

Task Force on No-Fault Insurance Issues

Meeting Notes – **DRAFT**

Prepared 9/29/15

Meeting Details

Date: September 22, 2015

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

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

Present: Marty Fleischhacker, Rep. John Lesch (for Rep. Joe Atkins), Douglas Broman, Bob Johnson, Vicky Rizzolo, Joel Carlson, Eric Dick, Charles J. Lloyd, Brad L. Plowman, Dan Wolfe, Dr. Timothy Johnson, Donald Bechtle, Tammy Reno, JoAnn Aiken, Mark Engdahl

T.J. Patton (No-fault presentation for Dept. of Commerce)

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

- Welcome and introductions
- Agenda overview; Point out the “Ideas Worksheets” for suggestion/questions
- Review/approval of 8/12 meeting notes
- Discussion of future meeting times and places
- No-fault background presentations:
 - Overview of no-fault history and evolution, current MN law, no-fault in other states (Dept. of Commerce)
 - Fraud Working Group Report (Sen. Jensen staff)
 - Bob Johnson, various studies and reports
 - RAND Study, “The U.S. Experience with No-Fault Automobile Insurance (MAD)
 - Joel Carlson, various studies and reports
- Wrap-up: What resonated?

Welcome, Introductions and Scheduling Discussion

Previously scheduled November 17 meeting may be changed to occur on November 16 due to the NAIC meeting

Presentations

(All presentation materials were made available via email and/or at the meeting. Selected notes of the accompanying discussion follow.)

Department of Commerce, “An Overview of No Fault Automobile Insurance”

- As originally envisioned, no-fault was intended to be secondary insurance coverage, not primary coverage.
- Psychiatric treatment related to auto accidents continues to be a litigated coverage area in Minnesota under no-fault.
- Many questions were asked about availability of data from other states regarding insurance costs before and after no-fault implementation, and also for states that enacted and later repealed no-fault.
- Not a lot of economic data directly tied to insurance or medical costs and changes that may be due to no-fault. Many questions were raised regarding the portion of the premium cost that could be attributed to medical under no-fault.
- A 1999 William Mitchell law review article was suggested.

Takeaways from Commerce presentation?:

- Can the Task Force get information about states that have repealed no-fault that is related to the task force’s three charges?
- Can the Task Force get a crosswalk of other states with no-fault and why those that have, have repealed it?
- COMMENT: repeal of no-fault is not within the charge under the legislative direction for the Task Force.
- Is there any credible assessment of the portion of increased no-fault costs due to increased rates of fraud?
- The lack of fee schedules and treatment guidelines may contribute to increased rates of fraud.
- Consumer choice perspective: those with higher coverage, unemployment and medical, would contribute to a smaller portion of those being reflected in auto insurance premiums
- But someone ultimately bears the cost – individual consumer, employer, greater society
- What if auto-related medical costs were all simply covered under major-medical – would the existing cost controls there reduce overall costs compared to the current system?

Fraud Working Group Task Force Report

- Original charge was not no-fault, but that quickly rose to the surface as an issue under the umbrella of insurance fraud

- Report includes a matrix of reform options; none include repeal of no-fault
- Question raised about fraud as a portion of the cost of no-fault premiums; Answer = very difficult to tease out

Bob Johnson (Insurance Federation of America) Discussion of Various Reports

- See page 13 of “No-Fault Insurance at 40,” section, “Ways to reduce premiums in No-Fault States”
- See page 34 of “Auto Insurance Reform Options...,” section, “Reforms to Reduce PIP Fraud”
- Suggestion on costs and fraud: take a look at the Croft treatment guidelines (chiropractic industry). 15 states have adopted these. They have become a national standard for the treatment of whiplash injuries.
- Comment that one author listed on two of the reports reviewed in this section is not objective (author/co-author is Peter Kinzler)

Joel Carlson (MN Association for Justice) Discussion of Various Reports

- Noted that he wanted to be sure that the consumer side was publicly represented. Documents presented do not necessarily directly address the three Task Force charges.
- Overall, premium costs are affected by tremendous number of variables
- Factors not always obvious or acknowledged include biases against lower-income and those of under-represented communities (e.g. through the use of credit reports as a guide for premium rates)
- Must consider the tradeoff when focusing just on rates: \$40,000 value is a lot to ignore for a cost reduction of \$100 in an annual premium rate
- QUESTION: any data on cost savings associated with no-fault repeal or changes in other states?
- ANSWER: It is very difficult to assign savings/cost levels to various changes to or repeal of no-fault
- Legislators will want real numbers.

Wrap-up: What resonated with you?

- First dollar insurance coverage is extremely important, especially for Level I trauma centers and emergency room efforts overall; no matter what reforms have occurred, we still don't have first universal dollar medical coverage
- Are there tools or practices from the managed care field that should be added to MN Stat. 65B?
- Why are there no managed care representatives at the table?
- What's the premise of the Task Force – fraud?, cost reduction focus?, fix the system?
- The IME process is a tool that the insurance companies can wield to limit costs and stop the process.
 - What are the criteria for or parameters that leads to the IME process?
 - What is the consumer perspective on the IME process?

- Is there a distinction between fraud and abuse? What is it? (NOTE: there are legal definitions of both)
- What's the scope of the IME process? Only 10 to 12% go to IME.
- Chiropractors face an extra fee for becoming certified to conduct an IME. That leads to a limited number who do them. That is one reason why the same names keep showing up.
- State Board of Medical Practice – they don't really act as an enforcement group regarding fraud and IMEs. Very low priority when they meet, and they meet infrequently.
- There is no such thing as a standard for electronic/dictated chiropractic records (such as has become the norm for medical records); very difficult to review or access

What can Guide this Process Through our Three Issue Lens?

- Look at the expected outcomes (what are they)? Suggestions:
 - Cost reduction
 - No-fault shouldn't pay for abuse of the system; fraud is one thing, but what exactly is "abuse"?
 - System shouldn't pay for care that is not "reasonable"
 - IME and arbitration should be tied to the treatment guidelines
 - Improve the consumer experience with the process (particularly the IME process)
 - Improve quality of care received
 - Are treatment guidelines clear?
 - Necessary medical treatment may be avoided or curtailed when the No-fault coverage maximum is exceeded; this contributes to overall greater insurance costs, including medical
 - Chiropractic and orthopedic treatments shouldn't be viewed with the same objectivity. A person may undertake more chiropractic than appears necessary, but it is unlikely that the same patient would simply, for example, get a spinal fusion just because it's an option. Much greater personal risk considerations for two very different types of treatments. Can lead to the appearance of abuse of the use of chiropractic and other soft tissue-injury treatment.
 - IME currently is usually used to put a stop to perceived abuse
 - The arbitration process is not transparent in allowing review of how and why decisions are made
 - IME process flows directly from how "reasonable" and "necessary" are defined
 - IME process for no-fault is not a unique process; it exists everywhere there is unemployment insurance, so it exists everywhere in the U.S.

Ideas Worksheet

From the September 22, 2015 Task Force meeting

[Note: Except for punctuation, spelling, etc. these issues have been transcribed verbatim as written. Each bullet represents all of the issues, questions, or ideas listed on each individual worksheet.]

Issue/Question/Idea:

- Economic data: How are premium dollars spent; how much on medical loss, repair costs, G&A expenses, surviving dependent, and so on. Data on fraud and abuse: How much, growth trends, what areas is it occurring (solely focused on no-fault). What abuse tools do other states use?
(No name or contact info included)

- If we are going to look at using medical managed care tools we need to define these tools and how they meet the needs of the three lenses of our scope.
cost = fee schedule
treatment parameters = fee schedule
policies and protocols = arbitration

Managed care tools allow for appeal, so some sort of "arbitrator" is needed. Medicare has many levels of appeals: redetermination, reconsideration, (couldn't decipher) hearing, etc.

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- William Mitchell Law Review Edition on No-fault;
MN chiropractic board actions taken against "abusive providers" (all licensing boards);
If MN \$750 million in no-fault PIP medical was run through the major medical system, what would be paid?;

Look at no-fault state legislative reforms in last five years. What are these reforms' impacts on system (costs)? (Looking at our three legislative charges.)

(No name or contact info included.)

- Croft guidelines for chiropractors;
Distribution of bodily injury cost liability premium (pie chart) within Minnesota;
Optum data: episodes of care for non-surgical neck/back cases; chiropractic care vs. medical/physical therapy/surgery
(MN Chiropractic Association)

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