

## Plaintiffs' bar angry over no-fault bill

### Opponents say caps restrictive, standards subjective

By: [Douglas Levy](#)

March 6, 2014

Michigan House Speaker Jase Bolger has resurrected and restructured a legislative measure that would make major changes to the state's no-fault auto insurance law.

His proposed legislation calls for a \$10 million cap on no-fault benefits, a 10 percent savings on premiums for two years, and a medical-provider fee schedule that follows the workers' compensation fee schedule.

But no-fault attorneys are raging over the measure.

They are saying that any savings on premiums are offset by other charges; that the proposal has other, more restrictive caps; and that they anticipate litigation over provisions and language that restrict what auto accident victims are entitled to under no-fault.

"You talk about a bill that creates special favors for the insurance industry, you will have to go a long way to beat this one," said George T. Sinas of Sinas Dramis Brake Boughton & McIntyre PC in Lansing.

At his Feb. 20 public unveiling of the proposal, Bolger said that the bill would make auto insurance affordable, and that Michigan's auto insurance system needs reform because of expensive premiums and a high rate of uninsured drivers.

The bill, "[Substitute for House Bill 4612](#)," replaces [HB 4612](#), which died on the House floor in 2013. That bill called for a \$1 million cap on benefits.

Bolger did not return calls for comment. Anna Heaton, spokeswoman for Bolger, said that the proposal is technically on the floor, but that Bolger is not moving on it because he wants lawmakers to have enough time to review it and make amendment proposals.

Meanwhile, Sen. John Pappageorge, R-13th District, on Feb. 25 introduced Senate Bill 818. While the bill has many of Bolger's plan's provisions, it does not have any saving provisions but it does retain lifetime benefits without a cap. That bill was referred to the Senate's Insurance Committee.

"Michigan is one of the leaders in getting people with spinal and brain injuries out of beds, into wheelchairs, then wheelchairs into walkers," he said. "Why would we stop that?"

## **'Misleading' caps?**

Peter Kuhnmuench, executive director of the Insurance Institute of Michigan in Lansing, said that the Institute hasn't taken a formal position on Bolger's measure just yet, and that he and insurance carrier representatives would be discussing the proposal at a March 10 meeting.

He said that from an insurance carrier's prospective, the jump from a \$1 million cap to \$10 million "makes it increasingly difficult to take costs out of the system. ... That takes away large portions of potential savings that were available under the former proposal."

But plaintiff's side no-fault attorneys say that even though the cap is increased under Bolger's plan, the proposal's three other caps put drivers at a disadvantage.

Sinas, who is general counsel for the Coalition Protecting Auto No-Fault, said that motorcycle injuries are capped at \$250,000, regardless of how the accident happened, "and those poor cyclists who sustain injuries have to exhaust their health care coverage before they can even turn to" personal injury protection benefits.

Bolger's plan also calls for a \$50,000 benefits cap for nonresidents. Sinas said that means, potentially, anyone from out of state could be admitted for a lengthy stay and incur medical bills that are hundreds of thousands of dollars.

"[T]he no-fault insurance industry that used to have to pay for those expenses now gets to wash their hands of those claims at \$50,000, which is going to saddle Michigan taxpayers with taking care of those nonresidents who get in our state who don't have health insurance coverage," he said.

"It's a massive tax shift from the auto insurance industry to Michigan taxpayers and it's going to create a real burden to some of Michigan's major level 1 trauma centers."

A fourth cap, applicable to the assigned claims plan for people who don't have their own auto insurance, is at \$250,000.

"The idea that there's a \$10 million cap is one of the most misleading things about this bill," Sinas said. "This bill is layered with these other caps."

## **Subjective standards**

But Sinas said he believes no one could ever reach the \$10 million mark because the proposed medical care restrictions could thwart it.

He said that under what he called a "plateau cutoff" provision, an insurance benefit would not be compensable unless, according to the plan's language, "it is reasonably likely to result in meaningful and measurable lasting improvement in the injured person's functional status."

"So you have someone who has permanent injuries. They're not going to get any better. They're paralyzed," he said. "But they're in horrible pain. Literally under this thing, if they're not going to get any better, you can stop treating. No more pain medication. They're done. Until they get worse, and then I

guess you can start treating them again until they get to the point of ‘lasting improvement’ and then you stop treating them again.”

“If the patient is not going to improve, the insurer doesn’t have any obligation to maintain the patient in that plateau status.”

Todd C. Berg of Michigan Auto Law in Farmington Hills said that language in the new bill adds “so many new layers to what must be proved in order to show you’re entitled to no-fault.”

“Right now whether you’re talking about attendant care, rehabilitation, home modification, vehicle modification, any of those things, there are only two things you need to show right now to get those things covered — are the charges reasonable, and is the product, service or accommodation you’re talking about reasonably necessary to the accident victim’s care, recovery or rehabilitation.”

But Bolger’s proposal calls for services, products or accommodations that are covered by no-fault to be judged as “reasonably necessary,” which can be a subjective standard.

Berg said that because of that, litigation could be “astronomical and more complex than anybody could ever imagine.”

### **Taking it to court**

But Berg added that Bolger’s proposal limits what can be litigated at all. For example, if someone wants to challenge denial or termination of benefits, he or she would not have a right to a jury trial on that issue, and claims-handling evidence would not be admissible in such trials.

He said that such evidence shows how the carrier handles the claim and bears directly on the issue of whether benefits were rightfully or wrongly denied.

“It definitely ties the hands of auto accident victims in their efforts to challenge those kinds of things,” he said.

Sinas said that the attorney fee penalty would be “virtually eliminated” if the bill goes through as it is.

He said that according to the bill’s language, if something such as attendant care is under dispute, then the insurer can only be hit for an attorney fee penalty for “services rendered in the 12-month period immediately preceding the date the insurer is notified of the dispute.”

“So I call my client’s insurance company today and say, ‘You’ve been paying at an unacceptable rate, you haven’t been paying all the hours that have been prescribed, you owe X hours of attendant care at Y rate,’” Sinas said.

“They say, ‘We disagree.’ I file a lawsuit, I win, I prove the insurer’s position was not only wrong but unreasonably wrong. I would normally get sanctions for all of the legal effort I would have to put into that kind of a case. Not so here. My client doesn’t get any attorney fee penalty for any work that was done one year after the insurer is notified.”

