

Task Force on No-Fault Insurance Issues

Meeting Notes – **DRAFT**

Meeting Details

Date: October 26 2015

Start/End Time: 1:00 p.m. to 4:30 p.m.

Location: Training Room, PERA Building, St. Paul, MN

Present: Marty Fleischhacker, Rep. Joe Atkins, Rep. Bob Loonan, Sen. Vicki Jensen, Sen. Paul Gazelka, Douglas Broman, Bob Johnson, Vicky Rizzolo, Joel Carlson, Eric Dick, Charles J. Lloyd, Brad L. Plowman, Dan Wolfe, Dr. Timothy Johnson, Donald Bechtle, Mark Engdahl, Tammy Reno, JoAnn Aiken,

Charlie Petersen and Demian Moore (MAD)

The Task Force is charged with submitting a report to the legislature with recommendations for changes to no-fault auto insurance, regarding:

- (1) no-fault arbitration process;
- (2) independent medical exam (IME) process; and
- (3) treatment standards and fee schedules.

Task Force information is available at the Department of Commerce website. <https://mn.gov/commerce/insurance/ins-companies/information-resources/task-force-no-fault-auto.jsp>

Activities

- Introductions and review of 10-22 Meeting Notes
- IRC MN No-Fault Claims Study
- William Mitchell study, “No-fault Independent Medical Examinations: Purpose, Timing and Impact” (1998)
- Commerce: Information from other states
- Consumer perspective (Presentation by lawyer from Duluth)

10-22 Meeting Notes

- Request made to include in the notes the references made and questions raised about fraud and abusive practices in the task force’s review of Minnesota’s No-Fault Law.
 - More than one comment/point raised that this would give undue attention to the issue of fraud, which is already defined by law, and will divert attention from this task force’s mission.

- Additional discussion: consensus that the task force should spend some time defining “abusive practices” so as to provide some distinction between fraud and those practices that are not strictly illegal
- Further discussion led to agreement that the task force should also consider identifying a definition of “reasonable and necessary,” re: medical services

Review of Insurance Research Council Minnesota Cost Study (Bob Johnson)

“Minnesota No-Fault Insurance Claims,” (PowerPoint) September 12, 2008

- IRC no longer collects the information in this report.
- Looks at closed claims, money paid, accident type, injury and claim severity (medical and wage loss), payment type, trends, etc.
- For purpose of the task force’s work Bob did not review the information covering attorneys and tort thresholds
- A number of questions were asked to which Bob Johnson responded he would provide additional information, e.g., “How many claims were reviewed for the study,” and “How is ‘visible injury’ defined?”
- Some requested/asked about more recent data
- Trend is injuries are less severe (more “minor strains and sprains”); involves many factors, including safety improvements and stricter enforcement of laws regarding seat belt use, for example
- Question: How do these numbers compare to worker’s compensation?
 - Department of Labor and Industry may have some information. But it would be difficult to compare, and they likely wouldn’t collect the same types of details.
 - Some commented that these comparisons are not even valid. For example, WC is about making sure people are able to return to work; no-fault is more generically about compensation for lost wages and medical costs
 - Response: could look at just WC claims involving driving
 - Response: work-related driving accidents are also not the same as typical n-fault accidents, e.g. often heavy equipment/larger vehicles/trucks involved
 - WC has fee schedules (another example of difficulty of comparing the two systems)
 - Comment: No-fault is supposed to restore you to your pre-accident condition; WC isn’t intended to do that. There are completely different thresholds. WC can sometimes lead to a determination of complete lifetime disability, and requires subsequent specific types of payments in accordance with that.
 - There’s no distinction in WC between “major” and “minor”
- Question/Comment: Request made for a specific definition of “minor sprains and strains”
- Broad comment (noted that this isn’t a new comment) that some task force member believe the IRC report is flawed for a number of reasons

Independent Medical Exam Discussion

- What are the numbers of and trends for cases going to IMEs, and what are the outcomes? (looking for data on IMEs, decisions made, and any resulting payments based on those decisions)
- What is the data surrounding the number of IME cases and the number that end up in arbitration, and the resulting payouts? (And the same question for those that don't go to arbitration.)
 - What percentage of cases going to IMEs result in termination of coverage?
 - How many people go to arbitration without a lawyer?
 - What's the number of cases attributable to fraud?
 - What's the number attributable to abuse (i.e. not fraud)?
 - IME is useful for cutting off excessive payments
 - Who determines the doctor a consumer goes to in an IME case?
 - Response: depends on injury type
 - Patient has no say in the choice.
- Question: what is the protocol for triggering an IME? Are there standards?
 - Response: When insurance company request it.
 - Response: No-fault IME cases represent only about 10% of all arbitration cases in Minnesota
- Comment: Original intent of IME was to be a mechanism to guide the immediate provision of reasonable and necessary medical care and compensation. Generally, a tool to protect the consumer, and not be a tool to stop the process.
- Comment: Also not intended to pay for fraud and abuse of the system
- Is there data/information from major medical coverage that could be used for comparison to no-fault claim costs?
 - Also difficult to compare; no-fault is first dollar coverage for car accidents, so major medical coverage wouldn't really have comparable data on immediate care for people involved in auto accidents
- Other no-fault states with fee schedules (Commerce is researching)

Consumer perspective presentation

- Typical IME lasts only 5-8 minutes
- IME panel is not really neutral; insurance-industry chosen
- Question: What is your proposed alternative to the existing system?
- Question: In your opinion, is there abuse of the system by doctors and others?

What can Guide this Process Through our Three Issue Lens?

- Must focus on the legislative directions (three issues)
- IME is currently the only option
 - How do we make that work better for the consumer?
 - Can we identify fraudulent claims?
 - Is the IME truly independent?
 - What is an alternative?

- Comment: Treatment standards and IME process are linked – can't look at them separately.
- Question:
- Do we know that the system is actually "broken"?

Next Steps

- Homework: What is your organizations definition of abuse?
- Are there treatment standard guidelines from other states we could consider?
- Is there more data, particular more recent data?
- Definitions needed:
 - Reasonable and necessary
 - Fraud/abuse
- Comments:
 - Definition of "reasonable" is really between the patient and doctor; more precisely need to identify "reasonable" costs of care – that would be a huge discussion. What is excessive?
 - Setting treatment standards/fee schedules would be a "big legislative lift"
 - Doubtful that people on the task force are interested in a discussion of treatment costs
 - These are very big policy discussions. Would get into what types of services are covered by fee schedules, and what those fees would be.
 - No-fault is the only system under which providers are 100% compensated (up to the limits) for their services; in other cases, e.g. major medical and Medicare, costs charged are not what is actually paid
 - Back to data: is there information on just how big (dollars) the problems of fraud and abuse are? How big is the variation in charges for the same medical services?
 - What do other state's fee schedules look like?
- Comment (public): studies point to gas prices as the biggest driver of accidents and costs of insurance; recession also plays a role
- Comment: "We" pretty much already know who most of the "bad actors" are; if existing tools/penalties aren't used (e.g. the relevant governing board or body), then he guidelines are useless
- Comment (public, insurance investigator)
 - IME is an important tool; without that, there really is no discovery process initiated, and identifying fraud becomes even more difficult
 - Florida's restrictive fee schedule has pushed organized crime (fraud) into Minnesota, which has a relatively high reimbursement rate level.

Meeting notes prepared by Demian Moore, MAD. Please direct revisions, additions, or questions to demian.moore@state.mn.us.