1998

An Analysis of the Minnesota Private Passenger Automobile No-fault System

Terry Tyrpin
Diana Lee

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol24/iss4/4
AN ANALYSIS OF THE MINNESOTA PRIVATE PASSENGER AUTOMOBILE NO-FAULT SYSTEM†

Terry Tyrpin††
Diana Lee †††

I. INTRODUCTION ................................................................. 1020
II. HISTORY OF NO-FAULT ...................................................... 1020
III. THE MINNESOTA AUTOMOBILE INSURANCE SYSTEM .... 1023
   A. Minnesota No-Fault Law ............................................... 1023
   B. Minnesota Average Liability Premium Outpaces National Mean ......................................................... 1023
   C. Minnesota Drivers are Filing More First-Party Injury Claims Than Before ........................................ 1024
   D. Rising PIP Claim Severities in Minnesota Result in Higher Attorney Involvement ..................................... 1025
   E. More Rapidly Growing Claiming Behavior in Minnesota ................................................................. 1026
   F. Comparisons Between Minnesota and Wisconsin .......... 1026
      1. Automobile Insurance Systems .................................. 1027
      2. Premium and Loss Experience .................................... 1028
IV. IMPROVING THE MINNESOTA SYSTEM ................................ 1030
   A. Conversion to Exclusive Verbal Tort Threshold .............. 1031
   B. Implementation of Managed Medical Care System .......... 1032
   C. Other Measures .............................................................. 1035
V. SUMMARY .............................................................................. 1036
VI. APPENDIX OF FIGURES .......................................................... 1039

†† J.D., 1976, Chicago-Kent College of Law/Illinois Institute of Technology. Vice President, Insurance & Research Services Division, National Association of Independent Insurers (NAII). The NAII is a trade association of 619 companies of all sizes and types, comprising a cross-section of the property/casualty insurance industry. NAII members write almost 40 percent of the personal automobile premium volume in both the nation and in Minnesota.
††† CPCU, ARP. Vice President of Research, NAII.
I. INTRODUCTION

This article provides a description of state automobile insurance reparations systems, specifically analyzing the performance of Minnesota's no-fault law in the context of its effect on insurance claiming patterns. In addition, it compares the value to consumers of the reparations system and related insurance coverages in Minnesota with the value to consumers of the more modest, traditional financial responsibility and tort law system in Wisconsin. The article also discusses public policy considerations relevant to strengthening the Minnesota No-Fault Automobile Insurance Act. In the latter context, subjects addressed include the exclusive verbal tort threshold, managed medical care, and similar measures that have been examined or tried in other no-fault states.

II. HISTORY OF NO-FAULT

Since the 1960s, the motor vehicle accident reparations system and the rules used to assess legal responsibility for motor vehicle crashes and compensate victims have been the subjects of controversy.¹ The debate has centered around the costly and tedious process of determining who is at fault after vehicular crashes occur. In an attempt to provide quick and fair compensation to the greatest number of injured persons possible without the delays, costs and uncertainty of recovery associated with the court system, no-fault legislation was introduced in the 1970s in many states. Over the last three decades, nearly 20 states have at one time or another experimented with no-fault accident reparations systems. Several of these states have since repealed their laws or substantially modified them. To this day, in fact, the no-fault system remains a source for public debate and potential reform in some states. In certain states, especially where the cost of automobile insurance is perceived as too high, changes to the system are being proposed to try to reduce the claims expenses that drive the cost of coverage.

Under an automobile no-fault system, the vehicle owner's insurance company covers bodily injury expenses incurred by the driver and his or her passengers, regardless of who caused the accident. Access to the court system is limited to those cases where more serious injuries are incurred or when out-of-pocket expenses

¹ For a more complete analysis of no-fault laws, see generally ROBERT H. JOOST, AUTOMOBILE INSURANCE AND NO-FAULT LAW (2d ed. 1992).
INDUSTRY ANALYSIS OF MINNESOTA NO-FAULT exceed a specified sum. This first-party coverage for losses is designed to provide prompt payments for economic losses, lower the litigation costs associated with the tort system, and reduce or eliminate the costs for non-economic losses (i.e., pain and suffering). The creators of no-fault had intended that tort liability be abolished and all accident injuries be compensated by insurers without determining whether negligence played a role in the crash. This original pure form of no-fault was never enacted in any state. Where administered today, no-fault systems typically embody elements of both tort liability and fault-free compensation. Because they do not abolish tort liability completely, these laws are often referred to as modified no-fault plans.

Ironically, in many no-fault states, tort liability is virtually unrestricted and, accordingly, there are still many accident-triggered lawsuits. The system encourages those involved in a crash to overutilize medical and treatment services, hence accident compensation often remains a slow process and the expenses of allocating fault means bodily injury liability insurance costs are higher than they should be. Under modified no-fault systems, a lawsuit in theory should be a remedy in only a very small percentage of cases where the nature of injury or the amount of damages would not be compensated fairly under a no-fault plan. In these states, access to the courts is permitted if the bodily injury claim exceeds a tort threshold level, which may be either a monetary sum, a specified class of injury, or a combination of both.

In theory at least, even modified no-fault plans are supposed to limit the right to bring a lawsuit for an accidental injury. Under these laws, the right to sue for minor automobile injuries is restricted and victims are provided personal injury protection (PIP) benefits, regardless of who is at fault. A verbal threshold variety restricts lawsuits to recover non-economic damages to those cases where serious injuries have been sustained. A “serious injury” would generally be a specific physical condition, for example, death, dismemberment, serious disfigurement, fractures or other severe impairment. Under verbal threshold no-fault laws, it was thought that lawsuits should be confined to only those cases where severe injuries had occurred, and the right to seek redress in court for subjective injuries and damages (i.e., pain and suffering, emotional distress, etc.) should not be impaired. In contrast, under a monetary threshold no-fault plan, accident victims can sue if their out-of-pocket expenses for medical care, wage loss, or other neces-
sary services exceed a specific monetary sum stated in the law.

Today, 13 states have some type of no-fault system for the compensation of persons injured in crashes. Of these states, Florida, Michigan, and New York are the only no-fault states with a verbal tort threshold. The remaining no-fault states have monetary lawsuit thresholds, currently ranging from $1,000 to $5,000. Several of these also have a verbal threshold, in which case injured parties have the option of applying either an economic (dollar threshold) or a subjective degree of injury standard to determine whether a tort lawsuit can be brought to recover non-economic damages. At one time, most no-fault states had very low dollar thresholds (e.g., $200-$500 of medical expenses). These laws failed to reduce the filing of tort liability suits because of the ease in accruing medical diagnostic and treatment bills and thus quickly surpassing the monetary threshold. In addition, low dollar thresholds created an incentive to exaggerate the seriousness of the injury in order to surpass the threshold. Monetary thresholds have been increased over time in an attempt to match the rising cost of medical services and to make it more difficult to file a lawsuit.

Kentucky, New Jersey and Pennsylvania now administer what are known as “choice no-fault” laws. Under a choice system, vehicle owners can select the no-fault process and collect benefits from their own automobile insurer regardless of who is at fault. Tort lawsuits are restricted but not eliminated in these states. Conversely, motorists can opt instead for a traditional tort liability system and coverages, and be able to sue other drivers on grounds of negligence. In a true choice state, the tort-chooser often files a negligence claim against his or her own insurer.

Ten states, along with the District of Columbia, have laws that require automobile insurers to offer personal injury protection (PIP) benefits, which are “added on” to the existing tort liability coverages. Some states require the purchase of add-on coverage, while other states do not. Although PIP benefits are similar to those provided in no-fault states, add-on laws are different in one respect: there are no restrictions on the right to file a liability claim.


3. Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, Washington, and Wisconsin.
or lawsuit against another driver. As in no-fault states, however, add-on PIP coverage compensates the insured for economic losses (e.g., medical, wage loss, etc.) regardless of whose negligence caused the injury.

At present, the remaining 27 states have traditional tort liability systems, under which there are no limitations on the right to assert negligence-based lawsuits. In full tort states, parties can sue to recover both economic as well as non-economic or subjective losses such as pain and suffering and emotional distress. In all but four of these states, bodily injury and property damage liability insurance must be acquired and maintained as a statutory condition of owning and operating a motor vehicle.

III. THE MINNESOTA AUTOMOBILE INSURANCE SYSTEM

A. Minnesota No-Fault Law

Minnesota has administered a modified no-fault law, known as the No-Fault Automobile Insurance Act, since January 1, 1975. The law permits injured persons to sue for pain and suffering or other non-economic damages if a monetary or verbal threshold or qualifier is met. General damages (i.e., damages compensating for non-economic losses) are recoverable only if injury results in permanent disfiguration or injury, disability (for 60 days or more), fatality, or medical expenses exceeding $4,000. First-party PIP benefits include a $40,000 limit on the following: $20,000 for medical expense loss arising out of injury to any one person; and a total of $20,000 for income loss, replacement services loss, funeral expense loss, survivor’s economic loss, and survivor’s replacement services loss arising out of the injury to any one person. Disability and income loss benefits are capped at 85 percent of the injured person’s loss of present and future gross income, up to $250 per week, and replacement service loss benefits and survivor’s economic loss benefits are limited to $200 per week.

B. Minnesota Average Liability Premium Outpaces National Mean

According to data compiled by the National Association of Insurance Commissioners, the average Minnesota consumer paid an annual premium of $713 for automobile liability and physical dam-

---

age insurance in 1996. Of that amount, 61% (or $437) of the total premium went toward liability coverage.

Minnesota is the twenty-fourth most expensive state in the country for automobile liability and physical damage insurance; it ranks twentieth highest in terms of liability coverage only. From 1987 to 1993, the average liability premium in this state was substantially lower than the countrywide norm. The slowing down of the countrywide liability premium over the last three years has resulted in Minnesota's premium now being almost the same as the national average. From 1987 to 1996, the average liability premium increased 58 percent in Minnesota, rising at a higher pace than the average of the other nine no-fault states (52%) and the nation (47%). Average liability premiums for Minnesota and the U.S. are both lower than the aggregate of the no-fault states, demonstrating that in spite of their faster growth in insurance rates, policyholders in Minnesota are still paying lower amounts for protection than their counterparts in other no-fault states combined, particularly those in the Northeast.

C. Minnesota Drivers are Filing More First-Party Injury Claims Than Before

Over the last five years, insurance companies have noted an increase in the number of personal injury protection claims filed and paid in the state. Such growth has helped to increase overall PIP loss costs and, hence, rates paid by policyholders for this type of coverage. According to the Fast Track Monitoring System report, the PIP claim frequency, or number of claims per 100 insured cars, in Minnesota increased 13 percent from 1992 to 1996. This,

5. See NATIONAL ASS'N OF INS. COMM'RS, STATE AVERAGE EXPENDITURES & PREMIUMS FOR PERSONAL AUTO. INS. IN 1996 Table 3 (January 1998) [hereinafter 1996 EXPENDITURES & PREMIUMS].
6. See infra Appendix, Figure 1.
7. See 1996 EXPENDITURES & PREMIUMS, supra note 5, Table 4; NATIONAL ASS'N OF INS. COMM'RS, STATE AVERAGE EXPENDITURES & PREMIUMS FOR PERSONAL AUTO. INS. IN 1991 Table 4 (January 1993) [hereinafter 1991 EXPENDITURES & PREMIUMS].
8. Kentucky, New Jersey, and Pennsylvania are excluded from this analysis because they have choice laws.
9. See infra Appendix, Figure 2.
10. See infra Appendix, Figure 3; NATIONAL ASS'N OF INDEP. INSURERS, INSURANCE SERVS. OFFICE, INC., & NATIONAL INDEP. STATISTICAL SERV., FAST TRACK MONITORING SYSTEM (3d Qtr. 1997) [hereinafter FAST TRACK MONITORING SYSTEM]. The Fast Track Monitoring System contains quarterly statistical personal automobile loss experience, representing about two-thirds of the Minnesota premium volume.
along with a 9 percent growth in average loss (i.e., claim severity), have contributed to a 23 percent increase in loss cost since 1992. In other words, it cost personal automobile insurers 23 percent more to offer no-fault protection in Minnesota in 1996 than it did in 1992.

D. Rising PIP Claim Severities in Minnesota Result in Higher Attorney Involvement

Initially, a monetary threshold can eliminate some liability claims and lawsuits, but its effectiveness diminishes over time. As experienced in most other states, inflation has had an effect on the cost of injury and other types of claims. From 1987 to 1996, the average claim severity for PIP coverage in Minnesota has grown 77 percent in the cost per injury claim ($4,353 vs. $2,453).11

As inflation reduces the value of the threshold, increasing numbers of PIP claimants qualify for tort claims. Based on data compiled by the Insurance Research Council, this trend is certainly true in the case of Minnesota as the number of PIP claimants who qualify for tort liability claims have more than tripled from 1977 to 1992.12 In 1977, 10 percent of PIP claimants in Minnesota qualified for a tort claim, compared to 22 percent in 1987; in 1992, this proportion jumped to 34 percent. As more injured parties file bodily injury (BI) liability claims, it is expected that attorney representation will grow as well.

Compared to no-fault states in general, the proportions of BI and PIP claimants represented by an attorney are higher in Minnesota. Thirty-two percent of PIP claimants in this state hired legal assistance when they were involved in an automobile accident in 1992, while 29 percent of PIP claimants in all no-fault states sought counsel.13 Moreover, 84 percent of BI claimants in Minnesota hired an attorney, compared to 81 percent of claimants in all no-fault states.14

It is jointly prepared by the National Association of Independent Insurers, Insurance Services Office, Inc. and National Independent Statistical Service.

11. See infra Appendix, Figure 4; FAST TRACK MONITORING SYSTEM, supra note 10 (3d Qtr. 1997 & 4th Qtr. 1991).
12. See infra Appendix, Figure 5; INSURANCE RESEARCH COUNCIL, AUTO INJURIES: CLAIMING BEHAVIOR AND ITS IMPACT ON INS. COSTS 46 (September 1994) [hereinafter CLAIMING BEHAVIOR].
13. See infra Appendix, Figure 6.
14. See CLAIMING BEHAVIOR, supra note 12, at 50-51.
E. More Rapidly Growing Claiming Behavior in Minnesota

No-fault laws provide for injured parties to be compensated by their own insurance companies, in an attempt to reduce the number of third-party BI liability claims and thus reduce a significant portion of the average automobile insurance premium. One measurement of policyholder claiming patterns, used by the Insurance Research Council, is the ratio of bodily injury liability claims per 100 property damage (PD) liability claims. This figure represents the likelihood of an injury claim being made, if an accident resulting in vehicle damage occurs. In 1997, Minnesota had 10.3 paid injury claims per 100 vehicle damage claims, lower than the amount (17.7 claims) for the other eight no-fault states combined. This ratio has been growing steadily at an overall rate of 78 percent in Minnesota since 1980, compared to the 62 percent increase for other no-fault states. These figures suggest that while Minnesota drivers currently are not claiming as many injuries as residents of most other no-fault states, they have, however, been filing these claims at an above-average pace over the last 17 years.

Minnesota has also out-paced the country as a whole in terms of reporting injury claims since 1980. The national BI-to-100-PD claim frequency ratio, however, is about three times higher than Minnesota. This is not surprising, as the national average includes tort states which have higher BI claim frequencies than Minnesota and other no-fault states.

F. Comparisons Between Minnesota and Wisconsin

There are many similarities between Minnesota and its neighbor to the east, Wisconsin. For example, likenesses in geophysical traits, climate, the size of their major urban areas and the demographics of the local population are obvious. Because of these similar characteristics, comparisons are often made between these two states by policymakers and the public alike. The following discussion thus offers an examination of the automobile insurance sys-

16. Kentucky, New Jersey, and Pennsylvania are excluded from this analysis because they have choice laws. Michigan is excluded because it has Property Protection Insurance instead of the standard Property Damage Liability coverage.
17. See infra Appendix, Figure 7.
tems and related premium and loss experience of these two states.

1. Automobile Insurance Systems

There are more differences than similarities when the comparison measures motor vehicle insurance and accident reparations rules.\(^{18}\) Minnesota policymakers have created a more socialized type of automobile insurance and accident compensation system for their constituents, in the form of a modified no-fault law. This law mandates the purchase and maintenance of certain insurance coverages, providing motorists with a simple and certain financial cushion in the event they are injured as the result of a motor vehicle crash.

Where automobile insurance is a mandatory requirement under Minnesota law, there is no governmental mandate to purchase or maintain insurance in the state of Wisconsin. In comparison to the highly structured no-fault plan in Minnesota, Wisconsin simply follows traditional tort liability rules in resolving motor vehicle accident claims.\(^{19}\) That is, motorists in this state retain an unrestricted right to bring an action based on negligence against a tortfeasor, no matter how inconsequential the damage. A financial responsibility law, known as the Wisconsin Safety Responsibility Act,\(^{20}\) is administered, requiring a driver to establish proof in the ability to pay a judgment if he/she is found negligent for another person's injury or damage in the event a motor vehicle crash occurs. Proof of financial responsibility can be established by showing the existence of an automobile liability insurance contract with policy limits commensurate with the minimum limits required under law. It can also be established by depositing financial assets sufficient to pay a judgment entered as the result of a tort liability cause of action. Accordingly, the primary automobile insurance coverage in Wisconsin is bodily injury and property damage liability insurance at limits adequate to meet the state's financial responsibility law.

Motorists residing in Wisconsin thus generally rely on two avenues of recourse for compensation of motor vehicle injuries. One source for compensation is the set of benefits that may be available

---

if an injured party is covered by a private health insurance plan or a
governmentally administered health-benefit program (e.g., Medi-
care). Another source is the civil justice system, where recovery is
not guaranteed and the time between injury and recovery of dam-
ages often can be years. While compensation for motor vehicle in-
juries in Wisconsin is largely dependent on whether a victim has
access to medical benefits or to the vagaries and chance of the tort
liability system, crash victims in Minnesota can recover a substantial
amount of economic or out-of-pocket losses through their own
automobile insurance company, regardless of whether their own
negligence contributed to the crash or injury.

It should be noted that Wisconsin does have a weak add-on
law, providing $1,000 of optional first-party medical expense in-
demnification similar to that found in Minnesota. Like the per-
sonal injury protection (PIP) coverage in Minnesota, the add-on
coverage in Wisconsin pays benefits for economic loss arising out of
a motor vehicle crash or incident regardless of fault. There are
significant differences, however. In Wisconsin, the add-on cov-
verage is optional in nature and, with its nominal benefit level of
$1,000, it bears little resemblance to the mandated, higher-limit
PIP coverage that is the centerpiece of the no-fault law in Minne-
sota. The add-on benefits in Wisconsin are intended as excess cov-
ervation over any other source of reimbursement to which the insured
person has a legal right.

2. Premium and Loss Experience

Another way in which the two states differ is in the cost of
automobile insurance. NAIC data show that Wisconsin has the
nineth lowest combined (liability and physical damage) average
premium in the United States, 18 percent lower than Minnesota.
Despite the substantial difference in both states’ premiums, they
have risen at about the same pace (50%) over the last ten years.21

The average liability premium in Wisconsin is the thirteenth
lowest in the nation, 28 percent lower than Minnesota’s.22 The
lower liability cost for automobile insurance in Wisconsin is attrib-
utable to several factors, including lower health care costs, lower

21. See infra Appendix, Figure 8; 1996 EXPENDITURES & PREMIUMS, supra note
5, Table 3; 1991 EXPENDITURES & PREMIUMS, supra note 7, Table 3.
22. See 1996 EXPENDITURES & PREMIUMS, supra note 5, Table 4; 1991
EXPENDITURES & PREMIUMS, supra note 7, Table 4.
utilization of medical services reimbursed by automobile insurers, fewer attorneys involved with injury claim representation, and a more basic accident reparations and insurance system. Some may perceive the Minnesota automobile insurance mechanism as more sophisticated and socialistic by virtue of: (1) its mandatory coverages; (2) the potential to compensate a greater number of injury victims more quickly under a no-fault insurance system; or (3) the ability to access personal injury protection benefits regardless of whether the injured party was negligent, owned an automobile, or had an automobile insurance policy of his or her own. In addition to having an accident reparations system that provides immediate compensation for economic loss regardless of fault considerations, motorists in Minnesota are not forced to trade away significant limitations on their right to use the tort liability system. Because of the low monetary threshold in the Minnesota no-fault law, motorists in the state are assured of the right to litigate injury claims that are not very serious in nature, providing they accrue a rather moderate amount of medical bills, wage loss, and related economic expenses. All of these consumer-friendly features, however, come at a price, resulting in the cost of automobile insurance in Minnesota being a more expensive commodity than in the neighboring state of Wisconsin.

More than $61 out of every $100 of the average insurance premium in Minnesota are used to cover liability protection, while a smaller proportion of the premium in Wisconsin pays for these coverages. As discussed below, residents of Minnesota are more prone to seek legal counsel and pay substantially higher health care costs than their neighbors to the east. In contrast, the portion of the insurance premium that pays for vehicle theft, fire, and so on is about the same in both states, while motorists in Wisconsin use a greater portion of their premiums to pay for collision coverage than their counterparts in Minnesota. The latter fact is attributable to higher automobile collision repair costs in Wisconsin, as compiled by Automatic Data Processing Claims Solutions Group. In 1996, average costs reflecting parts, labor, tow ing and storage costs, and so on ranked Wisconsin eighteenth highest in the nation and Minnesota the thirty-second highest.

According to the Insurance Research Council, attorney in-

23. See id.; see infra Appendix, Figure 9.
24. ADP Claims Solutions Group is located in San Ramon CA.
volvement in Wisconsin has been relatively low.\textsuperscript{25} Compared to 52 percent of BI claimants represented by counsel in all tort and add-on states, the proportion of BI claimants represented by an attorney in this state was only 42 percent in 1992. In contrast, 84 percent of BI claimants in Minnesota hired an attorney; this is not surprising as residual injury claims in no-fault states are filed mostly by people with more serious injuries (i.e., those who would seek representation).

Residents of Wisconsin also have the benefit of paying comparatively low hospitalization costs. Among the 44 states for which data are compiled by Mutual of Omaha Companies in 1992-1996, Wisconsin ranks tenth lowest in terms of total charge per admission during this time period.\textsuperscript{26} Compared to Minnesota, there are 20 states with lower admission charges. Both Wisconsin's and Minnesota's charges are lower than the average of all 44 states. According to Mutual of Omaha, the five-year average total charges per hospital admission for Wisconsin and Minnesota are $7,667 and $8,885, respectively, while the 44-state average is $9,626.

As mentioned above, policyholders in Minnesota are filing injury claims more rapidly than before. Since 1980, the number of injury claims per 100 damage claims rose 78 percent. This large increase may be attributable to more people overcoming the tort threshold and filing bodily injury liability claims. Wisconsin's growth rate has been increasing as well, but much more slowly; there are now only 20 percent more injury claims per 100 damage claims being filed in this state compared to 1980.\textsuperscript{27} This suggests that Wisconsin motorists are not as apt to litigate their motor vehicle claim as residents of other states.

IV. IMPROVING THE MINNESOTA SYSTEM

A no-fault law can create a more socially benevolent accident compensation system where more injury victims receive more immediate compensation for their economic losses. When the cost of providing no-fault benefits equals or exceeds the liability claim sav-

\textsuperscript{25} See Claiming Behavior, \textit{supra} note 12, at 49-50.


\textsuperscript{27} See Trends in Auto Injury Claims, \textit{supra} note 15, Table A-51; Fast Track Monitoring System, \textit{supra} note 10 (3d Qtr. 1997).
ings accrued through restricting the right to litigate injury claims, the no-fault system is dysfunctional or out of balance. The challenge for policymakers, therefore, is to develop and maintain a no-fault system producing a significant enough reduction in bodily injury claim costs to exceed the cost of providing accident compensation (i.e., PIP benefits) without consideration of negligence to a larger universe of claimants. Reducing liability-related claim costs is a common objective of no-fault plans; the Minnesota No-Fault Automobile Insurance Act is no exception. One of its introductory provisions recites the legislative objective: "to prevent the overcompensation of those automobile accident victims suffering minor injuries by restricting the right to recover general damages to cases of serious injury." 28

A. Conversion to Exclusive Verbal Tort Threshold

Policymakers in states that administer no-fault insurance laws have increasingly examined new approaches to help rein in the costs that drive automobile insurance premiums. Under study are the continued filing of tort-based bodily injury liability claims and the accrual of fault resolution expenses which, according to the original designers and proponents of no-fault, were supposed to have been abolished. Some states have amended their no-fault law by deleting their monetary threshold in preference for an exclusive verbal tort threshold. Monetary and verbal tort thresholds restrict access to the tort liability system, preventing the overcompensation of those sustaining only minor injuries, yet assuring those sustaining serious injuries the opportunity to seek compensation for intangible, non-economic damages. Some states have found that a plural tort threshold (i.e., one encompassing both monetary and verbal criteria for "serious injury") does not significantly reduce the number of liability claims for non-economic damage. This in turn adversely affects bodily injury liability claim costs and ultimately the price of BI insurance coverage.

Several studies have shown that no-fault laws which feature a single verbal tort threshold are more successful in containing the growth in bodily injury claim costs.29 In addition, other commenta-

29. For a more complete explanation, see Department of Legislative Reference, Research Division, General Assembly, No-Fault Auto Insurance: Does it Provide Consumers More Benefits at a Lower Cost?, LEGISLATIVE REPORT SERIES, Vol. 8, No. 3, (Dec. 1990); INSURANCE RESEARCH COUNCIL, TRENDS IN AUTO INJURY CLAIMS, PART
tors have made the observation that no-fault laws which incorporate monetary tort thresholds encourage the overconsumption of medical care and related services and, in some cases, fraud.\textsuperscript{30} Under no-fault laws, motorists can use their PIP benefits to finance the medical services they incur. The more services consumed, the greater the economic loss sustained by the motorist. Eventually, the injured person may consume enough medical services to reach the monetary threshold and file a liability claim. Since tort liability awards or settlements for general damages (e.g., pain and suffering) are determined by multiplying the amount of special damages (i.e., actual out-of-pocket expenses) by two, three, or an even larger number, there is a built-in financial inducement to generate and exaggerate economic losses. In short, the economic incentive fostered under a monetary tort threshold no-fault plan can become perverted and result in the over-treatment of minor injuries. At some point, if bodily injury liability claim severities in Minnesota were to become acute, one option that policymakers should consider is abolishing the no-fault law’s monetary threshold in preference for an exclusive verbal tort threshold.

\subsection*{B. Implementation of Managed Medical Care System}

Close examination of claiming practices in some no-fault states has shown an alarming and recurring pattern of some injured parties overutilizing medical services in an effort to generate a tort claim. According to the American Hospital Association, the average cost per day at a community hospital increased 37 percent ($536 vs. $736) from 1990 to 1995 in Minnesota.\textsuperscript{31} Policymakers have searched for methods to help insurers contain medical costs more efficiently, since these types of expenses make up a large portion of the PIP benefits paid by insurers in states with no-fault laws.

Personal injury protection coverage pays for all reasonable and necessary medical care up to the policy limits. Under Minnesota’s law, the medical care provided to motor vehicle injury victims is on a fee-for-service basis. This means that an injured party with access to PIP coverage selects one or more doctors, seeks treatment, and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{30} See \textsc{Stephen Carroll et al., The Costs of Excess Medical Claims for Automobile Personal Injuries} (Institute for Civil Justice, RAND Corporation 1995) for a more complete analysis of the impact of monetary tort thresholds.
\item \textsuperscript{31} See \textsc{American Hospital Association, Hospital Statistics} (annual).
\end{itemize}
\end{footnotesize}
sends the bill for medical services to the automobile insurer. With the growth of managed care in the Minnesota health and workers' compensation insurance markets, the automobile PIP coverage remains the last unmanaged source of medical treatment reimbursed through private insurance. This is a dubious distinction since it affords a haven for health care providers who have been left out of the "managed care revolution" in other coverages. Whereas medical practitioners are limited to fixed-fee reimbursement under other insurance and benefit programs, there are no ceilings or rules that limit medical service compensation under the Minnesota No-Fault Automobile Insurance Act. This fact would make it attractive for medical providers to bill their automobile insurance patients at higher rates than other fixed-fee patients.

The policymakers in several states with no-fault laws have seized the opportunity to contain automobile injury expenses by authorizing insurers to use managed medical care on a voluntary basis. In these states, insurance companies that wish to offer a managed care program must file for approval from the state insurance department. Once permission is granted, the insurers then provide consumers with the option of purchasing a policy under which the insured agrees to select doctors and hospitals from a health care network with which the insurers have a contract. This system works much like the managed care program in the accident and health insurance setting except that the consumer has the ability to accept managed care coverage in exchange for a lower premium, or reject it. Even when accepted, the insured can receive medical treatment from providers outside of the insurance company network in emergency situations or if the accident occurs out of the managed care network service area. A managed care system benefits the consumer since it allows the policyholder an option to get the same coverage but at a lower cost. It also encourages quality medical care by providers who are injury specialists.

Managed care systems compel network providers to treat patients and deliver services in the most efficient manner possible. There would be no economic incentive for unnecessary and excessive medical treatments, thus managed care can eliminate over-

32. According to figures from the Minnesota Managed Care Review, over 60 percent of 1996 accident and health premiums in Minnesota were paid to health maintenance organizations (HMOs). This does not include the percentage of the health care market which is covered by preferred provider and other managed care networks.
treatment by medical providers. It also mitigates the questionable services of insureds obtaining unnecessary treatment to “build up” or accrue greater economic loss in order to meet a tort threshold and initiate a liability claim. As long as policyholders receive treatment in the managed care network, the overall cost of medical care paid for by automobile insurance premiums is less, therefore helping to keep the price of personal injury coverage as low as possible.

The experience in Colorado, the first state to adopt managed care for PIP coverage in late 1991, provides some insight into the potential impact of managed care in the automobile insurance system. During the four-year period prior to managed care, the Fast Track Monitoring System shows that Colorado’s PIP claim severity increased 60 percent from 1987 to 1990. After the system went into effect, average PIP claim payments in the state dropped 4 percent over the next four years, while claim payments for similar coverage in other states continued to rise an average of 14 percent. Even the PIP claim frequency has tapered off in Colorado during the past five years; this has kept the loss cost (average loss per insured vehicle) for this insurance coverage from growing significantly, as it has countrywide. For all states offering PIP coverage, the average PIP loss cost is now 23.5 percent higher than what it was six years ago ($72.94 in 1996 vs. $59.06 in 1990), while Colorado’s loss cost is now only 0.4 percent higher ($100.56 vs. $100.20). In other words, it now costs automobile insurers throughout the country 23.5 percent more to offer PIP coverage to their policyholders than in 1990; in Colorado, it costs insurers only 0.4 percent more.

It should be noted that managed medical care in automobile insurance is not possible in states that administer more traditional tort law systems where third-party liability insurance is the norm. Automobile insurers have little ability to influence the medical care chosen by persons injured through the negligence of their policyholders. Managed care thus requires a privity of contract between insurer and insurance customer so that the provision of medical benefits can be regulated and linked by the insurer to its medical networks. Personal injury protection (no-fault) coverage provides the privity of contract necessary to create a managed medical care

coverage option.

C. Other Measures

Since every no-fault automobile insurance act has unique provisions or benefit/coverage requirements that set it apart from other similar accident reparations laws, there is no one formula or template to follow in setting up a cost-benefit balanced no-fault system. Each of the 13 no-fault laws in the United States is in many ways a reflection of the locale and its beliefs on accident compensation. If policymakers are concerned that the costs generated under a no-fault law are outstripping its benefits or value, the following is a list of other measures that can be considered to improve the plan’s operational efficiency:

- A first-party benefits package that balances the dual goals of reimbursing out-of-pocket losses for most minor and moderate injuries with the objective of promoting affordability of coverage;
- Peer review of medical services or, alternatively, implementation of medical service fee schedules for standardized procedures and treatments similar to the system used in state workers’ compensation programs;
- Additional restrictions on the filing of tort liability claims for the recovery of non-economic damages as, for example, the use of an exclusive verbal tort threshold to limit liability suits to only the most serious cases;
- Elimination of duplicate payments for automobile crash injuries by exposing collateral benefit sources and assuring that no-fault insurers operate as excess benefit payors in relationship to claims arising initially under state workers’ compensation or other governmental disability programs;
- Prohibitions against the “stacking” of coverages or limits;
- Statutory and other procedural penalties to function as deterrents against the filing of fraudulent claims and overbilling;
- Authority for no-fault insurers to use coordination-of-benefit programs; and
- Flexibility for no-fault insurers to settle inter-company conflicts by contracting with alternative-dispute-resolution providers of their choice.
V. SUMMARY

This article has analyzed the performance and assessed the value of Minnesota’s no-fault accident compensation system in the context of its effect on insurance claiming patterns and premiums. In addition, the article has compared the accident reparations system in Minnesota with the insurance and injury compensation rules in Wisconsin, and addressed public policy considerations relevant to strengthening the Minnesota No-Fault Automobile Insurance Act.

Minnesota’s average liability premium falls in the upper half of all states, partly due to growing PIP claim frequency and to the average cost of these claims. Attorney representation in this state is higher than average among PIP claimants, suggesting that people in this state are more inclined to seek attorney representation. These factors, along with inflation, have caused average PIP dollar losses to grow over time, increasing on a per-claim basis by 77 percent over the last decade. In turn, the result is a greater number of claimants surpassing the $4,000 monetary threshold and qualifying for a tort claim.

Although most motorists in Minnesota file PIP claims, their medical and other expenses usually do not exceed the $4,000 monetary threshold; hence, the rate of bodily injury liability claims is substantially lower than average. This is a sign of an effective no-fault system. While relatively few BI claims are filed compared to the nationwide average, attorney involvement in these types of claims is higher in Minnesota than the average no-fault state. The higher utilization of attorneys is corroborated by the increased number of injury claims filed for every 100 vehicle damage claims. Compared to other no-fault states, drivers in Minnesota are filing more injury claims, per unit of damage claims, than they were in 1980; in addition, the overall 17-year growth rate at which they are being filed is higher in Minnesota than in other no-fault states combined.

With regard to a comparison between Minnesota and Wisconsin, it is clear that the maxim, “getting what one pays for,” is applicable to accident compensation systems as well. Minnesota automobile insurance consumers pay more than their counterparts in Wisconsin to insure private passenger vehicles; they should, however, since the No-Fault Automobile Insurance Act is a more comprehensive, robust accident compensation system than the very modest tort liability system in Wisconsin. In Minnesota, consumers
have the convenience of being served by their own insurance company. They receive immediate injury compensation (i.e., insurance benefits) regardless of whether their own negligence contributed to or caused an injury. Insured motorists in Minnesota involved in "single-vehicle crashes," where automobiles make contact with fixed objects, leave the pavement, or roll over, would be able to collect no-fault accident compensation from their own insurer. In Wisconsin, under similar circumstances, the motorist would not have a claim against another motorist or tortfeasor and could conceivably find that his or her injuries are not compensable through automobile insurance.

No-fault benefits also provide compensation to a wider range of injury victims, as coverage is not limited to the named insured, family members, permissive vehicle users and guest passengers. No-fault insurance systems such as the Minnesota Act provide compensation even to pedestrians and those who do not own an automobile. In Wisconsin, being hit by an uninsured motorist can threaten the likelihood of obtaining injury compensation; under no-fault systems, compensation for injuries caused by uninsured drivers would not depend on whether the injured person maintained uninsured motorist insurance coverage. In sum, Wisconsin residents who are injured in an automobile crash have no guarantees of being compensated for their injury. They must file a liability claim against another motorist and can find themselves trying to recover damages from another person's insurance company under trying circumstances, i.e., where the other person and his or her insurer are contesting liability.

Another attribute of no-fault compensation systems that greatly influences what consumers pay for automobile insurance is the tort threshold or the limit on the right to recover for subjective, non-economic injuries. It has been suggested that the purpose of a tort threshold is to reduce the number of injured persons who are eligible to make a tort claim and bring a lawsuit in tort. An effective tort threshold should reduce total tort payments enough to equal or exceed the total cost of no-fault payments in a state and reduce average bodily injury liability premiums in the state by an amount equal to or greater than the average premium for PIP no-fault insurance. A healthy, balanced no-fault plan will successfully keep overall personal injury insurance premiums from rising, year after year, more than the rate of inflation. Their efficacy in restricting access to tort liability payments (thus avoiding legal expenses
and other costs and delays associated with using the civil justice system) to enough victims to prevent premium increases may have diminished over time. Reasons might include the effect of medical inflation, increased skill in overcoming thresholds, fabrication, and claim buildup.

The health of a no-fault system should be monitored and reviewed periodically by the state lawmakers, just as the health and well-being of a medical patient must be evaluated at regular intervals by a physician. If careful study suggests that bodily injury claim costs, which partially drive rising automobile insurance premiums, are rising in an alarming manner, Minnesota policymakers have options available. They might, for instance, consider installing a mechanism to adjust for medical cost inflation. The state insurance regulator could be empowered to multiply the dollar threshold component by a described inflation index. Another approach would be to examine the adequacy of the verbal tort threshold; for example, what percentage of tort liability claims in Minnesota is predicated on qualification under the verbal threshold? If the amount greatly exceeds the percentage of liability claims arising from monetary threshold qualifications, the description of “serious injury” may require re-engineering. Similarly, if monetary threshold liability claims are disproportionately larger than verbal threshold cases, the remedy might be to convert a plural threshold into an exclusive verbal tort threshold.

Managed medical care programs would also be a constructive approach to checking the increase in medical costs that are paid for by automobile insurance premiums. A review of recent claiming trends in Colorado suggests that managed care is working as intended. Specifically, the average claim payments and, hence, loss costs for PIP have been declining since the implementation of the program. PIP claim frequencies are also lower than what they were five years ago, when the system began in this state. It is believed that enactment of managed care in Colorado has successfully kept the cost of claims from being even higher. Without this system, costs would continue to rise as demonstrated in other states. In order to slow the growth of medical claim costs in Minnesota and thus help contain injury costs, local policymakers would be prudent to consider authorizing insurers to introduce managed care programs.

Finally, as long as a state’s no-fault automobile insurance plan is a modified variety where elements of the tort liability system re-
main intact, there will be multiple (i.e., liability and no-fault) cost-drivers that affect the cost of insurance claims and, ultimately, the price of automobile insurance. Minnesota has such a modified no-fault law. Should policymakers in this state ever grow concerned about rising automobile insurance premiums or question whether their no-fault system is delivering adequate value to their constituents, they might consider the strategies examined and used by public officials in other states to improve the efficiency of modified no-fault laws.

VI. APPENDIX OF FIGURES

![Pie chart showing the distribution of 1996 average auto premium by coverage in Minnesota. Liability is 61% at $437, Comprehensive is 17% at $156, and Collision is 22% at $152. Source: National Association of Insurance Commissioners.](image)
Minnesota Compared With Other No-Fault States and the U.S.
Trends in Average Annual Liability Premium

Note: Other No-Fault states include CO, FL, HI, KS, MA, MI, NY, ND and UT.
Source: National Association of Insurance Commissioners

Minnesota Trends in PIP Loss Experience

Source: Fast Track Monitoring System
Growth in Minnesota PIP Claim Severity

<table>
<thead>
<tr>
<th>Year</th>
<th>PIP Claim Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$3,450</td>
</tr>
<tr>
<td>1988</td>
<td>$3,819</td>
</tr>
<tr>
<td>1989</td>
<td>$4,278</td>
</tr>
<tr>
<td>1990</td>
<td>$4,732</td>
</tr>
<tr>
<td>1991</td>
<td>$5,190</td>
</tr>
<tr>
<td>1992</td>
<td>$5,648</td>
</tr>
<tr>
<td>1993</td>
<td>$6,102</td>
</tr>
<tr>
<td>1994</td>
<td>$6,555</td>
</tr>
<tr>
<td>1995</td>
<td>$7,007</td>
</tr>
<tr>
<td>1996</td>
<td>$7,452</td>
</tr>
</tbody>
</table>

Source: Fast Track Monitoring System

Fig. 4

Growth in Minnesota PIP Claimants Qualifying for Tort Liability

<table>
<thead>
<tr>
<th>Year</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>10</td>
</tr>
<tr>
<td>1987</td>
<td>22</td>
</tr>
<tr>
<td>1992</td>
<td>34</td>
</tr>
</tbody>
</table>

Source: Insurance Research Council

Fig. 5
Attorney Representation

Source: Insurance Research Council

Fig. 6

Minnesota vs. Other No-Fault States
Growth in Injury Claiming Behavior
(Injuries Per 100 Vehicle Damage Claims)

Note: Other No-Fault states include CO, FL, HI, KS, MA, NY, ND and UT.
Source: Insurance Research Council and Fast Track Monitoring System

Fig. 7
MINNESOTA VS. WISCONSIN
Trends in Average Annual Premium
(Liability and Physical Damage Coverages)

Source: National Association of Insurance Commissioners

Fig. 8

MINNESOTA VS. WISCONSIN
1996 Average Premiums
Distribution by Coverage

Source: National Association of Insurance Commissioners

Fig. 9