,133	4
Minnesota	\$1,362	28	\$1,407	21	\$1,493	34
Mississippi	\$1,409	24	\$1,378	26	\$1,606	25
Missouri	\$1,272	35	\$1,895	5	\$2,104	7
Montana	\$1,600	15	\$1,627	11	\$1,692	20
Nebraska	\$1,291	31	\$1,383	24	\$2,018	10
Nevada	\$1,525	19	\$1,380	25	\$2,023	8
New Hampshire	\$1,087	46	\$885	50	\$1,307	44
New Jersey	\$1,520	20	\$1,319	30	\$1,901	12
New Mexico	\$1,382	27	\$1,391	23	\$1,505	32
New York	\$1,789	9	\$1,163	42	\$2,020	9
North Carolina	\$1,095	45	\$1,326	28	\$1,368	40
North Dakota	\$1,164	43	\$1,234	36	\$1,419	37
Ohio	\$1,175	42	\$992	47	\$1,023	51
Oklahoma	\$1,966	4	\$1,393	22	\$1,797	17
Oregon	\$1,286	33	\$1,229	37	\$1,244	47
Pennsylvania	\$1,187	39	\$1,028	46	\$1,445	36

Rhode Island	\$1,834	7	\$1,801	7	\$1,845	16
South Carolina	\$1,433	23	\$1,409	20	\$1,894	13
South Dakota	\$1,262	36	\$1,575	13	\$1,581	28
Tennessee	\$1,297	29	\$1,206	38	\$1,373	38
Texas	\$1,779	10	\$1,710	9	\$1,875	14
Utah	\$1,206	38	\$1,250	35	\$1,469	35
Vermont	\$1,100	44	\$1,151	43	\$1,158	48
Virginia	\$1,063	47	\$1,033	44	\$1,321	43
Washington	\$1,401	25	\$1,298	33	\$1,371	39
West Virginia	\$1,472	21	\$1,299	32	\$1,610	24
Wisconsin	\$951	50	\$938	49	\$1,499	33
Wyoming	\$1,602	14	\$1,768	8	\$1,736	19
U.S. Average	\$1,457		\$1,428		\$1,682	

Source: Insure.com

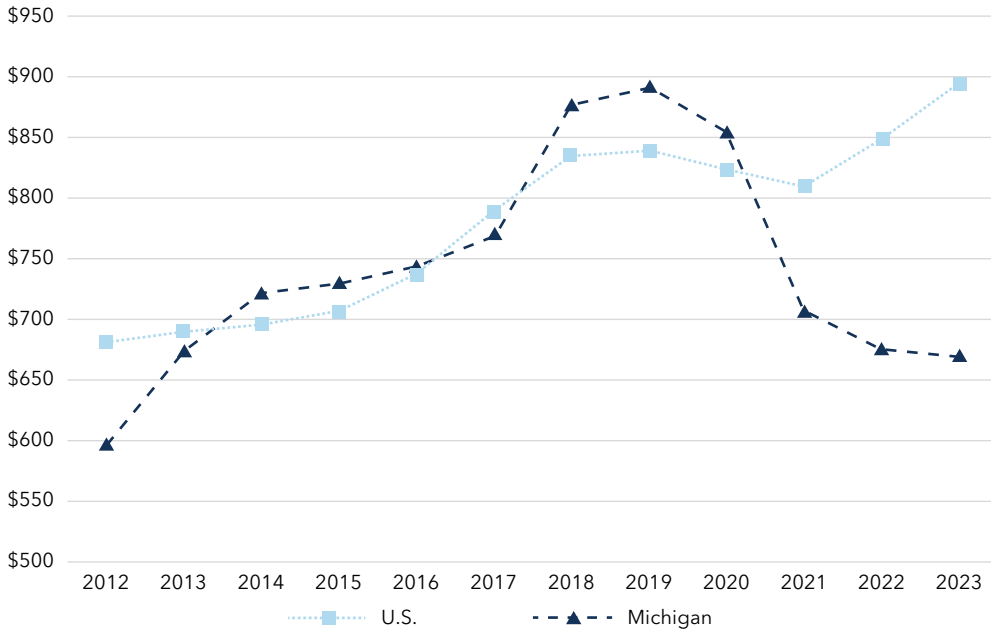
It is likely that several forces are working in different directions to influence the state's average premium and ranking among other states. Hence, the fact that Michigan's average premium rose slightly in 2022 does not mean that the no-fault reforms have been unsuccessful in reducing claim costs and premiums. Auto insurance rates have been rising in many states, as the frequency and severity of auto accidents are increasing. Indeed, according to the Bureau of Labor Statistics (BLS), the Consumer Price Index (CPI) for motor vehicle insurance increased nationally by 71.1% from 2013 to July 2023; it increased by 31.8% from 2020 to 2023.

We calculated more recent average premium trends using data from the Fast Track Monitoring System (FTMS).<sup>5</sup> Figure II.1 shows average premiums for the liability coverages for the years 2012-2023 calculated using the FTMS data.<sup>6</sup> We calculate the average premium by dividing total premiums paid by the number of earned exposures (car-years). Hence, unlike the average premiums published by Insure.com, this measure of premium costs reflects drivers' choices and does not control for the coverages purchased and the risk characteristics of insureds. The FTMS data are provided on a quarterly basis; we use the data from all four quarters of each year to calculate our figures for that year. Figure II.1 shows that the average liability premium in Michigan tracked the national average closely from 2013-2019. This changed when the average liability premium in Michigan dropped from \$892 in 2019 to \$671 in 2023.<sup>7</sup> In contrast, the average liability premium nationwide increased from \$839 in 2019 to \$894 in 2023.

5. In constructing this system, industry statistical agents (Verisk and the Independent Statistical Service) obtain data from a large portion of the industry to determine how auto insurance claim costs and premiums are trending. The data for this system are not "developed," e.g., claim costs are on a paid basis, not on an incurred basis.

6. We calculate a weighted average liability premium using two different tables in the FTMS data set. We obtained premium data from one table and data on earned exposures from another table. The organizations that compile these data generally do not recommend combining data from the two tables as the insurers providing the data are not exactly the same for the two tables. For our purposes, we are less concerned about the point estimates of average premiums and more focused on how average premiums have trended.

7. Note that this figure for 2023 is for the year ending 2023. Its only difference from the 2022 figure is that it reflects the experience for the first and second quarters of 2023.

**Figure II.1:** Average Auto Liability Premiums: 2012-2023 – Michigan and U.S.

Source: Fast Track Monitoring System and authors' calculations.

The possible reasons for this marked fall in the average liability premium in Michigan warrant some discussion. Note that, as we discuss below, the minimum liability limits increased in 2020, and we have no reason to believe that Michigan drivers chose to lower their limits if they exceeded the new minimums. Indeed, lower PIP premiums should give drivers more money to increase their liability limits and the reform legislation increased minimum liability limits. Further, the evidence indicates that the rates for PIP coverage fell, and some drivers opted for something less than unlimited PIP coverage. Hence, it is likely that the changes to PIP coverage were largely responsible for this decrease in the average liability premium. Additionally, some insurers may have lowered their rates for the other liability coverages to remain competitive in the post-reform market environment.

In general, there are several factors influencing rates that are largely unaffected by Michigan's reform measures, such as increases in auto repair costs and post-pandemic driving. More specific to Michigan, some drivers may have responded to lower rates due to the law changes by purchasing more coverage, such as higher liability limits and lower deductibles. On the other hand, as Michigan drivers are becoming more familiar with their PIP options over time, more of them may be opting for lower PIP coverage, which will lower their premiums, all other things equal.

## B. High Premiums in Detroit

Using these average premiums statistics reflect statewide averages; the rates insurers charge vary significantly across locations and vary by different drivers within a state.

All other things equal, rates in certain urban areas can be much higher than rates in suburban and rural areas. For example, auto insurance rates in Detroit have been especially high for several reasons, including high traffic density, high vehicle theft rates, and high levels of attorney involvement in auto insurance claims, among others. Also, one study determined that the severity of PIP claims in Detroit—\$59,000—was almost twice the severity of PIP claims in surrounding communities—\$30,000 (Mosely, 2015). Despite this evidence, some still contend that insurers overcharged Detroit drivers for auto insurance before the law was changed (Heller, 2019) and are still overcharging Detroit drivers. The high cost of auto insurance in Detroit not only increased the political pressure for reform, but it also led to other regulatory changes that were intended to reduce the disparity in rates between Detroit and other areas in the state.<sup>8</sup>

According to The Zebra, Detroit has been one of the most expensive cities in the nation for auto insurance. In 2019, the representative premium in Detroit was \$5,464 compared to a statewide premium of \$2,693.<sup>9</sup> In 2023, the representative premium in Detroit was \$4,726, and the statewide average was \$2,532; New York City had the second highest premium of \$4,545 in 2023.<sup>10</sup> Consequently, if this survey is reliable, it would indicate that there has been a significant decline in Detroit auto insurance rates since 2019 (-13.5%), even if they remain much higher than rates in the rest of Michigan.

### C. Uninsured Drivers

One unfortunate consequence of Michigan's high auto insurance costs is its relatively high number of uninsured drivers. Various factors affect a vehicle owner's choice to purchase and maintain insurance coverage, including the premium they would be required to pay.<sup>11</sup> All states, with one exception, require car owners to carry a minimum amount of liability insurance on their vehicles. States vary on how their minimum insurance requirements are enforced and their financial penalties for driving without insurance.<sup>12</sup> Nonetheless, some car owners still choose to take their chances and go without insurance.

To the extent that Michigan's system for auto insurance has increased its cost, it has induced more vehicle owners to go without coverage. Figure II.2 shows estimates of the percentage of uninsured drivers in Michigan relative to the national average for the years 2007, 2009, 2012, 2015, 2019, and 2022. These estimates, developed by the Insurance Research Council (IRC), indicate that in 2019, 25.5% of Michigan drivers were

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8. Some have expressed disappointment that rates have not fallen enough for Detroit drivers under the new law. See, for example, "Many Michigan Drivers Drop Unlimited No-Fault Insurance – Yet Rates Slow to Fall," *Detroit Free Press*, April 12, 2022.

9. As with the average premium estimates published by Insure.com, the estimates published by The Zebra are based on a hypothetical driver and set of coverages.

10. Available at <https://www.thezebra.com/auto-insurance/how-to-shop/car-insurance-rates-city/>.

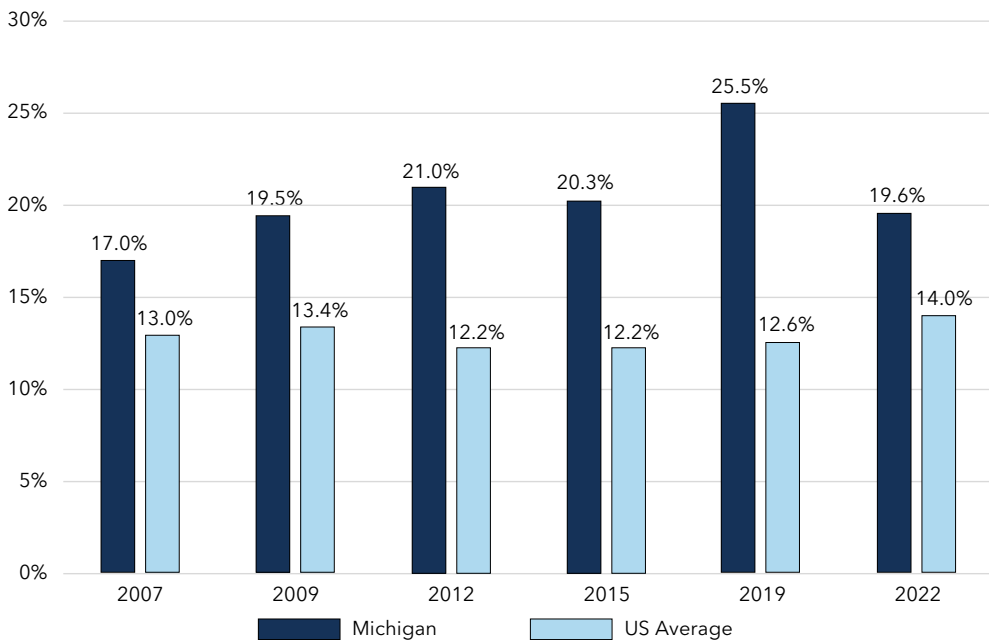
11. Borba (2019) examines the factors associated with differences in the incidence of uninsured motorists across states. He found that economic factors—particularly differences in income, education, and employment rates—explain a large portion of state differences in uninsured motorists premium rates.

12. In Michigan, an individual convicted of driving without insurance can be fined up to \$500 for two years and required to pay court costs. Additionally, an individual can have their license suspended for 30 days and face up to one year in jail for driving without insurance.



uninsured (Insurance Research Council, 2023).<sup>13</sup> This figure was considerably higher than the national average of 12.6% and had increased substantially since 2007 when it was 17%. Only one state—Mississippi—was estimated to have a higher percentage of uninsured drivers than Michigan in 2019.<sup>14</sup> However, in 2022, the percentage of uninsured drivers in Michigan had fallen to 19.6%, dropping its ranking from second to fifth for this metric. We believe that the premium savings due to the reforms were largely responsible for this positive development.

**Figure II.2:** Estimated Percentage of Uninsured Motorists: 2007-2022 Michigan and U.S. Average



Source: Insurance Research Council

Several concerns arose from Michigan's historically high number of uninsured drivers, including its negative effects on drivers who do not have coverage and the shifting of accident costs to vehicle owners who purchase coverage. In essence, this is a problem that, to a degree, could be self-perpetuating and self-reinforcing. As more car owners go without coverage or choose to buy lower liability limits to lower their premiums, the costs of uninsured and underinsured motorist coverage increase

<sup>13</sup> The percentage of uninsured drivers is estimated by dividing the number of uninsured motorist claims by the number of BIL claims. There may be other ways to estimate the percentage of uninsured drivers, but this is the method that insurance researchers typically use.

<sup>14</sup> In 2019, the IRC estimated that 29.6% of drivers in Mississippi were uninsured.

for those who buy this coverage.<sup>15</sup> In turn, higher insurance premiums, due to more uninsured/underinsured drivers, induce more drivers to go without insurance.

Both uninsured drivers and those they injure are at risk. A driver without insurance will not be able to collect on their own policy for any damages they suffer and will not be allowed to sue other drivers who cause harm to them. Further, the costs of damages not covered by insurance and otherwise not paid by uninsured drivers are shifted to others, including people injured by drivers without insurance, medical providers, and taxpayers who absorb the medical costs arising from accidents not covered by insurance. Further, not having insurance will not relieve a driver of their liability for the damages they cause. Any assets they have are subject to being taken, and their future wages and other income can be garnished to pay for the damages they owe.

Additionally, these estimates of uninsured drivers do not reflect how high auto insurance costs affect peoples' ability and decision to own a vehicle. The higher this cost, the more people we would expect to not own a vehicle, all other things equal. This may be less of a concern for people who have good access to public transportation, but it is a greater concern for people who do not. Lack of access to transportation could have negative effects on a person's ability to obtain employment and engage in other activities. Hence, the high cost of auto insurance in certain areas could adversely affect the economic status of households and the economic health of those areas.

It appears that the changes to PIP coverage that have enabled car owners to lower their premiums have had a beneficial effect in reducing the number of uninsured drivers. There are indications that some drivers who previously could not afford or chose not to buy auto insurance have purchased coverage. According to a 2022 press release issued by Michigan's Department of Insurance and Financial Services (MDIFS), more than 202,000 previously uninsured drivers took advantage of the law's amnesty period to buy coverage without paying a penalty.<sup>16</sup> This report is consistent with the significant decline in the percentage of uninsured motorists revealed in Figure II.2.

### **III. No-Fault Auto Insurance in Michigan**

In this section, we review how no-fault auto insurance generally works in the states that have this type of insurance system and Michigan's no-fault system, specifically, before and after it was reformed in 2019.

#### **A. Fundamental Elements of No-Fault Auto Insurance**

Michigan is one of nine states, as well as Puerto Rico, with a mandatory no-fault system; three additional states have "choice" no-fault systems (Insurance Information Institute, 2018).<sup>17</sup> There are 39 states with a tort liability system and 11 states that are termed "add-on" states.<sup>18</sup> PIP coverage is compulsory in 18 states and optional in six states.

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15. A car owner could avoid this additional cost by not purchasing uninsured/underinsured motorist coverage, as this coverage is not mandatory in Michigan. However, this coverage is typically included when consumers seek quotes in buying auto insurance.

16. According to a more recent estimate, 240,000 previously uninsured drivers have purchased insurance due to the reforms (Poe, 2023).

17. In states with choice systems, car owners can either opt in or opt out of no-fault insurance.

18. An "add-on" state is a state that has a tort liability system but also requires or allows car owners to purchase PIP coverage.

In states with tort liability systems, drivers who cause accidents are directly liable for the bodily injuries (BI) and property damage (PD) they cause. In a traditional no-fault system (without “add on” PIP coverage), if someone suffers bodily injuries due to the negligence of another, the injured party must meet a damage threshold to sue the negligent party. These thresholds can be monetary—a certain amount of medical expenses must be incurred (e.g., \$2,000)—or verbal (e.g., there must be an injury that results in the total or partial loss of a body member or function). Five of the 12 no-fault states, including Michigan, have verbal thresholds, and the other seven have monetary thresholds. In a mandatory no-fault state, the injured persons and family members of persons killed in auto accidents can seek recovery from their PIP coverage. PIP provides coverage for the medical expenses and lost wages of an insured person regardless of who is at fault in an accident.

When no-fault auto insurance was first introduced in the early 1970s, many believed that it would be a better system for compensating people injured in auto accidents.<sup>19</sup> The belief then was that no-fault would be a less costly and more equitable system for compensating persons injured in auto accidents than tort liability. Its proponents contended that it would significantly reduce litigation and other costs and, hence, result in lower auto insurance premiums.<sup>20</sup> In theory, no-fault imposes a tradeoff between restrictions on lawsuits and lower premium costs with more certain, timely, and equitable benefits for injured persons.

Early empirical studies of no-fault found that strict tort thresholds—high monetary or verbal—could reduce litigation costs (Carroll and Kakalik, 1993).<sup>21</sup> However, no-fault generally has not lived up to its promise. Initially, states that adopted no-fault achieved cost savings, but over the years, these savings have dissipated. Auto insurance has come to be more costly in no-fault states than in tort liability states (Anderson et al., 2009). One might also question whether any gains in greater benefit certainty, timing, and equity that have been achieved under no-fault have justified its overall higher costs.

One problem is that the predicted reduction in tort claims under no-fault in a given state either did not materialize or was not sustained. Further, expensive PIP coverage due to high medical costs in some no-fault states, such as Michigan, has likely more than offset any savings from reduced litigation over liability. Consequently, no state has enacted a no-fault system since 1990, and it is no longer proposed as a solution for high auto insurance rates. Indeed, five states have repealed their no-fault systems since they were enacted in the 1970s (Insurance Information Institute, 2018).<sup>22</sup>

One significant problem appears to be that state thresholds for filing lawsuits were not drawn tight enough to offset the high medical costs of the no-fault systems that were

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19. Refer to, for example, Anderson et al. (2009) for a historical review of no-fault insurance in the U.S., which includes Michigan. Keaton and O’Connell (1964) first presented a proposal for no-fault auto insurance. Mellon and Kowalski (2010) review the history of no-fault auto insurance in Michigan.

20. Additionally, no-fault proponents argued that it would result in more certain, timely, and equitable compensation for those injured in auto accidents; people injured would not be subject to the vagaries and uncertainties associated with tort liability.

21. Cummins and Weiss (1991) examined the effects of no-fault auto insurance systems on pure premiums (the average loss cost per insured vehicle) and found that verbal thresholds reduced costs, but monetary thresholds increased them. They did not distinguish between states with low monetary thresholds and high monetary thresholds. They did note that if monetary thresholds do not rise in pace with inflation, their ability to reduce costs will decline over time.

22. One of these states—Pennsylvania – subsequently reinstated its choice no-fault system.

created. Indeed, Michigan's verbal threshold appears to have substantially checked its BIL costs relative to other states. However, Michigan's high PIP costs swamped any savings achieved due to its tort threshold for reasons we discuss below. Nonetheless, O'Connell et al. (2011) contend that no-fault is a better system if properly constructed and is a valid policy option to address high auto insurance costs. Whether Michigan's no-fault reforms have, in fact, produced a better system is a fundamental question that we address in this paper.

## **B. Problems with No-Fault Auto Insurance in Michigan**

Michigan's historically high auto insurance costs and rates were due to several factors, with its PIP coverage as the primary source of its problems.<sup>23</sup> Prior to the reforms, Michigan's PIP coverage offered unlimited medical benefits. In other states with PIP coverage that is either mandatory or optional, benefits are subject to a minimum limit (e.g., \$15,000 in New Jersey).<sup>24</sup>

Further, under the old law, there was no medical fee schedule in Michigan; medical providers could be reimbursed according to their "reasonable and customary" charges. Also, family members could be paid for services they provided to an injured person and there was no statutory limit on the number of hours they could charge. Additionally, insurers were severely constrained in their ability to control the utilization of medical services. Insurers could attempt to limit the fees they paid, and their reimbursement of the care provided by family members, but there were no clear rules they could cite in such efforts. Hence, disputes over PIP claims often resulted in costly litigation. These aspects of no-fault benefits encouraged considerable fraud and abuse by medical providers, trial attorneys, and others who found ways to milk the system.<sup>25</sup>

The operations and financing of the Michigan Catastrophic Claims Association (MCCA) reflect the high medical costs under the state's no-fault system. The MCCA was established in 1978 to assume and distribute the cost of high PIP claims among all Michigan drivers.<sup>26</sup> When a claim reaches a certain monetary threshold, the MCCA pays for any costs that exceed the threshold, functioning as an excess reinsurer for PIP claims. To cover its costs, the MCCA imposes an annual assessment per vehicle that insurers pass on to their policyholders.<sup>27</sup> In 2019, the MCCA covered PIP claim costs exceeding \$580,000 on a given claim with an annual per vehicle assessment of \$220. As claim costs came down due to the reforms, the assessments also declined.

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23. Some of these factors are beyond the control of policymakers per se, such as traffic density, the costs of auto repairs and medical care, and adverse weather conditions, among others.

24. Next to Michigan, New York and the District of Columbia have the highest amounts of PIP benefits at \$50,000.

25. A 2013 study by the Citizens Research Council (CRC) found that medical claims cost auto insurers 57% more in Michigan than claims for similar accidents in other states (Citizens Research Council, 2013).

26. The MCCA was created when insurers found it difficult to purchase excess reinsurance coverage for auto insurance claims from private reinsurers.

27. This assessment is based on what the MCCA expects to pay out on claims in the coming fiscal year.

In 2022, the MCCA provided a \$400 per vehicle refund for car owners, as it was able to reduce its loss reserves due to the reforms.<sup>28</sup>

Unlimited medical coverage, the lack of a medical fee schedule, and uncontrolled utilization had enabled and encouraged considerable fraud and abuse under the prior system. (For an example, refer to Insurance Research Council, 2019b.) There were strong incentives for medical providers to prescribe or offer more services than necessary for injured people. With no out-of-pocket payments required of injured persons, they had no financial incentive to decline unnecessary services. Additionally, a person's family members could be paid substantial amounts for providing home attendant care. Further, some attorneys encouraged their clients to bring suits against their own insurers regarding their PIP benefits in order to obtain a contingency fee. Hence, all these aspects of Michigan's system for PIP benefits created significant moral hazard, resulting in significant "hard fraud" and "soft fraud" and abuse where injuries were either exaggerated or excessive services were provided.

### C. Reform Legislation

The concerns about high PIP costs and other problems with auto insurance in Michigan motivated the no-fault amendments that were enacted. On May 30, 2019, Michigan's Governor Gretchen Whitmer signed a compromise bill, S.B. 1, (which became P.A. 21) to reform Michigan's system for auto insurance.<sup>29</sup> The new law's provisions were phased in from the day it was enacted through 2021. This legislative accomplishment occurred after many years of failed attempts at fixing Michigan's auto insurance system. Certain stakeholders, such as medical providers and trial attorneys, as well as some consumer advocates, had strongly opposed the significant reforms, making it more difficult for legislators to change the system. The political pendulum swung in favor of reform when Michigan's Democratic governor, the mayor of Detroit, and prominent business leaders advocated for no-fault reform.

The new law made substantial changes to PIP coverage. Michigan drivers now have six options for the amount of PIP coverage they purchase. These options include: 1) \$50,000, if the insured is enrolled in Medicaid, or if the person's spouse and resident relatives have "qualified health insurance," Medicaid, or other insurance that provides PIP benefits; 2) \$250,000; 3) \$500,000; or 4) unlimited coverage. Insureds also can lower their PIP premiums if they make their health insurance primary for their medical costs arising from auto accidents. Additionally, a "qualified person" is allowed to opt out of PIP coverage entirely if the person's spouse and any resident relative has "qualified health insurance" or PIP coverage.

The new law also instituted a fee schedule for medical provider reimbursement that allows insurers to limit these fees to 190%-230% of the applicable Medicare rate that varies with the type of facility. For a service that does not have a Medicare rate, providers are allowed to charge 52.5%-71% of what they charged for the service in

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28. Currently, the MCCA covers PIP claim costs exceeding \$600,000; member insurers retain losses on claims up to \$600,000. For fiscal year 2023, there are two MCCA assessments. One assessment is \$74 per vehicle for drivers who elect unlimited PIP coverage. The second assessment is \$48 per vehicle for every driver regardless of their PIP coverage for debt recoupment due to litigation that invalidated certain cost controls for persons injured before the law changed.

29. The text of S.B. 1 can be accessed at <https://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0021.pdf>.

2019, adjusted for inflation. Additionally, insurers were given greater ability to control the utilization of medical services.

New limits were also imposed on home attendant care provided by family members. Insurers are not required to pay family members for more than 56 hours per week although they can choose to pay for more hours. There are also limits on the hourly rates that family members can be paid.

Additionally, Michigan's minimum BIL limits increased from \$20,000 per person and \$40,000 for all persons to \$50,000 per person and \$100,000 for all persons. The minimum required limit of \$10,000 for property damage did not change. A driver's liability limits default to \$250,000/\$500,000/\$10,000 unless they elect lower limits.

Further, the legislation returned Michigan to a prior approval (PA) rate regulatory system for auto insurance and prohibits insurers from using several "non-driving" rating factors. These regulatory changes were motivated by the high rates in Detroit and allegations that insurers were engaging in unfair discrimination against low-income and minority drivers. Some stakeholders also insisted on increased regulation to ensure that the no-fault changes would produce premium savings for consumers. The new law mandated specific rate reductions according to the amount of PIP coverage that a vehicle owner chooses.

Although the new law has only been in full effect for a couple of years, there is evidence that it already has reduced claim costs and produced significant premium savings for at least some and perhaps many drivers. There also are indications that the number of uninsured drivers has decreased significantly as the cost of insurance has fallen. However, some stakeholders have sought to roll back or at least temper some of the medical cost controls that were part of the 2019 reforms, and consumer advocates want to further tighten the regulation of auto insurers.<sup>30</sup> In a recent decision on a lawsuit challenging the no-fault reforms, *Andary vs. USAA Casualty Insurance Company*, the Michigan Supreme Court nullified certain medical cost controls for persons injured before the law changed. Further, new legislation has been introduced and passed by the Michigan Senate that would significantly relax these controls for all insureds, including people injured after the law changed. In other words, no-fault insurance in Michigan may continue to evolve.

#### **IV. No-Fault and Auto Liability Claim Costs in Michigan**

To gain a better understanding of what was causing Michigan to have such high auto insurance premiums and how the reforms may be affecting claim costs, it is helpful to review the underlying costs of providing this coverage. Here we consider the average loss costs (total claims costs divided by earned exposures), also known as the pure premiums, for the liability coverages and the frequency and severity of liability claims. The coverages most relevant to this review are PIP and BIL, as they were the focus of the 2019 legislation.

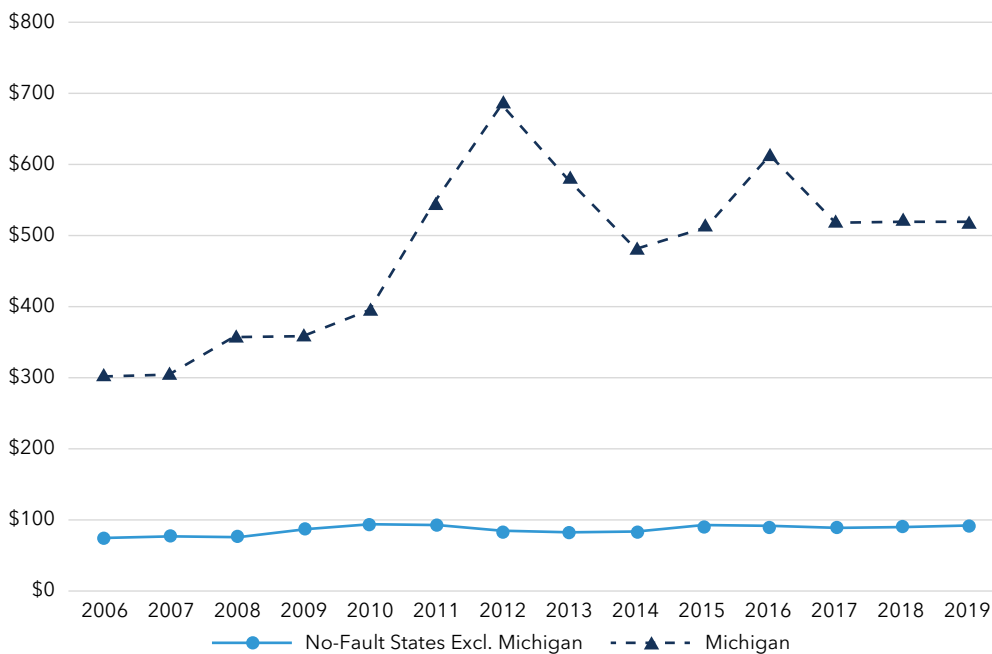
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30. The website for the Coalition to Protect Auto No-Fault (CPAN) outlines the policy positions of the critics of the 2019 no-fault amendments. Available at <https://protectnofault.org/>.

## A. Personal Injury Protection Costs

Figure IV.1 shows the weighted average loss cost per insured vehicle for PIP in Michigan and mandatory no-fault states generally (choice no-fault states excluded) for the years 2006-2019.<sup>31, 32</sup> Michigan is excluded from the calculation for no-fault states, as its inclusion would skew the average for all no-fault states. This figure indicates that the average loss cost for PIP was increasing and was much higher in Michigan in 2019 (\$517.10) than in other no-fault states (\$90.89). The data suggest that the very high cost of PIP claims in Michigan was largely responsible for its high PIP premium rates that created significant political pressure to reform its no-fault system.

**Figure IV.1:** Average PIP Loss Cost per Vehicle Insured: 2006-2019  
Michigan and No-Fault States Excluding Michigan



Source: NAIC and authors' calculations

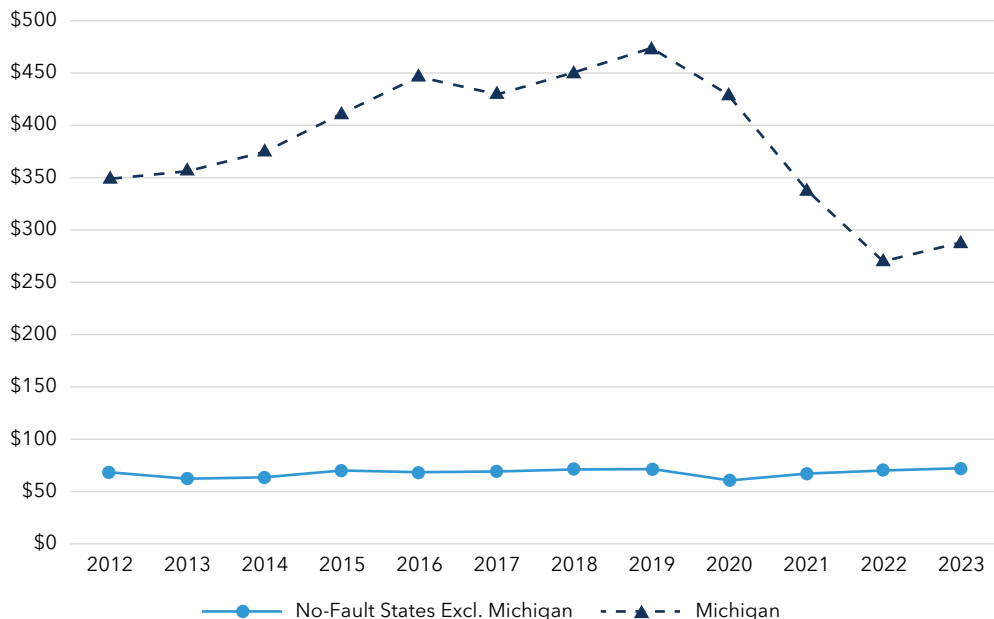
We can also examine more recent PIP pure premium trends developed from the FTMS data to see how the new law may be affecting PIP costs. Figure IV.2 shows the PIP pure premium for Michigan and other mandatory no-fault states for the years 2012-2023; the figures for 2023 only reflect the year ending the second quarter of 2023. The chart shows a significant 42.8% decline in Michigan's PIP pure premium from 2019 (\$474) to 2022 (\$271). We see a small uptick in the pure premium to \$289 in 2023 stemming from the first and second quarter 2023 results. This uptick could be due to insurers

31. The data used to create this figure reflects three years of loss development, making it more accurate from an actuarial perspective than more current data available from the FTMS. The data here are drawn from various editions of the NAIC's Auto Insurance Database Report.

32. Because no-fault is optional in states where drivers can choose the type of system in which they participate, these states are not comparable to states where no-fault is mandatory.

increasing their payments on claims incurred before the law changed in 2019 due to the Andary lawsuit challenging the medical cost controls.

**Figure IV.2:** Average PIP Loss Cost per Vehicle Insured: 2012-2023 – Fast Track Data Michigan and No-Fault States Excluding Michigan



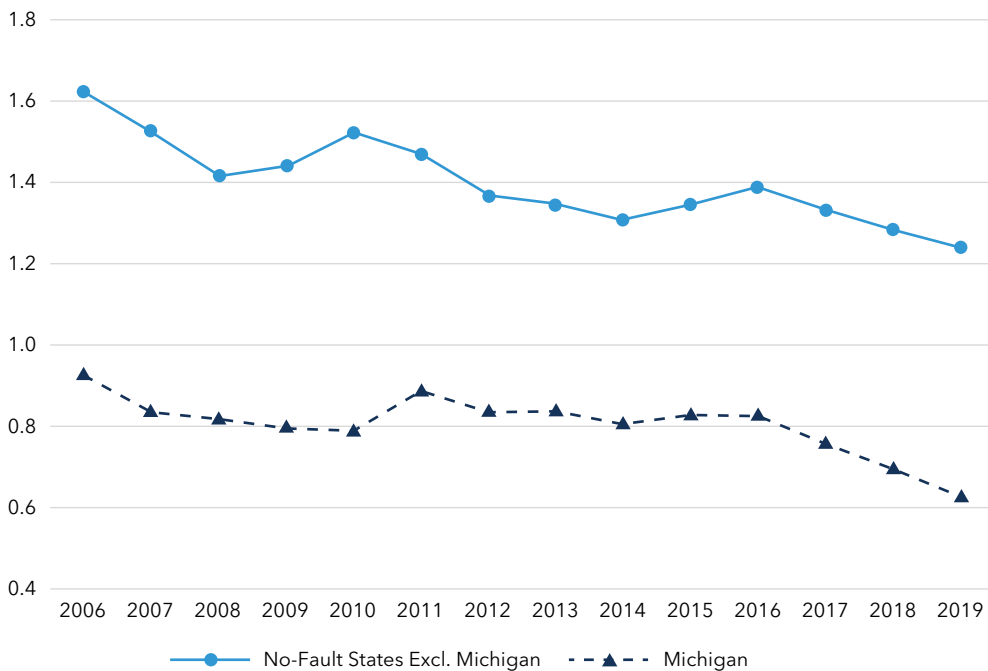
Source: Fast Track Monitoring System and authors' calculations

The two factors most likely contributing to the decline in insurers' PIP costs from 2019 through 2022 are the medical cost controls and consumers' PIP coverage choices enabled by the new law. If many drivers opted for lower levels of PIP coverage, this would reduce PIP claim costs. Also, other provisions of the new law, such as limits on the fees of medical providers and home attendant care provided by family members, could be further contributing to lower PIP costs, although insurers are now compelled to apply the old rules to "legacy insureds"—people injured before the law changed.

It is helpful to further decompose the elements of PIP average loss costs to better understand the drivers of these costs. Figure IV.3 compares the frequency of PIP claims in Michigan with the frequency of PIP claims in other mandatory no-fault states for the years 2006-2019.<sup>33</sup> The frequency of PIP claims in Michigan had been relatively low compared to the frequency of PIP claims in other no-fault states. For example, in 2019, the frequency of PIP claims in Michigan was 0.63 compared to 1.24 in other no-fault states. Hence, claim frequency does not appear to have been the primary cause of high PIP costs in Michigan.

33. Frequency is the number of claims multiplied by 100, divided by the number of insured car years.

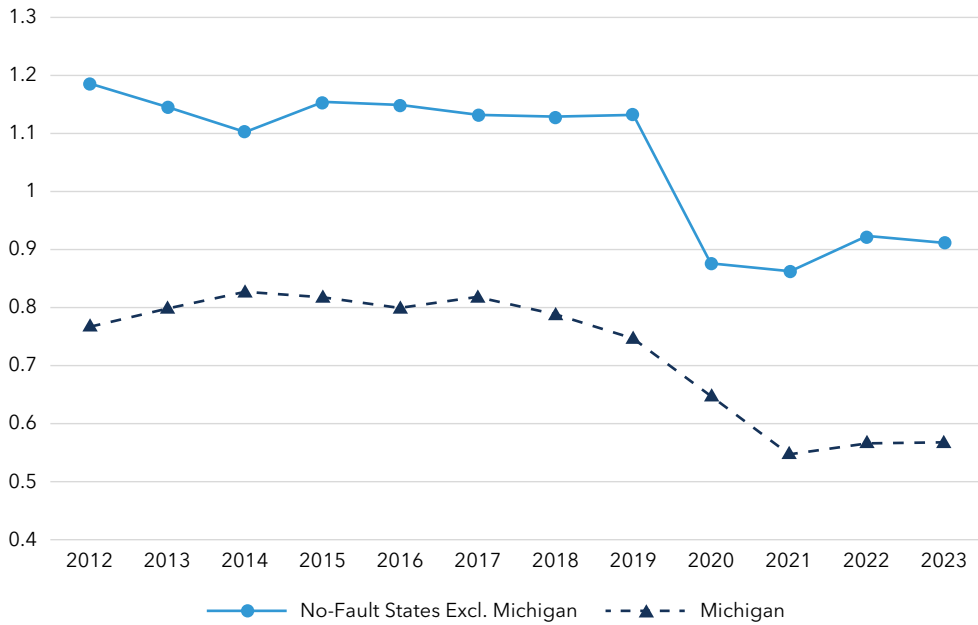


**Figure IV.3:** PIP Frequency: 2006-2019 – Michigan and No-Fault States

Source: NAIC and authors' calculations

Using the FTMS data, we can get some idea as to how the new law may be affecting the frequency of PIP claims. Figure IV.4 shows paid claim frequency trends for the years 2012-2023 derived from the FTMS data. We can see from this figure that paid claim frequency had remained relatively stable in both Michigan and the U.S. until 2020 when we see declines in both. It could be that the decrease in driving due to the pandemic caused the frequency of accidents and claims to fall. Claim frequency stabilized nationally from 2020 to 2022, while in Michigan we see a further decline from 0.65 in 2020 to 0.57 in 2023. It is possible that the law changes in Michigan contributed to this decline. If the medical cost controls reduced reimbursement rates for medical services covered under PIP, fewer PIP claims may be filed because the incentive to encourage auto accident victims with minor injuries to file for PIP benefits is lower.

**Figure IV.4:** PIP Paid Claim Frequency: 2012-2023 – Fast Track Data Michigan and No-Fault States Excluding Michigan

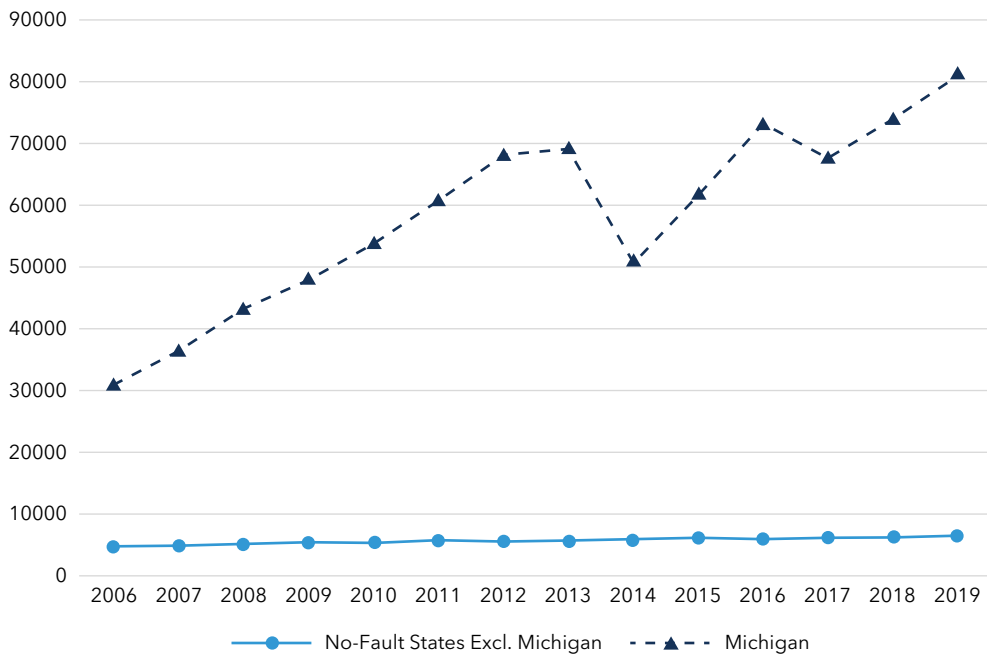


Source: Fast Track Monitoring System and authors' calculations

Figure IV.5 compares the severity of PIP claims based on incurred losses in Michigan with other mandatory no-fault states for the years 2006-2019.<sup>34</sup> This figure indicates that claim severity had been a major driver of PIP claim costs in Michigan and a principal contributor to total auto insurance costs in the state; it was \$81,537 in 2019. The sharp rise in the severity of PIP claims in Michigan, as well as the fact that it was much higher in Michigan than in other mandatory no-fault states (more than 12 times higher in 2019), was a matter of considerable concern that motivated the no-fault reforms that were enacted.

<sup>34</sup>. "Severity" is the total dollar amount of claims divided by the number of claims.

**Figure IV.5:** PIP Claim Severity: 2006-2019  
Michigan and No-Fault States Excluding Michigan



Source: NAIC and authors' calculations

These comparisons of PIP frequency and severity in Michigan with PIP frequency and severity in mandatory no-fault states indicate that the severity of these claims in Michigan was the principal reason why Michigan's PIP costs have been considerably higher than PIP costs in other mandatory no-fault states. Hence, the data lend support to the contention that Michigan's unlimited PIP medical benefits and its lack of a medical fee schedule, uncontrolled utilization, and substantial fraud and abuse were the principal factors causing Michigan's PIP costs to be so high.

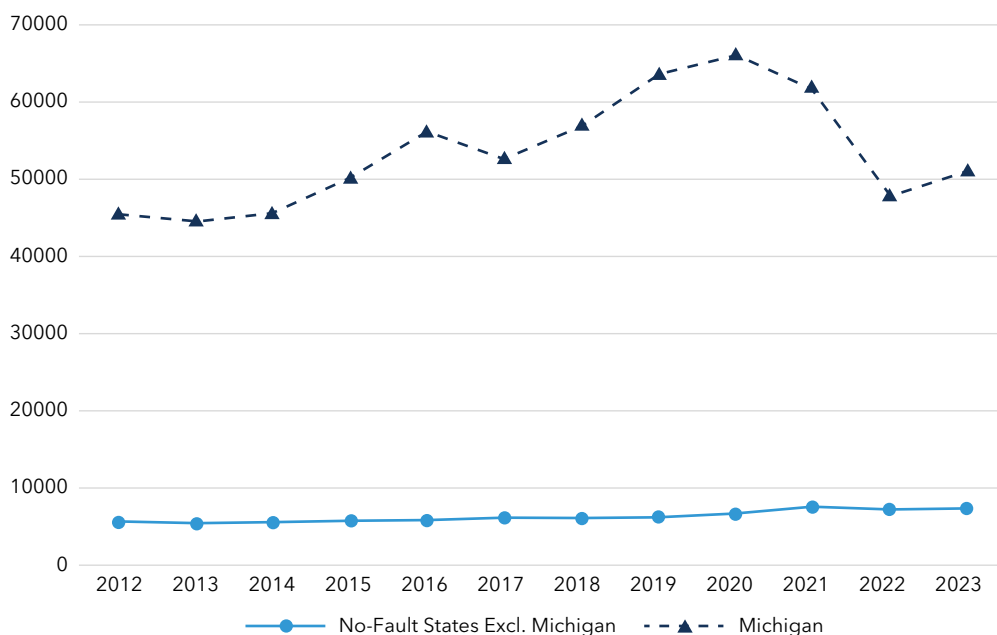
We can offer additional observations on how Michigan's PIP benefits likely contributed to the high severity of its PIP claims. With no effective limit on the amount of the medical benefits that could be claimed and the lack of cost controls, there were strong incentives for medical providers to prescribe or offer more services than necessary for injured people. With no out-of-pocket payments required of injured persons, they had no financial incentive to decline unnecessary services. Additionally, a person's family members could be paid substantial amounts for providing home attendant care.<sup>35</sup> Hence, all these aspects of Michigan's system for PIP benefits created significant moral hazard. This most likely resulted in significant hard fraud, soft fraud, and abuse where injuries are either exaggerated or excessive services are provided.<sup>36</sup>

35. As explained in Section V, family home attendant care refers to care that might otherwise be provided by a nurse or home health aide, including assistance with daily living activities.

36. An article by *Detroit Free Press* reporter JC Reindl highlighted the kinds of problems that caused very high auto insurance premiums in Detroit: "How aggressive lawyers, costly lawsuits and runaway medical bills make Detroit car insurance unaffordable," *Detroit Free Press*, May 6, 2017.

The more current FTMS data allow us to see whether there are indications that the reform legislation has had any initial effects on the severity of PIP claims. Figure IV.6 compares PIP severity in Michigan to that in other no-fault states for the years 2012- 2023. For Michigan, we see a decline in paid claim severity from \$66,067 in 2020 to \$47,826 in 2022—a 27.6% decrease. The decline in PIP severity in Michigan was particularly significant from 2021 to 2022. This suggests that, as the reforms took full effect, insurers' payments on PIP claims dropped considerably. However, we also see that paid claim severity increased to \$50,950 in 2023 based on two quarters of experience in 2023. Note that because these data are for paid claim severity, they reflect payments on claims incurred in 2022 and 2023, as well as claims incurred in previous years. It may be the case that, as insurers began increasing their payments on the claims of legacy insureds due to the Andary lawsuit, paid claim severity increased as any savings on claims for non-legacy insureds (i.e., people hurt after the law changed) were more than fully offset by payments on the claims of legacy insureds.

**Figure IV.6:** Paid Claim Severity: 2012-2023 – Fast Track Monitoring System  
Michigan and No-Fault States Excluding Michigan



Source: Fast Track Monitoring System

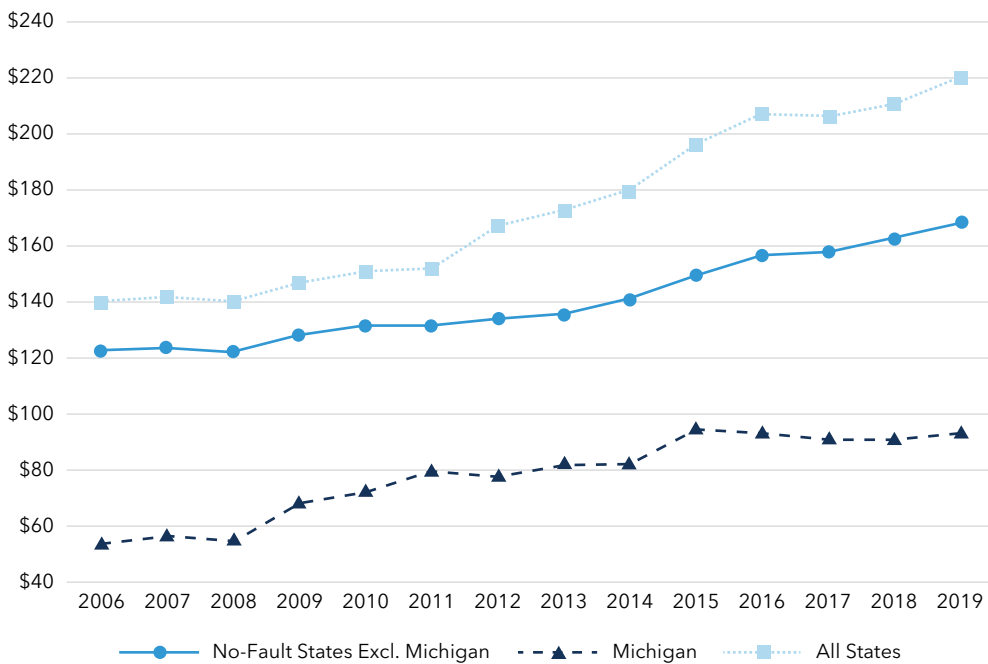
## B. Bodily Injury Liability

Because Michigan's PIP coverage law is an element of its broader no-fault insurance system, we also consider how this system may have affected the cost of BIL claims in Michigan relative to other states. To the extent that Michigan's no-fault law may have reduced the cost of BIL claims, this could have offset Michigan's high PIP costs at least

to a degree, understanding that the net result still may have been much higher overall insurance costs in Michigan. Additionally, if further changes to the reform legislation are contemplated, the benefits of Michigan’s tight threshold for liability claims should still be achievable with the changes to its rules for PIP benefits.

We begin by examining the average loss costs for BIL claims. This gives us a general picture of how Michigan’s no-fault system and verbal threshold had been affecting liability claim costs in total. Figure IV.7 compares the average loss cost for BIL claims for split limits policies in Michigan with the average loss costs in other mandatory no-fault states and all states for the years 2006-2019.<sup>37</sup>

**Figure IV.7:** Estimated Percentage of Uninsured Motorists: 2006-2029  
Michigan, No-Fault States, and All States



Source: NAIC and authors’ calculations

This figure reveals that BIL claim costs in Michigan were significantly below what they were in other no-fault states and all states. In 2019, the average loss cost for BIL for split limits policies was \$93.83 in Michigan compared to \$168.23 in other no-fault states and \$219.82 in all states. This suggests that Michigan’s verbal threshold is helping to reduce its BIL costs. It also is possible that Michigan’s high PIP benefits had reduced the incentive for injured persons to file claims against parties at fault even when their injuries met the verbal threshold.

37. In such policies, there are separate limits for bodily injury damages per person, bodily injury damages for all persons, and property damages. Having separate limits can reduce the amount of liability damages covered due to an accident relative to what would be covered if there was one combined limit for all damages.

We performed additional analysis of the frequency and severity of BIL claims in Michigan that we only summarize here but are available in detail from Born and Klein (2023). Our analysis indicates that BIL claim frequency was considerably lower in Michigan than in other no-fault states and all states. In 2019, BIL claim frequency was 0.18 in Michigan, 0.69 in other no-fault states, and 0.98 in all states.

Michigan's verbal threshold for liability claims could be substantially reducing the number of these claims relative to what would be the case if Michigan had a less stringent threshold or did not have a no-fault system. It also might be the case that Michigan's generous PIP benefits made it less likely that injured parties would file a liability claim, but this is a matter of speculation. Regardless, it is apparent that the relatively low frequency of BIL claims in Michigan has been a substantial contributor to its relatively low average loss costs for this coverage.

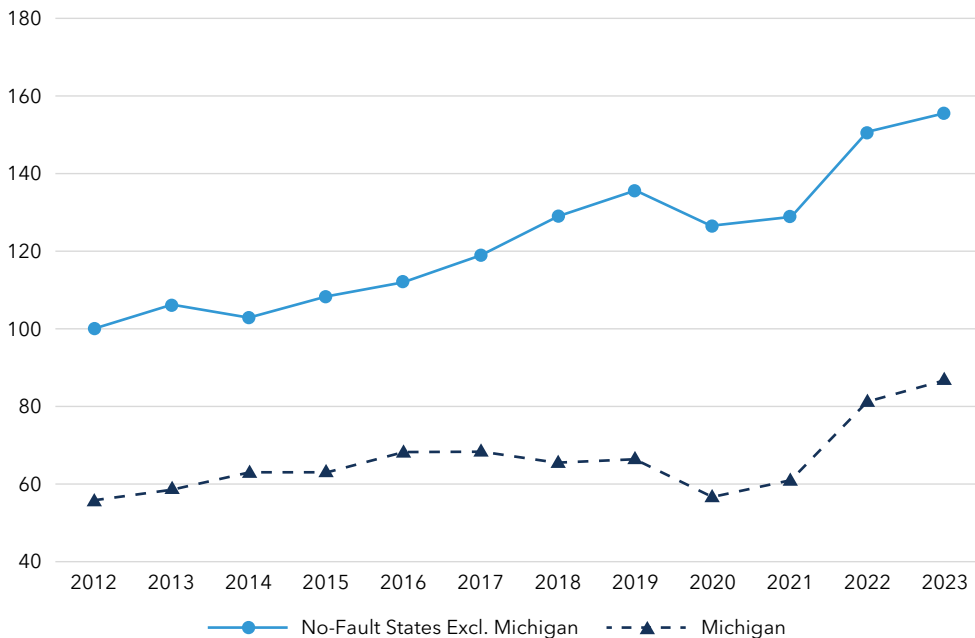
On the other hand, the data indicate that the severity of BIL claims has been considerably higher in Michigan than in other states. In 2019, the average BI claim in Michigan for split limits policies was \$51,040 compared to \$27,509 in other mandatory no-fault states and \$22,353 in all states. The higher severity of BIL claims in Michigan is not necessarily surprising if Michigan's verbal threshold is causing the liability claims that are filed to be more severe, i.e., the threshold discourages small claims from being filed. Other factors could also be causing liability claims for larger amounts to be filed and paid in Michigan, such as higher levels of attorney involvement and greater levels of soft fraud or hard fraud.<sup>38</sup>

We can gain some perspective on how the no-fault amendments may be affecting BIL costs by examining more recent data on BIL pure premiums, claim frequency, and severity from the FTMS. If the amendments have caused PIP claims to fall, it is possible that there has been an associated increase in BIL claim costs, as accident victims may be more likely to recoup their costs from at-fault parties. Figure IV.8 shows BIL pure premium trends for the years 2012-2023.

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<sup>38</sup> We performed the same calculations for pure premiums, claim frequency, and claim severity for combined limits policies. The results for combined limits policies were very similar to the results for split limits policies, so we do not report the combined limits results here. The only difference is that the pure premium and claim severity for combined limits policies are a bit higher than that for split limits policies.

**Figure IV.8:** BIL Pure Premiums: 2012-2023 – Fast Track Monitoring System  
Michigan and No-Fault States Excluding Michigan



Source: Fast Track Monitoring System and authors' calculations

What we see in this figure is that the BIL pure premium increased in Michigan and other mandatory no-fault states from 2020 to 2023. However, the BIL pure premium increased at a greater pace in Michigan—54.4%—than in other mandatory no-fault states—22.8%. This suggests that Michigan's no-fault amendments may be influencing its BIL claim costs. The data also indicate that while the frequency of BIL claims only increased modestly after the changes to the no-fault law, there was a sharp increase in the severity of BIL claims in Michigan in 2022 followed by a smaller increase in 2023. In other mandatory no-fault states, the increase in BIL severity has been more gradual. Hence, the increase in the BIL pure premium in Michigan appears to be due to an increase in claim severity and not claim frequency.

Several factors could be contributing to the sharp increases in the BIL pure premium and claim severity in Michigan. One of these factors could be the greater use of tort liability by accident victims who are seeking to recoup their damages from at-fault drivers. We note that the new law allows accident victims to sue at-fault parties in tort for damages not paid by their PIP coverage without having to meet the verbal threshold. The new law also increased the minimum required BIL limits that drivers are required to carry. Together, these two provisions of the no-fault amendments could be at least partially responsible for the increase in BIL claim costs.

Overall, the data indicate that despite the much higher severity of BIL claims in Michigan, the low frequency of such claims caused the average loss cost for these claims to still fall far below that of other states. Nonetheless, if Michigan's verbal threshold

was working to reduce the costs of auto insurance generally, it was not enough to fully offset the high costs of its PIP coverage prior to the reform. The data also suggest that the 2019 no-fault changes for PIP coverage may have shifted some bodily injury costs that were previously paid through PIP to other coverages and payors.

## V. Evaluation of No-Fault Reforms

In this section, we evaluate key provisions of the reform legislation and consider issues that have been or could be raised with these provisions. We focus on the provisions that involve PIP coverage, reimbursement of medical expenses, and minimum liability insurance requirements. While proponents of the legislation believed that the changes to PIP coverage would substantially reduce the costs of auto insurance for many drivers, some stakeholders have expressed concerns that those who choose low PIP limits, or opt out of PIP entirely, will not have adequate coverage if they are seriously injured. Further, medical providers and others contend that medical cost controls for PIP coverage under the reforms are too tight, causing some accident victims to receive inadequate care; the critics of these controls have challenged them in court and also support legislation to temper them. The regulatory changes in the reform legislation also could prove to be problematic but an evaluation of these changes is beyond the scope of this paper.<sup>39</sup>

### A. PIP Options and Premium Savings

As explained in Section III, under the new law, car owners have five options for PIP coverage levels and can also lower their premium by making their health insurance primary for medical expenses arising from auto accidents. A 2022 article in the *Detroit Free Press* reported the following statistics on drivers' PIP choices for the fourth quarter of 2021<sup>40</sup>:

PIP Choice	% of Drivers
Unlimited	63%
\$500,000	3%
\$250,000	10%
\$50,000	3%
Opt out	9%
Unknown	12%

Source: *Detroit Free Press*

It is interesting to note that, based on these statistics, more than 60% of Michigan car owners were still opting for unlimited PIP coverage at the end of 2021. There may be a number of reasons for this, but car owners that maintain unlimited PIP coverage limit the premium savings they can achieve. It is possible that, over time, more drivers will

39. Indeed, some have expressed considerable disappointment with how much the new law has actually reduced rates (Kaffer, 2022). Refer to Born and Klein (2023) for an evaluation of competition in Michigan's auto insurance market and the likely effects of the new law's tightening of insurance regulation.

40. "Many Michigan Drivers Drop Unlimited No-Fault Insurance - Yet Rates Slow to Fall," *Detroit Free Press*, April 12, 2022.



opt for something less than unlimited PIP coverage as they become more familiar with the new law. This would further reduce premiums for these drivers, all other things equal. Regardless of the mandated rate reductions, the new law should have lowered premiums significantly for many drivers if they chose something less than unlimited PIP coverage. Indeed, over time, competition among insurers could prompt them to offer even larger rate reductions than those required. In 2020, the MDIFS reported that the average statewide rate reductions initially filed by insurers for PIP coverage were greater than those mandated by the new law.<sup>41</sup>

Our initial analysis of average premiums suggests that some drivers are benefiting from substantial reductions in their premiums due to the reform legislation. The savings that any driver could achieve depend on many things including their choices on PIP coverage, liability limits, and deductibles. With the average premium falling by almost 20% from 2019 to 2022, we expect that some drivers are seeing much larger premium reductions, e.g., drivers who have opted out of PIP coverage. Rates are rising again for several reasons, but this does not mean that the reforms have not had desirable effects if premiums are still lower than they would be otherwise for many drivers.

On July 11, 2022, the MDIFS issued a press release touting the cost savings and other benefits that have been achieved under the new law.<sup>42</sup> The press release stated that the reforms had generated more than \$1 billion in premium savings. It also stated that Michiganders received \$3 billion in premium refunds.<sup>43</sup> According to the press release, more than 202,000 previously uninsured drivers took advantage of the law's amnesty period to buy coverage without paying a penalty. Further, the DIFS reported that 46 companies or their affiliates received authorization to enter Michigan's market, suggesting that the reforms made Michigan's auto insurance market more attractive.

In addition to the premium savings that many Michigan drivers are likely seeing, the premium reductions available appear to be reducing the number of uninsured drivers as indicated in the MDIFS press release and the latest statistics from the IRC. If auto insurance becomes more affordable for certain drivers, they should be less likely to go without insurance, all other things equal. Further, some people who did not own a car because they could not afford the cost of insurance may now be able to purchase a vehicle. Having a car could help some people become employed or get a better job.

One concern with the new law is how well drivers are covered for the medical expenses they incur if they are injured.<sup>44</sup> To the extent that someone relies on their health insurance to cover their medical costs from an auto accident, they will be subject to out-of-pocket payments, such as deductibles, co-pays, and coinsurance. This should not be a big concern for people with health insurance with low out-of-pocket payments but could be a problem for drivers with high out-of-pocket payments in their health plans.

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41. Press release available at <https://www.michigan.gov/difs/News-and-Outreach/press-releases/2020/06/09/new-auto-insurance-rate-filings-approved-average-statewide-savings-exceed-new-law-requirements>.

42. Available at <https://www.michigan.gov/difs/news-and-outreach/press-releases/2022/07/11/governor-whitmer-state-leaders-celebrate-cost-savings-provided-by-auto-no-fault-reform-law>.

43. To place these savings in perspective, auto insurers in Michigan collected \$9.1 billion in direct premiums written in 2021.

44. Refer to, for example, Kaffer (2022).

Another significant issue could be the expenses associated with custodial care and other types of care that are typically not covered by health insurance.<sup>45</sup> Custodial care is the assistance that someone receives to help them with daily living activities, such as bathing, dressing, etc. This type of care is different than the home nursing care that a person would receive, such as the administration of medications, physical therapy, etc. Home nursing care is typically covered by health insurance, but custodial care is not.<sup>46,47</sup> The provision in the new law that allows Michigan residents to sue at-fault drivers for damages that exceed their PIP limits provides another potential source of recovery for their costs of custodial care but no assurance that all of these costs can be recovered.

While at least some Michigan drivers may have obtained substantial savings under the new law, other payers of medical expenses are likely seeing increases in their costs. These other payers include employers who offer group health insurance to their employees, Medicare, and Medicaid.

The cost of liability coverage also could increase because drivers with little or no PIP coverage who are injured in accidents caused by others are more likely to sue those at fault and/or sue for larger amounts. The new law allows injured persons, if they are Michigan residents, to sue at-fault drivers for medical expenses and lost wages that exceed their PIP limits even if their injuries do not meet the verbal threshold. One justification for this provision is that it gives injured persons a means of recourse to recover excess damages not covered by their own insurance. Additionally, all other things equal, this provision could prompt more drivers to choose lower PIP limits. However, this provision also effectively weakens the application of the verbal threshold and may be leading to more litigation and higher liability insurance costs.

## **B. Limits on Reimbursement Rates**

Reimbursement rates also changed for medical providers. Under the reform law, insurers are only required to reimburse medical and rehabilitation providers for services rendered at 190%-230% of Medicare reimbursement rates. For most providers, the maximum reimbursement rate started at 200% and dropped each year by five percentage points to 190% of Medicare rates after July 1, 2023, where it was intended to stay. Recently proposed legislation would increase this percentage to 200%.

The limits on reimbursement rates are higher for certain medical facilities, such as hospitals with a high percentage of indigent patients and stand-alone rehabilitation facilities that specialize in treating traumatic injuries; these facilities are reimbursed at 220% of what Medicare pays. It is proposed that this percentage be increased to 230%. Additionally, certain facilities are allowed to charge up to 230% for emergency medical services; this percentage would rise to 240% under the proposed changes.

If Medicare does not provide an amount payable for a treatment, then a provider's reimbursement was initially capped at 55%-78% of their scheduled fee for the treatment in effect on January 1, 2019, adjusted for inflation. As with the scheduled

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45. The annual cost of nursing home care in Michigan can easily exceed \$100,000 depending on the level of care.

46. Long-term care insurance is designed to cover the costs of custodial care. However, relatively few people buy this coverage because of its high cost and young people rarely purchase this coverage.

47. Medicaid will cover the custodial care of individuals who have essentially exhausted all their assets. However, only a limited number of nursing homes are qualified to accept Medicaid patients.

fees for services covered by Medicare, certain facilities receive a smaller haircut on their regular fee. For the sake of simplicity, we will term this the “55% rule.” This range is now 52.5%-71%.

Medical providers that specialize in post-acute care and rehabilitation services have expressed concerns that the reimbursement rates that insurers are allowed to use for services not covered by Medicare under the reforms are insufficient to cover their costs of providing care for accident victims suffering catastrophic injuries.<sup>48</sup> These concerns have been articulated by the Coalition Protecting Auto No-Fault (CPAN).<sup>49</sup> The haircut for non-Medicare-coded services has been of much greater concern to medical providers than the scheduled reimbursement rates tied to Medicare and was one of the two cost controls that were challenged in the Andary lawsuit.

The Michigan Public Health Institute (MPHI) conducted a study, consisting of two surveys, on the impact of the new fee structure on service availability for people with catastrophic injuries resulting from a car crash (Michigan Public Health Institute, 2021 and 2022).<sup>50</sup> These surveys found that the new cost controls have had or are expected to have severe adverse financial effects on many providers specializing in post-acute and rehabilitation care. CPAN contends that a substantial number of these organizations had to close or significantly curtail their operations and this, in turn, has negatively affected the quality of care received by auto accident victims requiring post-acute and rehabilitation services.

As noted above, for drivers who continue unlimited PIP coverage for medical services, insurers are not required to pay for more than 56 hours per week of home attendant care by family members; insurers can choose to pay for more than 56 hours per week in specific cases. Further, under the reforms, family members can be paid based on the fee schedule used for medical providers. Previously, there was no fee schedule for services provided by family members, so insurers were hampered in their ability to limit what they were required to pay. These provisions of the reforms were added to address the concern that the reimbursement of family members for home attendant care had been abused in many cases under the old law. To provide some perspective, home attendant care accounted for \$1.2 billion (57%) of the claim costs of the MCCA in 2018 (MCCA, 2018).<sup>51</sup>

As discussed above, there was litigation regarding whether the 55% rule and the 56-hour-per-week limit for family care should apply retroactively to accidents and injuries that occurred before the new law took effect in a suit filed against two insurers—*Andary v. USAA Casualty Insurance Company*.<sup>52</sup> The plaintiffs in this suit argued that the contested medical controls were overly restrictive and arbitrary and should not apply to people injured before the law changed. The defendant insurers prevailed in the trial court but lost on appeal in the Michigan Court of Appeals and

48. Refer to, for example, “Uncertainty Looms for Hospitals Under New Auto Insurance Law,” *Crain’s Detroit Business*, June 2, 2019.

49. CPAN’s website can be accessed at <https://protectnofault.org/>.

50. The study was commissioned by the Brain Injury Association of Michigan (BIAMI).

51. This figure includes the care provided by a residential facility, care within a home provided by an agency, and care within a home provided by a person’s family members. Family attendant care accounted for \$210.7 million - 17.7% - of the MCCA claims payments in 2018.

52. Refer to “Michigan Supreme Court: No-Fault Overhaul Doesn’t Apply to 15,000 Catastrophic Survivors” *Detroit Free Press*, July 31, 2023.

the Michigan Supreme Court. Hence, the medical cost controls enacted in 2019 have been invalidated for legacy insureds.

The concerns that motivated the plaintiffs in the Andary suit also may affect the limits on reimbursement rates going forward. In October 2023, legislation was passed in the Michigan Senate that would substantially modify the medical cost controls for PIP coverage that were enacted in 2019.<sup>53</sup> This legislation would increase the scheduled reimbursement rates for services covered by Medicare as noted above. For services not covered by Medicare, the legislation specifies the reimbursement rates that insurers would be required to pay delineated by the type of service, with different rates for the Detroit Metro Area and the remainder of the state. These rates are more generous for most providers than what they are receiving under the 55% rule. Additionally, the 56-hour-per-week limit for reimbursement of family members for providing home care would be increased to 122 hours per week. The legislation further specifies higher hourly reimbursement rates for family members based on the types of services they provide.

This legislation, if enacted, will affect rates moving forward. Insurers will need to raise their rates to adjust for higher claim costs stemming from increasing reimbursement rates for providers of medical, rehabilitation, and home attendant care services, as well as the increase in the hourly limit and reimbursement of home attendant care provided by family members. In turn, this will raise premiums for drivers who continue to purchase some amount of PIP coverage. This could induce more drivers to lower their PIP coverage or opt out of it entirely.

A thorough evaluation of this legislation is beyond the scope of this paper, but we can offer some observations. Medical providers already are constrained by the reimbursement rates used by private health insurers, Medicare, and Medicaid. Additionally, the scheduled reimbursement rates under no-fault exceed the scheduled fees for workers compensation. Consequently, assuming their marginal costs are adequately covered by these payers, the issue for providers is how they cover and allocate their overhead (fixed) costs. Under the old system, providers had become accustomed to relying on auto insurance to cover an inordinate portion of their fixed costs. They are not able to do this to the same extent under the reforms. Michigan drivers could contend that this is only fair. Nonetheless, if medical providers are being truthful with respect to the concerns they have expressed, it appears that some are being forced into cutbacks of their services and facilities.

To our knowledge, no one has conducted any formal research on how the proposed legislation would affect the services received by auto accident victims or how it would affect claim costs and premiums, but insurers have offered initial cost estimates. In testimony before the Michigan House Committee on Insurance and Financial Services, Eric Poe (the CEO of Citizens United Reciprocal Exchange), estimated that the legislation would increase premium costs by more than \$500 million.<sup>54</sup> Presumably, the provider community and trial bar believe this legislation would provide sufficient

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53. This legislation in Michigan Senate Bills 530, 531, and 575. A summary of this legislation is available at <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/Senate/pdf/2023-SFA-0530-F.pdf>.

54. Testimony available at [https://www.house.mi.gov/Document/?Path=2023\\_2024\\_session/committee/house/standing/insurance\\_and\\_financial\\_services/meetings/2023-11-02-1/documents/testimony/CURE%20Auto%20Insurance.pdf](https://www.house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/insurance_and_financial_services/meetings/2023-11-02-1/documents/testimony/CURE%20Auto%20Insurance.pdf).

reimbursement of the cost of providing medical and post-acute care to auto accident victims. The questions that remain unanswered are whether the objective of funding adequate care for accident victims could be achieved at a lower cost and how much the proposed changes would affect claim costs and premiums going forward.

### **C. Utilization Controls**

The new law has enabled insurers, including the MCCA, to institute greater control over the utilization of medical services arising from auto accidents. Insurers are allowed to conduct utilization reviews, which refer to an insurer's initial evaluation of the appropriateness of both the level and the quality of treatment, products, services, or accommodations provided to an insured under their PIP coverage based on medically accepted standards. A medical provider can be required to submit necessary records and other information concerning a treatment or service they have provided. A provider that knowingly submits false or misleading records or other information to an insurer or the MDIFS commits a fraudulent insurance act and is subject to sanctions.

It appears that one intention of the new provisions is to flag and require medical providers to justify services that go beyond what is normally provided for a particular injury. Specifically, under the reforms, if a provider provides a service that is not usually associated with the diagnosis or condition for which a patient is being treated, the insurer may require the provider to explain the necessity or indication for the service.

The MDIFS oversees the utilization review process. An auto insurer must have a certified utilization review program that complies with the department's utilization review administrative rules and is subject to its approval. An insurer also is required to submit an annual report to the MDIFS detailing its review program and activities. Additionally, insurers' utilization decisions are subject to appeal to the MDIFS.

We are not aware of any published evaluations on how well utilization review is working under the new law and how it may be affecting the cost and quality of medical care provided. Anecdotally, our discussions with insurers indicate that their enhanced ability to control utilization has helped to lower PIP claim costs. As with the limits on reimbursement rates, this is an area that warrants further study.

### **D. Minimum Liability Insurance Requirements**

As discussed in Section III, the new law also raised the minimum liability insurance requirements for drivers to \$50,000 per person and \$100,000 for all persons, and insurers must also offer BIL coverage with limits of \$250,000 per person and \$500,000 for all persons.<sup>55</sup> One argument for raising the minimum liability insurance requirements is that the change to PIP requirements increases the likelihood that drivers will be sued for accidents they cause as the new law allows injured persons to sue at-fault drivers for damages that exceed their PIP limits. A second argument for higher liability limits is that they will help injured persons to recover more of the damages they suffer from the insurance of at-fault drivers. A vehicle owner can purchase underinsured motorist coverage, but this comes at a cost.

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<sup>55</sup> Only two states—Alaska and Maine—have minimum liability insurance requirements this high. Some states also require vehicle owners to purchase uninsured/underinsured motorist coverage, but Michigan does not.

The downside of higher liability insurance requirements is that they increase premiums for vehicle owners who would otherwise choose lower amounts of coverage. The premium costs of higher limits could be particularly burdensome for low-income car owners and could cause more of them to drop their insurance. Consequently, policymakers have to consider the tradeoff between the greater protection provided by higher liability limits against their costs and effects on certain drivers. We expect that this aspect of the new law has raised premiums for this coverage for drivers who had previously opted for lower liability limits.

Further, the increase in minimum liability insurance requirements will likely lead to higher liability claims costs, all other things equal, and the most recent data are consistent with this prediction. This is not just a matter of higher amounts of insured losses. Some injured persons could choose to sue for higher damages than they would otherwise if the at-fault driver has higher liability limits. Hence, while higher minimum insurance requirements provide greater protection for at-fault drivers, they also may be leading to more lawsuits and higher court awards and settlements. Anticipating an increase in BIL claim costs, insurers will need to raise premiums for this coverage that will partially offset the savings from lower PIP limits.<sup>56</sup>

## **VI. Summary and Conclusions**

This paper provides an initial and high-level look into no-fault auto insurance reform in Michigan. Our initial analysis reveals several things. One, prior to the reforms, what car owners were paying for auto insurance in Michigan had been increasing at a fast pace and was much higher than what other car owners were paying in other states. Two, high PIP costs appear to be the main culprit that had caused auto insurance premiums to be so high in Michigan. Three, it was the severity and not the frequency of PIP claims that has been the problem in Michigan. Four, Michigan's verbal threshold for liability claims appears to have reduced auto insurance costs and premiums in Michigan relative to other states, but any cost savings from this were swamped by high PIP costs prior to the reforms. Five, Michigan has had a high number of uninsured motorists, which is likely due, at least in part, to its high auto insurance premiums.

Our initial evaluation of the likely effects of the 2019 reform legislation indicates that it is significantly reducing the costs of auto insurance for many Michigan drivers. The savings for any given driver will depend on the amount of PIP coverage they choose, among other factors. Based on recent data available from the FTMS, we see sharp reductions in average liability premiums from 2020 through the second quarter of 2023. These data also indicate that the average loss cost for PIP and the severity of PIP claims had fallen considerably from 2020 to 2022 as the medical cost controls took effect. However, PIP claim costs increased in 2023, which is likely due to the Andary lawsuit and other litigation. These statistics suggest that the reforms have provided considerable premium savings, at least for some Michigan drivers. It also appears that lower premiums due to the reforms have reduced the number of uninsured drivers in Michigan.

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56. Increased costs due to higher minimum liability insurance requirements could be offset somewhat by lower costs for underinsured motorists coverage.

However, there are reasons to believe that we could see PIP costs and premiums increase again, as indicated by the most recent data. The Michigan Supreme Court's decision in the Andary case is causing insurers to pay out more on PIP claims for people injured before the law changed. The most recent proposed changes to PIP medical cost controls for all insureds would increase claim costs and compel insurers to increase their rates for PIP coverage, all other things equal.

As time passes and more data become available, we will be able to better gauge how the reforms are affecting claim costs and premiums and the likely effects of changes to the reforms. One development that we would like to examine is drivers' choices for liability limits and PIP coverages. If drivers are significantly reducing their PIP coverage as allowed under the new law, we would expect this to substantially reduce claim costs and premiums, all other things equal. Over time, more drivers may reduce their premiums by choosing lower amounts of PIP coverage. Additionally, if PIP premium rates rise due to the proposed modifications of the medical cost controls, this will likely induce more drivers to lower their PIP coverage or opt out of it entirely.

Additionally, we need to gain a better understanding of how the reforms as originally enacted have affected the cost and quality of medical care for persons injured in auto accidents and monitor how changes to the cost controls, if enacted, will affect medical care going forward. It would be desirable to disentangle the effects of the scheduled reimbursement rates for medical providers, the reimbursement of post-acute and rehabilitation services, the limits on family-provided home attendant care, utilization controls, and drivers' choices on their PIP coverage. How are these measures affecting the adequacy and quality of the medical care received by injured persons? How are injured persons dealing with the cost of custodial care if they do not have PIP coverage? To what extent and with what effect are drivers suing at-fault drivers for auto accidents if their PIP coverage is insufficient to cover their medical costs? Answering these and other questions will help us better understand how Michigan's unique system for no-fault auto insurance has performed and affected the interests of Michigan drivers and accident victims.

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