No-Fault Auto Insurance: A Survey

PROPERTY & CASUALTY INSURANCE (C) COMMITTEE
No-Fault Auto Insurance: A Survey
PROPERTY & CASUALTY
INSURANCE (C) COMMITTEE

December 2000

NAIC
National Association
Of Insurance Commissioners
# Table of Contents

**INTRODUCTION** ................................................................................................................... 1

**EARLY CONCEPT OF AUTOMOBILE INSURANCE** ................................................................ 1

**HISTORY OF NO-FAULT COVERAGE** .................................................................................. 2

**STATE NO-FAULT LAWS** ...................................................................................................... 6

- **COLORADO** .......................................................................................................................... 6
- **CONNECTICUT** .................................................................................................................... 7
- **DISTRICT OF COLUMBIA** .................................................................................................. 8
- **FLORIDA** ........................................................................................................................... 9
- **GEORGIA** .......................................................................................................................... 10
- **HAWAII** .......................................................................................................................... 11
- **KANSAS** ........................................................................................................................... 12
- **KENTUCKY** ..................................................................................................................... 13
- **MASSACHUSETTS** ............................................................................................................. 14
- **MICHIGAN** ...................................................................................................................... 15
- **MINNESOTA** .................................................................................................................... 17
- **NEVADA** ........................................................................................................................... 18
- **NEW JERSEY** ................................................................................................................... 19
- **NEW YORK** ...................................................................................................................... 21
- **NORTH DAKOTA** ............................................................................................................. 22
- **PENNSYLVANIA** .............................................................................................................. 23
- **PUERTO RICO** .................................................................................................................. 25
- **UTAH** .................................................................................................................................. 26

**REVIEW OF EXISTING LITERATURE ON NO-FAULT AND OTHER AUTOMOBILE INSURANCE SYSTEMS** ........................................................................................................... 27

**CRITICS OF TORT REPARATION SYSTEMS** ........................................................................ 27

**INDEPENDENT QUANTITATIVE RESEARCH** ........................................................................ 28

- Findings Using Historical Data ................................................................................................. 28
- Simulation Results .................................................................................................................... 30

**CONCLUSION** ..................................................................................................................... 31

**REFERENCES** ....................................................................................................................... 32
No-Fault Auto Insurance

Introduction

In 1997, the National Association of Insurance Commissioners (NAIC) decided to study the concept of no-fault auto insurance. The NAIC’s Property and Casualty Insurance (C) Committee was asked to “study the concept of no-fault auto insurance and consider drafting optional model laws to implement a choice no-fault system, a pure no-fault system, a verbal threshold no-fault system and monetary threshold system.” The committee received its study outline on March 19, 1997 and proceeded with the study. This paper presents the committee’s findings relative to the charge.

The past several decades have seen a growing interest in developing a possible alternative to the tort system as a way of providing reparations in many of today’s automobile accident cases. Anecdotal evidence and reports in the popular press have raised several issues regarding the use of tort remedy in automobile insurance systems which have led to continual efforts to find a workable alternative. No-fault insurance and, more recently, Auto choice insurance systems have been offered as solutions to perceived shortcomings of the tort based system. In the pages that follow, the history of no-fault insurance is developed. A state by state review of current modified no-fault systems is then presented. A review of studies done on the effectiveness of alternative automobile insurance systems is then provided.

Early Concept of Automobile Insurance

Henry Ford’s mass production of economical automobiles brought about a revolution in American travel options. Along with it came some problems that each American must face when choosing to own an automobile. First, motor vehicles represent a significant financial investment. This is as true today as it was when the automobile first appeared on the scene. Thus, since its invention, automobile owners have sought to purchase insurance coverage to protect against economic loss to the vehicle. However, damage to the vehicle is not the most significant threat to its owner. In spite of a person’s best intentions, the propensity of drivers to run into other autos, stationary objects and pedestrians causes a significant exposure to financial loss. It is this threat to the economic assets of the negligent person that is the subject of auto liability insurance. Further, many states require the purchase of auto insurance as a measure of financial responsibility to protect other motorists and pedestrians from unintended losses.

At the turn of the century, the Industrial Revolution had led the American court system to abandon the traditional absolute liability system in favor of a less stringent tort liability system. The tort system provides a way in which the courts assign negligence or blame to a person called the “tortfeasor.” Black’s Law Dictionary defines a tort as “a private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. There must always be a violation of some duty owing to a plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties.” (Black, 1991, p. 1036). A tortfeasor is held responsible only if he or she is determined by the court to have caused the

---

1 1997 NAIC charges to the Personal Lines—Property and Casualty Insurance (C) Committee.
injury or damage and was guilty of wrongdoing or fault, unless a form of strict or absolute liability applies.

Thus, a person who owns or operates an automobile faces the possibility of being sued for injury or damage because of his or her negligence in operating the vehicle. Many people choose to purchase liability insurance to protect themselves from financial loss because of negligent operation of an automobile. It is important to note that the purpose of liability insurance is to protect the assets of the purchaser, not to compensate the accident victim irrespective of the percentage of legal liability involved. The concept of “fault” and “damage contribution” are related in complex ways that vary from state to state. Thus, there are times where an insurer successfully defends a policyholder and no benefits are provided to an accident victim.

The insurance industry was quick to respond to the changing needs of the American public. The Travelers Insurance Company first provided auto liability insurance in 1898. Others soon followed. Today, most auto insurance policies are sold as a package of coverages that provide both first and third party benefits. An auto insurance policy is one that is purchased by the policyholder (first party) from the insurer (second party) that pays benefits to either the policyholder or covered injured person (third party). Comprehensive coverage is not fault based. Also, medical benefits are typically applied to drivers and passengers of the insured auto regardless of fault. Finally, uninsured motorists coverage and underinsured motorists coverage are paid to the policyholder based on the relative fault or lack of financial resources of the person responsible for the accident. Thus, an auto insurance policy typically delivers both fault and no-fault benefits. The liability portion of the policy provides for damages to injured third parties if the policyholder is determined to be negligent or at-fault. It also provides defense costs associated with litigating or settling the claim for damages.

**History of No-Fault Coverage**

The concept of no-fault auto insurance is not new. It can be traced as far back as the 1930s to the Columbia University Committee Plan (Columbia, 1932). This plan proposed a schedule of out-of-pocket loss benefits similar to the workers’ compensation coverage in place at the time. It also had limitations on liability. Auto insurance was mandatory with accidents settled without a determination of fault. Recoveries for pain and suffering were eliminated.

It was Canada that first adopted a no-fault plan. The Saskatchewan Plan was adopted in 1946. The Saskatchewan Plan was based primarily on the Columbia University Committee Plan. Benefits were provided to almost all victims of auto accidents regardless of fault. The plan was mandatory and auto owners were required to purchase liability coverage for amounts above the basis no-fault limits. Another feature required the purchase of physical damage coverage for both collision and comprehensive.

In the United States, no-fault again became topical in the late 1950s and early 1960s when Robert E. Keeton, Harvard University Professor of Law, and Jeffrey O’Connell, University of Illinois Professor of Law, wrote extensively on the topic and appeared before and interacted with state legislatures. To address what they perceived to be shortcomings in the auto insurance

---

2 In fact, for 1998, auto insurance is compulsory in 43 states and the District of Columbia (Gastel, 1998).
3 The first auto bodily injury liability policy written in the United States was issued to Dr. Truman J. Martin in 1898 by the Travelers (Mehr and Cammack, 1976, P 340).
4 The Automobile Accident Insurance Act, 1946, 10 Geo. 6, Ch. 11 (Saskatchewan).
system, Keeton and O’Connell proposed a system where drivers would purchase a new form of compulsory auto insurance called *basic protection insurance* which would compensate all persons injured in auto accidents regardless of fault. The *basic protection insurance* provided for all out-of-pocket expenses for injury up to a limit of $10,000. The person’s own insurer would provide the compensation. In addition, the proposal called for enactment of legislation to provide a partial exemption from tort liability for those involved in auto accidents. The initial proposal called for elimination of the tort remedy for cases where damages for pain and suffering would not exceed $5,000 and other tort damages would not exceed $10,000. Thus, tort remedies remained for the seriously injured (Keeton and O’Connell, 1965). The plan was later amended to include optional property damage protection.

Following the proposal by Keeton and O’Connell, several no-fault plans were tendered by a variety of academics, legislators and the insurance industry. A brief description of each follows:

- **1968**—The American Insurance Association (AIA) developed *The Complete Personal Protection Automobile Insurance Plan*. This plan proposed the first pure no-fault system. There were no limits on the benefits to be paid and no right to sue for damages. The AIA plan included property damage under the no-fault coverage. Coverage was provided on a first party basis for bodily injuries. The medical and hospital benefits were unlimited; however, they were required to be “reasonable.” Up to $1,000 was provided for funeral expenses. Lost income was compensated up to $750 per month. Up to 50% of the amount paid for medical and hospital would be paid for permanent impairment of a body function or disfigurement. A policyholder could choose optional added coverage for serious injury. Tort would apply only where a conflict in state laws existed.

- **1970**—The National Association of Independent Insurers (NAII) developed a plan that provided limited first party benefits. It imposed a formula that limited a person’s right to seek general damages. First party coverage for medical, hospital and funeral expenses was limited to $2,000. Coverage for lost wages would be provided up to $6,000. Additional optional coverage would be available. Arbitration would be required for small (under $3,000) claims. The plan also called for investment in traffic safety research, strict penalties for filing fraudulent claims and regulation of contingent legal fees.

- **1972**—The National Conference of Commissioners on Uniform State Laws developed a Uniform Motor Vehicle Accident Reparation Act (UMVARA). This model was to serve as a standard for no-fault reparation systems. UMVARA provided unlimited medical benefits; however, hospital room payments would be limited to the prevailing rate for semi-private rooms. Work loss and survivors loss benefits would be provided up to $200 for an unlimited duration of time. Benefits were also provided for replacement services. Funeral expenses of $500 were specified. A variety of deductible options were

---

5 $52,889 in 1999 dollars.
6 $26,444 in 1999 dollars.
7 $52,889 in 1999 dollars.
8 $4,787 in 1999 dollars.
9 $3,591 in 1999 dollars.
10 $8,588 in 1999 dollars.
11 $25,763 in 1999 dollars.
12 $12,881 in 1999 dollars.
13 $797 in 1999 dollars.
14 $1,993 in 1999 dollars.
required to be offered by insurers to constrain costs. Tort would be abolished except for general damages (i.e., pain and suffering) in excess of $5,000\(^\text{15}\) for injuries resulting in death, significant permanent injury, serious permanent disfigurement or total disability lasting more than six months. UMVARA also proposed to eliminate tort for damages to vehicles.

- 1986—Jeffrey O’Connell, now with the University of Virginia Law School, and Robert H. Joost, an attorney, proposed a freedom-of-choice no-fault plan (Virginia Law Review, 1986). This plan featured a choice where the individual driver would be able to elect to stay within the tort system or switch to a no-fault system where the right to sue would be given up in exchange for a generous package of insurance benefits to compensate for economic losses.

- 1992—The National Conference of Insurance Legislators (NCOIL) adopted a model bill entitled “Auto Accident Compensation and Cost Savings Act.” This model proposed to compensate individuals without regard to fault for minor injuries. The model called for provision of basic personal compensation with an aggregate amount of $15,000\(^\text{16}\). Additional benefits would be available with an aggregate limit of $100,000\(^\text{17}\). Tort recovery was restricted to uncompensated economic loss, except in cases of a verbal threshold based on a definition of “serious injury.” A serious injury was defined as “an accidental bodily injury which results in death, dismemberment, a significant and permanent loss of an important body function caused by a continuing injury which is physical in nature, or a significant and permanent disfigurement which is usually visible while clothed and results in subjection of the injured person to mental or emotional suffering.”\(^\text{18}\) The model proposed that the basic personal compensation would provide for medical expenses (with $250\(^\text{19}\) deductible), loss of income ($200 per week), replacement services ($100\(^\text{20}\) per week) and a $5,000\(^\text{21}\) death benefit. The added personal compensation would, in addition to increasing the aggregate limit, increase loss of income to $1,000\(^\text{22}\) per week, increase replacement services to $300\(^\text{23}\) per week and increase the death benefit to $25,000\(^\text{24}\).

The introduction of the “choice” concept by O’Connell and Joost lead to four variations that included the choice between tort and a version of no-fault. These variations are briefly discussed below:

- Original O’Connell-Joost Plan—Their original proposal would have completely eliminated lawsuits for non-economic damages. It provided a pure no-fault system where an injured person could not sue for either economic or non-economic benefits regardless of the severity of injuries. For those selecting the tort option, a new coverage called

\(^{15}\) $19,928 in 1999 dollars.
\(^{16}\) $17,812 in 1999 dollars.
\(^{17}\) $118,746 in 1999 dollars.
\(^{19}\) $297 in 1999 dollars.
\(^{20}\) $119 in 1999 dollars.
\(^{21}\) $5,937 in 1999 dollars.
\(^{22}\) $1,187 in 1999 dollars.
\(^{23}\) $356 in 1999 dollars.
\(^{24}\) $28,686 in 1999 dollars.
inverse liability would be created. It would pay benefits to the insured when involved in an accident with a negligent driver who had selected the no-fault option. Inverse liability would operate much like uninsured motorist coverage. Those selecting the no-fault option would trade the right to sue and be sued for a generous package of benefits for medical expenses, lost income and other economic losses.

- Modified O’Connell-Joost Plan—The Original O’Connell-Joost Plan was criticized for potentially being overly costly for low-income drivers. To address this concern, O’Connell and Joost proposed a modified plan that would eliminate the pure no-fault component in favor of a requirement that the state’s financial liability limit be used to establish a basic benefit for economic loss. Higher benefits would be available at the insured’s option. The modified plan would restore limited tort rights for those selecting the no-fault option. They would be allowed to sue for economic losses in excess of their selected limits. However, they could not sue for non-economic losses (i.e., pain and suffering). The tort selectors would be treated as they were under the Original O’Connell-Joost Plan.

- Project New Start Plan—Project New Start was a group of consumer advocates that developed a modified version of the O’Connell-Joost Plan. They advocated no-fault with a right of rejection. Under the Project New Start Plan, a motorist would be placed in a no-fault plan like the Modified O’Connell-Joost Plan unless they rejected no-fault in writing. Those who rejected no-fault in writing would be free to sue and be sued by others. The principle difference between the Modified O’Connell-Joost Plan and the Project New Start Plan was that the individuals who rejected coverage could be sued by those opting out of no-fault under the Project New Start Plan. This eliminated the need for inverse liability coverage in both O’Connell-Joost Plans.

- Freedom-of-Choice Threshold Plan—Under this version of choice, a motorist could select to remain in tort or opt for a basic no-fault package that provided benefits for economic loss. Lawsuits would be allowed for non-economic losses only if the victim reached the lawsuit threshold.

The first no-fault law drafted by one of the states was enacted in Massachusetts in 1970. It followed the Puerto Rico law that was adopted in 1968 to be effective in 1970. Several other states soon followed suit. The most recent state to adopt a no-fault law was Pennsylvania in 1974. The Pennsylvania law was repealed in 1984 and a choice no-fault law was adopted in 1990. Three states, Connecticut, Georgia and Nevada adopted and later repealed no-fault laws.

At the time this report was prepared, thirteen states and Puerto Rico were operating under no-fault auto insurance laws. Five of these states, Florida, Michigan, New Jersey, New York and Pennsylvania, apply verbal thresholds to restrict the right to sue. Seven of the remaining states have chosen monetary thresholds of varying amounts to limit access to the courts. These states are Colorado, Hawaii, Kansas, Kentucky, Massachusetts, North Dakota and Utah. Each of these continues to include a verbal threshold that may be reached as an alternative to the monetary threshold. One state, Minnesota, while not restricting the right to sue for economic loss, requires that all Personal Injury Protection (PIP) benefits paid or payable is subtracted from any tort

recoveries (without regard to deductibles). In three no-fault states, motorists are given a choice to reject the no-fault system and retain the right to sue to determine compensation for auto insurance accidents.

State No-Fault Laws

COLORADO

The combination monetary/verbal threshold no-fault law in Colorado was originally effective April 1, 1974. The tort threshold is designed so that a person is not entitled to sue for general damages unless his/her medical and rehabilitation benefits have a reasonable value of more than $500, or the injuries result in death, dismemberment, permanent disability or permanent disfigurement. The Colorado Commissioner determines annually the average cost of specific types of services to establish the $500 threshold. The monetary portion of the threshold was changed to $2,500 effective Jan. 1, 1985.

Personal Injury Protection coverage is mandatory for every owner of a motor vehicle who operates the motor vehicle on the public highways of Colorado. PIP coverage is not mandatory for motorcycles, mini-bikes, motorbikes, snowmobiles and other off-road vehicles. The following coverages make up the minimum required benefits, effective April 1, 1974:

- Up to $25,000 for medical services within three years;
- Up to $25,000 for rehabilitative services within five years;
- 100% of the first $125 of loss of gross income per week up to 52 weeks;
- $15 per day for up to 364 days for essential services; and
- $1,000 per person death benefit.

Effective Jan. 1, 1985, the benefits were changed as follows:

- Up to $50,000 for medical services within five years;
- Up to $50,000 for rehabilitative services within five years (this was changed to 10 years effective July 1, 1994);
- Up to a maximum of $400 of loss of gross income per week for 52 weeks;
- Up to $25 per day for 52 weeks for essential services; and
- $1,000 per person death benefits.

Effective July 1, 1992, for households with income under $20,000, insurers may offer as an alternative to minimum coverages a Basic PIP Policy. The basic policy provides up to $25,000 of medical benefits, no rehabilitative service benefit, up to $5,000 loss of gross income benefit and a death benefit of $5,000 per person.

Colorado is among the first states to allow for cost containment options under PIP benefits. On July 1, 1991, the law was modified to allow insurers to offer managed care arrangements through Preferred Provider Organizations (PPOs) and Health Maintenance Organizations (HMOs). Deductibles and coinsurance were also allowed. Effective Jan. 1, 1999, insurers must offer deductibles and coinsurance options. Offering of the PPO and HMO options by insurers remain

---

26 Minnesota does however utilize a combined monetary and verbal threshold to restrict the right to sue for non-economic loss.
on a voluntary basis. In emergency situations, insurers cannot apply deductibles or coinsurance requirements during the first 24 hours or until the patient’s emergency medical condition is stabilized, whichever is longer, or until the injured person is transferred to a managed care provider.

As of April 10, 1992, Colorado law allowed declination of the loss of gross income benefit at the option of the insured provided that the insured or his/her spouse had not received any earned income during the preceding 31 days and did not anticipate any income during the next 180 days. Effective Jan. 1, 1999, the loss of gross income benefit may be declined without any minimum income qualifications.

Colorado law provides that motor vehicle insurance is primary except when the person injured is a person for whom benefits are required to be paid under workers’ compensation. Accident and health insurers are permitted to coordinate benefits with motor vehicle insurers for an appropriate reduced premium.

A system of subrogation exists for accidents involving a private passenger motor vehicle and a non-private passenger motor vehicle. The insurer of the private passenger motor vehicle is allowed to seek reimbursement from the responsible owner or operator of the non-private passenger motor vehicle.

CONNECTICUT

The monetary threshold no-fault law in Connecticut was originally effective Jan. 1, 1973. The monetary tort threshold was designed so that a person was not entitled to sue for general damages unless the victim’s allowable expense exceeded $400, or the injury resulted in permanent injury, bone fracture, disfigurement, dismemberment or death. Property damage remained subject to tort. This law was repealed July 1, 1993 to be effective Jan. 1, 1994. Many believe that the low dollar tort threshold caused the law to be ineffective in keeping auto insurance claims out of the court system. Connecticut is now a tort state.

Coverage under Connecticut’s no-fault law was mandatory for all Connecticut motorists. They were required to buy liability and uninsured motorist coverage and a $5,000 basic benefits package that included the following:

- Medical and hospital services;
- Up to $2,000 for funeral benefits;
- 85% of lost wages up to $200 per week for loss of income;
- The cost of substitute services; and
- Survivor’s benefits of not more than $200 per week for loss of income and substitute services.

Connecticut law defined private passenger vehicles as vehicles other than motorcycles and not used for public conveyance, or light trucks not used for commercial purposes except farming as covered by the law.
The District of Columbia Compulsory No-fault Motor Vehicle Insurance Act was enacted in 1982 to be effective Oct. 1, 1983. A significant amendment was adopted effective June 2, 1986 that made the auto insurance no-fault system optional. Thus, the District of Columbia currently has a verbal threshold, choice no-fault law. The “choice” feature can occur at two points in the system. First, a motorist can choose not to buy PIP coverage. Second, after an accident, the injured person who is covered by PIP has 60 days to decide whether to accept PIP benefits and the verbal threshold that accompanies the selection or reject PIP in favor of tort action. Accident victims covered by PIP who elect to receive those benefits cannot maintain a civil action based on the liability of another person unless the injury results in:

- Substantial permanent scarring or disfigurement;
- Substantial and medically demonstrable permanent impairment which has significantly affected the ability of the victim to perform his or her professional activities or usual and customary daily activities;
- A medically demonstrable impairment that prevents the victim from performing all or substantially all of the material acts and duties that constitute his or her usual and customary daily activities for more than 180 continuous days; or
- Medical and rehabilitation expenses or work loss that exceeds the amount of PIP benefits available.

Under the District of Columbia law, insurers must offer policyholders an optional PIP coverage with the following characteristics:

- Either $50,000 or $100,000 per person for medical and rehabilitation benefits;
- Either $12,000 or $24,000 per person for work loss benefits; and
- Up to $4,000 per person for funeral costs.

Motorists are allowed to select any combination of benefits they desire or choose not to buy PIP coverage.

A form of binding arbitration is offered to accident victims in the District of Columbia. Accident victims may ask that the District of Columbia Board of Consumer Claims Arbitration settle their claims. If all parties consent, the board will hear and decide the claim. Once a decision is made, it is binding on all parties.

The District of Columbia law provides a cost containment feature that makes PIP benefits secondary to other insurance. If an accident victim is eligible for compensation from another insurer, the victim cannot claim PIP benefits except to compensate for any deductible contained in the other coverage.

The District of Columbia has established an Uninsured Motorist Fund to compensate victims not covered by insurance. Licensed insurers are assessed to support the fund. Compensation by the fund is limited to:

© 2000 National Association of Insurance Commissioners
• $100,000 for medical and rehabilitation expenses;
• $24,000 for wage loss; and
• $4,000 for funeral expenses.

These amounts are reduced by sums available from collateral sources.

**FLORIDA**

The Florida Legislature adopted the original Florida Automobile Reparations Act effective Jan. 1, 1972. The Act has been changed by significant decisions by the Florida Supreme Court in 1973 and 1974. Significant legislative amendments were enacted in 1976, 1977, 1978 and 1982. The latest version was effective Oct. 1, 1982. It provides a verbal threshold no-fault law where an accident victim cannot recover general damages from a motorist carrying the required insurance unless the accident results in:

- Significant and permanent loss of an important body function;
- Injury that is permanent within a reasonable degree of medical probability, other than scarring or disfigurement;
- Significant and permanent scarring or disfigurement; or
- Death.

Motorists in Florida are required to carry PIP coverage with the following characteristics:

- A minimum coverage amount of $10,000 per person;
- Coverage for 80% of medical expenses;
- Coverage for 60% of lost income;
- Coverage for replacement services; and
- Up to $5,000 in death benefits.

The Florida law essentially provides a coinsurance requirement for its PIP claimants. A claimant is responsible for 20% of medical expenses and 40% of lost income that is not covered by the above PIP coverage for the first $10,000 of loss per person. They may, however, sue for recovery of uncovered economic damages within the first $10,000 and for loss amounts above $10,000 that are not subject to the coinsurance requirements. Insurers must offer an array of PIP deductibles including deductibles of $250, $500, $1,000 and $2,000. The deductibles can apply to the policyholder alone or to the policyholder and dependent resident relatives. Insurers may not apply the deductibles to relatives not living in the policyholder’s household. An option is available for policyholders to exclude PIP coverage for loss of income at appropriately reduced rates.

The Florida no-fault law, with a few exceptions, applies to motor vehicles with four or more wheels. The exceptions to this law include municipally owned buses, taxis, limousines and golf carts. It is interesting to note that Florida’s law also applies to non-residents who have their vehicles in Florida more than 90 days per year. This provision may cause some interesting results when a person is obliged to maintain conflicting coverage under two state laws at once.

Florida has enacted cost containment features that allow insurers to contract with preferred providers to provide health care to accident victims. To entice policyholders to use preferred
provider arrangements, insurers may pay benefits in excess of those required by law or they may waive or lower deductible amounts.

Another cost containment feature of Florida’s law is the extensive measures that deal with auto insurance fraud. The Florida Insurance Department has a Division of Insurance Fraud that is charged with investigation of suspected fraudulent activity. The law provides a mechanism for insurers to report any suspicious claims to the Division of Insurance Fraud. Insurers, their employees and agents are provided immunity to lawsuits alleging libel that arise because of the information that is provided to the Division of Insurance Fraud. The law makes auto insurance claim fraud a third-degree felony in Florida. It applies to any physician, attorney, insurance adjuster, insurer or claimant who attempts to defraud an insurer. A unique feature makes any hospital administrator or employee guilty of a third-degree felony if he or she allows the use of hospital facilities by an insured person in order to commit fraud. The law also contains a provision that requires doctors, hospitals and other medical institutions to provide sworn statements that the treatment rendered to an accident victim was reasonable and necessary.

GEORGIA

The Georgia Legislature adopted the Georgia Motor Vehicle Reparations Act on Feb. 28, 1974, to be effective on March 1, 1975. Under Georgia’s monetary threshold no-fault law an accident victim could not recover general damages from an insured motorist unless the reasonable value of medical costs exceeded $500, he or she was disabled 10 consecutive days, or his or her injuries resulted in death, a fractured bone, permanent partial or total loss of sight or hearing. This law was repealed April 17, 1991 to be effective Oct. 1, 1991. Many believe that the low dollar tort threshold caused the law to be ineffective in keeping auto insurance claims out of the court system. Georgia is now a tort state.

Coverage under the Georgia law was mandatory for all motorists, except for motorcycles. Every motorists was required to carry PIP coverage with the following characteristics:

- An aggregate coverage limit of $5,000 per person;
- Medical benefits up to $2,500 per person;
- Loss of income benefits of 85% of lost income subject to a $200 per week maximum;
- Benefits for replacement services of up to $20 per day;
- Survivor’s benefits that match the loss of income and replacement services benefits; and
- Funeral benefits of $1,500 per person.

Under Georgia’s law, insurers were required to offer PIP benefit levels of up to $50,000 at the insured’s option. They were also required to offer, at the insured’s option, deductibles at an appropriately reduced price. These deductibles did not apply to pedestrians, or to any insured person whose injury resulted in death, dismemberment, permanent blindness in one or both eyes, total and permanent paralysis or a compound fracture of an arm or leg. The Georgia law designated auto insurance as primary. There were no offsets for workers’ compensation benefits. Property damage remained under tort.

A unique feature of the Georgia law was a subrogation right related to a vehicle weight threshold. The law stated that when an insurer paid no-fault benefits to a policyholder who was injured in an accident in which another driver was at-fault, the insurer had no right of
reimbursement from the at-fault driver or his/her insurer except in accidents in which at least one vehicle weighed more than 6,500 pounds unloaded.

HAWAII

The State Legislature repealed Hawaii’s modified no-fault insurance law during the 1997 legislative session and replaced it with a motor vehicle insurance law, which took effect on Jan. 1, 1998. This new law was amended during the 1998 legislative session by H.B.2823, H.D.1, S.D.1, C.D.1, which the Governor signed into law as Act 275 on July 20, 1998.

The only remnant of no-fault in Hawaii’s current motor vehicle insurance system is the PIP component. PIP pays for auto accident related injuries of a policyholder or the injured in the policyholder’s vehicle regardless of fault, or pedestrians, bicyclists or moped riders injured by the policyholder’s vehicle.

The minimum mandatory requirements under the motor vehicle insurance law is $10,000 PIP, $20,000/$40,000 bodily injury (BI) liability and $10,000 property damage. For those insureds choosing minimum mandatory limits, the legislature mandated that there be a 20-35% decrease in premium paid from July 1, 1996 to Jan. 1, 1998. All licensed insurers selling motor vehicle insurance in Hawaii met this mandate.

Certain coverages that were once mandatory under the old no-fault law are now optional. These coverages include wage loss, naturopathy, faith healing, death benefits and funeral benefits. Other optional coverages that remain from the old law are uninsured motorists, underinsured motorists, collision and other than collision.

A person may sue or be sued for the recovery of property damages. A person can also sue or be sued for recovery of bodily damages if:

- Medical bills equal or exceed $5,000;
- The injury is such that the use of a part or function of the body is lost or permanent and serious disfigurement results; or
- The injury results in death.

Any bodily injury settlement or award will be reduced by no less than $5,000 or the amount of PIP benefits incurred on the plaintiff’s behalf up to $10,000.

Hawaii retained the cost containment features for medical payments adopted in 1993 and amended in 1995. These features limit PIP charges and treatment frequencies for provided health services to those permitted under the workers’ compensation fee schedule (currently Medicare + 10%) and Section 431: 10C-103.6, Hawaii Revised Statutes. Emergency services provided within the first 72 hours remain exempt from this requirement.

Other important elements of Hawaii’s new motor vehicle insurance law include: the option of binding arbitration; the requiring of a medical prescription for physical and massage therapies; the limiting of chiropractic and acupuncture treatments to a combined total of 30 under a minimum PIP coverage; the establishment of an amnesty period for uninsured motorists until Dec. 31, 1998; the allowing of insurers to offer managed care PIP coverages; the secondary to the operator’s or renter’s motor vehicle insurance policy under certain conditions; and the
prohibiting of PIP benefits being applied in case of injury to or death of any operator or passenger of a motorcycle or motor scooter in a motor vehicle accident unless expressly provided for in the motor vehicle policy.

**KANSAS**

The initial Kansas no-fault law was adopted by the legislature and signed into law on April 11, 1973 to be effective Jan. 1, 1974. In 1974, the Supreme Court of Kansas upheld the constitutionality of the Kansas no-fault law. On Feb. 18, 1974, a revised no-fault law was adopted to be effective Feb. 22, 1974. Significant revisions were made to the law in 1987.

The current monetary threshold no-fault law applies tort restrictions to all Kansas residents and imposes an obligation to provide liability insurance that includes the first party benefits as a condition of use of the Kansas Highway system. This provision is enforced through the insurer licensing process. An insurer seeking a license in Kansas must certify that its auto liability policies will provide the benefits specified in Kansas law when its policyholders are operating a motor vehicle in Kansas. This requirement applies regardless of where the policy is issued.

Tort recovery is limited to those individuals meeting the following threshold:

- First party medical benefits exceed $2,000;
- The injury results in permanent disfigurement;
- The injury results in a fracture to a weight-bearing bone;
- The injury results in a compound, comminuted, displaced or compressed fracture;
- The injury results in loss of a body member;
- The injury results in permanent injury;
- The injury results in permanent loss of a body function; or
- The injury results in death.

The Kansas law contains some nuances that affect the $2,000 threshold. Persons receiving free medical benefits may use their equivalent value in determining if the threshold has been met. Similarly, persons receiving necessary nursing services from a relative or member of the household may use their equivalent value to reach the $2,000 threshold amount. Further, if an injured person can demonstrate to the satisfaction of the court that the reasonable value of the benefits received differs from the amount charged by medical providers, the court may accept the reasonable value rather than the actual charges to determine if the threshold has been pierced.

Motorists in Kansas are required to carry PIP coverage with the following characteristics:

- Medical benefits of up to $4,500 per person for necessary health care, including hospital, surgical, x-ray and dental services, plus coverage for prosthetic devices;
- Loss of earnings is provided up to $900 per month for up to one year. If the benefits are not subject to federal income taxes, the maximum is capped at 85% of actual lost earnings;
- Benefits up to $4,500 for rehabilitation;
- Benefits for substitute services of up to $25 per day for one year;

---

27 Manzanares v Bell (1974)

© 2000 National Association of Insurance Commissioners 12
• Benefits for survivors of up to $900 per month for lost earnings and up to $25 per day for substitute services, and
• Funeral benefits of $2,000 per person.

Under Kansas law, motorists must also purchase liability coverage with minimum limits of $25,000 per person and $50,000 per accident for bodily injury and $10,000 per accident for property damage. Property damage claims remain subject to the tort system. Motorcyclists may reject the first party coverages. Auto insurance is primary under Kansas law, however, if an auto accident is work related, workers’ compensation benefits are primary. A form of subrogation is provided to insurers under Kansas’s law. An insurer paying for no-fault benefits has a right to seek reimbursement from another driver’s insurer if that driver is at-fault in the accident.

KENTUCKY

The Kentucky “choice” no-fault law was originally enacted on April 2, 1974 to be effective July 1, 1975. It allows Kentucky residents to choose to be subject to a no-fault system or to reject tort limitations in writing. The law permits accident victims who have signed the form that provides for the rejection of the tort limitation or those injured by a driver who has signed the form that provides for the rejection of the tort limitation to retain tort remedies for both economic and non-economic loss. Motorists are deemed to have accepted the tort limitation unless they sign a written rejection form that is provided by the insurer. The form is prescribed by the insurance commissioner and the insurance department collects the rejection forms. The forms are designed to remain in effect indefinitely unless the motorist subsequently revokes the election in writing.

The tort limitation in Kentucky contains a threshold that prohibits recovery of general damages unless one or more of the following conditions are met:

• Medical expenses exceed $1,000;
• The injury results in permanent disfigurement;
• The injury results in a fracture to a bone;
• The injury results in a compound, comminuted, displaced or compressed fracture;
• The injury results in loss of a body member;
• The injury results in permanent injury within reasonable medical probability;
• The injury results in permanent loss of a body function; or
• The injury results in death.

Free medical benefits are counted in determining whether the threshold has been met.

Kentucky residents are required to purchase a basic package of PIP benefits with the following characteristics:

• An overall benefit limit of $10,000 for medical and other expenses;
• $1,000 for funeral expenses;
• Up to $200 per week for loss of income;
• Up to $200 per week for replacement services;

28 It should be noted that payment of Kansas survivors benefits are limited to one year after death of the covered person minus the number of months during which he or she received disability benefits prior to death.
• Up to $200 per week for survivors economic loss; and
• Up to $200 per week for survivors replacement services.

A person who has rejected the tort limitations may buy the PIP coverage at a higher price than those accepting the limitations. PIP is optional for motorcycles. Motorcyclists may reject the tort limitations for their motorcycles without rejecting the tort limitations for their automobiles. The loss of income benefits can be reduced by up to 15% to reflect tax savings. Insurers must make available both first party deductibles of $250, $500 and $1,000 at appropriately reduced cost and added no-fault coverage of up to $40,000 per person in units of $10,000. This additional coverage may contain reasonable deductibles, waiting periods or coinsurance features. Auto insurance is primary, except for workers’ compensation. There is no statutory provision that would disallow receipt of duplicate benefits from collateral sources.

Motorists are also required to purchase auto liability insurance. They must buy coverage with bodily injury limits of at least $25,000 per person and $50,000 per accident. Property damage remains in the tort system and property damage liability limits of at least $10,000 must be purchased. In the alternative, motorists are allowed to purchase a policy wherein the bodily injury and property damage limits are combined into a single per accident limit of at least $60,000. The law also requires insurers of out-of-state motor vehicles driven in Kentucky to provide no-fault insurance. Underinsured motorists coverage must be made available to motorists.

The Kentucky law establishes an interesting subrogation mechanism for insurers. When an insurer has paid for no-fault benefits for an accident where another driver was determined to be at-fault, it has a right to be reimbursed by the insurer of the at-fault driver. A mandatory arbitration mechanism called the Kentucky Insurance Arbitration Association is authorized to settle all disputes between insurers. However, the insurer is alternatively entitled to assert its subrogation claims by joining in a lawsuit brought by the injured party.

Another unique feature of Kentucky’s law is the one time rate rollback. When the law was enacted, it required insurers to reduce rates no less than 10% from those previously charged for the $10,000/$20,000 per person/per accident bodily injury liability limits, the uninsured motorists coverage and $1,000 medical payment coverage which were the minimum limits at that time.

**MASSACHUSETTS**

Effective Jan. 1, 1971, Massachusetts became the first state to enact a monetary threshold no-fault law. One year later, on Jan. 1, 1972, Massachusetts added a provision providing for no-fault property damage. This provision was repealed effective Jan. 1, 1976 and tort was restored for damage to motor vehicles. Several significant amendments were made effective Jan. 1, 1989, including raising the monetary threshold from $500 to $2,000 and raising the basic PIP benefit from $2,000 to $8,000.

The tort limitation in Massachusetts contains a monetary threshold that limits recovery of general damages unless:

• Medical expenses exceed $2,000;
• The injury results in a fracture;
• The injury results in loss of sight or hearing;
• The injury results in permanent and serious disfigurement;
• The injury results in loss of a body member; or
• The injury results in death.

All motor vehicle owners are required to purchase a basic package of PIP benefits with the following characteristics:

• An overall limit of $8,000 per person (but this may be declined for household members and the driver);
• Covers medical and funeral expenses;
• Covers 75% of lost income; and
• Covers the cost of substitute services.

Insurers are required to offer PIP deductibles of $100, $250, $500, $1,000, $2,000, $4,000 and $8,000 for the named insured or the named insured and household members. Auto insurance is primary over other collateral sources and health insurers for the first $2,000 of medical and funeral expenses. The law provides that no health insurer or other collateral source, excluding sources governed by federal law, can deny coverage for medical or funeral expenses because of the existence of no-fault benefits.

**MICHIGAN**

Michigan’s verbal threshold no-fault law went into effect on Oct. 1, 1973. It is generally recognized as the most effective no-fault law in the nation. It provides unlimited medical benefits, generous wage loss benefits, up to $1,000,000 for damage to property and a no-fault system for collision.

The tort limitation in Michigan provides that motorists cannot recover general damages unless the accident victim’s injuries result in:

• Death;
• Serious impairment of a body function; or
• Permanent serious disfigurement.

Further, the motorist cannot recover for damages to motor vehicles from another Michigan driver, regardless of fault, except for the first $500 of the loss. It should be noted that suit can be brought for economic benefits that exceed the basic PIP package.

Michigan motor vehicle owners are required to purchase a basic PIP package of coverages that provide:

• Unlimited medical and hospital benefits (hospital room charges are based on a semi-private room charge);
• Funeral expense of not less than $1,750 and not greater than $5,000;
• Wage loss benefits of up to $1,475 per month, adjusted annually by the insurance commissioner to reflect cost of living adjustments—currently $3,688— for up to three years; and
• Substitute services of $20 per day for up to three years.

This coverage follows Michigan residents as they travel in other states and Canada.

Insurers may offer a deductible of up to $300 per accident on the basic PIP coverage. A law change enacted on April 4, 1974, allows motorists to optionally make other health and accident coverage primary over auto insurance. Auto insurers are required to offer, at appropriately reduced rates, deductibles and exclusions reasonably related to other health and accident coverage that the insurer has available. These deductibles and exclusions apply only to the person, his/her spouse and other resident relatives.

All motor vehicles with more than two wheels are subject to Michigan’s no-fault law. While motorcycles are not subject to the law, if a motorcyclist is injured in a collision with a motor vehicle subject to the law, the motorcyclist would receive PIP benefits from the insurer of the motor vehicle.

Michigan also requires the purchase of “property protection insurance.” This coverage is unique to Michigan. It provides a coverage limit of $1,000,000 for damage to legally parked motor vehicles and to property other than motor vehicles.

Michigan is currently the only no-fault state where physical damage to motor vehicles is also settled on a no-fault basis. The system Michigan has designed allows an individual to replicate, on a first party basis, the coverages that exist in tort states. Insurers are required to offer three types of collision coverage, two of which are unique to Michigan. The coverage called “standard collision” is identical to the collision coverage provided in tort states. It provides for the repair of the vehicle or settles total losses on an actual cash value basis after the application of a deductible selected by the policyholder. Michigan law requires insurers to offer “broad form collision” and “limited collision” to policyholders. “Broad form collision” is simply “standard collision” with a feature that waives the application of a deductible when the policyholder is not substantially at-fault in the accident. This allows the policyholder to replicate the situation that applies in tort states where a person has purchased collision coverage. In tort states, if the policyholder is at-fault, a deductible applies and when the policyholder is not at-fault the loss would be paid by the insurers of the at-fault driver without the application of a deductible.

“Limited collision” provides collision coverage with the application of a deductible amount when the policyholder is not substantially at-fault in an accident. If the policyholder is substantially at-fault in an accident, there is no coverage. This form of “limited collision” allows the policyholder to replicate the coverage situation in a tort state where a person decides not to purchase collision coverage, but is allowed to sue an at-fault driver for damages to his/her vehicle.

An amendment effective on July 1, 1980 restored a limited amount of tort for collisions. The law made the substantially at-fault driver responsible for the first $400 of uninsured collision damage. This figure was increased to $500 in 1994. This limited liability is not covered by the

---


© 2000 National Association of Insurance Commissioners 16
compulsory liability coverage in Michigan. Many insurers have voluntarily offered special liability or “mini-tort” coverage to fill this gap in coverage.

Michigan also has another unique feature that was developed to address a concern over potential solvency threats to small insurers that providing unlimited medical benefits might otherwise cause. The Michigan Legislature created a Catastrophic Claims Association to pay all losses that exceed $250,000. This statutory reinsurer provides access to coverage that might be unavailable to small insurers. It is priced uniformly across the state. It essentially spreads the risk of large catastrophic losses over all insurers and all Michigan residents. It also provides unique access to information that allows academics to study the effect of providing unlimited medical benefits.

When Michigan’s no-fault law was enacted, it provided a certification procedure to protect non-Michigan residents who were driving in the state and found that Michigan residents could not generally be sued. It requires insurers licensed to sell auto insurance in Michigan to file the certification and offered a voluntary certification method for those insurers not licensed. Essentially the insurer certifies that it will interpret its policies to provide the benefits required by Michigan law when an accident occurs in Michigan.

MINNESOTA

The Minnesota No-Fault Automobile Insurance Act was enacted on April 11, 1974. Its provisions took effect on Jan. 1, 1975. It replaced an earlier law that took effect on Jan. 1, 1970, that required insurance companies to offer first party benefits without any limitations on the tort system. While the Act does not restrict tort liability for economic loss using an actual “monetary” threshold, all PIP benefits paid or payable must be subtracted from tort recoveries without regard to deductibles. Property damage is left unrestricted under the tort system. Liability, uninsured motorist and underinsured motorist coverages are required in addition to PIP. Minnesota residents must purchase coverage for bodily injury liability with limits of at least $30,000 per person and $60,000 per accident and property damage liability with limits of at least $10,000 per accident. Uninsured motorist and underinsured motorist coverages are required with limits of at least $25,000 per person and $50,000 per accident. The law applies to all owners of motor vehicles that have four or more wheels and are registered for road use.

The tort limitation in Minnesota will not allow an auto accident victim to recover non-economic damages unless:

- Medical expenses exceed $4,000 ($2,000 for accidents prior to Aug. 1, 1978);
- The individual has 60 days or more of disability;
- The injury results in permanent disfigurement;
- The injury results in permanent injury; or
- The injury results in death.

Minnesota residents are required to purchase the following basic PIP package:

- Medical and rehabilitative expense benefits of up to $20,000 per person;
- Non-medical benefits of up to $20,000 per person, subject to the following limits:
  - Income loss benefits limited to 85% of actual loss with a maximum benefit of $250 per week;
Replacement services benefits limited to $200 per week with a seven day waiting period;
Funeral expenses of up to $2,000;
Survivor’s economic loss benefits limited to $200 per week; and
Survivor’s replacement services benefits limited to $200 per week.

In Minnesota, auto insurance is primary except for workers’ compensation. If disputes arise, all claims for less than $10,000 must be submitted to arbitration. Further, disputes between insurers must be settled by binding arbitration. Minnesota law has a unique treatment for certain commercial vehicles. When an insurer pays PIP benefits to a policyholder injured in an accident in which certain commercial vehicles are involved, the insurer has subrogation rights against the insurer of the commercial vehicle if the driver of the commercial vehicle was at-fault in the accident.

**NEVADA**

Nevada was the first state to repeal its no-fault law. The Nevada no-fault law became effective Feb. 1, 1974 and was repealed on June 5, 1979, by the Nevada Legislature, effective Jan. 1, 1980. Nevada currently operates under the tort system.

The Nevada no-fault law employed a monetary threshold to restrict access to the tort system. Its provisions prohibited accident victims from recovering general damages in tort unless:

- Medical benefits exceeded $750;
- The injury resulted in chronic or permanent injury;
- The injury resulted in permanent partial or permanent total disability;
- The injury resulted in disfigurement;
- The injury resulted in more than 180 days of inability to work in the victim’s occupation;
- The injury resulted in fracture of a major bone;
- The injury resulted in dismemberment;
- The injury resulted in permanent loss of a body function; or
- The injury resulted in death.

If the injured person received necessary nursing services from a relative or a member of the household, the reasonable value of those services could be counted toward satisfying the $750 threshold.

The law required Nevada residents to purchase PIP benefits with the following characteristics:

- A $10,000 aggregate coverage limit for medical, hospital, nursing and rehabilitative expenses;
- Disability income benefits of up to $175 per week;
- Replacement services benefits of up to $18 per day for up to 104 weeks;
- Survivor’s benefits of not less than $5,000 and not more than the amount which the accident victim would have received in disability benefits for one year if he/she had not died, less any expenses the survivors avoided because of the death; and
- Funeral benefits of $1,000.
The Nevada no-fault law left property damage under the tort system. It also allowed insurers to offer deductibles on PIP coverage. Insurers were allowed to subject claimants to independent mental or physical examinations. If the person refused, the insurer could withhold no-fault benefits. Auto insurance was primary over other forms of coverage, except workers’ compensation. It provided for subrogation between insurers so that the at-fault driver’s insurer would end up providing the benefits. Disputes between insurers were subject to binding arbitration. The law also allowed the use of named driver exclusions.

It appears that the Nevada law suffered from a low monetary threshold that was easy to pierce. This led to a high frequency of tort claims and added to the cost of auto insurance. There is some evidence that the frequency and severity of PIP claims were higher than other no-fault states.

**NEW JERSEY**

Auto insurance has been a hot topic in recent years in New Jersey. With average rate levels among the highest in the nation, the auto insurance system has come under significant scrutiny in recent years. Calculation of an average rate may be misleading as there are two distinct choices of coverage that New Jersey citizens make under New Jersey’s choice verbal threshold no-fault system. The New Jersey auto insurance system is one of the most complicated systems studied.

The original no-fault law in New Jersey was effective on Jan. 1, 1973. It has undergone several significant amendments over time. Substantial changes occurred effective July 1, 1984, Jan. 1, 1988, Jan. 1, 1989 and Jan. 1, 1998. The tort option was changed from a monetary to a verbal threshold in 1989. In May of 1998, the legislature passed additional significant changes to the no-fault system.

Effective in 1999, motorists must choose one of two types of policies:

- **The Basic Policy** which includes:
  - $5,000 in property damage;
  - $15,000 in medical expenses, subject to additional benefits of up to $250,000 for certain serious injuries and emergency hospital care;
  - Optional $10,000 bodily injury liability; and
  - Limitation on Lawsuits Tort Option.

- **The Standard Policy** which includes:
  - Property damage subject to a minimum limit of $5,000 per accident;
  - Bodily injury liability coverages with minimum limits of $15,000 per person, $30,000 per accident;
  - Uninsured and underinsured motorist coverage with the same minimum limits as bodily injury and property damage liability;
  - Personal Injury Protection Benefits which include as the standard:
    - $250,000 in medical expense coverage, subject to a $250 deductible and 20% co-pay for the first $5,000;
    - Loss of income benefits of $100 per week, to a maximum total benefit of $5,200;
    - Essential services benefits of $12 per day up to $4,380 maximum;
Funeral expenses of $1,000; and
Death benefits equal to the income loss that would have been paid had the injured party not died.

Insureds who select the standard policy may choose higher or lower benefit levels for all PIP coverages as well as higher deductibles and the option of having the insured’s health care insurer primary for PIP coverage. The insured that purchases a standard policy may also choose between the Limitation on Lawsuit Option or No Limitation on Lawsuit Option tort options. The choice must be made in writing and applies until another written selection is made. If the insured fails to make a written selection, the Limitation on Lawsuit Option applies.

The lawsuit option chosen by each insured applies to the named insured and all members of the household receiving PIP benefits under the policy. It is the lawsuit selection made by each injured party who files a tort action that is considered at the time of the accident. For example, if a person who selected the Limitation on Lawsuit Option was injured in an accident where the at-fault party had selected the No Limitation Option, the selection made by the injured party (Limitation on Lawsuit) applies.

The Limitation of Lawsuit Option limits the insured’s right to assert a claim for non-economic loss to bodily injuries resulting in:

- Death;
- Dismemberment;
- Significant disfigurement or scarring;
- Displaced fractures;
- Loss of a fetus; or
- Permanent injury within a reasonable degree of medical probability other than scarring or disfigurement.

These restrictions are intended to limit claims more than the 1989 verbal threshold definitions but are yet to be tested by the courts.

If the insured selects the No Limitation of Lawsuit Option, this person may assert a claim for any non-economic loss.

New Jersey utilizes a medical fee schedule that establishes maximum provider reimbursement for treating auto accident victims. The provider is not permitted to balance bill for fees in excess of those allowed by the schedule.

The May 1998 legislation requires the commissioner to establish basic medical expense benefits in consultation with the Department of Health and Senior Services as well as appropriate professional licensing boards. These benefits may include treatment protocols for common injuries. Protocols deemed not to have recognition or standing by the provider community or the appropriate licensing board may be rejected by the commissioner. The appropriate professional licensing boards are required to develop a list of valid diagnostic tests that may be used in conjunction with the treatment protocols. In addition, the commissioner shall establish a statement of basic benefits to be included in policy forms as eligible medical expenses. Any disputes regarding PIP benefits may be submitted to Alternate Dispute Resolution for a determination, with medical issues resolved by an independent medical review organization.
As a result of the changes to the PIP benefits, carriers were required to file for reductions of at least 25% from the medical expense benefits portion of the PIP territorial base rate.

There are two mechanisms that appear unique to New Jersey that are intended to address certain nuances in the New Jersey law. First, there is a fund that operates as a risk sharing mechanism called the Unsatisfied Claim and Judgment Fund. It reimburses insurers for PIP benefits that exceed $75,000. It seems to serve a similar purpose to Michigan’s Catastrophic Claims Association; however, its utility is less apparent. The second mechanism is called the New Jersey Automobile Insurance Risk Exchange (Risk Exchange). The Risk Exchange is designed to correct the following situation. If a motorist who has selected the Limitation on Lawsuit Option is “at-fault” in an accident with a motorist who has selected the No Limitation on Lawsuit Option, his/her insurer will have to pay the other driver’s non-economic loss, in spite of the fact that the insurer charged a reduced premium. The Risk Exchange reimburses the insurer for the non-economic loss portion of the claim. The Risk Exchange is funded by assessments on insurers. A portion of the premiums that insurers collect from those exercising the No Limitation on Lawsuit Option is used to fund the Risk Exchange.

NEW YORK

On Feb. 12, 1973, the New York Legislature enacted the New York Comprehensive Automobile Insurance Reparations Act. The Act took effect on Feb. 1, 1974. It was extensively amended on Aug. 11, 1977 to be effective Dec. 1, 1977. The original law contained a $500 monetary threshold. This was replaced by today’s verbal threshold. Under New York law, a motorist must purchase bodily injury liability insurance with limits of at least $25,000 per person and $50,000 per accident and property damage liability with a limit of at least $10,000 per accident, in addition to the no-fault benefits as of Jan. 1, 1996. Property damage remains under the tort system. All motor vehicles are subject to the no-fault law; however, no-fault benefits are not paid to riders of motorcycles.

The tort limitation in New York does not allow a person to recover general damages from a driver covered by no-fault unless the victim’s injury results in:

- The person being unable to perform substantially all of the material acts which constitute the victim’s usual daily activities for at least 90 of the 180 days following the accident;
- Dismemberment;
- Significant disfigurement;
- A fracture;
- Loss of a fetus;
- Permanent loss of use of a body organ, member, function or system;
- Permanent consequential limitation of use of a body organ or member;
- Significant limitation of use of a body function or system; or
- Death.

New York motorists are required to purchase PIP coverage providing economic loss benefits with the following characteristics:
- An aggregate limit of $50,000 per person;
- Medical benefits are required to be paid without a time limit if, within one year of the accident, it is known that further expenses may be incurred;
- Wage loss coverage of up to $2,000 per month for a maximum of three years, subject to a limit of 80% of actual loss;
- Substitute services benefits of up to $25 per day for one year; and
- A death benefit of $2,000 that is in addition to the aggregate limit.

New Yorkers may optionally buy an additional $25,000 of PIP coverage that can be applied to loss of earnings or psychiatric, physical, or occupational therapy and rehabilitation. This optional coverage applies after the initial $50,000 is exhausted. The New York PIP coverage can be purchased with a $200 deductible. Additional benefits at higher levels are available.

The New York PIP coverage is primary, except when workers’ compensation insurance is available or when the health insurance exclusion has been exercised. Another exception concerns wage loss coverage. If a person is entitled to receive his/her salary while unable to work because of an auto accident injury, the person will not receive loss of income benefits from the auto insurer unless the employee’s future benefits for illness or injury would be reduced.

New York uses a fee schedule to contain health/medical-related costs. They use the same fee schedule for auto accidents that is used for workers’ compensation claims. The chairperson of the workers’ compensation board of industrial accidents promulgates this fee schedule.

**NORTH DAKOTA**

The North Dakota Legislature adopted its monetary threshold no-fault law on April 9, 1975. The North Dakota Auto Accident Reparations Act became effective Jan. 1, 1976. It applies to all owners of motor vehicles with more than three wheels. Property damage remains subject to tort.

The tort limitation in North Dakota does not allow a person to recover general damages from an auto accident unless the victim’s injury results in:

- More than $2,500 in medical expenses;
- Disability for more than 60 days;
- Serious and permanent disfigurement;
- Dismemberment;
- Death; or
- Economic loss not compensated by the no-fault coverage.

North Dakota motor vehicle owners are required to buy PIP coverage with the following characteristics:

- An overall limit of $30,000 per person;
- Covers medical and rehabilitation expenses;
- Covers lost income of up to $150 per week, limited to 85% of actual income;
- Covers replacement services up to $15 per day;
- Covers up to $150 per week for survivor’s income loss;
• Covers up to $15 per day for survivor’s replacement services; and
• Provides up to $3,500 for funeral, cremation and burial expenses.

While auto insurers are the primary providers of PIP benefits to accident victims, North Dakota law allows them to coordinate benefits in excess of $5,000. Amounts paid under workers’ compensation must be subtracted from PIP benefits. Health insurers are allowed to exclude the first $5,000 of expenses resulting from auto accidents, provided that the expenses are covered by PIP. Health insurers that coordinate benefits must give their customers an equitable reduction in premiums.

Insurers are required to offer an additional $80,000 of optional PIP coverage that applies when the basic PIP benefits are exhausted. The added coverage may be written with deductibles, waiting periods and coinsurance provisions.

There is a limited form of subrogation allowed in North Dakota. Insurers that have paid no-fault benefits to a policyholder injured in an accident where another driver was at-fault may seek reimbursement from the other driver’s insurer when the injured person has a serious injury or if the accident involved a vehicle that weighs more than 6,500 pounds unloaded.

**PENNSYLVANIA**

Pennsylvania has enacted several changes to its auto insurance system in recent times. Its first significant action occurred in 1974 when the Pennsylvania Legislature adopted a no-fault law with unlimited medical benefits and several alternative tort thresholds, any one of which a claimant would have to meet in order to recover for non-economic injuries, such as pain and suffering. Such thresholds including, for example, a monetary threshold of $750 in medical and dental expenses and various verbal thresholds, including death, serious and permanent injury or severe and permanent disfigurement. The no-fault act was repealed in 1984 and replaced by an add-on system where motorists were required to purchase certain first-party coverages, but no restrictions on lawsuits were enacted.

Pennsylvania’s current choice no-fault system was adopted on Feb. 7, 1990. The current law requires Pennsylvania motorists to make a choice, in writing, between two alternatives:

- A full tort alternative that allows motorists involved in auto accidents to seek compensation for both economic and non-economic losses (including pain and suffering) through the courts; or
- A limited tort alternative that allows a person to seek compensation for only economic losses, such as medical or other out-of-pocket expenses, unless a “serious injury” or one of four other circumstances is involved. Under these conditions, the person may seek both economic and non-economic damages.

Pennsylvania law defines a “serious injury” as one resulting in:

- Serious impairment of a body function;
- Permanent serious disfigurement; or
- Death.
This is the same verbal threshold used in Michigan. Pennsylvania adds four more conditions where non-economic damages may be sought from an at-fault driver:

- If the at-fault driver was convicted of or accepted Accelerated Rehabilitative Disposition for driving under the influence of alcohol or a controlled substance;
- If the at-fault driver was driving a vehicle registered in another state;
- If the at-fault driver intended to injure himself or someone else; or
- If the at-fault driver has not maintained the financial responsibility required by Pennsylvania law.

Unlike New Jersey, the Pennsylvania law deems motorists who have failed to make a written selection to have chosen the full tort alternative.

Auto insurance is compulsory in Pennsylvania. Motorists are required to purchase bodily injury liability coverage of at least $15,000 per person and $30,000 per accident and $5,000 of medical benefits (PIP) coverage payable regardless of fault. Insurers must also offer uninsured and underinsured motorists coverage.

There are several enhancements that Pennsylvania residents may consider. Insurers are required to offer the following optional coverages:

- Up to $100,000 in medical and rehabilitation benefits;
- Income loss benefits, including some substitute services benefits, of 80% of gross income up to $2,500 per month subject to a maximum of $50,000;
- For deaths occurring within two years of the accident, an accidental death benefit of $25,000;
- A funeral benefit of $2,500;
- A combination of the four benefits listed above up to $177,500, with the accidental death benefit limited to $25,000 and the funeral benefit limited to $2,500; or
- An “extraordinary medical benefit” for medical expenses, in increments of $100,000, for medical expenses between $100,000 and $1,100,000.

Regardless of the tort alternative selected, Pennsylvania law does not allow accident victims to seek compensation for expenses covered by the required $5,000 medical coverage or the optional “extraordinary medical benefit” coverage.

Like Kentucky, Pennsylvania mandated a rate reduction when its law was originally adopted. Those choosing the limited tort alternative received at least a 22% premium reduction based on the coverages in effect on Dec. 1, 1989. Those selecting the full tort alternative were entitled to a 10% reduction in premium.

In an attempt to constrain the cost of medical treatment, the Pennsylvania law has several features that control loss costs. They include the use of a fee schedule for auto accident victims and the use of peer review organizations to confirm that the treatment, healthcare services, products and accommodations provided to accident victims are medically necessary.

The former Pennsylvania law would allow research into the combination of unlimited medical benefits with a relatively low monetary tort threshold. Another interesting research question
would be the differential effect that Pennsylvania’s designation of the full tort option as fallback has when compared with the Kentucky and New Jersey fallback of the no-fault option. The optional “extraordinary medical benefit” coverage may provide some interesting insights as well.

**PUERTO RICO**

The Commonwealth of Puerto Rico adopted its “Automobile Accident Social Protection Act” in 1968. The act establishes the Automobile Accident Compensation Administration. The initial legislation appropriated $1,000,000 to fund the Automobile Accident Compensation Administration. For its ongoing funding, the Administration collects an annual premium each time a vehicle is registered. The annual premium is established by the Administration and subject to approval of the commissioner of insurance.

Puerto Rico limits tort actions in the following manner. The statutory benefits provided for injuries sustained in auto accidents are paid up to the limits specified in the law. Persons may not sue responsible parties to recover the statutory benefits. Further, negligent individuals are exempt from the application of the principle of liability on the basis of negligence, except for:

- The amount of $1,000 for physical and mental suffering, including pain, humiliation and similar damages; and
- The sum of $2,000 for other damages or losses not included in the $1,000 amount above.

The courts are required to separate the amount of indemnity granted for damages due to pain and physical and mental suffering from the amount of indemnity granted from other losses.

Puerto Rico law sets forth a statutory set of benefits in a fashion similar to the workers’ compensation laws in many states. Benefits are provided for the following:

- Disability income payments equivalent to 50% of the weekly income not received by the victim, subject to a maximum of $100 weekly for 52 weeks and 50% of the weekly income not received by the victim, subject to a maximum of $50 weekly for the next 52 weeks;
- All reasonable medical, hospital and rehabilitation services incurred within two years of the accident;
- Up to $10,000 for dismemberment based on a statutory schedule of benefits;
- Up to $10,000 for death that occurs within one year of the accident; and
- $1,000 for funeral services.

There is a provision that allows the Administration to pay medical and hospital expenses for more than two years for paraplegics, quadriplegics and in cases of severe trauma. The Administration is obligated to provide medical, hospital and rehabilitative services either directly or by contracting with health care providers and facilities.

There is an effort to coordinate available benefits that may be duplicative. If a victim is receiving disability income benefits from the State Insurance Fund (Puerto Rico’s exclusive workers’ compensation state fund), and the Fund decides that the injury is non-occupational, these payments would be deducted from the benefits due the accident victim under the Automobile Accident Social Protection Act. The Administration would then reimburse the State Insurance
Fund. All other benefits available to accident victims are deducted from the amounts the victim is entitled to receive under the Act, except for:

- Benefits by reason of the obligation of family support;
- Inheritance estates;
- Life insurance;
- Gifts; and
- Social Security benefits.

**UTAH**

The Utah no-fault law was enacted March 8, 1973 and amended in 1986. It contains a monetary tort threshold to limit access to the courts. The initial $500 threshold was replaced by a $3,000 threshold in 1986. The law applies to all registered motor vehicles except motorcycles, trailers and semi-trailers. Property damage remains subject to tort action.

The Utah law limits tort liability by prohibiting recovery for general damages unless:

- The reasonable value of the victim’s medical expenses exceeds $3,000;
- The injury results in dismemberment;
- The injury results in permanent disfigurement;
- The injury results in permanent disability;
- The injury results in permanent impairment based upon objective findings; or
- The injury results in death.

Utah motorists are required to purchase the following minimum first party PIP benefits:

- $3,000 per person for medical benefits. Insurers are required to pay the “reasonable value” of the medical and hospital services based on a study of the relative value of those services in Utah’s most populous county;
- $250 per week for loss of income benefits that pay 85% of gross income for a maximum of 52 weeks, subject to a three-day elimination period. The motorist and his/her spouse may waive these loss of income benefits if neither has received any earned income within the preceding 31 days and if neither will receive earned income for at least the next 180 days;
- $20 per day for loss of services for as long as 365 days, subject to a three-day elimination period;
- $1,500 for funeral expenses; and
- $3,000 for survivor’s benefits.

While Utah’s no-fault law makes auto insurance primary, it provides for a reduction in benefits for those received under workers’ compensation or similar statutory plans and from the United States Government for military service.

The Utah law provides for subrogation. It grants the insurer that pays no-fault benefits to a policyholder the right of reimbursement from the responsible driver’s insurer. Binding arbitration is used to determine who was at-fault and the amount of reimbursement, should disputes arise.
Review of Existing Literature on No-Fault and Other Automobile Insurance Systems

As various automobile insurance systems have developed around the country, with often significant variations in outcome, it is only natural that economists and other interested parties study the impact of these systems on various aspects of the important issues surrounding automobile insurance. This section reviews the literature on alternative automobile insurance systems and their influence on costs, distribution of resources and outcomes.

CRITICS OF TORT REPARATION SYSTEMS

The literature regarding no-fault, as well as other automobile insurance systems, has a long broad history. Keeton and O’Connell’s text, *Basic Protection for the Traffic Victim* (1965), is considered the pioneering work in establishing the no-fault framework for automobile insurance. The text outlines in detail the perceived economic inefficiencies and lack of fairness existent in a tort system for auto insurance. According to Keeton and O’Connell, there are five serious shortcomings of the tort system for compensating victims of auto accidents:

1. As a way of compensation for injuries suffered on the roadways, the system falls grievously short. Some injured persons receive no compensation. Others are compensated far less than the economic loss sustained. This gap is at least partly due to the role fault plays in the system.

2. The system is cumbersome and slow. Delays in payment are the rule; sometimes taking several years to collect benefits when due. The result is that injured persons are often forced to settle for less than a full settlement. An injured person needing money cannot afford to wait as long as an insurer can, placing the injured person at a significant disadvantage when negotiating a settlement.

3. The system is loaded with unfairness. Minor injuries tend to be overcompensated by insurers to avoid the expense and risk of litigation. These added costs are passed on to all motorists. Often the most seriously injured receive the lowest percentage of compensation for their losses.

4. Operation of the present system is excessively expensive. The system builds in an additional administrative burden in addition to the actual economic costs of auto accidents. Because individuals must establish fault to receive compensation, the intricate details of an accident must be scrutinized. These legal contests and the costs involved in preparation for them may exceed the amount claimed as compensation. These expenses are added to the auto insurance premium.

5. The system is marred by temptations to dishonesty. Individuals are tempted to exaggerate to improve their case or defense. This can leave victims both injured and debased.

Numerous examples are provided to support each of the claims made by the authors.

The motivating factors described initially in Keeton and O’Connell are amplified in a number of other texts. O’Connell and Wilson’s monograph, *Car Insurance and Consumer Desires* (1969), summarizes the results of a 1968 survey conducted with Illinois residents by the University of
Illinois Survey Research Laboratory. The general results of the survey indicated that under the present tort system, about one-half of the survey respondents did not understand how the current system worked. Moreover, when asked a question about preferred systems, 91% of the Illinois interviewees responded, with 71% of them preferring a system that would pay for medical and wage loss, with nothing paid for pain and suffering, without regard to who was at fault.

O’Connell and Simon’s monograph, *Payment for Pain and Suffering: Who Wants What, When & Why?* (1972), provides the first survey of accident victim’s compensation. Using a sample of claims for a single insurance company’s Illinois experience in calendar year 1966, the results suggest that 89% of the respondents received compensation in excess of their economic loss, with 24% of them receiving payment of more than four-times their economic loss. This survey is frequently cited as evidence of overpayment for “pain and suffering” awards in tort systems and as evidence in support of the economic efficiency and fairness advantages claimed for no-fault systems. In 1972, O’Connell published, *Ending Insult to Injury*, a text that offered much of the now familiar anecdotal evidence on the perceived failings of the tort system by attorneys and the related perceived failings of the limited no-fault systems that prevailed in a number of states. With these surveys, of course, questions do remain as to the veracity of extending the results from a narrowly focused group of respondents from one state/company to the entire populace.

Not long after the publication of these texts, two books were released in the popular press that called auto insurance into the public debate. Perhaps Professor O’Connell’s most famous book is *The Lawsuit Lottery* (1979), which provides numerous examples of perceived attorney excess in accident cases and recalls his prescription for solving the “problem” through adoption of general no-fault principles. Andrew Tobias published, *Auto Insurance Alert! Why the System Stinks, How to Fix It, and What to Do in the Meantime* (1993), which, while largely similar in form and content to *The Lawsuit Lottery*, also includes a discussion of a pay-at-the-pump system of automobile insurance designed to remove the problems and costs of uninsured motorists within a system.

**INDEPENDENT QUANTITATIVE RESEARCH**

As interest in the original works grew, a large and growing body of independent objective inquiry evolved that has focused on trying to establish the veracity of the original conjectures made and to measure the degree of difference between no-fault and tort auto systems. This research can be roughly divided into two methodological categories. Most of the research uses historical empirically observed data to test specific hypothesis regarding the comparative results of various auto insurance systems. The other category of research is based on simulation modeling of economic and market conditions for various auto insurance systems based on assumptions regarding the underlying economic and demographic relationships inherent in an auto insurance market. This section reviews the significant research from each category.

**Findings Using Historical Data**

One of the primary contentions of the no-fault premise is that traditional tort systems, and dollar threshold no-fault systems to a lesser degree, encourage exaggeration of accident claims and injuries. Several pieces of research have investigated this contention. Work by the Insurance Research Council (1990) documents an increase in BI claims while accident rates remain stable or decline. Cummins and Weiss (1991) report increasing BI claims in national data from 1983 through 1987. They attribute most of this increase to rising medical costs during the period, but
also note that the type of auto insurance system in place also explains part of the increase. Similarly, Cummins and Tennyson (1992) report findings of an increase in BI losses of 9% in no-fault states and 11% in tort states from 1984 through 1989 using national data.

A related body of research has sought to determine the relative costs and benefits of alternative auto insurance systems. A study by the All-Industry Research Advisory Committee (AIRAC) (1979) reported results suggesting that for their sample, in tort states $0.43 of every dollar of claim payment went for reimbursement of economic losses and $0.57 went for non-economic losses. In no-fault and add-on states, $0.57 of every dollar of claim payment went to economic losses and $0.48 went for general damages. Using national data from 1975-1980, Witt and Urritia (1983, 1984) provide evidence that suggests that no-fault states tend to provide higher benefits and/or lower costs to consumers than do tort states using state specific loss ratios as the measure of benefits and its inverse as the measure of costs. They also provide evidence to suggest that add-on systems offer no particular advantages over tort systems when loss ratios are considered. Finally, their analysis suggests no significant variation in no-fault loss ratios due to the difference between competitive or non-competitive ratings regulations in each state.

The Alliance of American Insurers (1984, 1989) compared BI pure premiums for no-fault states having various thresholds with what their estimated BI pure premiums would have been under a tort system. Their results suggest that for their sample years (1982 and 1987) pure premiums were lower for each of the three verbal threshold no-fault states. For 11 states implementing dollar threshold systems, the evidence was mixed; half of the states showed a reduction in pure premiums, half showed an increase. For the four states implementing add-on coverages, all but one showed an increase in pure premium over what would have been estimated had a tort system been in place.

In contrast, Johnson, Flanigan and Weeks (1983) report results suggesting that over the period from 1971 to 1980, no-fault provisions had the effect of increasing the cost of automobile insurance. Their model used a regression model to estimate BI pure premiums after controlling for some demographic differences such as population density, average wage and vehicle fatalities. According to their analysis, “true no-fault” (using their definitions that made no distinction between verbal and monetary thresholds) afforded the highest pure premium relative to tort states. Lilly and Webb (1983) also provide summary statistics suggesting that BI pure premiums in no-fault states generally rose more dramatically than in tort states over the 1975 to 1982 period. No controlling factors were considered. Although no analysis of statistical significance was undertaken, their results when looked at more closely showed that tort states showed a cumulative percentage increase of 60.47%, monetary threshold states showed a cumulative percentage increase of 95.35%, add-on states showed an increase of 56.26% and verbal threshold states showed an increase of 46.44%. Substantial methodological criticisms of these works are found in Lawson, Heidrick and Soular (1985).

In summarizing the research in this area, Cummins and Weiss (1998) conclude that no-fault plans, especially those with stringent thresholds (e.g. closest to pure no-fault), reduce claim costs. Browne and Pelz (1996) report the same finding, except that their results also show that plans with low dollar thresholds can actually increase claim sizes. This finding is consistent with the results obtained by Derrig, Weisberg and Chen (1994) who find that those with “small” claims may view it as an opportunity to participate in a lottery with a chance at relatively larger payments for non-economic losses. Their results are consistent with this lottery hypothesis.
A recent study by Cassidy, et. al. (2000) examined the incidence of reported whiplash injury in Saskatchewan, Canada, following a change in automobile insurance systems from a tort-based system to a no-fault system. Their sample consisted of filed insurance claims for traffic injuries between July 1, 1994 and Dec. 31, 1995, which covers the time span during which the system was changed. Their results suggest a lower incidence of reported whiplash injuries after the no-fault system was in place.

Other research has addressed different facets of the no-fault versus tort issue. Kleffner and Schmit (1999) examined the issue using data from the Canadian experience. Their results differ markedly from the U.S. experience owing in no small part to the existence of universal health care in Canada. Using data from 1991 to 1996, their results suggest that the average gross loss ratio for no-fault provinces is statistically indistinguishable from the average gross loss ratio for tort provinces. Using their definition of insurance cost ([Incurred Losses + Loss Adjustment Expenses]), the mean insurance cost in no-fault provinces was statistically indistinguishable from the mean insurance cost in tort provinces. Yet, in a regression model designed to control for differences in provinces regarding population, wage levels and the degree of government involvement in the provision of insurance, the results suggest that the average cost of no-fault is higher.

Landes (1982) examined the issue from the perspective of accident losses. The argument being examined is the economic argument that restricting liability may induce increased risky behaviors, as the one undertaking the risky behaviors does not carry the full liability for their actions. The main results are that states with tort restrictions (some variation of no-fault) experienced significantly higher increased fatal accident rates relative to the other states, using data from 1967-1976. In particular, states with relatively moderate restrictions on tort activities had between 2% and 5% more fatal accidents, while states with more restrictive laws had as many as 10% to 15% more fatal accidents after the tort restrictions were in place.

On the other hand, some studies have found no correlation between no-fault and higher accident rates. Zador and Lund (1986) addressed Landes' analysis and found no such correlation. Kochanowski and Young (1985) used an expanded regression analysis including more variables than the Landes study and also found no correlation.

Simulation Results

Some research has addressed the relative costs and benefits of no-fault insurance systems by using economic modeling and simulation rather than by analyzing observed historical data. Perhaps the most widely quoted of these efforts is work done by Stephen J. Carroll, et. al (1991), commonly known as the Rand Study. In this study, a sample of actual outcomes from closed-claim survey data and household data was used to construct a baseline sample of the actual experience of those injured in no-fault states. This baseline experience was then modeled and extrapolated to compare outcomes in no-fault and tort states. One of their initial results suggested that individuals in tort reparation systems with relatively minor economic losses (defined as less than $5,000) received compensation worth two to three times their losses; those with more severe losses (defined between $25,000 and $100,000) received compensation for slightly more than half of their economic losses; and those with severe economic losses (defined as excess of $100,000) received compensation worth about 9% of their economic losses. The second part of their analysis compared actual outcomes with those outcomes that would have, under the assumptions of their modeling, occurred under various no-fault systems. The results suggested
that regardless of the specific type of no-fault plan considered, transaction costs were reduced, compensation more closely matched economic losses, time to receipt of compensation was quickened and the amount paid in compensation for non-economic losses was reduced.

Later analysis by Abrahamse and Carroll (1995), O’Connell, et. al (1995), Carroll (1997) and Carroll and Abrahamse (1999), extended this simulation-based modeling to identify cost savings available with Auto Choice plans. Much of this work is also summarized in a report prepared by the Joint Economic Committee (1997). Their analysis suggests considerable cost savings with an auto choice plan relative to tort systems, with reported estimated savings from 21% to greater than 60% in some cases. Kabler (1999) provided a critical response to this literature, citing issues with the underlying assumptions used in the simulations, particularly with regard to the assumptions that there will be no adverse selection and that increases in claim frequency will not be sufficient to offset cost reductions associated with the elimination of non-economic events. These models also make various assumptions regarding the conversion rate of drivers to the no-fault option, although their conclusions are not overly sensitive to the percentage conversion assumed.

**Conclusion**

The purpose of this study is to provide insurance regulators with an overview of no-fault automobile insurance reparation systems. The study provides information about no-fault systems to the regulator who wishes to broaden his/her understanding of no-fault systems and some of the insurance issues these systems are designed to address. It also provides information to the regulator who may wish to learn what systems have been implemented in other states and the legal characteristics of these systems.

After many months of work by the Automobile Insurance Working Group, it became apparent that no clear-cut answer in the literature exists when asking whether no-fault automobile insurance reparation systems are preferable systems to tort systems currently used in a majority of the states. As efforts are made to learn more about no-fault as compared with the tort liability system, this study may be an important first step to identifying the issues that need to be addressed.
References


__________, and Rita James Simon, 1972, *Payment for Pain and Suffering*. Copyright Board of Trustees, University of Illinois reprinted with permission by Insurors Press, Inc.


