

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

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### No-Fault Reform Legislation

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#### Background

Michigan adopted no-fault auto insurance in 1973. Under no-fault, benefits are paid to injured policyholders regardless of who was at fault in an accident. While twelve states have no-fault insurance, Michigan alone guarantees unlimited coverage for all reasonably necessary medical expenses incurred because of a motor vehicle accident.<sup>i</sup> In exchange, injured parties are heavily restricted in their ability to sue at-fault drivers for damages. Proponents hoped the change would ensure prompt and adequate compensation, reduce tort liability litigation costs, and promote administrative efficiency.

The no-fault system has undergone several major changes and further reforms continue to be of interest to lawmakers. This paper will provide an overview of the elements of no-fault most commonly targeted by reform proposals.

#### Personal Injury Protection

No-fault insurance includes personal injury protection, or PIP. Personal injury protection covers medical expenses, lost wages, and replacement services to provide daily household assistance for individuals injured in motor vehicle accidents. These costs are paid by the vehicle owner's own auto insurance company, although Michigan permits policyholders to make their health insurance provider their primary payer. Insurers must pay expenses up to a certain dollar amount, known as the catastrophic threshold. The Michigan Catastrophic Claims Association (MCCA) reimburses insurers for PIP payments above this threshold. The current threshold is \$555,000 per accident.

Personal injury protection coverage encompasses an array of products and services. Major expense categories include hospitalization, prescriptions, home and vehicle modifications, equipment, case management, and long-term attendant care. With restrictions, PIP covers up to 85% of lost wages and up to \$20 per day for services, such as housekeeping, that the individual is no longer able to perform because of his or her injuries. Wage and replacement services benefits are payable for a maximum of three years following an accident.

Michigan's no-fault coverage has two additional components: property protection insurance (PPI) and residual liability insurance (bodily injury and property damage protection), but these provisions have received significantly less legislative attention.

#### Michigan Catastrophic Claims Association

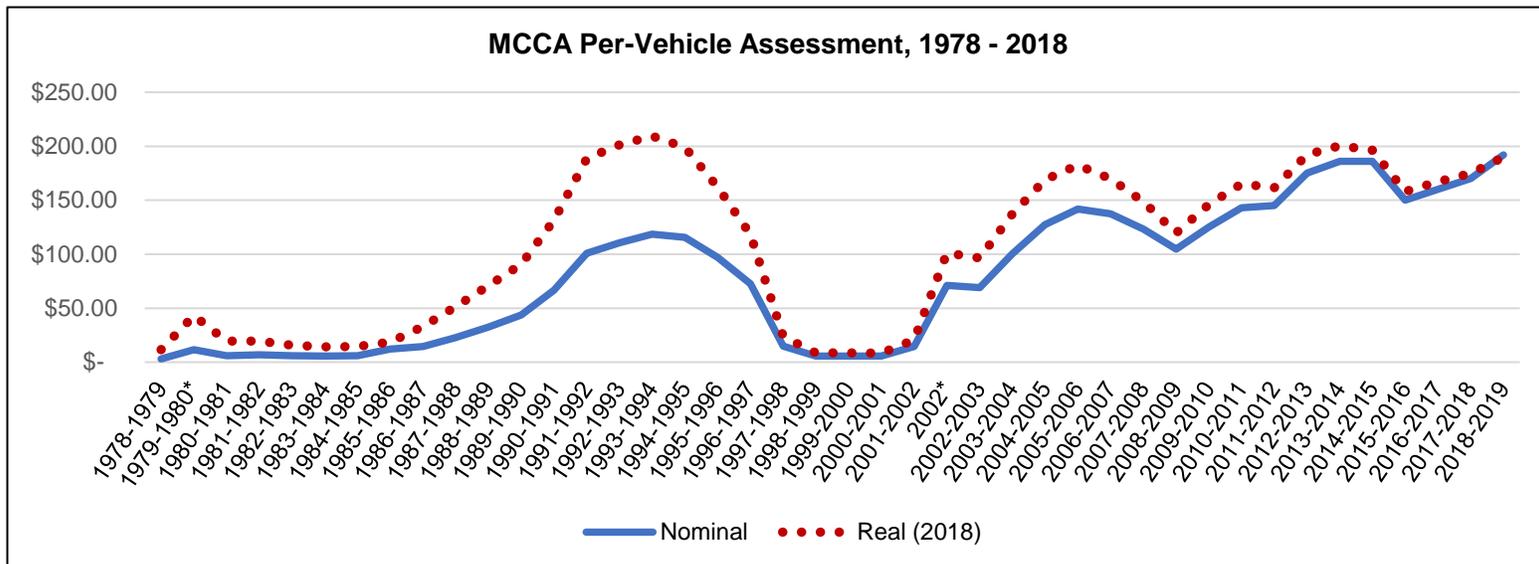
The MCCA is a private, nonprofit organization established in 1978 to limit losses to insurance companies due to the new mandatory unlimited coverage. All auto insurers in Michigan are required to be members. The Board of Directors is comprised of five industry representatives and the Director of the Department of Insurance and Financial Services, who serves as an *ex officio* member of the Board. The MCCA is funded by an annual per-vehicle assessment paid by insurers. These companies, in turn, charge a fee to policyholders to cover the assessment. The formula used to set the assessment is not disclosed to the public. Concerns over transparency have led to several significant lawsuits and resulted in multiple legislative proposals to overhaul or dissolve the MCCA.

As shown in [Figure 1](#), the assessment has varied significantly over time. Nominally, it has increased 97% since 2000. A 2014 study concluded that it has been about 15% higher than necessary over



the course of the MCCA's history,<sup>ii</sup> but lack of direct data on the Association's calculations make it difficult to draw conclusions about the cause of this purported overassessment.

**Figure 1**

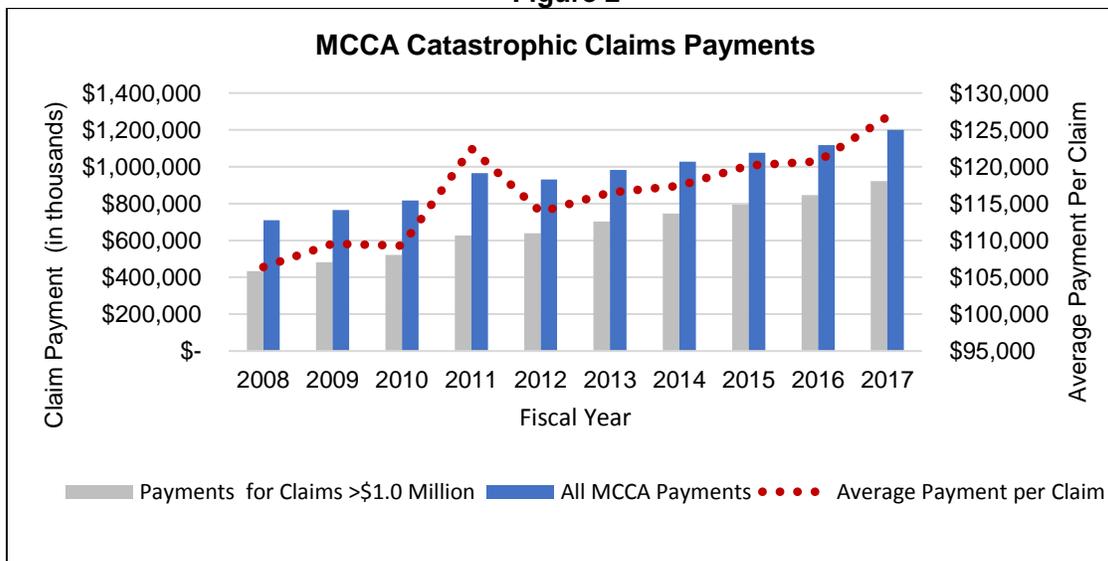


\* Rate in effect for partial year. MCCA years run July to June since 2002. Previously, MCCA years were January to December with the exception of 1978 and 1979.

Source: Michigan Catastrophic Claims Association.

The catastrophic threshold is specified in Section 3104 of the Insurance Code (Michigan Compiled Laws (MCL) 500.3104). The first, set in 1978, was \$250,000, the equivalent of approximately \$957,000 today. Currently, the threshold is \$555,000, with biennial adjustments for inflation.

**Figure 2**



Source: Michigan Catastrophic Claims Association.

Figure 2 shows overall payments and payments for claims over \$1.0 million for fiscal years (FYs) 2008 to 2017. Payments have increased from an average of \$106,390 per claim to \$126,789 per

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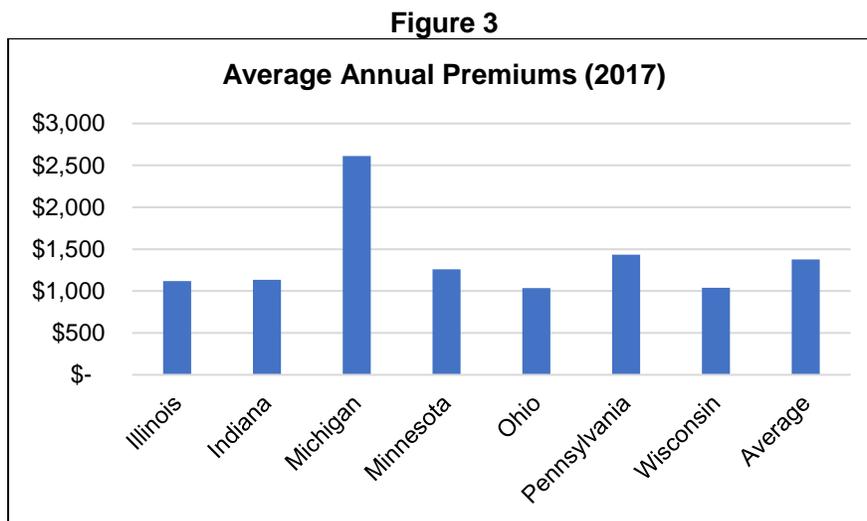
[www.senate.michigan.gov/sfa](http://www.senate.michigan.gov/sfa)



claim over the same time period. As of June 30, 2017, the MCCA had paid out \$15.3 billion to cover catastrophic claims.

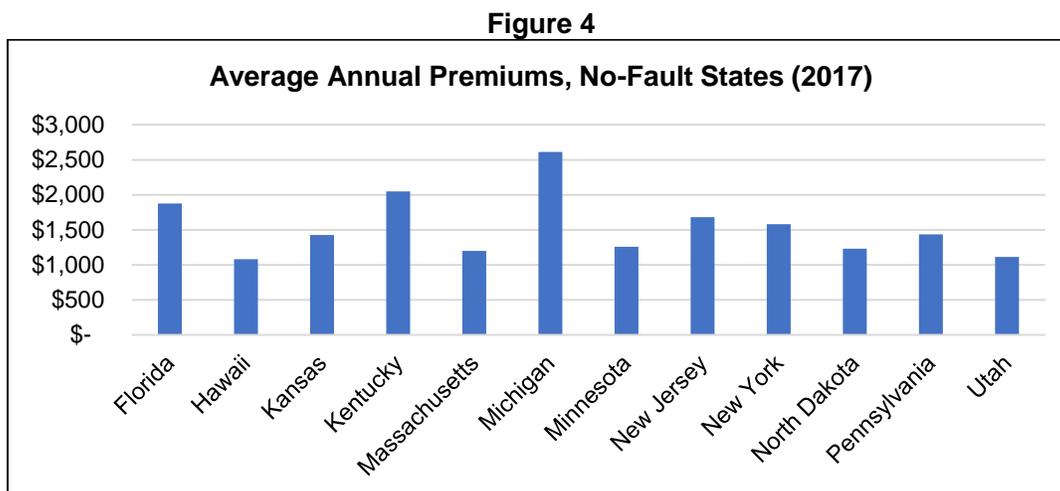
**Are Michigan's Rates Excessive?**

In 1990, Michigan's auto insurance premiums were close to the national average. Today, they are among the nation's highest. The average premium has increased about 18% since 2011.<sup>iii</sup> Figure 3 below illustrates the significantly higher prices paid by Michigan drivers compared to nearby states. At \$2,610, Michigan's average annual premium was nearly twice the average of these seven states (\$1,376).



Source: The Zebra. "The State of Auto Insurance". 2018.

As shown in Figure 4 below, Michigan's premiums also exceed those of the other no-fault states. All of these states have lower minimum PIP coverage levels, but there also are major differences in the overall structure of their insurance systems and demographics that complicate attempts to identify the source of cost differences directly.



Source: The Zebra. "The State of Auto Insurance". 2018.

The Insurance Code specifies that a rate may not be held to be excessive unless it is "unreasonably high for the insurance coverage provided", and there is not a reasonable degree of competition available for that type of coverage. The Director of the Department of Insurance and Financial Services has the authority to declare a rate excessive, but the large number of auto insurers in Michigan make it difficult to establish that there is not a "reasonable degree of competition". In Michigan, rates are effective when filed and do not require the Department's approval. This is in contrast to most other states, which requires their insurance commissioners to approve a rate before it can be charged.

Critics and advocates of the no-fault system acknowledge that rising health care costs and longer lifespans have contributed to the increased cost of providing unlimited coverage, but the magnitude of their effect is disputed because of a lack of reliable data on insurer profitability. The issue is further complicated by Michigan residents' distinctive consumption behavior; a 2010 RAND study found they tend to select a different mix of medical treatment and care options than injured policyholders in other states<sup>iv</sup>. Whether the additional cost of full coverage in case of a catastrophic accident is worthwhile is central to the debate over no-fault reform proposals.

In addition to interstate variation, premiums can differ substantially within Michigan. In the 1980s, limitations were placed on insurance companies' ability to charge significantly different rates based on geography, but those limitations later were repealed. However, concerns about the high rates charged by drivers in some urban areas remain part of the debate over no-fault auto insurance rates in Michigan. Several of the most discussed proposals within the last decade were explicitly linked to relieving drivers in Detroit, who face exceptionally high premiums. A 2018 study found that Detroit's drivers paid an average of \$5,414 for annual coverage compared to \$2,610 for Michigan drivers overall.<sup>v</sup> It has been argued that the high cost of auto insurance in the city has prevented lower income residents from reaching suburban employment opportunities, compounding the economic impact of current practices.<sup>vi</sup> For a discussion of previously enacted legislation that restricted insurers' ability to vary rates by geography, see the Senate Fiscal Agency March/April 1992 State Notes article *No-Fault and Essential Insurance*.

### **Common Elements of No-Fault Legislative Proposals**

#### *PIP and Catastrophic Claims Coverage*

Proponents argue that lower mandatory PIP coverage levels or the option to choose between coverage tiers would result in lower insurance premiums for policyholders. A 2007 EPIC Consulting study of more than 70,000 PIP claims concluded that about 94% were for less than \$50,000.<sup>vii</sup> However, the 0.5% of claims that exceeded \$400,000 made up about 43% of all PIP losses. For claims over \$400,000, the average claim amount is \$1,408,238.

For example, House Bill (HB) 5013 (2017) would have allowed individuals to select between three PIP coverage options: \$250,000, \$500,000, or unlimited. At the \$250,000 level, coverage would consist of \$225,000 for an emergency medical condition and related emergency care only and \$25,000 for all other PIP benefits, including long-term residential or attendant care services. Like HB 5013, HB 4936 (2011) proposed allowing drivers to choose between three levels of PIP coverage. The initial thresholds were higher, but coverage ultimately was capped at \$5.0 million. Under this bill, a reformed MCCA would cover 90% of losses between \$500,000 and \$1.0 million and 100% over \$1.0 million.

Several bills have proposed ending MCCA liability for expenses beyond a set monetary amount; additional costs would be the responsibility of the individual. For example, in addition to limiting PIP benefits to \$50,000, Senate Bill (SB) 251 (2013) proposed absolving the MCCA of all liability for



losses on policies issued or renewed after a specified date. House Bill 4612 (2013) would have replaced the MCCA with an organization that would have liability for claims only up to \$1.0 million.

Table 1 summarizes changes to PIP proposed by several bills typical of recent reform efforts.

**Table 1**

<b>Legislation</b>	<b>PIP Coverage Levels</b>	<b>MCCA Replacement</b>
HB 4936 (2011)	- \$500,000 - \$1.0 million - \$5.0 million	- Maintained with changes to rules and responsibilities  - Liability for 90% of losses between \$500,000 and \$1.0 million; 100% liability for losses above \$1.0 million
SB 251 (2013)	- \$50,000	- Dissolved and liability ended for policies issued or renewed after dissolution date
HB 4612 (2013)	- \$530,000	- Dissolved and replaced  - New organization would have liability for losses between \$530,000 and \$1.0 million
SB 248 (2015)	- \$545,000	- Dissolved and replaced  - New organization would have liability for losses over \$545,000
HB 5013 (H-7) (2017)	- \$250,000 - \$500,000 - Unlimited	- Maintained with changes to rules and responsibilities

*Fee Schedules*

A 1990 report from the Michigan Senate Commerce and Technology Committee stated that "the absence of effective health-care cost-containment measures in Michigan's no-fault law is a crisis waiting to happen".<sup>viii</sup> Various legislators and organizations have proposed fee schedules as a potential solution. A schedule would list the maximum fees that could be charged by physicians, therapists, laboratories, and other medical service providers. Advocates argue that a fee schedule would facilitate more efficient and accurate billing and reduce payment-related lawsuits. In addition, analyses have indicated that auto accident victims are often charged more than other patients for the same procedures and services.<sup>ix</sup>

Testimony and data from medical providers included in the Committee report led to the conclusion that "no-fault helps [providers] make up for underfunding in other areas". That is, hospitals depend on auto accident victims' payments to make up for losses from Medicaid patients and other categories. The report recommended privately-negotiated agreements rather than regulation. Nevertheless, it called standardized fee schedules, along with case management, "essential for the long-term survival of Michigan's no-fault system". Opponents contended that fee schedules would encourage doctors to limit care to accident victims because of lower profitability.



Proposals differ in whether they suggest the use of existing fee scheduling or other funding formulas. House Bill 4926 (2011) would have applied the State's workers' compensation schedule to auto accident-injury charges, excluding emergency care performed by ambulance staff. In 2017, the Coalition Protecting Auto No-Fault (CPAN) supported "a no-fault fee schedule for all medical providers, with the exception of Level 1 trauma hospitals, that would be based upon 185% of the workers' compensation fee schedules, with cost-of-living adjustments".<sup>x</sup>

*Attendant Care Limitations*

An accident victim who can no longer attend to some of his or her own basic needs may be reimbursed for attendant care costs. An attendant does not need to be professionally trained and can include a family member who assists the injured individual with daily activities like meal preparation and bathing. The Michigan Court of Appeals has previously held that rates charged by professional health services may be used as guidelines for compensation of household members, although more recent decisions have lessened their relevance.<sup>xi</sup> As a result, compensation generally reflects market rates. Some reform advocates support attendant care limitations as a way to make no-fault more sustainable, while others believe the current relative lack of regulation promotes fraud.<sup>xii</sup>

As shown in [Table 2](#), attendant and residential care costs have made up an average of 57% of losses paid by the MCCA over the past three years. About one-third of these costs have been for family-provided care.

**Table 2**

<b>Percent of MCCA Loss Payments by Category by MCCA Fiscal Year</b>				
	<u>2014-2015</u>	<u>2015-2016</u>	<u>2016-2017</u>	<u>Average</u>
<b>Residential Care .....</b>	20.6%	20.4%	20.0%	20.3%
<b>Attendant Care - Family .....</b>	20.0%	18.8%	18.1%	19.0%
<b>Attendant Care - Agency.....</b>	17.6%	18.1%	17.8%	17.8%
<b>Other<sup>†</sup> .....</b>	41.8%	42.7%	44.1%	42.9%
<b>Attendant/Residential % of Total MCCA Losses.....</b>	58.2%	57.3%	55.9%	57.1%

<sup>†</sup> Other categories of MCCA loss payments include prescriptions, hospitalization, transportation, home purchases and modifications, vehicle purchases, and other expenses.

Source: Michigan Catastrophic Claims Association, Annual Reports to the Director of the Department of Insurance and Financial Services, 2015 - 2017.

Limitations on attendant care consumption and compensation have been a common feature of recent no-fault legislation. House Bill 4612 (2013) would have limited attendant care to 56 hours per week and capped payment at \$15 per hour. Senate Bill 248 (2015) proposed limiting total billable hours to twenty-four hours per day for nonfamily and nonhousehold members, regardless of the number of attendants present.

Opponents argue that limitations would place an unnecessary burden on the very patients no-fault is meant to protect the most: those with catastrophic, life-changing injuries. As Medicare does not pay for long-term attendant care, this issue is of particular concern for older patients. As of June 2017, approximately 18.2% of claimants, or about 800,000 individuals, over the course of the



MCCA's history were 61 or older at the time of their accident. However, it is important to note that many claimants require long-term care because of their injuries, meaning that many additional claimants will age into the Medicare age bracket. This would increase the number of individuals who may require Medicare services in order to receive treatment for eligible accident injuries.

#### *Direct Regulation of Rates and Premiums*

Provisions directly altering rates are less common than those focusing on changes to PIP coverage or MCCA liability. The EPIC Consulting study cited above found that a \$50,000 cap would result in a PIP charge reduction of 45% and an overall premium reduction of 15.8%. Many reformers also have argued that lower premiums would lead to fewer uninsured drivers, further reducing costs to the State and consumers.

The introduced version of House Bill 4612 (2013) would have required annual insurance premiums to be reduced by at least \$150 per vehicle, an effective savings of \$125 for policyholders after other elements of the bill were enacted. Other proposals have reserved mandatory cuts to consumers who select low PIP benefit plans. House Bill 5013 (2017), for example, would have required a 40% reduction in PIP premiums only for those who chose the lowest threshold.

#### *Limitations on Rate Determinants*

Other rate-related provisions include further prohibitions against excessive charges and discriminatory rates. Rate determinants that are currently legal, but opposed by some reformers, include credit scores, home ownership, occupation type, and educational attainment. [See House Bill 4617 (2017)].

#### *Transparency and Fraud Prevention*

Efforts to make Michigan's insurance industry and the MCCA more transparent are a recurring feature of reform proposals. The MCCA is not subject to the Freedom of Information Act or the Open Meetings Act. In August of 2016, the Michigan Court of Appeals held that the MCCA's exemption from the Freedom of Information Act is constitutional.<sup>xiii</sup> Senate Bills 240 and 241 (2017), among others, would have ended both exemptions.

Transparency advocates note that Michigan is the only state for which the National Association of Insurance Companies is unable to calculate insurer profitability because of data reporting issues.<sup>xiv</sup> Changes to PIP coverage in order to promote consumer savings, they argue, are irresponsible if actual financial conditions are unknown.

A 2014 analysis of Michigan's auto insurance market concluded that transparency and consistency in insurance industry reporting standards would likely lower premiums.<sup>xv</sup> The author recommended that the Department of Insurance and Financial Services create a standard procedure for insurance companies to project future claims. Many recent reform proposals also have included additional reporting requirements for both insurance companies and the MCCA.

Fraud prevention has also captured legislative attention. Among the most popular proposals is the creation of a Fraud Prevention Authority. Senate Bill 1014 (2018) proposes creating an authority within the Automobile Insurance Placement Facility. The Authority would be funded through membership fees, which could not be derived from insurance premiums. It would be tasked with collecting data from insurance companies and combating insurance fraud.



## **Impact of Changes on State and Local Government**

Changes to no-fault could have a notable fiscal impact on State and local governments. As the details of each proposal vary significantly, the potential cost impacts listed below are general.

### *Medicare and Medicaid*

Limiting MCCA liability likely would result in increased costs to Medicare and Medicaid. By law, these programs are payers of last resort, but ending or reducing liability could result in insufficient coverage through private auto and health insurers. The repeal of no-fault and switch to a tort liability system in Colorado resulted in a 205% increase in auto accident-related charges to Medicaid within five years.<sup>xvi</sup> The impact on Medicaid in Michigan could be smaller, as most proposals limit rather than eliminate the MCCA's obligations. A House Fiscal Agency analysis of HB 5013 (H-3) suggested that State Medicaid costs could increase as much as \$80 million over a ten-year period because of long-term care costs for individuals with insufficient PIP coverage.<sup>xvii</sup>

### *Decreased Tax Revenue*

Insurance companies are taxed differently from other corporations under Michigan's corporate income tax (CIT) rules. While most corporations pay a 6.0% tax on income, insurers pay a 1.25% tax on gross direct premiums written in Michigan.<sup>xviii</sup> Revenue from this tax was estimated at \$398.1 million for FY 2017-18.<sup>xix</sup> This was a 10.3% increase over FY 2015-16. Like all business tax revenue, insurance company tax payments are deposited in the General Fund. For FY 2017-18, insurance company tax revenues made up about 3.8% of GF/GP tax revenue dollars. However, this figure includes taxes on all insurance companies, not auto insurers alone. Decreased premiums would lead to an unknown decrease in tax revenue depending on consumer behavior.

### *Court Costs*

Some reforms likely would increase court costs, while others could reduce caseloads. For example, advocates of fee schedules contend that payment disputes over what constitutes a reasonable charge would be reduced by the change, reducing court caseloads. In contrast, reductions in PIP coverage and MCCA liability, if accompanied by a relaxation of the restrictions against lawsuits, could lead to an increase in small claims cases.

### *Staffing Costs*

A number of proposed reforms, including fraud prevention measures, likely would require additional State expenditures for staff. The departments affected by these changes would vary based on the structure of the Fraud Prevention Authority. Based on past legislation, the Department of the Attorney General, the Department of Insurance and Financial Services, and the Michigan State Police are among the departments most likely to be affected.

### *Insurance Premiums*

The cost of insuring State and municipal vehicles would be affected by any changes to auto insurance premiums resulting from reforms. Decreased premiums would be most significant to small municipalities.

## Conclusion

The debate over no-fault auto insurance primarily focuses on cost reductions for consumers, but reform proposals differ in their scope and their primary means of achieving these reductions. The most frequently proposed reforms outright limit or offer consumers the option to limit the coverage they receive from their insurers. Many also seek to reform or restrict the liability of the Michigan Catastrophic Claims Association. Additional proposals include medical fee schedules, direct rate reductions, and price limits in an effort to reduce the cost of maintaining Michigan's no-fault system. Advocates for these proposals argue that these changes will reduce insurance premiums without substantial risk to the majority of policyholders, who are unlikely to face catastrophic injuries. Current limitations of data and research ensure that debate over the best means of addressing both coverage needs and the high cost of auto insurance will continue for the foreseeable future.

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<sup>i</sup> What constitutes reasonable expenses has been the subject of some dispute. See: *DiFranco v. Pickard*, 427 Mich 32 (1986); *Kreiner v. Fischer*, 471 Mich 109 (2004); and *McCormick v. Carrier*, 487 Mich. 180 (2010)

<sup>ii</sup> Angoff, Jay, "An Analysis of Profitability and Pricing In the Michigan Auto Insurance Market", Mehri & Skalet, PLLC, July 2014.

<sup>iii</sup> The Zebra, "The State of Auto Insurance", 2018.

<sup>iv</sup> Heaton, Paul, "Auto Insurance Reform in Michigan", RAND Institute for Civil Justice, 2010.

<sup>v</sup> The Zebra, "The State of Auto Insurance", 2018.

<sup>vi</sup> Miller, Dan, "Auto Choice: Impact on Cities and the Poor", in Lascher, Edward L., and Michael R. Powers (Eds.), *The Economics and Politics of Choice No-Fault Insurance*, 2001.

<sup>vii</sup> Miller, Michael J., "Private Passenger Automobile Analysis of No-Fault Legislative Reforms", EPIC Consulting, Inc., June 2007.

<sup>viii</sup> Senate Committee on Commerce and Technology, "Report on No-Fault Auto Insurance Reform in Michigan", April 1990.

<sup>ix</sup> Coffey, Matthew, "What's Wrong With Michigan's No-Fault Automobile Insurance", Mackinac Center for Public Policy, 28 Sep 2017.

<sup>x</sup> Coalition Protecting Auto No-Fault, "CPAN's Proactive Auto No-Fault Reform Agenda", 8 May 2017, Lansing, MI.

<sup>xi</sup> See *Manley v. Detroit Automobile Inter-Insurance Exchange*, 425 Mich. 140 (1986) and *Douglas v. Allstate Insurance Company*, 815 N.W.2d 118 (2012).

<sup>xii</sup> Coffey, Matthew, "What's Wrong With Michigan's No-Fault Automobile Insurance", Mackinac Center for Public Policy, 28 Sep 2017.

<sup>xiii</sup> The case is *Coalition Protecting Auto No-Fault v. Michigan Catastrophic Claims Association*, 137 Mich App 1 (2016).

<sup>xiv</sup> Note 3.

<sup>xv</sup> Note 3. (Angoff)

<sup>xvi</sup> BBC Research & Consulting, "Auto Insurance/Trauma System Study: State of Colorado", 18 Feb 2008.

<sup>xvii</sup> Michigan House Fiscal Agency, "Legislative Analysis: No-Fault Auto Insurance Amendments - House Bill 5013 as Reported from Committee", 2017.

<sup>xviii</sup> Michigan Department of Treasury, "2016 Michigan Corporate Income Tax Returns: Insurance Companies."

<sup>xix</sup> Senate Fiscal Agency, Monthly Revenue Report, June 2018.