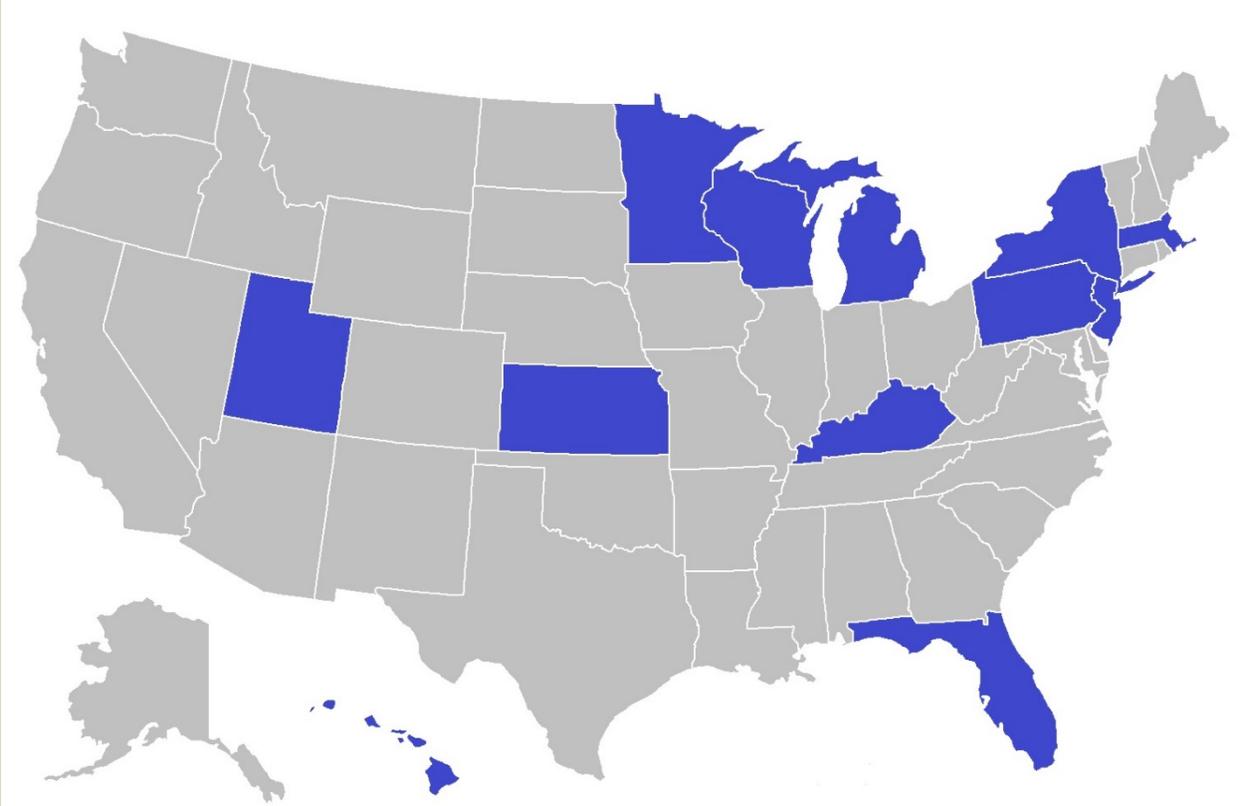


No-Fault Automobile Insurance Task Force



**Report to the Legislature
February 29, 2016**

This document reports on the results of Minnesota's Task Force on No-Fault Insurance Issues (established per 2015 Minnesota Session Laws, Special Session Chapter 1, section 25). The report presents the task force's review and evaluation of no-fault insurance, and recommendations for reform of three specific issues, as specified by the legislation.

No-Fault Insurance Task Force Members

JoAnn Aiken	Minnesota Ambulatory Surgery Center Association
Joe Atkins	Minnesota Representative
Donald Bechtle	Medical Group Management Association of Minnesota
Douglas Broman, DC	Minnesota Chiropractic Association
Joel Carlson	Minnesota Association for Justice
Eric Dick	Minnesota Medical Association
Mark Engdahl	Representative of the Independent Medical Examination profession, appointed by the Commissioner of Commerce
Marty Fleischhacker	Minnesota Department of Commerce (Task Force Chair)
Paul Gazelka	Minnesota Senator
Vicki Jensen	Minnesota Senator
Bob Johnson	Insurance Federation of Minnesota
Timothy Johnson, MD	Minnesota Chapter of the American College of Emergency Physicians
Charles J. Lloyd	Minnesota Glass Association
Bob Loonan	Minnesota Representative
Buck McAlpin	Minnesota Ambulance Association
Brad L. Plowman	Minnesota Hospital Association
Tammy Reno	Minnesota Defense Lawyers Association
Vicki Rizzolo	Representing Insurance Federation of Minnesota (Not a Member)
Dan Wolfe PT, GDMT	Minnesota Physical Therapy Association

Contact information (Minnesota Department of Commerce)

Telephone: (651) 539-1600

Website: <https://mn.gov/commerce/>

Address: 85 7th Pl E #500, St Paul, MN 55101

Copies of this report (Minnesota Department of Commerce)

For more information or copies, contact the Commerce Service Center at (651) 539-1600.

Alternative formats (Minnesota Department of Commerce)

Upon request, this document can be made available in alternative formats by calling Minnesota Department of Commerce, Communications Division 651-539-1462.

Cover map: Blue shaded states have No-fault Insurance systems. Image via Wikipedia Commons, by user Zntrip.

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Executive Summary

Introduction

The 2015 Minnesota Legislature established a task force to “review certain issues related to no-fault automobile insurance reform.”¹ Between August 2015 and February 2016, the task force on No-Fault Auto Insurance Issues (task force) met nine times to assess approaches for reforming Minnesota’s no-fault automobile insurance law in three specific areas. The task force included 19 members representing many interests and areas of expertise. The task force was directed to review and evaluate three issues related to no-fault insurance reform. They are:

- No-fault arbitration process;
- Independent medical exam (IME) process; and
- Treatment standards and fee schedules.

This report presents the task force’s findings and recommendations. A summary of each task force meeting may be found in Appendix D.²

Background

In the early 1970s, a number of states enacted no-fault automobile insurance laws. Minnesota is one of twelve states that currently have some form of no-fault insurance.³ In summary, the goal of Minnesota’s no-fault insurance law is to:⁴

- Relieve the severe economic distress of uncompensated victims of automobile accidents;
- Prevent the overcompensation of those automobile accident victims;
- Encourage appropriate medical and rehabilitation treatment of the automobile accident victim by assuring prompt payment for such treatment;
- Speed the administration of justice, ease the burden of litigation of the courts of this state, and create a system of small claims arbitration; and
- Correct imbalances and abuses in the operation of the automobile accident tort liability system.

This task force was convened to review and evaluate the three specific issues related to no-fault insurance noted above. Within that process, the task force covered many related issues regarding potential areas of reform for the state’s no-fault system. In some cases, task force members determined that more study and analysis is required before making any recommendations in those areas. In some other areas, the task force was able to reach

¹ The full text of the legislation is in Appendix A.

² Full meeting notes and other information provided to the task force may be found by visiting the task force website, <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>.

³ States currently with some form of no-fault auto insurance are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New York, New Jersey, North Dakota, Pennsylvania, and Utah.

⁴ See the “Purpose” section of Minnesota Statute 65B.42 for the complete text describing the underlying intent of Minnesota’s no-fault statute.

acceptance on a limited set of findings and recommendations, which are briefly described in this report.

Task force discussions, deliberations, and initial findings

The task force covered significant ground in its efforts to respond to the legislature's directive. The group's comprehensive discussions and deliberations included:

- Key issues in Minnesota's no-fault system:
 - Impact on insurance premiums
 - No-fault arbitration process
 - Independent medical examinations (IME)
- No-fault options from other states

The task force developed initial findings that will be of use as work continues:

- **Data is limited.** This is the primary finding of the task force: there is a limited amount of up-to-date, valid, reliable, reportable data on no-fault insurance.
- **The no-fault insurance process is complex.** No-fault law and related systems have been developing for over forty years. This complexity makes it difficult to define problems, let alone understand and work toward collective solutions.
- **Treatment of "soft-tissue" injuries is an ongoing concern.** "Soft-tissue" injuries, frequently described as strains and sprains, are more difficult to diagnose and have a less defined method of treatment leading to differing interpretations and potential abuse.

Recommendations

Introduction

In its review of the no-fault auto insurance system and of information related to assessing the impact and effectiveness of the system in Minnesota and other no-fault states, the task force determined that much of the information necessary for answering many important questions is not currently available, or is not collected in a way that is easy to access. Thus, the task force's first and primary recommendation is that additional data and information should be collected related to the three reform areas specified by the Legislature. Additional recommendations follow that the task force feels would also improve the administration and effectiveness of the no-fault system, and could help identify and reduce incidences ranging from the over utilization of medical services and/or excess billing practices to fraud and abuse within the system. Further, the recommendations recognize that further work needs to be done on identifying potential improvements to the arbitration and IME processes and the review of cost data. Much of the information and data the task force is requesting in its initial recommendation would be used to direct subsequent recommendations. The Executive Summary highlights the

recommendation language. Please see the Recommendations section on page 22 for a full review of the recommendations.

Recommendation 1: The Legislature should authorize the Department of Commerce to require certain no-fault data to be reported to and reportable by the department.

Summary

Task force members asked a number of questions that could not be satisfactorily answered with existing data either by the Department of Commerce, task force members, or through other sources. Many of these questions are fundamental in understanding the issues the task force was charged to address. The information requested below would provide a valuable step in comprehending the no-fault system in Minnesota. Further, the task force noted that the information requested below would be helpful to carry out subsequent task force recommendations.

Data/information to be provided to and reportable by the Department of Commerce

- The number of no-fault-related accidents that result in injuries requiring hospitalization, or that lead to any form of accident-related medical treatment, including by a doctor, chiropractor, or physical or occupational therapist, or any other medical professional. Data must be at the level of detail necessary to identify whether soft-tissue treatment occurs and specific details about type and extent of that treatment.
- Cost of care data for medical coverage of comparable injuries that is paid under 1) major medical programs operating in the state (including Medicare), 2) the state’s workers compensation system, and 3) the no-fault system. Data should include both what was charged by the medical provider as well as what was ultimately paid.
- Data on how no-fault claim payments are allocated, including:
 - Number of claims that reach the \$20,000 limit, and the actual amount paid for each claim.
 - Number of claims that exceed the \$20,000 limit, and the actual amount paid for each claim.
 - Total cost of care for all medical expenses attributed to the no-fault-related incident, including and in addition to the \$20,000 limit.
- Data on disputed claims:
 - Number of arbitrations on an annual basis.
 - Number of denied claims on an annual basis.
 - Number of IMEs requested on an annual basis.
 - Number of claims that actually go to an IME and the rationale for the IME determination on an annual basis.
 - Number of bodily injury claims on an annual basis.
- Data on arbitration and the arbitration process:
 - Number of arbitration awards on an annual basis, and total, range, and average amount of awards.
 - Percentage of award that goes to provider.
 - Total expense of arbitration and how much is covered by the award.

- Number of arbitrators available to hear cases.
- Number of cases each arbitrator hears on an annual basis, as well as the average and range of the number of cases heard per arbitrator.
- Data on individual no-fault glass claims that are consolidated into a single proceeding:
 - What is the average and range of the number of individual claims consolidated into a single proceeding?
 - For consolidated proceedings, how long on average are individual claims accumulated for a consolidated proceeding?
 - What is the range of time for these claims to be resolved?
 - What is the average and range of the dollar amounts of the individual claims?
 - What is the average and range of the dollar amounts awarded for all consolidated and non-consolidated proceedings?

Recommendation 2: The Legislature should require health care providers rendering services within the no-fault system to follow treatment guidelines established by their profession, and approved by the Department of Commerce.

Summary

In some cases healthcare professionals involved with treating no-fault accident victims do not have established industry-wide objective guidelines that direct their treatment protocols. Because of this, some members suggested, the no-fault system is vulnerable to over utilization, fraud, abuse, or inefficiencies in its process. These guidelines will be used to help identify outliers.

Under this recommendation, each relevant profession would develop treatment guidelines, in consultation and cooperation with the Commissioner of the Department of Commerce. These guidelines would be based on the expertise and advice of the professional peers and the endorsement of the specific health care profession. The Department of Commerce would develop and communicate a process for reviewing and approving existing or newly developed guidelines presented by the respective professions.

Recommendation 3: The Legislature should establish in the Department of Commerce, a No-Fault Technical Advisory Committee to advise the department on the development, implementation, and administration of various parts of the No-Fault process.

Summary

The Technical Advisory Committee would include representatives from the Departments of Commerce and other appropriate agencies, members or representatives of the professional groups operating within the no-fault system—including all relevant medical and health care professionals, consumer and industry advocates, and legal representatives involved in the no-fault system.

The task force members discussed the technical advisory committee’s duties would include advising the Commissioner on:

- analysis and further use of the specific data to be gathered under Recommendation 1;
- development, implementation and administration of the treatment guidelines described in Recommendation 2;
- the IME process;
- the arbitration process; and
- billing cost data.

Some members suggested that a “peer review” group within each relevant professional organization be established to help identify issues that the Technical Advisory Committee should review, as well as to assist the Department of Commerce to identify specific information and data needs.

Recommendation 4: The Legislature should extend the time period for the existing No-Fault Insurance Issues Task Force to review and make recommendations specifically on the no-fault arbitration process, the IME process, billing and cost data, and the impact of developing treatment guidelines on these areas.

Summary

Members discussed the large breadth of the original charge to the task force and how the complexity of the topics made understanding them time consuming. While the arbitration process was discussed and members raised concerns, there was not sufficient time to work through these concerns and whether they were viable. The arbitration process in Minnesota has a structure in place and members could not coalesce around whether that structure needs to be improved let alone ways to improve it.

Additionally, members discussed and raised concerns about the IME process but did not have sufficient time to develop recommendations. Many members viewed the development of treatment guidelines as a key step that would impact the IME process and potentially foster changes. Further, having medical cost data to review could provide valuable insight for the task force and provide the basis to respond to the Legislature concerning fee schedule issues.

Members noted the discussions around the arbitration and IME processes were valuable in understanding how they operate. Additionally, they noted some building of trust between the parties involved. They suggest additional time is needed to discuss these issues including the analysis of data requested in Recommendation 1 which may lead to a better understanding of concerns and identifying options to improve the arbitration and IME processes.

Additional comments from task force members on report recommendations are in Appendix B.

Introduction

Legislative directive

Minnesota law states that the drivers of licensed vehicles must carry auto insurance. Part of that required coverage is Personal Injury Protection (PIP), or no-fault, coverage. This is coverage that pays medical bills and provides for wage losses incurred by a victim of an automobile accident. “No-fault” refers to language in Minnesota Statutes initiated in the 1970s regulating the insurance a motorist must have in order to operate a motor vehicle in Minnesota.⁵

The law’s intent is to allow those involved in an accident—regardless of who caused it—to recover costs for medical bills, wage losses, and other economic losses, and to “encourage appropriate medical and rehabilitation treatment...by assuring prompt payment for such treatment.”⁶ The law is also intended to prevent overcompensation of accident victims, speed the administration of justice and reduce the incidence of litigation involving auto accidents, and to “correct imbalance and abuses in the operation of the automobile accident tort liability system.”⁷

The 2015 Minnesota Legislature established, under the responsibility of the Minnesota Department of Commerce (Commerce), the Task Force on No-Fault Auto Insurance Issues (task force).⁸ The task force is charged with reviewing and recommending changes to certain issues related to no-fault insurance reform.

To that end, the 2015 legislation directed the task force to review and evaluate three issues related to no-fault insurance reform. They include:

- No-fault arbitration process;
- Independent medical exam (IME) process; and
- Treatment standards and fee schedules.

The Department of Commerce asked Management Analysis & Development (MAD), a division of Minnesota Management & Budget, to facilitate the task force and write a report to the Legislature. This report presents the results of the task force’s review and recommendations.

⁵ No-fault insurance coverage is not applicable in the case of motorcycle accidents, or in auto accidents covered as part of a workers compensation claim.

⁶ 2015 Minnesota Statute, sections 65B.41 to 65B.71, Minnesota No-fault Automobile Insurance Act.

⁷ Ibid.

⁸ Appendix A contains the complete legislative language text establishing the no-fault task force.

Task force membership and process

Membership

The task force included 19 members representing many interests and areas of expertise related to no-fault insurance. Members represented the Minnesota Department of Commerce, the Legislature, the insurance industry and consumer representatives, physicians, chiropractors and other medical profession representatives, and other stakeholders involved with developing, regulating, or working in professions involving no-fault insurance-related issues. Assistant Commerce Commissioner Martin Fleischhacker served as task force chair.⁹

In addition to receiving information from members, information was provided to the task force by various interested parties, including non-task force medical professionals and attorneys involved with no-fault auto insurance issues. Organizations making presentations before the task force included representatives of the American Arbitration Association, Minnesota's Department of Labor and Industry, and informal public comments from chiropractors, other medical professionals, and plaintiff and defense attorneys.

Process

The Minnesota Department of Commerce convened the group, coordinated meetings, provided technical assistance, and delivered the report to the Legislature on behalf of the task force. Management Analysis & Development, a division of Minnesota Management & Budget, provided facilitation, writing, and other support. The task force held nine meetings between August 2015 and January 2016 to:

- **Organize the group's structure and task** by identifying the goals and expected outcomes of the task force process, establishing clear and agreed upon discussion rules, and agreeing at the outset on the final decision-making process for approval of recommendations.
- **Build common knowledge** through presentations from Minnesota agencies and other experts, along with a review of no-fault insurance models used in other states, the insurance industry, attorneys that practice in the no-fault auto insurance area, including those involved with the IME process, and academic studies and other related studies.
- **Identify viable options for reform** by considering the experiences of state officials, legislators, and other task force members with the no-fault system in Minnesota, as well as information on other states' experiences with their own no-fault systems and related reforms those states have implemented.
- **Select best options, develop recommendations, and create a report** based on additional information, review, and discussion.

⁹ Additional task force information, including meeting notes, meeting agendas, and information presented by various presenters before the task force are available at the Department of Commerce's "Task Force on No-Fault Auto Insurance Issues" website: <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>. Last accessed January 5, 2016.

Background

No-Fault insurance intent in Minnesota

Minnesota first enacted no-fault auto insurance in 1974. The overarching goal of no-fault is to ensure that accident victims are justly and swiftly compensated for costs resulting from auto accidents, while at the same time guarding against overcompensation for the medical and rehabilitative treatments those victims receive. No-fault auto insurance is intended to simplify and expedite the process of providing compensation to accident victims (regardless of fault), reduce the burden on the courts of litigation due to auto accident litigation, ensure that compensation and medical treatment provided is appropriate but limited based on a monetary cap, and to identify and reduce areas of abuse of the system. Minnesota requires that a minimum PIP coverage of \$20,000 for medical care and \$20,000 for wage loss/replacement services be available to those directly involved in an auto accident.

Another intent of no-fault laws is to provide an avenue for resolving disputed cases outside of the legal system. Because most no-fault auto accident claims involve relatively minor amounts of money, no-fault disputes go through a separate small claims arbitration process, and not through the court (i.e., tort) system. One goal of this process is increased efficiency via a more streamlined dispute resolution process, and reduced costs from bypassing the more formal legal system.

To this end, an important component of the no-fault system is the arbitration process involving professional arbitrators and the IME processes whereby independent medical professionals are expected to determine the appropriateness of disputed medical and rehabilitative treatments and their costs. Overall, this process is to provide a non-court venue and system for assessing disputes arising in the treatment and compensation areas of no-fault.

The Minnesota law has been subject to numerous reforms, revisions, and court rulings since it was enacted.

Use of no-fault insurance in other states

Eleven other states, besides Minnesota, currently have some form of no-fault auto insurance.¹⁰ The other no-fault states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Dakota, Pennsylvania, and Utah.¹¹

At its peak of popularity in the 1970s, 26 states used some form of no-fault auto insurance. There are conflicting opinions about the reason for the decline in popularity of no-fault since its

¹⁰ No-fault coverage is frequently referred to as personal injury protection (PIP) coverage.

¹¹ Department of Commerce No-Fault Laws Summary: <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>. Last accessed February 25, 2016.

peak of popularity in the 1970s. In a 2010 analysis, the RAND Institute for Civil Justice observed:

When first enacted, no-fault automobile insurance provided a quicker, fairer, and less expensive approach to compensating victims of auto accidents. Despite its initial popularity, political support has declined because premiums cost more, rather than less, in no-fault states. These cost increases can be traced to two main causes. Not only does auto insurance pay for more medical services for accident victims in no-fault states, but it also pays more for the same care than in tort states.¹²

Many states have continued to reform their no-fault systems. Florida, Massachusetts, and New Jersey are among the states recently enacting major no-fault reforms.

States without any form of no-fault are referred to as tort states. This is a reference to the common law legal right of action, and the fact that in these states there is no restriction on whether people involved in an auto accident can sue a company or individual that was a party to the accident.

Task Force Discussions and Deliberations

The task force covered significant ground in its efforts to respond to the legislature's directive. This section of the report highlights and summarizes several of the group's comprehensive discussions and deliberations:

- Key issues in Minnesota's no-fault system:
 - Impact on insurance premiums
 - No-fault arbitration process
 - Independent medical examinations (IME)
- No-fault options from other states

Key issues: No-fault auto insurance in Minnesota

Impact on insurance premiums

Some task force members commented that auto insurance premium rates have not declined in Minnesota since adopting no-fault. Others took the position that there is no evidence pointing

¹² RAND Institute for Civil Justice Research brief, "What Happened to No-Fault Automobile Insurance?" 2010. Accessed September 14, 2016. http://www.rand.org/pubs/research_briefs/RB9505/index1.html

to no-fault as having an impact on insurance premiums one way or another. Some task force members also stated that insurance fraud, or abuse of the system, is a reason that premium rates have increased. Many members felt that fraud and abuse within the no-fault system is the biggest problem affecting premium rates. Some members suggested that the no-fault system has not been properly or completely administered as initially intended, which, they noted, contributes to a lack of effectiveness in reducing premium costs. A National Association of Mutual Insurance Companies (NAMIC) report reviewed by the task force concludes, in part, that:

...no-fault was never given a chance in its intended form and the failure of the state laws to lower premiums lies not in the no-fault concept itself, but because laws were structured in such a way as to undermine the law's effectiveness.¹³

At the same time, some members disagreed with claims that no-fault had no impact on auto insurance premium rates, and they disputed observations that the no-fault arbitration process had become increasingly "bogged down." Information provided from the 2015 Insurance Fact Book showed that Minnesota is in the lower half of all U.S. states for average auto insurance premiums for the period covering 2007-2011. Other information provided by the American Arbitration Association (AAA), which helps oversee and administer the arbitration process in Minnesota and many other states, shows the number of arbitration filings decreased from 2013 to 2014, the most recent period for which data was available from AAA.¹⁴

Data presented by the Department of Commerce drawn from National Association of Insurance Commissioner annual statements showed that PIP-related premium loss ratios have been steadily declining since 2010.¹⁵ For the nearly 900 company statements reviewed in each of the five years (2010-2014) the loss ratio declined from 67.42% in 2010 to 53.56% in 2014. Some members questioned the details of the data, however, and they suggested that significantly more discussion and evaluation of those details was necessary before any agreement could be reached on what that information conveyed.

In a similar vein, information from the Insurance Research Council covering 1997-2007 showed average total claimed PIP losses and payments in Minnesota increasing.

¹³ O'Connell, Jeffrey, Peter Kinzler and Dan Miller. "No-Fault Insurance at 40: Dusting Off an Old Idea to Help Consumers Save Money in an Age of Austerity." National Association of Mutual Insurance Companies, December 2011. Some task force members voiced concerns of bias about the NAMIC report. Jeffrey O'Connell, a law school professor and co-author of the report, was a co-creator of the no-fault concept.

¹⁴ Presentations and related information presented to the task force, including the referenced AAA information, are available from the task force's website, <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>. Last accessed January 28, 2016.

¹⁵ NAIC Annual Statement Data 2010 to 2014 – Minnesota All-Company PIP Premiums and Loss Ratios: <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>. Last accessed February 25, 2016.

These two reports are not directly comparable: one looks at earned premium compared to losses, while the other reflects costs related to PIP claims. The time periods covered are dissimilar, and the Insurance Research Council report relies on information from years ago. Some members felt that the information from these studies would require much more analysis before it could be used as a basis for discussion or recommendations to the Legislature.

Some information presented by task force members generated a great deal of discussion, and raised a number of important questions that the group could not fully answer in the time allotted. Further, some questions could not be answered by available data, or members felt that they needed supplemental data and information or more context about the information presented before reaching any conclusions.

No-Fault arbitration process in Minnesota

The task force examined the no-fault arbitration process. The arbitration process is conducted pursuant to a set of 43 Minnesota Supreme Court adopted rules, and is guided by the Minnesota office of the American Arbitration Association (AAA). AAA administers the arbitration process in many other states as well, and in areas other than no-fault claims. The rules pertaining to arbitrations include the selection of an arbitrator, arbitrator certification, arbitration fees, and provisions for interpreters and instructions for conducting hearings. The No-Fault Standing Committee appointed by the Minnesota Supreme Court administers the formal process by which existing arbitration rules are added or changed. The ultimate decision of whether no-fault rules are changed lies with the Minnesota Supreme Court.

AAA director Krista Peach presented information to the task force at its October 26, 2015 meeting. Her presentation included statistics and general information on arbitration cases for 2013 and 2014, giving an overview of the arbitration process, describing AAA's role in that process, and the process for making changes to the arbitration rules.¹⁶

According to its website, AAA has administered tens of thousands of no-fault arbitration cases in Minnesota since 1975. From their website:

The American Arbitration Association (AAA), is a not-for-profit organization with offices throughout the U.S. AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and organizations who wish to resolve conflicts out of court.

The AAA role in the dispute resolution process is to administer cases, from filing to closing. The AAA provides administrative services in the U.S., as well as abroad through its International Centre for Dispute Resolution® (ICDR). The AAA's and ICDR's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with

¹⁶ American Arbitration Association, "Minnesota No-Fault Insurance 2014 Case Statistics." <http://mn.gov/commerce-stat/pdfs/nofault-aaa-case-stats-2014.pdf>. Last accessed January 5, 2016.

information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.¹⁷

The arbitration process begins by filing a “Petition for No-Fault Arbitration” with AAA. AAA then selects an arbitrator at random and the process is set in motion.¹⁸

According to Minnesota’s AAA, 7,343 no-fault arbitration cases were filed in 2013, and 7,031 cases were filed in 2014. Awards in those cases ranged from \$8.16 to \$149,500.57 in 2013, and from \$12.06 to \$237,700 in 2014.¹⁹ However, the average award in 2013 and 2014 was less than \$7,000 in both years, and the median award in both years was less than \$5,500.

As they considered the arbitration process in general, the task force discussed the related topic of auto glass claims being consolidated for arbitration into a single proceeding for resolution. Members discussed the value of such consolidation to be for efficiency and cost savings. Further, they noted that various courts have been involved in the issue. Other task force members noted that the large dollar amount generated by consolidating the claims should not be allowed in a no-fault arbitration process that is designed for smaller dollar issues. Members also discussed whether this issue would be better resolved in the Legislature instead of the courts.

As with other important issues, data on glass consolidation proceedings is limited. The task force took no action on the topic other than to request additional information that may help in understanding its impact.

Independent medical examinations (IME) in Minnesota

There was no formal presentation or testimony about the IME process. Rather, the group discussed the IME process on multiple occasions and in numerous contexts throughout the task force meetings. It was noted that the IME and arbitration processes are closely related. Some members raised concerns that the IME process is not truly “independent,” and that in practice it is sometimes used as a tool used to halt the payment of medical expenses. This is the only tool that insurers have to determine whether treatments are reasonable or necessary.

The task force considered the ramifications of a current trend: nearly all claims that go to an IME result in termination of treatment, which is nearly always the disputed issue in an arbitration case. Under the law, it is the insurer’s right to select an IME doctor of their choosing, within certain guidelines, to assess the necessity and sometimes cost of billed treatment. The no-fault law stipulates that “any person seeking no-fault benefits shall, upon the request of [the

¹⁷[American Arbitration Association's website](#). Last accessed January 5, 2016.

¹⁸ According to AAA, there are currently over 500 registered arbitrators in Minnesota.

¹⁹ Although no-fault case are limited by statute to a total value not to exceed \$40,000, after a case is accepted for arbitration, at the discretion of the arbitrator, additional charges and costs may be included in the total amount being considered under arbitration.

insurer] from whom recovery is sought, submit to a physical examination by a physician or physicians selected by the [insurer] as may reasonably be required.”²⁰

Some task force members argued that this results in a system that is not fundamentally “independent,” since it occurs at the discretion of the insurer. Others noted that IME doctors are medical professionals who are bound by legal and ethical standards. Further, although rarely exercised, claimants do have some ability to be involved in selecting the IME doctor if they so choose.

During the several months of the group’s work, members frequently returned to discussions of needed data and similar additional information about the arbitration and IME processes. The general conclusion was that more information was needed in both areas before an agreement on any recommended changes could occur.

Treatment standards and fee schedules

The task force considered a number of potential models for designing a set of treatment standards. Minnesota’s Department of Labor and Industry (DLI) made a presentation that included a discussion of the fee schedules and treatment standards used to guide the state’s workers compensation system. For a number of reasons, including the complexity and detail involved in designing the worker’s compensation system and the narrow focus of no-fault related solely on auto accidents, many task force members did not think that the workers compensation system would be a good basis for the no-fault system. Additionally, cost data that the task force hoped to get from the DLI on certain types of treatments was not available at the level of detail necessary for easy use as a potential model for the no-fault system.

The task force discussed how to implement a set of treatment standards for the various medical and rehabilitation services providing services within the state’s no-fault system. The group considered New Jersey’s process as they developed one of the recommendations described in this report.²¹ A number of task force members agreed that they would have liked more time for a thorough exploration and assessment of the New Jersey and other state’s no-fault systems, as well as Minnesota’s workers compensation system. In addition, many task force members were more comfortable using the term *guidelines* rather than *standards* for the direction of treatment protocols. Further, some task force members noted that the additional work recommended to be done as part of the continuation of this task force, and as part of the recommendation for data collection, should include an assessment of the value of implementing fee schedules and whether that would reduce overall no fault costs and result in a reduction of premiums.

²⁰ 2015 Minnesota Statute, sections 65B.56.

²¹ See Appendix C.

Fraud and abuse in the no-fault system

A 2014 Minnesota Senate report on fraud identified the state's no-fault system as one area of concern regarding an increasing incidence of insurance fraud in Minnesota.²² That report, in part, led to the creation of the no-fault task force.

Some members stated that the incidence of insurance fraud has been an increasing problem in Minnesota and in other no-fault states. Others observed that the design of the no-fault system itself leaves it open to fraud and abuse, and that many questionable medical claims are paid under the system. Task force members raised many questions about fraud and abuse within the no-fault system that could not be answered given currently available data and information. Some members did not necessarily agree that the no-fault system itself was responsible for any real or perceived increase in the incidence of auto insurance fraud in Minnesota. Some members suggested that it is a small number of "bad apples" who target no-fault, particularly to abuse the part of the process involving compensation for rehabilitation and treatment of soft tissue injuries.

Fraud is clearly defined in Minnesota statute as an illegal activity, both broadly and specifically in the case of insurance.²³ Many on the task force believed that abuse of the no-fault system, while not necessarily illegal, was another area affecting premium rates and contributing to delays in the arbitration and IME processes. In an attempt to develop a framework or definition of "abuse" within the no-fault system that the task force could use, a subgroup of task force members was identified to meet and discuss the issue. A subgroup member's organization noted that the key terms of "necessary" and "reasonable," as used in the no-fault system have been defined through the courts, and that developing a definition for abuse would not address the issue and would potentially bring instability to the system. Because of this, the subgroup could not reach an agreement on the issue and nothing was presented to the full task force.

Finally, some on the task force remained unconvinced that reducing the incidence of fraud and abuse in the no-fault system would result in lower auto insurance premium rates, which, they pointed out, were already quite low in Minnesota compared to most other states.

No-fault options from other states

Overview

Task force members reviewed and discussed information from other states with no-fault laws.²⁴ Most states do not operate under a no-fault auto insurance system, but otherwise the coverage

²² Fraud Working Group Report, Recommendations to Senate Commerce Committee, presented by Fraud Working Group, Minnesota Senate, March 12, 2014.

²³2015 Minnesota Statutes 60A.0788 FRAUDULENT ACTS and 609.611 INSURANCE FRAUD.

²⁴ Department of Commerce No-Fault Laws Summary; <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>. Last accessed February 25, 2016.

components are broadly the same. They typically include liability, collision, personal injury, property damage, and comprehensive coverage.

In a no-fault or PIP state, generally, the individual components regarding personal injury are lumped together into a single package that is distinct from the other pieces of auto coverage. This is also referred to as first-party or first-dollar coverage, as it provides immediate compensation for treatment of injuries sustained in an auto accident (up to some cap in most states) regardless of fault. In some states, there are different coverage provisions within the PIP portion of auto insurance for things like ambulance services, emergency room expenses (some states do not count ER costs against the cap), radiological and imaging services, and post-hospital recovery/treatment needs.

Some no-fault states offer “opt-out” or “add-on” options. In these states consumers may choose to pay for a different type of auto insurance that, for example, gives them an unlimited right to sue in the event of an accident (opt-out) or supplements the basic coverage by providing additional compensatory coverage beyond that state’s no-fault coverage (add-on). These are often called “choice” states.

Reform options

Commerce held numerous conversations with their counterparts in other states in an attempt to quantify or identify the impact or effect of reforms in those states. None of the states contacted were able to provide more than general or anecdotal evidence of the impact of their no-fault reforms.

Based on a review of available public information from other no-fault states, and through discussions by task force chair Martin Fleischhacker with other state insurance commissioners and relevant no-fault officials in those states, the task force focused on the states of Florida and New Jersey for insight and information.

Florida

Representatives from Florida provided information, including an impact analysis of proposed legislation specifically targeting auto insurance fraud. Task force members did not feel comfortable relying on this and similar information without additional study of the context of the analysis and a better understanding of the data and data sources, particularly some of the private sector sources of information relied upon for data collection and analysis.

New Jersey

In conversations with their New Jersey counterparts and a review of the extensive amount of information on their website, Commerce staff concluded that the New Jersey system seemed to be the most comprehensive in terms of information provided to the public and medical providers. Most relevant for the task force’s work, New Jersey was transparent and detailed the terms with respect to how its system operates. In particular, New Jersey has designed an extensive set of treatment standards and fee schedules guiding medical and rehabilitative

treatments under its no-fault coverage.²⁵ The state's no-fault fee schedules cover physician, dental, home care, and ambulance services, and it establishes allowable charges for durable medical equipment and hospital outpatient surgical facility stays. However, the system is complex.

Officials in New Jersey claim that reforms over the years have improved their no-fault system by reducing fraud and lowering costs. Evidence of that success, however, is not yet available in official statistics or data that could be shared with the task force. Additionally, a member noted that the 2015 Insurance Fact Book ranks New Jersey as the most expensive state (on average) for auto insurance over the 2007-2011 period.

Some task force members observed that prior to enacting their current reforms, many auto insurers had stopped conducting business in New Jersey for a number of reasons. Those insurers have recently been returning to the state, and it is unclear whether the return of increased competition within the state's auto insurance industry, coupled with their no-fault reforms, will reduce premiums.

Task Force Initial Findings

Task force members shared perspectives, reviewed related information from Minnesota and other states, and raised valuable questions in an attempt to address the no-fault insurance issues charged to it by the Legislature. The Task Force Review and Activities Appendix D highlights the content of each meeting and materials presented. The task force made several initial findings based on its review. As described in the Recommendations section of this report, members concluded that more information and work is needed before it can completely address the areas specified by the Legislature.

Data is limited

The primary finding of the task force was that there is a limited amount of up-to-date, valid, reliable, reportable data on no-fault insurance. Specifically, data was limited on how no-fault claim awards are allocated, disputed claims, the no-fault arbitration process, and consolidated glass claims. Members frequently asked questions that were unanswerable because key data was not available or could not be reported.

The no-fault insurance process is complex

After seven months and nine meetings of the task force, members were just starting to get a deeper understanding of the background and context of various no-fault processes and procedures. Additionally, members were beginning to understand each other's perspectives and build the relationships needed to develop solutions. No-fault law and its related systems

²⁵ State of New Jersey, Department of Banking & Insurance, "PIP Information for Health Care Providers." <http://www.state.nj.us/dobi/pipinfo/aicrapg.htm>. Last accessed January 6, 2016.

have been developing for over 40 years. This complexity makes it difficult to define problems, let alone understand and work toward collective solutions.

Treatment of “soft-tissue” injuries is an ongoing concern

Task force members discussed that if an individual breaks their arm, there are defined treatments to follow to heal the injury. “Soft-tissue” injuries, frequently described as strains and sprains, are more difficult to diagnose and have a less defined method of treatment. Additionally, it can be more difficult to know if the treatment is objectively successful. Members noted that the less defined process for soft-tissue injuries makes them more open to interpretation and potential abuse.

Recommendations

Introduction

The task force was directed to review and evaluate three issues concerning no-fault insurance. They include:²⁶

- No-fault arbitration process;
- Independent medical exam (IME) process; and
- Treatment standards and fee schedules.

In its review of the no-fault auto insurance system and of information related to assessing the impact and effectiveness of the system in Minnesota and other no-fault states, the task force determined that much of the information necessary for answering many important questions is not currently available, or is not collected in a way that is easy to access. Thus, the task force’s first and primary recommendation is that additional data and information should be collected related to the three reform areas specified by the Legislature. Additional recommendations follow that the task force feels would also improve the administration and effectiveness of the no-fault system, and could help identify and reduce incidences ranging from the over utilization of medical services and/or excess billing practices to fraud and abuse within the system. Further, the recommendations recognize that further work needs to be done on identifying potential improvements to the arbitration and IME processes and the review of cost data. Much of the information and data the task force is requesting in its initial recommendation would be used to direct subsequent recommendations. A timeline of how the recommendations should be implemented to best sequence the key actions is on page 27 of this section.

²⁶ The full text of the legislation establishing the task force and describing its goals is in Appendix A.

Recommendations

Recommendation 1: The Legislature should authorize the Department of Commerce to require certain no-fault data to be reported to and reportable by the department.

Summary

Task force members asked a number of questions that could not be satisfactorily answered with existing data either by the Department of Commerce, task force members, or through other sources. Many of these questions are fundamental in understanding the issues the task force was charged to address. The information requested below would provide a valuable step in comprehending the no-fault system in Minnesota. Further, the task force noted that the information requested below would be helpful to carry out subsequent task force recommendations.

Data/information to be provided to and reportable by the Department of Commerce

- The number of no-fault-related accidents that result in injuries requiring hospitalization, or that lead to any form of accident-related medical treatment, including by a doctor, chiropractor, or physical or occupational therapist, or any other medical professional. Data must be at the level of detail necessary to identify whether soft-tissue treatment occurs and specific details about type and extent of that treatment.
- Cost of care data for medical coverage of comparable injuries that is paid under 1) major medical programs operating in the state (including Medicare), 2) the state's workers compensation system, and 3) the no-fault system. Data should include both what was charged by the medical provider as well as what was ultimately paid.
- Data on how no-fault claim payments are allocated, including:
 - Number of claims that reach the \$20,000 limit, and the actual amount paid for each claim.
 - Number of claims that exceed the \$20,000 limit, and the actual amount paid for each claim.
 - Total cost of care for all medical expenses attributed to the no-fault-related incident, including and in addition to the \$20,000 limit.
- Data on disputed claims:
 - Number of arbitrations on an annual basis.
 - Number of denied claims on an annual basis.
 - Number of IMEs requested on an annual basis.
 - Number of claims that actually go to an IME and the rationale for the IME determination on an annual basis.
 - Number of bodily injury claims on an annual basis.
- Data on arbitration and the arbitration process:
 - Number of arbitration awards on an annual basis, and total, range, and average amount of awards.
 - Percentage of award that goes to provider.
 - Total expense of arbitration and how much is covered by the award.
 - Number of arbitrators available to hear cases.

- Number of cases each arbitrator hears on an annual basis, as well as the average and range of the number of cases heard per arbitrator.
- Data on individual no-fault glass claims that are consolidated into a single proceeding:
 - What is the average and range of the number of individual claims consolidated into a single proceeding?
 - For consolidated proceedings, how long on average are individual claims accumulated for a consolidated proceeding?
 - What is the range of time for these claims to be resolved?
 - What is the average and range of the dollar amounts of the individual claims?
 - What is the average and range of the dollar amount awarded for all consolidated and non-consolidated proceedings?

Rationale

The appropriate information to help make decisions on understanding and improving the no-fault system in Minnesota is lacking. Task force members discussed issues of alleged over-utilization of medical services and/or excess billing practices that may potentially lead to fraud and abuse in the system, possible waste or inefficient use of resources, perceptions that the arbitration process is cumbersome, a variety of medical/health care related treatment issues, and the use of the IME process. The information and data necessary to examine these concerns was frequently not available to support or refute these assertions to the extent necessary for the task force to agree on recommendations in these areas.

Additionally, members noted the collection and reporting of this data would help increase the transparency and accountability of the system, and could potentially lead to the identification of fraudulent and abusive no-fault practices as well as other areas of concern.

Considerations

Concerns about medical privacy and proprietary industry information exist. The task force requests that all data be reported to the Department of Commerce and be maintained under applicable data privacy laws. Commerce would aggregate the data and make it public.

The Commissioner of the Department of Commerce would need additional statutory authority for collecting the data requested by the task force. It was also noted that additional resources would be needed by the department to collect, organize, analyze, and report the information requested.

Recommendation 2: The Legislature should require health care providers rendering services within the no-fault system to follow treatment guidelines established by their profession, and approved by the Department of Commerce.

Summary

In some cases, health care professionals involved with treating no-fault accident victims do not have established industry-wide guidelines that direct their treatment protocols. Because of this, some members suggested that the no-fault system is vulnerable to fraud, abuse, or inefficiencies in its process. These guidelines will be used to help identify outliers.

Under this recommendation, each relevant profession would develop treatment guidelines in consultation and cooperation with the Commissioner of the Department of Commerce. These guidelines would be based on the expertise and advice of the professional peers and the endorsement of the specific health care profession. The Department of Commerce would develop and communicate a process for reviewing and approving existing or newly developed guidelines presented by the respective professions.

Rationale

Task force members noted that a uniform set of guidelines, as developed and defined by peers of each relevant health care profession, could help reduce problems in the no-fault system, and may even help identify areas of over-utilization of medical services and/or excess billing practices that may potentially lead to waste or inefficient use of resources, abuse, or fraud. They suggested it is difficult for non-practitioners, including regulatory agencies and the courts, insurance and consumer representatives, and health care professionals, to make an objective assessment of treatments applied in various health care professions. This can complicate the arbitration process where the arbitrator and parties involved are basing their decision on medical/treatment reports provided by practitioners who may not operate under a common standardized set of treatment guidelines. While task force members stated they want to avoid interfering in the doctor-patient relationship, they felt that each profession should develop a set of universal guidelines directing their treatment practices. These guidelines would be developed by the respective professions, in consultation with the Departments of Commerce and other appropriate agencies. Members noted that peer review groups should consider consulting with payors as well. In some cases such treatment guidelines and peer review processes may already exist.

Considerations

There was some discussion about the appropriate peer review and deliberation process within each profession for developing guidelines. For many health care professions, there is an existing board or association with some form of oversight or guidance authority. For others, however, it was not clear where the authority lies to develop the necessary guidelines. Most task force members accept that there should be treatment guidelines for all non-emergency soft tissue treatments.

Many task force members believe that defining the treatment guidelines is the next step, after the data is gathered and reviewed from Recommendation 1, in improving the no-fault system. Subsequent steps include analyzing the IME and arbitration processes in relation to the use of the established treatment guidelines along with various cost data gathered.

Recommendation 3: The Legislature should establish in the Department of Commerce, a No-Fault Technical Advisory Committee to advise the department on the development, implementation, and administration of various parts of the No-Fault process.

Summary

The Technical Advisory Committee would include representatives from the Department of Commerce and other appropriate agencies, members or representatives of the professional

groups operating within the no-fault system—including all relevant medical and health care professionals, consumer and industry advocates, and legal representatives involved in the no-fault system.

The task force members discussed the technical advisory committee’s duties would include advising the Commissioner on:

- analysis and further use of the specific data to be gathered under Recommendation 1;
- development, implementation and administration of the treatment guidelines described in Recommendation 2;
- the IME process;
- the arbitration process; and
- billing cost data.

Some members suggested that a “peer review” group within each relevant professional organization be established to help identify issues that the Technical Advisory Committee should review, as well as to assist the Department of Commerce to identify specific information and data needs.

Rationale

Task force members suggested a Technical Advisory Committee consisting of the Department of Commerce representatives, in conjunction with the appropriate representative group for each of the health care professionals and payor groups, would provide valuable insight and counsel during the development, implementation, and administration of treatment guidelines and have the potential to provide ongoing wisdom to the department on no-fault related issues.

Task force members felt that it was important for the state agencies overseeing the no-fault system to be advised by peer professionals of the health care organizations represented on the Technical Advisory Committee. Members also wished to maintain the oversight and accountability role of the Department of Commerce in overseeing the operations of the no-fault process.

Considerations

Task force members observed that a key value of this recommendation is its dependence on the successful implementation of Recommendations 1 and better data to make informed decisions. Additionally, they noted the Technical Advisory Committee could advise the Department of Commerce on identifying and/or refining additional data to help improve the no-fault insurance process in Minnesota.

The Commissioner of the Department of Commerce would need statutory authority to create the technical advisory committee plus additional resources to carry out the functions of the committee.

Recommendation 4: The Legislature should extend the time period for the existing No-Fault Insurance Issues Task Force to review and make recommendations specifically on the no-fault arbitration process, the IME process, billing and cost data, and the impact of developing treatment guidelines on these areas.

Summary

While the TAC could advise the Commissioner on more specific details in the no-fault system, recommendations to a number of the broader policy questions addressed to the task force have not been developed and need further work. Members discussed the large breadth of the original charge to the task force and how the complexity of the topics made understanding them time consuming. While the arbitration process was discussed and members raised concerns, there was not sufficient time to work through these concerns and whether they were viable. The arbitration process in Minnesota has a structure in place and members could not coalesce around whether that structure needs to be improved let alone ways to improve it.

Additionally, members discussed and raised concerns about the IME process, but did not have sufficient time to develop recommendations. Many members viewed the development of treatment guidelines as a key step that would impact the IME process and potentially foster changes. Further, having medical cost data to review could provide valuable insight for the task force and provide the basis to respond to the Legislature concerning fee schedule issues.

Members noted the discussions around the arbitration and IME processes were valuable in understanding how they operate. Additionally, they noted some building of trust between the parties involved. They suggest additional time and the inclusion of data requested in Recommendation 1 may lead to a better understanding of concerns and identifying options to improve the arbitration and IME processes.

Rationale

Some task force members felt that the arbitration piece of the no-fault system is in need of major repair. Others believe that any changes to the arbitration system, if indeed any are necessary, could be made within the existing framework that the AAA oversees for proposing arbitration rule changes to the Minnesota Supreme Court. Still other task force members did not believe that the system itself is flawed, but rather that components of the design of no-fault related to the health care treatment and insurance sides of the system contribute to many perceived problems with the arbitration process itself. Members suggested that implementing treatment guidelines would be a step in framing the discussion in working towards improving the arbitration and IME processes. Consensus could not be reached among task force members that there was enough information or data available to make specific recommendations at this time for changes to either the arbitration or IME processes.

Considerations

The members discussed expanding the task force to include additional parties with expertise in various areas of the arbitration and IME processes. After deliberation, the members settled on staying with the existing membership of the task force, if extended, and would identify and invite additional experts in certain no-fault related areas to give presentations and answer

questions. Examples of potential additional experts and presentations include members or a representative of the Minnesota No-Fault Standing Committee,²⁷ a presentation and more focused discussion on the components of the workers compensation system, and additional consumers and attorneys with firsthand experience with the no-fault system.

Further, the Legislature would need to authorize an extension of and provide resources for the ongoing work of the task force. Task force members discussed the possibility that this may require an extension as long as two additional years, depending on the information identified and compiled under Recommendation 1.

Timeline for Implementing Recommendations

Year 1

- Legislature adopts recommendations
- Technical Advisory Committee is created to advise the Commissioner
- Data gathered, analyzed, and reported by Commerce, (data which is currently available)
- Task force reconvenes to discuss IME and arbitration processes and cost data generated by Recommendation 1
- Summary report to the Legislature of task force work

Year 2

- Data gathered, analyzed, and reported by Commerce (continuation of data in year one and new data that was not initially available)
- Treatment guidelines developed and approved by the Commissioner
- Initial recommendations on IME and arbitration processes from the reconvened task force sent to Legislature and/or Commerce, as appropriate
- Task Force report submitted to Legislature with recommendations on IME and arbitration processes, and potential cost issues

Ongoing as needed

- Technical Advisory Committee advises Commerce on no-fault processes based on expertise and available data; suggests possible alterations or changes to the process
- Legislature and/or Commerce, as applicable, implement policy changes to no-fault insurance process
- Evaluation and follow-up as needed of changes made to no-fault policy and process

Additional comments from task force members on report recommendations are in Appendix B.

²⁷ The Legislature established by statute (MN Stat. 65B.525) the process by which the Minnesota Supreme Court developed the rules governing the no fault arbitration system. The Supreme Court created the No Fault Standing Committee to oversee the system and make changes as necessary.

Appendix A: Legislative Directive

2015 Minnesota Session Laws

CHAPTER 1 – H.F. No. 3

Sec. 25. TASK FORCE ON NO-FAULT AUTO INSURANCE ISSUES.

Subd. 1. **Establishment.** The task force on no-fault auto insurance is established to review certain issues related to no-fault automobile insurance reform.

Subd. 2. **Membership; meetings; staff.** (a) The task force shall be composed of the following 19 members, who must be appointed by July 1, 2015, and who serve at the pleasure of their appointing authorities:

- (1) the commissioner of commerce or a designee;
- (2) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;
- (3) two members of the senate, one appointed by the Subcommittee Previous on Next Committees of the Committee Previous on Next Rules and Administration and one appointed by the minority leader;
- (4) a person appointed by the Minnesota Chiropractic Association;
- (5) a person appointed by the Insurance Federation of Minnesota;
- (6) a person appointed by the Insurance Federation of Minnesota who is not a member of the Federation;
- (7) a person appointed by the Minnesota Association for Justice;
- (8) a person appointed by the Minnesota Medical Association;
- (9) a person appointed by the Minnesota Glass Association;
- (10) a person appointed by the Minnesota Hospital Association;
- (11) a person appointed by the Minnesota Ambulance Association;
- (12) a person appointed by the Minnesota Physical Therapy Association;
- (13) a person appointed by the Academy of Emergency Physicians-Minnesota Chapter;
- (14) a person appointed by the Medical Group Management Association of Minnesota;

(15) a representative of a medical consulting company specializing in the delivery of independent medical examinations, appointed by the commissioner;

(16) a person appointed by the Minnesota Defense Lawyers Association; and

(17) a person appointed by the Minnesota Ambulatory Surgery Center Association.

(b) Compensation and expense reimbursement must be as provided under Minnesota Statutes, section 15.059, subdivision 3, to members of the task force.

(c) The commissioner of commerce shall convene the task force by August 1, 2015, and shall appoint a chair from the membership of the task force. Staffing and technical assistance must be provided by the Department of Commerce.

Subd. 3. **Duties.** The task force review and evaluate the following issues related to no-fault automobile insurance reform:

(1) no-fault arbitration process;

(2) independent medical exam process; and

(3) treatment standards and fee schedules.

Subd. 4. **Report.** By February 1, 2016, the task force must submit to the chairs and ranking minority members of the house of representatives and senate committees and divisions with primary jurisdiction over commerce and transportation its written recommendations, including any draft legislation necessary to implement the recommendations.

Subd. 5. **Expiration.** The task force expires the day after submitting the report under subdivision 4, or February 2, 2016, whichever is earlier.

EFFECTIVE DATE. This section is effective the day following final enactment.

Appendix B: Additional comments from task force members

These letters were submitted by commission members for inclusion in the report without review or comment by the No-Fault Automobile Insurance Task Force.

Thank you for the opportunity to provide our thoughts on the No-Fault Task Force Report (“Task Force Report”). Please find the responses from the Minnesota Chiropractic Association (“MCA”) to the four recommendations included in the Task Force Report below.

Recommendation 1

As written, the Minnesota Chiropractic Association (“MCA”) supports Recommendation 1 of the Task Force Report, the recommendation calls for more data collection on various aspects of Minnesota’s no-fault system. We agree with the Task Force Report that information must be collected to best direct all changes to the no-fault system.

Recommendation 2

The MCA has made it very clear in its communication both through submission of comments to drafts of this report and at the Task Force meetings that the MCA supports the adoption of treatment guidelines that are recommended by the impacted profession for treating no-fault cases, but only if the adoption is done at the same time as the adoption of independent medical examinations (“IME”) process reform. Certain insurers use IMEs to unreasonably control costs through intimidation of auto accident victims and their health care providers. Although, IME reform may influence the discussions around other parts of the no-fault system, it is a necessary component to guideline development and adoption. Accordingly, the MCA would support recommendation 2 if the adoption of the treatment guidelines is directly connected with the adoption of changes to the IME process.

Recommendation 3

The MCA is cautiously neutral on Recommendation 3. We believe that the Commissioner should have the assistance of an advisory committee, but the MCA would not support the abdication of legislative authority to the commissioner to modify the no-fault system in Minnesota. To the extent that an advisory committee is necessary, such an advisory committee can be established by the commissioner and does not need to be established by the legislature. Further, to the extent the advisory committee is formed by legislative action, the formation must not provide any powers to the advisory committee other than providing advice to the commissioner on a list of prescribed issues related to the no-fault system.



Recommendation 4

The MCA supports reconstituting the No-Fault Task Force for the sole purpose of reviewing and making recommendations to the no-fault arbitration process. We oppose the expansion of the scope of this reconstituted No-Fault Task Force to include reviewing and making recommendations on the IME process as we believe changes to the IME process must be done at the same time as the adoption of treatment guidelines under Recommendation

Finally, the MCA calls into question the premise under which the No-Fault Task Force was formed—that no-fault insurance premiums are seeing dramatic increases because of the treatment of soft tissue injuries. Minnesota’s auto insurance expenditures relative to other states ranks 31st, and Minnesota rates have increased modestly over the past 5 years while the pure direct loss ratios related to personal injury protection (“PIP”) have seen a steady decrease over the same period of time (70.5% to 53.56%). The MCA believes that prior to any additional reforms to the no-fault system, the stated need for the reform must be closely examined. Also, the MCA sees a certain irony in looking to New Jersey for examples of reform as it leads the nation in auto insurance expenditures.

Thank you again for the opportunity to respond to the Task Force Report. It has been a great honor to work with the Task Force on trying to reach a common understanding of the no-fault system to foster needed reform that will benefit the citizens of Minnesota.

Respectfully,

A handwritten signature in black ink that reads "Douglas Broman DC". The signature is written in a cursive, flowing style.

Douglas Broman, DC
President
Minnesota Chiropractic Association



Appendix C: No-Fault Technical Advisory Committee – New Jersey language

NOTE: This example is for illustrative purposes only. It was the model the task force used to craft its version of a Technical Advisory Committee.

[See PDF attached]

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE)
PERSONAL INJURY PROTECTION) ORDER
TECHNICAL ADVISORY COMMITTEE)

This matter having been opened by the Commissioner of the Department of Banking and Insurance ("Commissioner") pursuant to the authority of N.J.S.A. 17:1-15i; and

IT APPEARING that the Automobile Insurance Cost Reduction Act, P.L. 1998, c. 21 as amended by P.L. 1998, c. 22 ("the Act") was enacted May 19, 1998; and

IT FURTHER APPEARING that as required by the Act, the Commissioner, in consultation with the professional licensing boards in the Division of Consumer Affairs of the Department of Law and Public Safety ("Professional Boards") and the Commissioner of the Department of Health and Senior Services ("DOH&SS"), has adopted administrative rules at N.J.A.C. 11:3-4 ("rules") that more precisely define the benefits available under automobile insurance personal injury protection ("PIP") coverage and establish standard treatment and diagnostic procedures for treatment of accidental injury to the spine and back against which the medical necessity of treatments reimbursable under PIP medical expense benefits coverage can be judged; and

IT FURTHER APPEARING that as part of its consultation with the Department of Banking and Insurance ("Department"), the Director of the Division of Consumer Affairs in the Department of Law and Public Safety formed an ad-hoc committee composed of representatives of those Professional Boards most directly impacted by the reforms to PIP and this ad-hoc committee worked efficiently in accomplishing the goals of the Act; and

IT FURTHER APPEARING that during and after the rule proposal process there was a high level of interest and concern from medical professionals, members of the legislature and the general public that insurers would implement the rules in an arbitrary manner to deny reimbursement for medically necessary care; and

IT FURTHER APPEARING that the treatment standards established by the Department's rules are not meant to be applied rigidly or in such a manner as to deny reimbursement for medically necessary care; and

IT FURTHER APPEARING that especially during the implementation process, the Commissioner has determined to continue consultation not only with the Professional Boards and the DOH&SS, but also with other knowledgeable interested parties about the rules and to establish formally an appropriate mechanism for that continuing consultation; and

IT FURTHER APPEARING that pursuant to N.J.S.A. 17:1-15i, the Commissioner may appoint an advisory committee to advise and assist her in carrying out the functions and duties of the Department of Banking and Insurance; and

THEREFORE, IT IS on this 10th day of March, 1999 ORDERED that:

1. The Personal Injury Protection Technical Advisory Committee ("PIPTAC") is created and will be convened by the Commissioner to assist her in:
 - i. Determining whether the standards for treatment established in the adopted rules result in injured persons receiving necessary medical care, and, if necessary, recommending changes to those standards;
 - ii. Determining whether reimbursement for medically necessary care of injuries sustained in automobile accidents is being inappropriately or arbitrarily denied by insurers by reviewing data collected on implementation and relevant non-confidential complaint information;
 - iii. Preparing a report on the implementation of the rules to be made to the Legislature after a review of data collected during the first 18 months of implementation of the rules after the effective date of the Act. The report shall set forth issues raised during the implementation process that resulted in recommendations for changes to the rules and/or statute.

1. The initial membership of the committee shall be as follows:

- i. Representatives of appropriate Professional Boards designated by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety
- ii. The Commissioner of the Department of Health and Senior Services;
- iii. The Insurance Fraud Prosecutor;
- iv. Four representatives designated by the Commissioner upon nomination by professional organizations whose members are involved in the insurance process;
- v. Four representatives of the insurance industry; and
- vi. Two representatives of the public who are not health care providers, nor employed by, or affiliated with, any insurer, health care provider, nor shall they be any person, or any person who is employed by or is affiliated with any person who has received remuneration from an insurer or has a financial or any other interest in the automobile insurance system other than as a policyholder.

3. The Commissioner may designate additional members of the committee or replace existing members without need of further formal order.

4. The committee shall assist the Commissioner in evaluating the implementation of the rules by reviewing data regularly provided to it by the Commissioner including:

i. The number of requests for decision point review and the number of such requests denied as medically unnecessary;

ii. The number of medical reviews scheduled;

iii. The number of comprehensive treatment plans submitted and the number approved or disapproved;

iv. The number of requests for review by Medical Review Organizations that are made pursuant to N.J.A.C. 11:3-5.6 by the Alternate Dispute Resolution Administrator; and

v. The final determinations of dispute resolution professionals filed with the Department pursuant to N.J.A.C. 11:3-5.7(b).

5. Based on its review of the data provided by the Commissioner, the committee may recommend to the Commissioner that the Department:

i. Undertake examinations or claims audits of certain insurers;

ii. Request that the conduct of certain providers be reviewed by the appropriate Professional Board in the Division of Consumer Affairs in the Department of Law and Public Safety;

iii. Make amendments to the currently approved rules or recommend changes to statutes.

6. Upon designation of the committee, the Commissioner shall establish the date and time of the first meeting, which shall be no longer than 60 days from the date of this Order and thereafter the Committee shall meet as often as may be directed by the Commissioner, but at least once every two months.

/s/ Jaynee LaVecchia

Commissioner

Appendix D: Task force information review and activities

The task force met nine times between August 2015 and January 2016.²⁸ All meetings were highly attended by members. There were always in excess of approximately a dozen public attendees, with attendance more often being in the range of 25-35 people. At least one public comment was made at every meeting. The majority of meetings lasted approximately half a day, varying between mornings and afternoons. The January 7 meeting was approximately a full day in length.

Department of Commerce and MAD staff coordinated all meeting venues. Meetings were held in publicly accessible spaces at the Minnesota Department of Revenue, the Minnesota County Attorney's Association, the Public Employees Retirement Association of Minnesota, and at the Minnesota Judiciary Center.

Meeting overview and activities

August 12, 2015

- Members reviewed the task force purpose and scope, and laid a course for future meetings. Some members viewed fraud as the main problem to be addressed. More than one member raised the issue whether or not full repeal of the no-fault law would be considered. The task force agreed, and reiterated at many subsequent meetings, that repeal of Minnesota's no-fault law was not under consideration by the task force.
- Members identified three important issues to discuss during task force deliberations. The included: 1) What does the data tell us about the scope and purpose of the IME process; 2) What was the intent of no-fault insurance and does the process meet that intent; 3) What is the purpose of arbitration and does its original intent in no-fault match the current system?

September 22, 2015

- Department of Commerce staff presented an overview and history of no-fault insurance in Minnesota and other states.
- Senator Vicki Jensen's staff presented and summarized the 2014 Senate Fraud Working Group report
- Bob Johnson presented and summarized information on behalf of the Minnesota Insurance Federation of America.
- Joel Carlson presented information representing the consumer side of the no-fault insurance issue.

²⁸ More detailed meeting notes and copies of meeting agendas are available at the Department of Commerce's Task Force on No-Fault Auto Insurance Issues website. <https://mn.gov/commerce/industries/insurance/no-fault-task-force-on-auto-insurance/>

- The task force discussed issues from the presentations in the context of the three focus areas for the task force specified by the legislation. Members proceeded to group all of the issues raised into narrower categories of focus to be discussed at the subsequent meeting. Broadly, the narrowed areas were:
 - Economic and other data: How are premium dollars spent? What data on fraud and abuse is available? What are the trends in no-fault costs, claims, awards, etc.? What are other states' experiences with no-fault reform?
 - Need for definition and further clarification of the meaning of certain words/phrases, or put them in context regarding the task force's charge, e.g., treatment standards, fee schedules, arbitration.
 - What sort of medical guidelines and treatment standards are applied in no-fault, if any? Particularly, are there universally accepted standards for chiropractic treatment?

October 26, 2015

- Bob Johnson presented an overview and summary of Insurance Research Council no-fault claims study.
- The task force reviewed William Mitchell College of Law article, "No-Fault Independent Medical Examinations: Purpose, Timing and Impact."
- Department of Commerce shared information gathered on the use of no-fault insurance in other states.
- On behalf of Joel Carlson, a presentation was made from the consumer perspective. The focus was primarily on the IME process.
- The task force discussed how to proceed and use the information already presented in the context of the three legislative areas. Task force members agreed to share their organizations' understanding of the terms "reasonable and necessary" (regarding medical treatment) and "abuse" (regarding auto insurance and medical claims within the context of the no-fault system

November 5, 2015

- The meeting began with a discussion of the availability of data from the Minnesota workers compensation system and from the insurance industry. In both cases, it would be difficult to disaggregate the data to the level that the task force requested.
- The group discussed members' definitions of abuse. A main theme was that fraud is clearly defined in Minnesota statutes, and "abuse" is difficult to define broadly. It may not be possible to establish a broad, objective definition that would provide any benefit.
- The group reviewed other no-fault states and their use of fee schedules regarding no-fault claims. Most states that have fee schedules base it on their workers compensation system's fee schedule. Rates and standards are often based off of the Medicare rate schedule.
- A follow-up discussion focused on whether answering these various questions would benefit the task force's mission. Members wanted to narrow the scope to only those questions that would address the three issues presented by the legislature.

- Based on information provided and thorough discussion, the task force noted that fee schedules would not provide much benefit to the no-fault system. Instead, the task force would focus on treatment standards.

November 17, 2015

- The focus of this meeting was the arbitration process, and the use of fee schedules and treatment standards within Minnesota's workers compensation system. Presentations were made by Krista Peach, Director of the American Arbitration Association, which administers Minnesota's no-fault arbitration system, and representatives from the Minnesota Department of Labor and Industry.

December 7, 2015

- Outside counsel for the Minnesota Association of Justice presented information from the consumer side of the arbitration process.
- Stemming from this presentation, a discussion arose again on defining "abuse" and "medically necessary."
- Charles Lloyd gave a presentation on the glass-related component of the arbitration process. The task force discussed the presentation, and two members of the public made comments.
- The meeting closed after a discussion and compilation of a "wish list" by task members for data they would like to better answer the questions they faced. In most cases, the data is not currently available, and the discussion was intended to identify a potential recommendation to the legislature for requiring that the data be collected.

December 17, 2015

- This meeting was broadly split into two sections. The first half of the meeting entailed a discussion of treatment standards. The second half of the meeting focused on further refining the list of data needs identified at the previous task force meeting.
- Regarding treatment standards, the task force considered New Jersey as a model for a potential task force recommendation. Among no-fault states, New Jersey's system is the most fully developed and includes the most detail and information on designing a system to include treatment standards and fee schedules specifically for no-fault claims.
- The task force considered a condensed version of their list of data needs. Members agreed that the list of data needs would be part of a recommendation to the legislature, and that they did not expect to have the information for their current work.
- Task force members considered another part of the New Jersey model and discussed developing a recommendation for creating a peer review board in Minnesota for each of the medical professions involved in the no-fault area.

January 7, 2016

- The task force met for approximately a full day to refine and come to some degree of acceptance around a proposed set of recommendations.
- Members reviewed and discussed a set of draft recommendations and other proposed draft documents.

- Members confirmed agreement that a primary recommendation to the legislature would be a requirement for Commerce to collect various data necessary to answer many questions remaining regarding the three legislative charges
- There was a great deal of additional discussion and revision regarding the draft recommendations, aside from the agreement on data collection
- Members discussed, and in some instances disagreed about, the proposed creation of a no-fault review board or committee. In particular, they discussed how it would be developed, what its charge would be, and how its authority would be invoked. Issues also arose about the makeup up and need for the proposed “peer review” board/process.
- It was agreed that a number of specific modifications would be made to the draft report, the recommendations would be further refined and shared with members for their review, and that another draft would be prepared and shared in advance of the 1/21 meeting.
- Some discussion continued about various members’ acceptance on whether they would support recommendations for treatment standards and fee schedules. Members agreed to talk further about this among themselves, and to re-visit the issue at the next meeting in the broader public forum.

January 21, 2016

- The task force reviewed a full draft of the final report. Some members were concerned about a number of issues that they felt did not receive full discussion, and some members were not ready to accept the proposed recommendations to the legislature.
- Members tentatively accepted a revised set of recommendations. Primary among those was, 1) that a good deal of additional data and information was necessary before developing final recommendations on all three of the legislative directives, and 2) that the current task force should be given an extension to build upon the work it has already done, and help further refine the recommendations.
- The task force agreed that they would review the next and possible final draft report. If edits are more substantial, they may reconvene at a full meeting to give final approval to that draft.