

Casualty Loss Reserve Seminar
Las Vegas
September 16, 2011

No Fault: Concept versus Reality?

AI Neis FCAS, MAAA
Progressive Corporation

No Fault: Concept versus Reality?

- Panelist today are
 - Dawn E. Elzinga – Vice President PC Underwriting & Actuarial
 - Farm Bureau Ins of Michigan

 - Iva Yuan – Consulting Actuary
 - Milliman Inc.

 - AI Neis – Corporate Actuary
 - The Progressive Companies

No Fault: Concept versus Reality?

- Dawn Elzinga – will speak to the No Fault coverage/environment in Michigan.

- Iva Yuan – will speak to No Fault in New Jersey.

- AI Neis –No Fault in New York.

Auto No Fault - beginnings

- Most of the comments on the following slides were taken from a
- Research report by the RAND Institute for Civil Justice copyrighted in 2010

- The rest of the comments were made up

Auto No Fault - beginnings

- Theory was developed in the mid-1960's to provide first party benefits while restricting the right to sue third parties.
- Many credit a paper published by Robert Keeton and Jeffrey O'Connell, "**Basic Protection for the Traffic Victim: A Blue print for Reforming Automobile Insurance**" in 1965, which pointed out 5 problems:
 - Victims were not compensated or **undercompensated**
 - **Delay** in providing compensation to injured parties
 - Seriously injured were undercompensated, minor injuries too much
 - Establishing fault creates **high administrative costs**
 - Victims & injurers; **incentive to be dishonest** to improve their cases
- Savings would come from reduction in administrative costs & pain and suffering would not be covered by the first party insurance

Auto No Fault - beginnings

- One of Keeton's former students, Michael Dukakis had experience in litigating accident cases and was appalled by the level of fraud and abuse
- Along with Keeton, Dukakis drafted a no-fault bill and was able to pass it, over the opposition of trial lawyers and the insurance industry in Massachusetts effective January 1, 1971.
- Puerto Rico introduced a system in 1969.

Auto No Fault - beginnings

- Sixteen (16) states and Puerto Rico adopted some form of no-fault auto insurance in the early to mid 1970's
- Five (5) of those states (Nev, Penn, Ga, Conn, & Colo) have repealed their no-fault laws, although Pennsylvania passed a new law in 1990
- Eleven (11) others passed an add on coverage.
- Most States provide for limited first-party medical benefits
- Pennsylvania, New Jersey and Michigan have provided unlimited first-party medical
 - Penn until 1984 repeal
 - New Jersey until 1990 - x/s \$75,000 ceded to UCIF
 - Michigan

Auto No Fault - beginnings

- California did not pass a no-fault legislation
 - At first it looked like insurers and consumer advocates would convince proposition voters to enact it
 - Political opponents -- plaintiffs' lawyers defeated it by focusing on premium costs and distrust of insurance cos.
 - Surprise! Surprise!!!
 - Of course we know the activities around the proposition of the late 1980's

Auto No Fault - beginnings

- The average Auto Liability premiums 3 to 5 years after the law was repealed
- in Colorado, Connecticut and Georgia
- was approximately 15% to 20% lower than the 3 years prior to it being repealed.

No Fault: Concept versus Reality?

- So how does today's environment compare to the intended objectives
- when the statutes were being passed?

Michigan No-Fault Overview

- Effective October 1973
- Highest level of Auto Medical benefits in the country
- Unlimited Medical for lifetime

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Michigan No-Fault Coverages

- Personal Injury Protection ("PIP")
 - All reasonable and necessary charges for lifetime medical care, including attendant care
 - Up to 3 years of lost wages
 - Annual cost of living adjustment
 - Currently \$4,929/mo (\$177,444 maximum)
 - \$20/day for replacement services
 - Funeral and burial expenses

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Michigan No-Fault Coverages

- Property Protection Insurance (“PPI”)
 - One limit, \$1 million
 - Non-vehicle property



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Michigan Other Coverages

- Residual Liability (BI & PD)
 - Accidents in Michigan
 - \$20,000/\$40,000/\$10,000 minimum
 - Where injuries which result in Death, Serious Permanent Disfigurement, or Serious Impairment of Bodily Function. If meets the threshold, can also recover Wage Loss which exceeds the cap.
 - Accidents outside Michigan

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Michigan Other Coverages

- ▶ Residual Liability (continued)
 - *McCormick v. Carrier*
 - 2010 Michigan Supreme Court Decision
 - Lessened the threshold requirement
- ▶ Physical Damage
 - Collision and Comprehensive
 - Must purchase own coverage; applies regardless of fault

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Michigan No-Fault Order of Priority

- Different order of priorities for:
 - Drivers/Passengers
 - Pedestrians
 - Motorcyclists
 - Out-of-state
- Last resort:
 - Michigan’s Assigned Claims Facility

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Michigan No-Fault MCCA

- Michigan Catastrophic Claims Association (MCCA)
 - Created in 1978
 - All insurers that write Auto in Michigan must be members
 - Members cede premium and loss to MCCA
 - Member companies are on the risk if the MCCA cannot meet its obligations

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Michigan No-Fault MCCA

- ▶ Members cede losses which exceed an occurrence threshold:
 - ▶ \$250,000 (from 1973 – 2002)
 - ▶ Threshold has been increasing since 2002
 - ▶ \$500,000 current

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Michigan No-Fault MCCA

- ▶ Members cede a dollar amount per written car-year (or as a percentage of PIP premium)
 - Updated every July
 - This cost is passed through to policyholders

- ▶ MCCA assessment as of July 2011:
 - ▶ Pure Premium \$115.38
 - ▶ Expenses 0.30
 - ▶ Deficit Recoupment 29.32
 - ▶ \$145.00

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Michigan No-Fault LAE

- Increasing, both A&O and DCC

- ▶ Attendant care cost litigation

- ▶ Companies generally cannot cede LAE to MCCA, with the exception of some case management costs and medical bill review costs

- ▶ MCCA Plan of Operation changed in 2007 May see increase in ceded DCC

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Michigan No-Fault Subrogation

- Typically insignificant amounts, related to:
 - Out of state tort recoveries

 - Judgments against uninsured

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Michigan No-Fault Potential Reform

- Expected to be introduced in legislature in Fall 2011
- Tentative effective date July 2013
- Voluntary Medical Limits
- Two Separate Accounts within the MCCA

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Michigan No-Fault Potential Reform

1. MCCA Account for policies effective prior to legislation
2. "Excess PIP" Account for policies effective post legislation
 - For Policyholders - replaces unlimited Medical with limited Medical options per occurrence:
\$250,000, \$500,000, \$1,000,000, or \$5,000,000
 - For Member Insurers - retention is \$500,000 plus 10% in the \$500,000 excess of \$500,000 layer per occurrence

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Michigan No-Fault Potential Reform

- ▶ Implements a medical fee and attendant care caps (number of hours and rate/hour)
 - ▶ Expected savings range from 10% to 30% of PIP costs.
 - ▶ Affects all policies (effective before and after July 2013)
- ▶ Includes some broadening of Liability threshold

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New York - No Fault

- No Fault coverage
 - Threshold –
 - Verbal – death, dismemberment, significant disfigurement;
 - loss of organ or bodily function,
 - inability to perform material acts for at least 90 of 180 days following accident
 - Medical - \$50,000 overall limit on 1st party Benefits
 - Workers' Compensation Medical Fee Schedule
 - Wage Loss – 80% up to \$2,000/month for 3 years
 - Replacement Services - \$25/day for 1 year
 - Survivor's Benefit - \$2,000 in add'n to economic

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New York - No Fault

- Insurance Research Council
- Division of the American Institute for Chartered Property and Casualty Underwriters
- The IRC completed a study of more than 4,500 claims closed in a 2 week period in the second half of 2010
- Companies that participated in the study included

– Allstate	Ameriprise	Amica
– Electric Ins	GEICO	Liberty Mutual
– Nationwide	Progressive	State Farm
– USAA		

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New York - No Fault

- Average amt Paid for PIP increased 52% from 2005 to 2010, 8.7% annually - (Fast Track data)
- Countrywide Severity grew 25% for PIP
- Overall Medical Care costs, 20% - (CPI for Medical care)

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New York - No Fault

- Key cost drivers
 - Increased utilization of Medical care – seeing more doctors/vendors for more visits
 - More diagnostic procedures
 - More durable medical equipment

Found evidence of litigiousness and pervasive overbilling among medical providers –

DCC as % of Premium has grown significantly (NAIC)

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New York - No Fault

- Patterns of behavior are not seen uniformly statewide
- New York City Metropolitan area
 - Similar in types of injuries and measures of injury severities
 - NYC-56% neck/back sprains/strains vs 53% upstate
 - 77% no disability as a result of their injuries - same across the state
 - # days claimants unable to perform usual daily activities
 - % claimants < 10 days of restricted activity – 88% downstate; 90% upstate

1992 claim severity was close now NYC twice upstate as a result of

- Visiting a larger # providers
- Expensive diagnostic procedures
- More durable medical equipment
- Pain clinics
- And hiring attorneys

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New York - No Fault

- Causes for the gap between claims in New York City versus upstate counterparts
 - Evolving culture of pain management
 - Manipulation under anesthesia (MUA)
 - Nerve Block, etc
 - Availability of different types of treatment
 - Also it is likely due to increase in fraud and buildup
 - New York Ins Fraud Bureau reports of no-fault fraud
 - 2006-10,117 2009-13,433 (9.9% annually)
 - National Insurance Crime Bureau NY suspicious claims

2008 – 6,378	2009 – 6,726	2010 – 7,026
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New York - No Fault

- Injuries across the two regions were similar but,
 - Claimants in New York city area reported radically different treatment patterns
 - More likely to receive MRI 50% versus 21%
 - More receive Electromyography (EMG) 24% versus 4%
 - More X-Rays
 - Computerized Tomography (CT) – more upstate, but % increased downstate from 2007 while upstate was flat

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New York - No Fault

- New York city area more likely to have high # visits to same types of providers
 - NYC claimants to general practioners
 - 18% > 20 times vs 4% upstate
 - Claimants Visited Physical Therapy more than 50 times
 - 18% downstate vs. 10% upstate
 - Claimants visited Chiropractors > 50 times
 - 19% NYC area vs 21% upstate (12% & 19% in 2007)
 - Based on a list of 17 different types of providers
 - 44% of claimants in NYC area visited > 4 diff. types
 - 14% in rest of state

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New York - No Fault

- Some Medical Providers submit charges in excess of the established medical fee schedule -- Despite regulations prohibiting the practice
- Insurers must routinely adjust payments to reflect allowable fees
- Providers have incentives to overbill
 - To occasionally avoid the attention of medical bill reviewers
 - To increase a litigated settlement.

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New York - No Fault

- The study saw that the majority of providers submitted at least one charge in excess of the applicable fee schedule
- Acupuncturists were the most likely
 - 85% in NYC area vs 87% upstate

Surprisingly, for most types of providers submitting charges above the fee schedule was more prevalent for upstate.
Chiropractors – 59% upstate vs 51% NYC area

Costs insurers' incur to review and adjust medical bills is considerable. Adjusters cannot just pay charges.

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New York - No Fault

- Durable medical equipment (DME) has emerged as a significant item in New York's no-fault system
 - Claimants reporting expenses for DME
 - 30% for NYC area vs. 7% for upstate
 - Medium # of items - NYC claimants 6 versus 2 in upst

Examples – electrical muscle stimulation (EMS) units, transcutaneous electrical nerve stimulators (TENS) units, etc

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New York - No Fault

- Pain clinics, or multidisciplinary facilities other than hospitals, are a growing presence in auto injury systems countrywide (generally PIP States).
- The facilities allow claimants to receive treatment from many different types of providers under one roof.
- Convenient for claimants, but are often associated with high dollar claims
- Claimants treated in multidisciplinary facilities (pain clinics, etc)
 - 44% in New York city area versus 12% upstate.

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New York - No Fault

- Attorney involvement much higher in the New York City metro
- Attorney involvement was associated with much more extensive and expensive treatment and significantly higher claimed losses and payments.

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New York - No Fault

- Emerging issue is the New York PIP system has been the litigiousness of medical providers.
- Provider lawsuits were more common than lawsuits of behalf of claimants, especially in the NYC area.
- Attorney-represented types of providers
 - Acupunctures 18% - NYC area vs 6% upstate
 - Physiatrists 18% - NYC area vs 4% upstate
 - Chiropractors 14% - NYC area vs 3% upstate
 - Physical therapists 13% - NYC area vs 2% upstate
 - Gen practitioners 12% - NYC area vs 1% upstate

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New York - No Fault

- Claims w/ appearance of Fraud - those that had any element of Fraud present.
 - Staged or caused accidents
 - Unrelated injuries
 - Duplicate bills for same treatment

Claims with appearance of buildup - if any element (medical expense, lost wages, or other expenses) was thought to inflated appearance of buildup -14% NYC vs 4% upstate
 35% NYC area claim abuse – fraud or buildup 8% upstate

Reviewed claims in IRC report included **Abused Claims that were paid** – insufficient evidence to prove fraud or buildup.

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New York - No Fault

- Challenges for the Companies
 - Pricing
 - for the increasing severity
 - For Fraud
 - for the considerable time and expense devoted to reviewing and re-pricing medical bills - these costs are considerable and not included in the loss data.
 - This work of review and re-pricing poses considerable risk and cost in the form of provider litigation.
 - Adjusting claims
 - When do you order IME's? Peer reviews?
 - How large a bill or expense should be challenged?
 - Which disputes do you research and how much?

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New York - No Fault

- When developing rates or reserve levels in New York for PIP -- the data needs to be segmented by area of the state.
 - The severity is different
 - The development is different
 - The DCC costs are different
 - The Adjusting & all other expenses are different

Does the insurance department know about these differences? Yes. How do they respond?

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New York - No Fault

- Antidotal information on policies with fraudulent claims
 - Older vehicle purchased just prior to accident
 - Multiple injured passengers
 - Several policies purchased from same email address
 - Or the Cookie - same PC
 - Same phone number
 - Multiple iterations when quoting, changing drivers, vehicles in the same quote process.
 - Down payment check that bounces - watch out for an accident in the near future
 - Same car on different policies, vehicle has a PD claim and Co does not inspect as it doesn't have the Collision then auto in another accident.

Probably organized rings.
 smart, ingenious approaches to accidents
 Are they associated with a medical provider, attorney, etc????

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New York - No Fault

- WSJ.com Aug 23, 2011
- Allstate Corp. (ALL) filed a lawsuit to recover \$5 million from 10 New York-area defendants, its fourth insurance fraud suit of the year
- It alleges New York medical professional firms were fraudulently incorporated through a scheme using the names of licensed medical physicians when a lay-owner actually controlled the firm.
- The suit alleges a corporation established a surgery center in the Bronx and a medical clinic in Manhattan that fraudulently billed Allstate.
- Allstate is seeking reimbursement for PIP benefits paid on behalf of its customers.

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New York - No Fault

- Reform - the following information -
- (from the Legislature Research Service at "NYSenate.gov/legislation/Bill" website)
 - Currently Bill S2816A-2011
 - Purpose - To enact Comprehensive reforms to reduce fraud, abuse and the associated costs in the New York no-fault system.

Section 1 - Define "health service provider"

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New York - No Fault

- Section 2 - clarify that preclusion of defenses to a claim is not the penalty for late pay or denied claims and make burden of proof requirements more equitable
 - Case law - added that insurer is precluded from denying a non-meritorious claim if "30-day rule" is violated- Mandates payment of excessive and even fraudulent claims
 - This section of the Bill - ensures insurer is not forced to pay non-meritorious claim and defenses such as a lack of coverage or fraud, would not be precluded

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New York - No Fault

- Section 2 also makes burden of proof more equitable
 - NY civil legal system places burden on plaintiff to prove the basic elements of their case
 - **no-fault case law** - shifted the burden entirely to the insurer whereby the medical provider needs only to provide a bill to establish a claim for benefits
 - Insurer needs to request information to verify services are necessary
 - Bill - requires medical provider to present information that service is necessary and they bill fee from applicable schedule.

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New York - No Fault

- Section 3 – require mandatory arbitration of no-fault disputes
 - Over 400,000 no-fault cases are filed annually in the New York City courts (many are not for large amts)
 - 18 to 36 months to adjudicate a no-fault case vs. 4 to 6 months in arbitration
 - This delay was not contemplated originally – the **intent was to ensure prompt payment** for medical costs resulting from auto accidents

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New York - No Fault

- Section 4 – provide assignment of benefits rules for no-fault --similar to other types of medical claims
 - For non no-fault medical claims - Claimant authorizes medical provider to submit charges, provide information supporting claim and receive benefits directly on behalf of the patient.
 - Provider does not receive the right to sue 3rd party independently

NY no-fault differs as it assigns “all rights and privileges and remedies to the provider. Allows provider to contest all issues, including policy issues, coverage eligibility

Bill – would provide the right to contest denials involving policy issues to claimant only and assignment not valid when coverage or compliance w/policy terms is in dispute.

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New York - No Fault

- Section 5 – revise provisions authorizing the decertification of medical providers who engage in fraud and certain other practices from receiving payment under no-fault
 - Current law authorizing decertification has not been implemented due to cumbersome nature of the statute.
 - This amends the statute so the Ins Dept is authorized to review and decertify unscrupulous medical providers from billing and collecting no-fault benefits

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New York - No Fault

- Section 6 and 7 – provide for the use of treatment guidelines in the no-fault system
 - Guidelines exist in NY for the WC system and are a valuable tool in preventing the fraudulent over-utilization of unnecessary medical treatments
 - These sections prohibit paying charges which exceed applicable fee schedule or which is not provided for under the schedule or compensable under Medicare.

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New York - No Fault

- Section 8 – allow insurers to rescind or cancel a policy w/in the 1st 60 days back to the inception of the policy
 - for nonpayment premium or where payment proceeds or identity of the Policyholder were stolen
 - For those engaging in fraud many times they take out a policy w/o paying the premium then quickly stage an accident and bill the insurer for fraudulent treatments
 - When a policy is taken out fraudulently an insurer should not be required to provide benefits

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New York - No Fault

- Section 1 – Define “health service provider”
- Section 2 – clarify preclusion of defenses
- Section 3 – Burden of Proof more equitable and Mandatory Arbitration
- Section 4 - assignment of benefits rules
- Section 5 - decertification of medical providers
- Section 6 & 7 – treatment guidelines
- Section 8 – Cancel policy back to effective date for non payment of premium

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New York - No Fault

- New York’s average PIP claim cost of \$9,007 is the third highest in the nation as of 2nd quarter 2010.

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