

# Task Force on No-Fault Insurance Issues

## **DRAFT** Meeting Notes

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**NOTE:** Meeting notes are not a transcript or “official” documentation of task force meetings. They are intended to track the key themes of the discussion. Notes do not necessarily reflect task force agreement with, or the accuracy of, information from statements, comments, or presentations provided at any meeting.

### Meeting Details

**Date:** December 17, 2015

**Present:** Marty Fleischhacker, Rep. Bob Loonan, Sen. Vicki Jensen, Dr. Douglas Broman, Dan Wolfe, Bob Johnson, Vicky Rizzolo, Joel Carlson, Eric Dick, Charles J. Lloyd, Brad L. Plowman, 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
- Questions/comments; review of 12/7 meeting notes
- Treatment standards discussion
- Public comment period
- Discussion/Identification of no-fault-related data needs
- Next Meetings

## Questions/comments; review 12/7 meeting notes

- *Comment/Question:* Seems that it keeps getting said that arbitrators rule on facts and don't interpret the law. Not clear that this is actually true.
- *Response:* There is some interpretation, but arbitrators really do not rule on matters of law.
  - They also may rule based on precedents that are not established law.
  - If a case/ruling **based on a matter of law** goes on to court, an arbitrator's ruling is not considered as precedent, and the matter is reviewed de novo by the court
  - A mistake in the facts in an arbitration case IS NOT an accepted reason for appeal. That is, if it turns out that there was some mistake in the facts presented in an arbitration hearing that will typically not be a basis for allowing a decision to be modified or reversed on appeal.
- *Question:* How often are arbitrator's awards over turned?
- *Response:* It happens, but it is very rare.

## Treatment standards

- *Discussion/Comments*
  - Many concerns raised about any discussion of repealing no-fault in MN
  - It was subsequently reaffirmed that this task force is not considering the repeal of no-fault
- Marty reiterated that the New Jersey website has very detailed information on the state's use/application of treatment standards in its no-fault auto insurance system
- *Comment:* Reduced/eliminated no-fault system doesn't change the cost structure. It just shifts the burden of cost to providers and ultimately to taxpayers/consumers.
- Lessons can be learned from both New Jersey's and Florida's various attempts at no-fault reform
- *Question:* What is the big issue in Florida?
- *Response:* Fraud
- *Comment:* This is why getting data, from the insurance industry and from wherever it exists, is so important. We really need to drill down and get to the root cause of how we can reform the no-fault system to reduce fraud and in a way that reduces the costs and inefficiencies in the current system
- *Comment:* No-fault-related auto claims should not end up simply being shifted to a person's major medical plan deductible. Legitimate claims need to be covered by the no-fault system.
- *Comment:* Another problem observed after repeal (Colorado) is that after care for auto-related injuries found their way into the emergency room; this created a real strain
- *Question:* What is Florida's system of "buckets" all about?
- *Response:* (Marty) they haven't been able to provide any useful data. Marty will check back again.
- Chiropractors have supported runner laws, limits on advertising, etc. If a practitioner is convicted of fraud they are prohibited from participating in no-fault related treatment for five years.

- *Comment:* Treatment standards does get to fraud. If you exceed the standards, or can't show that you're following them, then that's an obvious red flag. New Jersey is a good example.
- *Comment:* recent news indicates that we are identifying some potential fraud here in MN.
- *Comment:* This task force is a direct result of the fraud task force report. We can't ignore fraud as part of our discussions. It's really important to get better data so we have a better idea of the scope of the problem – fraud, badly designed system, weak accountability, etc. Repeal is not part of this discussion. We're here to improve the existing system

### ***Medical-loss ratio handout discussion***

- Hard to determine from the data presented what is causing the downward trend in the annual ratios
- Federal law (medical insurance) – loss-ratio for small policies can't exceed 80%, and can't exceed 85% for large policies.
- *Comment/Response:* The handout is just PIP. Isn't really an accurate comparison to the loss ratio discussion under major medical.
- We need to know exactly how much of the overall premium price is due to PIP.
  - *Response:* Currently it's more than about 20%; historically it's been less than 10%, maybe even less than 5%.
- *Comment:* There's not enough information here. You can change your loss ratio just by changing your premium cost, or attributing costs to administration. This handout isn't helpful.
- *Data question:* Is the data available to produce a pie chart of the cost breakout of PIP and all other factors from total premium cost?

### **Data needs discussion**

(See handout. At the 12/7 meeting. At that meeting TF members brain-stormed about data they would like to have to help inform their decisions. They then voted on each suggestion, and Charlie tabulated those results. Sixteen recommended data items (labeled A-P, in order of how many votes each received) were presented for consideration at this 12/17 meeting. The full list is appended to these notes, verbatim.

**Goal:** Identify a short list of data needs from the longer list that the task force believes will help narrow the scope of how to best reform the no-fault system. It was agreed that items N-P will be ignored, or are covered as part of other options.

- Top five data needs identified from 12/7 meeting (verbatim, as presented to the TF) are copied below. Items D and E were agreed to be related and will be combined. Item F (outside of the top five) was agreed to be included as part of related item C. Votes received at 12/7 meeting are in parentheses.

- A. What are the percent of soft-tissue cases vs. the percent of total medical cases (9 votes)
  - o Data from IRC(?)
- B. No-Fault claims to \$20,000, how is it broken out? What money is spent on? (9 votes)
  - a. Data from IRC
  - b. Data from AAA
- C. Claimants who are denied additional benefits who do not pursue action (7 votes)
- D. Arbitration awards; what percentage of the award goes to provider? What is the total expense of arbitration? Sub vs paid(?) (6 votes)
- E. What is the pool of arbitrators? How many arbitrators hear how many cases? (6 votes)
  - a. Data from AAA
- F. Total number of cases that go to IME per denials; need total number of cases as a base
  - a. Bodily injury claims(?) (5)
  - b. What percent are soft tissue vs. other medical?

### Discussion

- Issue raised of the reliability/objectivity of the data and information presented in the IRC report
  - o *Response:*
    - This information is used by a number of other state across the country.
    - It is statically valid; based on a review of 500 closed cases.
    - It is the only data of its kind.
    - Yes, the report needs to be updated and more recent data should be included.

(Continuing broader data discussion)

- *Comment:* The data discussion is about having everything on the table. If we said we wanted it, we're not here to discuss whether information available or easy to get. We're just talking about what sorts of data would help us answer these questions about no-fault. Ask what we can get first.
- IME issue doesn't seem to be among the top five. (Later would be included by bringing in item F. It was also noted that IMEs are related to both the arbitration process and the treatment standards that would be covered elsewhere.)
- Main issue seems to be soft-tissue injuries (**Item A**). Yes, agreed to without dissent.
- But, soft-tissue is not just chiropractic; must include everything within that scope (also agreed to).
- Recently, with improved safety of vehicles, a lot of the major injuries that would lead to the ER, and more obvious physical injuries, have decreased. Thus, soft-tissue injuries seem to be a much bigger problem. These don't always present themselves immediately, e.g. whiplash.

- *Comment/Question:* Task force agrees/believes that ER visits are not part of the problem? Yes, TF agrees.
- What does the IRC data say about soft-tissue injuries? (Appears to be called “sprains and Strains” in that data.)
- **Item B**
  - How is the \$20,000 spent – what is the breakdown of cost allocation?
  - How many claims take up the full \$20,000?
    - Is this limit still appropriate?
  - It would be useful to know the comparable data for New Jersey and Florida; also for workers comp in MN.
  - *Comment:* Can be difficult to compare. Depending on your insurer, the rates for the same services may be compensated for at different amounts. It’s contracted for between providers and insurers. Same thing in the WC system, as well as different contracted agreements for different states. Really can be enormous differences in costs of coverage for the exact same service, depending on the type of system, which state, and whether it’s no-fault, WC, Medicare-based, etc.
  - *Comment:* Also, administrative costs are difficult to tease out.
  - *Comment:* Regardless, let’s get what we can get. We should be able to get something useful. At a minimum, no-fault and WC data must be available at some level.
    - Breakout by treatment type
    - Also by soft-tissue and everything else
    - Also, it would be helpful to just know the ranges of costs for different types of treatments and procedures, even if there is no standard charge for every coverage type
  - *Comment:* We can demand information. We’re requiring no-fault insurers to act like property and casualty insurers, to a point, but we aren’t requiring any data or accountability from them
  - *Comment:* Arbitration process seems to be able to burden providers with accepting discounted payments, but in a system where those providers don’t actually have a contractual relationship with either the insurers or the consumer
- **“Fair Health” (?)**
  - Has a large database of medical costs by region, using actual charge codes (CPT codes)
  - Could be an alternative or held in comparison to the insurance industry data
- *Comment:* costs and treatment charges can be useful, but must be interpreted with care. As part of negotiations providers will get what they can in some areas to make up for concessions or losses they know will happen elsewhere. Lot of work to try and identify apples to apples comparisons.
- Arbitrators do have the latitude to modify the amounts of the costs that will be paid for.

- Also, back to the issue of what constitutes abuse and how do we deal with it? Tammy Reno's example (\$29,000+ chiropractic bill in less than a year) is clearly abusive, but it's not illegal.
- **Data items C and F** will be looked at together. They are related.
  - Very difficult to identify people who were sent to an IME and then the case was simply dropped; can't determine if they gave up, felt intimidated, or even perhaps if they no longer needed additional treatment
  - IME really appears to be frequently used as a cost-containment tool
- *Comment:* This is where specific, agreed upon treatment standards are so important. If all the guidelines are followed – "boxes checked", then there's no obvious rationale to send someone to an IME. That step could be denied in a lot of cases.
- *Question:* What's the extent of the case where providers are receiving no payment, or severely reduced payment? Is there data on that? Do we know the scope and magnitude of that part of the problem? Is it really that much of a problem, or not?
- Medical/provider liens has become increasingly an issue.
- One of the TF recommendations could be some sort of requirement for the arbitrator to collect and report some specific data, beyond just the summary checklist that now happens.
- **Items F and C**
  - What sort of standards currently exist that would trigger an insurer to request an IME?
  - *Response:* Nothing currently. No really objective way of determining that an IME that was ordered is or isn't appropriate. No "trigger" leading to an IME

#### Public Comment

- A chiropractor:
  - ICD 10 data – reporting standards recently became adopted; should be some actual useful data there
  - May not be required of all types of practitioners to use
  - If it were required it would be sufficient to answer a lot of these data questions
- Kevin Goodno:
  - There were some reforms implemented in 2010
  - Pointed out that while PIP costs are up, loss ratios are going down. Why?
  - Chiro association is open to discussion about range of things, including treatment standards, but everyone on the provider side must be part of that discussion; can't just be calling out chiropractors for everything

- What are the standards in place for other providers within the no-fault provider system, including those involved in the IME process?

### **Treatment standards discussion**

- *Request/comment:* Dr. Broman/chiro representative, as well as a PT representative, to take a look at the New Jersey system and comment on it for their respective industries
- For the broken arm example: Standards/charges aren't typically based directly on actual conditions, but more so on the procedure, e.g. CT scan, MRI, set of PT sessions, etc.
  - This will differ depending on the insurer and the state
  - Medicare also has a set of standards and allowed charges
  - Employers pay the majority of medical costs; they also may have developed their own unique "baskets" of coverage types and allowable charges; part of the negotiation process (think of how you decide upon your own medical insurance coverage, based on each insurer's coverage package – they are usually all different to some degree)
  - The coverage caps are usually based on the services, not the total costs, and the employer will have negotiated a price they are willing to pay, e.g. 10 PT visits in a month
- Medicare – also won't find costs based on specific injuries; more of a basket approach as well
- *Comment:* Even looking at the New Jersey standards (page 9, "Cervical Spine Soft Tissue Injury" flowchart of one of the handouts), there's a whole lot of subjectivity in most of the assessment steps

### **Charlie: Suggested next steps/discussion areas**

- Direct the appropriate medical professional "boards" to produce their own sets of standards to propose to the commissioner.
  - E.g., are the Croft, or other, guidelines an accepted set of standards for chiro, and across the industry in MN?
  - Who decides whether they are or not?
  - Is that decision binding across the profession?
  - Do insurance companies have their own sets of treatment standards that they follow when assessing approval/denial of a claim?
- Peer review board/process for proposed standards, and any subsequent modifications
  - Do current professional orgs (PT, chiro, medical, etc.) already have such bodies in place that could produce these standards?
  - Are they representative/inclusive of all that are involved?
- *Comment/Question:* Are we proposing to spend a lot of time and other resources addressing a problem that only manifests in a very small part of the profession (e.g. soft tissue)?
  - Do we have an answer to that question?
  - Is this a solution chasing a very small problem?

- *Comment:* A number of consumers do truly need what may appear to be excessive treatments. Need to avoid catching them up in an overly broad net.
- Seems a lot of the abuses/fraud is occurring in the relatively new practices that provide a range of types of treatments/services; maybe we're looking at a new animal here.
- The bad apples are sophisticated. They know what to include and not to include in their billing statements and other records so as not to violate the law in an obvious way. A lot of times these people don't get "caught" until you force someone into the IME/arbitration process.
- *Comment:* Some concerns were raised that the existing oversight structure in some industry is not capable of, or maybe does not have the tools for, identifying and punishing the abusive practitioners
- *Comment/Suggestion:* Croft appears to be based on a survey of best practices. Could we do the same thing here in MN and then develop our own specific set of chiro treatment standards?
- *Comment:* Whatever is ultimately adopted, part of that must require it to be measured for effectiveness in addressing the problems we identify.
  - For example, the Legislature:
    - Creates an oversight board
    - Requires it to establish effective and specific, enforceable guidelines
    - Identifies measures of accountability and recourse when violations occur
    - Requires data collection
  - Potential steps:
    - Each professional/medical oversight organization and its experts develops its own set of treatment standards
    - Commerce commissioner and peer review board reviews them
    - They are put into practice
    - Peer review board remains in place to periodically re-visit standards and impact on no-fault; also to consider any proposed changes to the standards
- *Comment:* We shouldn't tie the existing IME and arbitration processes to all of this until we know that this process will be effective
- *Comment:* Need to also look more into the multi-disciplinary practices – chiro, massage, etc. all under one roof. How are they treated? The whole soft-tissue universe can't be treated as one. PT, for example, is an entirely different arena.

### **Closing summary/Next steps**

- Need to finalize recommendation about types of data that is needed
- More information requested on the New Jersey model – treatment standards model

- Task force likes the idea of a set of treatment standards established by each relevant medical/professional organization involved
- Treatment standards are a key to many issues, but fees can't be completely divorced from things;
- Treatment standards can go a long way towards addressing some of the problems with the IME/arbitration process; they are all related
- "Soft tissue" includes many distinct types of medical professions; mustn't all be lumped together

*Meeting notes prepared by Demian Moore, MAD. Please direct revisions, additions, or questions to [demian.moore@state.mn.us](mailto:demian.moore@state.mn.us).*

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# Task Force on No-Fault Insurance Issues

December 17, 2015

## Data needed to address No-Fault Issues (top areas in bold)

- A. **What are the percent of soft-tissue cases vs. the percent of total medical cases (9 votes)**
  - a. **Data from IRC (?)**
- B. **No-Fault claims to \$20,000, how is it broken out? What money is spent on? (9 votes)**
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  - a. Bodily injury claims(?) (5)
  - b. What percent are soft tissue vs. other medical?
- G. What standards do chiropractors follow for soft tissue injuries; (5 votes)
- H. Auto injury cases – severity; workers comp versus no-fault
  - a. IRC data (?)
- I. Savings from treatment schedules by parameter (4 votes)
  - a. What does/doesn't work for WC system
- J. Pool of IME doctors and the number of cases they do (4 votes)
- K. Percentage of glass claims awards versus what award should be paid; average from billed amount paid (disputed amount) (3 votes)
- L. Savings from fee schedules and how it would impact Minnesota customers (3 votes)
- M. How many glass arbitrations (total) and the number consolidated; how big is the issue? (2 votes)
- N. Surveys for local market area – local market for glass (0 votes)
- O. How many case include attorney representation? (0 votes)
  - a. How many just “disappear” because claimant doesn't want to go to next step (IME) – because they think they know the outcome
  - b. Data may be skewed (only looks at cases that go to arbitration)
- P. Ask IRC to do study (0 votes)
  - o