

## No-fault bill on deck after recess

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BY: Gary Gosselin



The Michigan Legislature has taken its annual “summer recess,” but like school kids out for the summer, they must take up pen and paper in late summer and continue where they left off.

Top of the list for some would be pending legislation to reform no-fault auto insurance in Michigan.

Rep. Pete Lund, R-Shelby Township, sponsored House Bill 4612, which would cap the current

unlimited benefits for catastrophic no-fault claims at \$1 million, among other major changes to the system.

Lund declined to comment for this story.

Opponents — mainly Democrats, health care organizations, and the plaintiff’s bar — have squared off against proponents that mainly include Republicans and the insurance industry.

Republicans were far short of the votes they needed to pass the bill before recess, so HB 4612 hasn’t come to a full vote.

“We’re still hopeful they will take it up and consider it, but I’m not aware of any specific plans. People are trying to figure out where the votes are,” said Peter Kuhnmuensch, executive director of the Insurance Institute of Michigan. “I’m not aware of any specific plans. Everyone wanted to take the summer and discuss what changes, if any, what could garner votes, what’s important ...

“We’re hopeful there will be reconsideration in the fall, but the legislators will give you what they give you. Our preference is the legislation as it is, but there’s often compromise,” he added.

The bill was voted out of committee in the spring amid much controversy. It would cap claims at \$1 million, eliminate the Michigan Catastrophic Claims Association, and create a new nonprofit entity with appointees and meetings open to the public.

“When they broke, it clearly appeared the proponents didn’t have enough votes to pass, and it looks like that’s still the issue,” said George T. Sinas, of Lansing-based Sinas Dramis Brake Boughton & McIntyre PC. He also serves as general counsel for the Coalition Protecting Auto No-Fault.

“The insurance industry is continuing to press for the votes, but Michigan Association for Justice and CPAN have not seen any erosion in the bipartisan opposition to 4612,” said David E. Christensen, of Gursten Koltonow Gursten Christensen & Raitt PC, in Farmington Hills, who is chair of the Michigan Association for Justice’s no-fault insurance committee.

Medicaid and the summer vacation — recess — have taken front seat lately, he said, noting that House Speaker Jase Bolger, R-Marshall, is applying pressure when and where he can to get votes, but for now the debate seems pretty “stagnant.”

“We continue to talk to legislators and educate them and be sure they understand the nuances,” Kuhnmuensch said.

## **Withholding information**

Sinas said the one issue that must be overcome before another word is spoken about any changes to the No-Fault Act is the release of information by the MCCA, whose board is made up of insurance executives.

The MCCA is accused of withholding important financial information and of stonewalling Freedom of Information Act requests to get that information. CPAN and the Brain Injury Association of Michigan filed a lawsuit in 2012 to compel MCCA to release information.

In early January 2013, Ingham County Judge Clinton Canady III ruled that the MCCA was subject to FOIA requests and must release information regarding rate-making and its assessment process to come up with its \$186 fee per car.

The MCCA appealed, and now briefing is almost complete and the COA should schedule the case for argument very soon, Sinas said.

“It has been the strongly held view of CPAN that this is an important issue not only for Michigan customers who have a right to know, but also important for our legislators; they should not be put in a position to vote on changes [the no-fault bill] that affect the lives of so many, based on claims by the MCCA, when the MCCA won’t disclose information.”

The bill would reduce payments to medical providers and would lower insurance premiums by \$125 per vehicle for the first year — with no guarantees for continued reductions.

It would add two \$25 taxes to pay for a \$1.2 billion Medicaid deficiency created by the shortfall and sunset of the Health Insurance Claims Assessment, and to make up for a projected \$2 billion deficit in the \$14 billion Michigan Catastrophic Claims Fund.

“There are conversations continuing as [Lund] and others try to figure out ways to move forward with this in the fall, but there’s no definitive changes going on right now or proposals going forward,” said Ari Adler, spokesman for Bolger.

## **Payments too much**

Kuhnmuench said one of the big issues has to be cost control and a change in the rack rate or chargemaster rate for no-fault claims. Under the current system, he said, payment for services is at a much higher level than noninsured are charged, not the lower rates that insurers have negotiated.

“We end up paying hospital charges and emergency room rates at three, four or five times the rate” insurers normally pay, Kuhnmuench has said.

Christensen disputed the idea, saying that the No-Fault Act says insurers must only pay reasonable costs and that the insurance companies determine what is a reasonable charge. He added that they may be billed for the full amount, but, as with other claims, they pay substantially less, usually the going rate for that service — just like other claims.

The no-fault system was set up in 1972, and a lot has changed since then, Kuhnmuench said, noting the next highest payout for no-fault benefits is in New York, at \$50,000. Most no-fault states (12) are like Massachusetts, he said, with caps around \$8,000.

Tom Shields, spokesman for the Michigan Insurance Coalition and the Coalition for Auto Insurance Reform, did not return several calls for comment.

*If you would like to comment on this story, call Gary Gosselin at (248) 865-3103 or email [gary.gosselin@mi.lawyersweekly.com](mailto:gary.gosselin@mi.lawyersweekly.com).*