CPAN
COALITION PROTECTING AUTO NO-FAULT

216 North Chestnut Street, Lansing, MI 48933 • (517) 882-1096
ProtectNoFault.com • Facebook.com/ProtectNoFault • Twitter.com/ProtectNoFault

SUMMARY ANALYSIS OF HB 5013: THE END OF NO-FAULT AS WE KNOW IT

By:
The CPAN Legal Team

George T. Sinas
Stephen H. Sinas
Thomas G. Sinas

Sinas Dramis Law Firm

October 2, 2017

On September 26, 2017, HB 5013 was introduced, which proposes drastic modifications to the Michigan No-Fault Act – modifications that CPAN believes would virtually destroy the no-fault system as we know it and would result in a major cost-shift of auto accident related medical treatment to Michigan's Medicaid budget/taxpayers, health insurers, employers, and patients. Among other things, the bill:

- ***Authorizes unprecedented dollar cap limitations on no-fault benefits;***
- ***Gives insurance companies substantial control over a patient's medical care;***
- ***Greatly increases the legal power of insurance companies while taking away legal rights from patients; and***
- ***Provides no guaranteed premium rate reductions.***

In many respects, the concepts incorporated in this bill were contained in Proposal D and Proposal C, ballot propositions that were resoundingly defeated by Michigan voters in 1992 and 1994 by margins of 60+% of the voters. Several of the serious problems created by HB 5013 are summarized briefly below, with bracketed references to the pages of the bill where that subject is addressed.

A. ENORMOUS LOSS OF BENEFITS WITH ULTIMATE COST-SHIFTING

The promise of lifetime medical care, which is at the core of the current Michigan Auto No-Fault law, will be shattered and replaced by a law that will result in a severe loss of benefits for thousands of Michigan auto accident victims, including the following:

1. INADEQUATE BENEFIT CAPS

HB 5013 authorizes the sale of no-fault PIP benefit policies with woefully inadequate lifetime benefits caps. The first capped option is a lifetime benefit cap of $25,000. Contrary to some characterizations, this first cap is ***not*** a $250,000 cap. Rather, it is a $25,000 lifetime cap with a narrow exception for $225,000 in emergency medical care. The second capped option limits benefits to $500,000. These two benefit caps ($25,000 and $500,000) apply not only to medical expenses, but to ***all PIP benefits***, including wage loss and replacement service expense benefits. Therefore, persons who become disabled in auto accidents and who incur medical expenses that exceed their selected PIP benefit cap (which will occur in most serious injury cases where the $25,000 cap has been selected) will have ***no PIP wage loss benefits*** available to them. Moreover, these benefit caps are applicable to all family members in a household who are covered by the policy. As all who work with severely injured patients will clearly confirm, these limited benefit caps fall far short of that which is needed to properly care for such patients. Even though an uncapped lifetime benefit option is still available, it will likely become exceedingly expensive and, therefore, essentially unaffordable to many consumers who would otherwise prefer to continue their lifetime medical benefit coverage under current law. This is expected to happen as a result of there being far fewer individuals in the uncapped benefit pool, which will likely cause the cost of uncapped benefit policies to increase substantially. [pp. 36-37]

2. JEOPARDIZING THE CARE OF CHILDREN

Under current law, virtually all Michigan children involved in motor vehicle accidents have access to lifetime medical care. However, in light of the fact that HB 5013 permits consumers to purchase limited benefit caps, children who sustain severe injuries in a motor vehicle accident will face a loss of lifetime medical care if their parents make a bad decision and purchase limited benefit coverage—particularly children in households where the $25,000 benefit cap is selected. [pp. 36-37]

3. MEDICAL EXPENSE TORT IMMUNITY FOR AT-FAULT DRIVERS

Reckless, impaired, drunk drivers, or otherwise negligent drivers, who cause innocent victims to incur medical expenses in excess of the victim's PIP benefit cap will become

absolutely immune in tort for any such unpaid medical expenses, regardless of how reprehensible was the defendant's conduct. This immunity problem does not exist under the current law, where the medical expenses of the accident victim are not capped, therefore, not resulting in any unpaid medical expense balance. [p. 44]

4. DRAMATIC REIMBURSEMENT CUTS FOR MEDICAL PROVIDERS

Providers treating auto accident victims will be prohibited from receiving reimbursement for services rendered in excess of that which is payable under the federal Medicare law. Under these low reimbursement rates, it will not be economically feasible for many medical providers to treat auto accident victims whose insurance coverages will provide reimbursement far below a provider's customary charges. As such, accident victims face the risk of being treated as *"second class patients"* and medical providers will face substantial economic harm that will likely damage the Michigan medical economy and result in potential job losses for healthcare workers. [pp. 50-51]

5. FAMILY PROVIDED ATTENDANT CARE CUTS

HB 5013 dramatically reduces reimbursement for in-home attendant care that is rendered to injured persons by family members or others domiciled in the injured person's household. Such attendant care would be reimbursable for only 56 hours of care per week, *i.e.*, an average of eight hours per day. These changes will take away the right of severely injured persons to choose their attendant care providers and will force them to hire strangers to come into their home to provide the care they need. [p. 31]

6. MOTORCYCLIST BENEFIT REDUCTIONS

Motorcyclists who sustain injury as a result of being struck by a motor vehicle are limited by the benefit cap selected by the operator of the motor vehicle involved in the accident, even though the motorcyclist actually purchased unlimited PIP coverage on his or her privately owned motor vehicle. As a result, motorcyclists are penalized for the bad choices of the motor vehicle drivers involved in their accidents. [p. 41]

7. SENIOR CITIZEN OPT-OUTS

HB 5013 permits persons over the age of 62 who have health coverage under private or public retirement programs to completely opt-out of no-fault PIP benefit coverage, even though those other benefit programs do not provide the vast coverage that is available under no-fault PIP benefits. Therefore, senior citizens who opt out of no-fault coverage will completely lose certain critically important benefits, such as in-home attendant care, handicap-accessible accommodations, residential facility living accommodations, long-term comprehensive rehabilitation, etc. The end result is that many seniors seriously injured in

motor vehicle accidents may very well end up being cared for in a nursing home paid by Medicaid or Medicare. [pp. 33-35]

8. MEDICAL TRANSPORTATION LIMITATIONS

Seriously injured persons requiring medical transportation by commercial agencies or other providers are reimbursed for those expenses only up to three times the IRS tax deduction rate, rather than the actual cost of the transportation. [pp. 31-32]

9. MAJOR COST-SHIFT TO TAXPAYERS AND EMPLOYERS

The auto accident related medical expenses that will no longer be covered as a result of this bill, will be shifted to other payment systems and ultimately to Michigan taxpayers and employers. Those uncovered expenses that are cost-shifted to Medicaid will impose additional and substantial burdens on Michigan's Medicaid budget, further complicating the funding of Michigan's future health care needs. This will potentially create the need for higher taxes. Similarly, employers will face the prospect of increased costs for providing healthcare coverages, which will be called upon to fund unpaid auto accident medical care—all so that auto insurance companies can make more money.

10. FINANCIAL RUIN FOR MANY MICHIGAN FAMILIES

Those seriously injured persons who select the $25,000 PIP benefit cap and who incur substantial medical expenses in excess of that cap, will likely face financial disaster because of these uncovered expenses. For many, this means filing for bankruptcy, which will further impair Michigan's economy and financial recovery.

B. INSURER CONTROL OF MEDICAL CARE

HB 5013 gives unprecedented control to government bureaucracy and insurance companies to determine and control the type of medical care and services that injured persons will receive under the No-Fault Act. This occurs in several ways, including, but not limited to, the following:

1. RESTRICTED CARE THROUGH UTILIZATION REVIEW

HB 5013 provides that the care rendered to auto accident victims must conform to certain *"utilization review standards"* promulgated by the insurance bureau, without any guidance or limitations set forth in the new legislation. These utilization review rules will be based upon what is referred to as *"medically accepted standards,"* rather than on the current no-fault statutory standard that requires insurers to pay for all *"reasonably necessary"* products,

services, and accommodations. This will surely narrow the scope of medical care and treatment that auto accident victims receive for their injuries. In addition, HB 5013 provides that treatment and services rendered *"longer in duration"* or *"more frequent"* than that which is *"usually"* required, can be deemed non-compensable, even though the legislation provides no definitional guidelines or standards to further define these ambiguous concepts. Furthermore, insurers are empowered to unilaterally decree that certain events have occurred, which would then force providers to defend themselves by triggering protracted administrative agency hearings, thereby unnecessarily complicating medical care. For example, this could occur whenever insurance companies decree that an injured person has *"overutilized"* services; has received *"inappropriate treatment;"* or has been charged an *"inappropriate amount."* None of these vague phrases are defined anywhere in the statute, thereby creating the potential for unnecessary, costly and time-consuming delay in rendering care and processing claims. [pp. 54-56]

2. POTENTIAL INTIMIDATION OF MEDICAL PROVIDERS

HB 5013 may cause medical providers to be reluctant to provide treatment to auto accident victims because of certain coercive and intimidating procedural regulations that are applicable to them under this legislation, including the following:

- Providers will be required to submit voluminous documentation to insurance companies that is far beyond what is required under current law, including extensive past billing and charge history of the provider;

- Providers may be forced to refund payments to insurance companies with substantial interest penalties if the insurer alleges, and the agency determines, that the service *"was not medically necessary;"*

- Providers refusing to refund payments to insurance companies can be sued by the insurer and be held liable for attorney fees and costs in the event refunds are ordered; and

- Medical providers may be barred from ever receiving payment for services under the Act if they are found to have engaged in what is referred to as a *"pattern or practice of conduct"* in violation of the Act. Such a finding could be requested by an insurer pursuant to administrative agency proceedings even though the legislation contains no specific elements that must be proven in order to justify such banishment. [pp. 51-56]

C. MORE POWER TO INSURANCE COMPANIES, LESS POWER TO PATIENTS

HB 5013 gives insurance companies far greater legal power, while taking away existing legal rights from patients. This occurs in a number ways, including, but not limited to, the following:

1. DIMINISHED LEGAL RIGHTS FOR PATIENTS

The patient's right to be awarded penalty interest and attorney fees, which is an important right under current law, is virtually eliminated under HB 5013, in that this legislation provides such sanctions are not available whenever *"an insurer has reasonable proof it is not responsible for the payment."* This immunity from patient sanctions could be applicable whenever an insurance company receives an IME report purchased by the insurer to justify its termination of benefits. Moreover, a patient's attorney is prohibited from seeking attorney fee sanctions on behalf of the patient unless the attorney first satisfies numerous and complicated administrative procedures that are designed to make it more difficult to enforce penalty sanctions on behalf of patients. In addition, under HB 5013, patients will not be entitled to attorney fee penalties in attendant care lawsuits for any legal work done by the patient's attorney after an insurance company is notified of the attendant care dispute. [pp. 45-47]

2. STRENGTHENED LEGAL POWER FOR INSURANCE COMPANIES

Under HB 5013, insurance companies, unlike patients, receive dramatically increased legal sanction power that can be used against patients. Under this new power, patients can be ordered to pay an insurance company's attorney fees and court costs if the benefits in question were found to be *"not medically necessary,"* or if the claim was for *"an excessive amount."* Nowhere under current law must a patient show that any service is *"medically necessary."* On the contrary, benefits are payable under current law whenever a service is *"reasonably necessary."* These changes will virtually eliminate the patient's ability to sue an insurance company for non-payment of benefits because of the chilling effect caused by the strengthened legal powers of insurers under the bill. [pp. 46-49]

3. IMMUNITY FOR CARELESS INSURANCE AGENTS

Under HB 5013, insurance agents who make mistakes and fail to accurately inform consumers of the limitations of their insurance coverage selections or who otherwise fail to properly inform the consumer, are rendered completely immune from any civil liability for such negligent conduct. Given the important decisions that consumers will be required to make under this complicated legislation, such immunity for agents who fail to do their jobs properly is dangerous for consumers and completely unjustified. [p. 4]

4. A ONE-SIDED APPROACH TO FIGHTING FRAUD

HB 5013 takes a hard line in the fight against patients and providers who commit acts of insurance fraud. However, it does absolutely nothing to investigate and eradicate abusive and unfair practices utilized by insurance companies – practices that are inconsistent with the letter and intent of the No-Fault Act and that result in costly and unnecessary litigation. In addition, HB 5013 utilizes certain fraud-fighting techniques that, without proper protections and supervision, could easily produce a chilling effect on patients and providers who are, in good faith, attempting to play by the rules. [pp. 65-78]

D. NO GUARANTEED RATE REDUCTION

HB 5013 purports to mandate a 40% reduction in premiums. In reality, however, this premium reduction is totally illusory for two reasons:

(1) The premium reduction required by HB 5013 applies only to the premium for PIP benefits, not to the total premium, which, in reality, is comprised of coverages far more costly than the premium for PIP benefits.

(2) Under HB 5013, no premium reduction is necessary if an insurance company is able to convince the Insurance Bureau that the failure to reduce the premium is "*justified*" by "*using generally accepted and reasonable actuarial techniques.*" [pp. 58-60]