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SPECIALIZING IN GUARDIANSHIP,  
CONSERVATORSHIP & CARE MANAGEMENT

October 10, 2011

Representative Peter Lund  
Committee Chair Person  
for the Insurance Commission  
House of Representatives  
374 Capitol Building  
P.O. Box 30014  
Lansing, Michigan 48909

Dear Representative Lund:

Thank you for the opportunity to provide testimony to your committee regarding the proposed Pending Legislative Bill HB 4936. I serve as a professional Guardian with a specialty in brain injury.

I am strongly against the proposed changes to the Michigan No Fault Program. I feel they will not achieve the stated goals of cost containment and instead will adversely impact our State's economy, our State's ability to deliver care to its citizens and will overload an already pressured public health system.

My credentials are as follows:

- A Bachelor of Science in Management degree, with minors in Economics and Psychology, from Oakland University.
- A Masters in Business Administration degree in Finance and Accounting from Wayne State University.
- A Juris Doctor degree from the University of Detroit School of Law.
- I am licensed as a CPA and as an attorney in the State of Michigan.
- My background in health care spans over thirty years of practice as an Auditor for Arthur Andersen, an international public accounting firm and as a financial executive for Mercy Health Services, now Trinity Health System (CFO/Controller/Consultant) in the area of health care.
- As an entrepreneur, I developed a professional care management firm for disabled individuals.

My practice spans the Lower Peninsula with cases from Lenawee to Otsego Counties and from Wayne to Kent Counties. There are approximately twenty people employed by my company.

Today, I am targeting my testimony in the financial area to save time and to avoid redundancy. Certainly, I could question the methodology of Dr. Tennyson and her dire forecast of rising costs. Financially, the bottom line is that if the costs of this program continue to rise at 7% when the State and National averages for insurance premiums are increasing at 15%, we must

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applaud the No Fault program for its success with cost containment and not react to the fact that after ten years, at that rate, the costs will double. Please note that the 15% increase in rates for Michigan do not incorporate added costs should the changes in the Pending Legislative Bill HB 4936 take effect.

I am familiar with New York's auto injury coverage. Some years ago, I was appointed Temporary Guardian to an individual who rolled his NY rental car on the service drive of the John Lodge expressway.

- This young man had no medical coverage. Henry Ford Hospital incurred over \$300,000 in costs for his emergency care.
- They received no reimbursement from the victim.
- The loss for services flowed through to the year end cost report and was paid back in part to the hospital by the State of Michigan.
- This young man was sent back to New York and was admitted to a Medicaid nursing home.
- The State of New York did not have to cover the significant cost of the emergency care and upon his return to New York, it offered only basic skilled care in a nursing home.
- Rehabilitation was not available.
- He had no chance to recover to his fullest potential and perhaps to return to his community.

I have done a cost/benefit analysis and it concerns me. The Bill will eliminate an industry. In essence, rehabilitation would become either a Medicaid or private insurance funded system. The costs are too prohibitive to believe any meaningful segment of our society could afford the necessary long term care. If private insurance were forced to pick up the services currently covered under the No Fault Program, every health insurance company would either have to significantly increase the premiums for their coverage or add exclusions for those services. Thus, at some point rehabilitation services would either stop or dramatically be curtailed due to funding.

The projection of the loss of 5,000 jobs, in my opinion, is low. The reason for this is that it only incorporates the loss of direct care jobs within the first year. It does not include the ancillary services or the wind down of businesses in the rehabilitation field. For example, office supplies are delivered to my company weekly. On a much larger scale, this will stop. Every company supplying services to health care providers will be faced with immediate losses and layoffs. Assuming argument to the 5,000 jobs to be accurate, the State will lose the revenue from payroll taxes and will pick up the liability of unemployment compensation. While unemployment is partially funded by employers, when businesses close, the revenue source will end. Further, the surviving corporations will face higher rates to fund the pool. Further losses will be experienced by the State Treasury as a result of the loss of corporate taxes and property taxes. Property tax losses will occur from both the corporate level and from the individuals who have lost jobs.

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Recently, Beaumont Hospital announced that they anticipate a loss of \$25,000,000 of revenue should HB 4936 become law. Consider that this will have the same effect on the Detroit Medical Center, the Henry Ford Health System, the Spectrum Health System, the Sparrow Health System, the U of M Health System, the Trinity Health System, the Genesys Health System, Munson Hospital, the Oakwood Health System, the St. John Health Systems, the Providence Health Systems (Daughters of Charity), all small community hospitals like Mary Free Bed, and rehabilitation programs like Hope Network, the Eisenhower Center, Special Tree Rehabilitation System, Rainbow Rehabilitation Centers, Willowbrook Rehabilitation and the Lighthouse Rehabilitation Center. There are many smaller programs in Rehabilitation that are not listed. Extrapolating from the Beaumont study and using a projection of \$10,000,000 for the larger rehabilitation systems, I project a loss to our economy of over \$300,000,000 annually from this change.

This is not theory. We have seen this trend with the collapse of the auto industry. Fortunately, we are resilient and have overcome adversity before. My questions to the legislature are:

- During a severe economic downturn, are you willing to forgo in excess of \$300,000,000 of revenue annually?
- Have you planned for the related cutbacks to our educational system and public programs?
- Have you identified the benefits of the proposed changes?

As an attorney, I have listened to some of my colleagues discussing a new golden era of personal injury litigation. They see huge sums for fees related to personal injury litigation. In my analysis:

- There is no benefit to the public.
- There is a significant loss of coverage with no corresponding guarantee of savings from reduced premiums.
- In essence, the proposal is a corporate bailout of an industry that is healthy.
- Further, it appears the changes will drive up the overall premiums as drivers will have to consider increasing under insured coverage and umbrella coverage for more serious injuries.

My concern is that if you believe this to be a more expedient way of handling automobile accidents, you are unfamiliar with the challenges faced during litigation. Most litigation takes about three years. We know that the most critical period of time for recovery is the first twelve months. Therefore, what can be done when the case is tied up in litigation? We know that many rehabilitation programs will close or dramatically cut back to remain in business. Who will provide the care? Who will pay for the care during the litigation process? Please remember that the litigation is based on a lifetime projection for the cost of care. After the litigation, one third plus out of pocket costs are deducted from the settlement. This means the injured estate starts out approximately 40% below the projected future costs. For those individuals

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who are involved in accidents where there is no possible defendant, they would simply have no recourse. Examples of this would be hitting a deer or losing control because of the weather and hitting a tree. These individuals would quickly fall to the public healthcare sector.

Comments regarding Medicare have been made in error. The majority of accidents involve individuals between 16 and 25 years old. Most of them have not worked long enough to qualify for Social Security Disability Income. Therefore, they are not eligible for Medicare benefits. In order to qualify for Medicare benefits, individuals under 65 years of age must wait 24 months from the time Social Security determines permanent disability. The disability process can take up to four years if the claim is initially denied by Social Security. Up to 80% of the claims are denied and then appealed. Who pays during this period of time? My point is that this is not a simple cost shift to the Federal Public Sector.

Finally, there is the dramatic cost to the State run penal system. When Michigan changed the mental health program, a significant percentage of the discharged patients ended up incarcerated. Judge Milton L. Mack, Jr., Chief Judge for the Wayne County Probate Court has authored a paper on the failure of this program.<sup>1</sup> Currently, the penal program in Wayne County is the largest provider of psychiatric care in the Country.

Further, I have sent studies previously to each of you documenting that currently 60% of the incarcerated population has suffered some form of brain injury. In law school we are taught that the purpose of incarceration is threefold: restitution, retribution, and rehabilitation. These are unattainable goals with this population. They are doomed to remain in the revolving door of committing crimes, incarceration, release and repetition. It is well documented that individuals who have suffered frontal lobe injury are driven to impulsivity with no internal means to stop their actions.

In addition to the costs borne by Michigan's penal system is the cost to the community from the crimes committed due to this uncontrollable impulsivity. This population does not end up in jail by accident. Crimes have been committed and innocent people have suffered. Additional law enforcement is involved and there is a cost for these services.

Much of my time as a Guardian is in securing individuals who have long histories of misbehaving. I spend a great deal of time in Courts meeting with Judges and Prosecutors to develop alternatives to jail. Cases involving impaired defendants tie up Court dockets and are expensive to litigate. By law, a lawyer must be appointed to defend these individuals. In most cases, Judges are required to Order forensic examinations to determine if they are

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<sup>1</sup> Hon. Milton L. Mack, Jr., "Involuntary Treatment for the Twenty-First Century," The Quinipiac Probate Law Journal, volume 21, numbers 3 and 4, 2008.

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competent to stand trial. This means there can be no simple pleas and that there may be three or more hearings before a District Court can transfer the case to a Circuit Court. All of this comes out of a tight Court budget.

Judges understand that not only is it futile to incarcerate these individuals, it creates a huge liability to the State of Michigan for the psychotropic medications that must be dispensed and for the professional staff that must monitor and control this population. Not only are the psychiatrically impaired prisoners at risk but the general population and the prison staff are exposed to explosive and at times violent behaviors. This is where a sound rehabilitation program makes a difference.

Not only are these individuals currently managed, their transition to the community is closely monitored to prevent harm to citizens, to avoid police interactions and to set them on a course for a safe semi-independent life. The only skills that this population learns in jail are criminal activities. Rather than learning to control aberrant behavior, it becomes ingrained due to their experience.

In summary, I believe the proposed Pending Legislative Bill HB 4936 is not just inhumane to a damaged, defenseless population and their families, it is financially unsound. Given the current state of Michigan's economy it could be ruinous.

Please feel free to contact me if you have any questions regarding this letter.

Very truly yours,



Steven Siporin, B.S., M.B.A., J.D., C.P.A.

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Marlena M. Wald, MPH, MLS and Sharyl R. Helgeson, RN, BAN, PHN, "Traumatic Brain Injury Among Prisoners," Brain Injury Professional, Minnesota Department of Corrections funded Study Grant, pp. 22-25.

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<http://health.state.tn.us/tbi/index>.

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