

Florida's Motor Vehicle No-Fault Law

Report Number 2006-102

November 2005

Prepared for
The Florida Senate

Prepared by
Committee on Banking and Insurance

Table of Contents

Background	5
Overview of Florida’s No-Fault Law; Report Objectives	5
Development of the No-Fault Concept	6
Legislative History of Florida’s No-Fault Law	7
Automobile Repairs Reform Act of 1971	7
Subsequent Legislative Changes	10
2000 Grand Jury Report and No-Fault Reforms of 2001 and 2003.....	14
The Constitutionality of the No-Fault Law	19
Current Automobile Insurance Provisions	20
Mandatory Coverages.....	21
Personal Injury Protection (PIP)	21
Property Damage Liability (PD)	22
Optional Coverages	23
Bodily Injury Liability Coverage (BI).....	23
Uninsured Motorist Coverage (UM).....	23
Other Optional Coverages.....	23
Financial Responsibility Law.....	24
Methodology.....	25
Findings.....	26
Is Florida’s No-Fault System Working?.....	26
Availability of Motor Vehicle Insurance	26
Compliance with Mandatory Vehicle Insurance Laws	29
Efforts to Combat Motor Vehicle Insurance Fraud and Abuse.....	32
Unreasonable Denial of Claims by Insurers.....	41
Affordability of Motor Vehicle Insurance	42
Profitability of Auto Insurance Companies	49
Adequacy of Motor Vehicle Coverage	52
PIP Loss Costs in Florida and Nationwide	52
Bodily Injury (BI) Liability Loss Costs in Florida and Nationwide.....	59
BI Liability Claims Frequency.....	59
BI Liability Claims Severity	60
BI Liability Claims Costs (Pure Premium)	61
Medical Costs in Florida; Fee Schedules and Treatment Protocols	62
Attorney Involvement in PIP and BI Auto Insurance Claims.....	67
Reduced PIP Litigation in Florida.....	67
Effect of Attorney Involvement.....	67
Related Litigation Issues; Positions of Interest Groups	69
One-Way Attorney Fees, Contingency Risk Multipliers, and Bad Faith	71
Pre-Suit Resolution Procedure to Settle PIP Disputes	75
Additional Issues under the Current PIP Law	76
Effect of Repealing No-Fault in Florida.....	78
National Overview of Auto Insurance and No-Fault Laws	82
Tort-Based States	82
No-Fault States.....	82
Tort-Based System with Add on PIP Benefits.....	82
Choice No-Fault Auto Insurance System	83

Bodily Injury Liability Coverage in Tort and No-Fault States.....	83
Uninsured/Underinsured Motorist Coverage.....	84
Review of State No-Fault Laws	87
Required Level of PIP Limits.....	87
Allocation of PIP Benefits.....	87
Tort Thresholds in No-Fault States	88
Recent Developments in No-Fault States	91
The Battle Against PIP Fraud in New York.....	91
Colorado's Switch from No-Fault to Tort.....	93
Conclusions and Recommendations	95

Background

Overview of Florida's No-Fault Law; Report Objectives

In 1971, Florida became the second state in the country to adopt a no-fault automobile insurance plan which took effect January 1, 1972.¹ From a policy perspective, the no-fault plan was offered as a viable replacement for the tort reparations system as a means to quickly and efficiently compensate injured parties in auto accidents regardless of fault. The principle underlying no-fault automobile insurance laws is a trade-off of one benefit for another, by assuring payment of medical, disability (wage loss) and death benefits, regardless of fault, in return for a limitation on the right to sue for non-economic damages (pain and suffering).² Currently, twelve states, including Florida, have some form of no-fault provision.

The legislative objectives of the no-fault law were enumerated by the Florida Supreme Court in 1974 in *Lasky v. State Farm Insurance Company*.³ The Court opined that the no-fault law was intended to:

- assure that persons injured in vehicular accidents would be directly compensated by their own insurer, even if the injured party was at fault, thus avoiding dire financial circumstances with the “possibility of swelling the public relief rolls;”
- lessen court congestion and delays in court calendars by limiting the number of law suits;
- lower automobile insurance premiums; and
- end the inequities of recovery under the traditional tort system.

In the ensuing 34 years, the Legislature has periodically revised the no-fault law, courts have interpreted its key provisions, and various constituent groups have analyzed its impact upon Florida motorists.

In 2001 and 2003, the Legislature enacted significant no-fault reforms; however, according to many stakeholders, these reforms have not gone far enough in resolving the problems within the no-fault system which include fraud, abuse, inappropriate medical treatment, inflated claims, inadequate compensation to victims, increased premiums, and the proliferation of law suits.⁴ As a result of

¹ Chapter 71-252, L.O.F. Massachusetts enacted the first no-fault law, effective January 1, 1971. A total of 16 states enacted an auto no-fault law during this period; however, several states have since repealed their law. The no-fault era was ushered in by Professors Robert Keaton and Jeffrey O’Connell in 1965 with the publication of “*Basic Protection for the Traffic Victim*.”

² Cassandra R. Cole, Kevin L. Eastman, Patrick F. Maroney, Kathleen A. McCullough, A *Review of the Current and Historical No-Fault Environment*, Journal of Insurance Regulation (Fall 2004).

³ 296 So.2d 9 (Fla. 1974)

⁴ Ch. 2001-271, L.O.F.; Ch. 2001-163, L.O.F.; Ch. 2003-411, L.O.F. See, *Report and Recommendations of the 2003 Senate Select Committee on Automobile Insurance/PIP Reform to the Senate President* (March 3, 2003).

these concerns, the 2003 Legislature in Special Session “A” passed legislation providing that effective October 1, 2007, the Motor Vehicle No-Fault Law is repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.⁵ The law authorized insurers to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

As policymakers and stakeholders continue to debate the cost and effectiveness of the no-fault system and whether it should be allowed to “sunset,” a more thorough understanding of how well the system is functioning is critically important. The objectives of this report are to:

- review the legislative history of Florida’s motor vehicle no-fault insurance system, analyze the early court decisions interpreting the constitutionality of the law’s provisions, and outline the current motor vehicle coverages;
- assess how well Florida’s no-fault system is working according to the following criteria: availability of motor vehicle insurance; compliance with mandatory vehicle insurance laws; efforts to combat motor vehicle fraud and abuse; affordability of motor vehicle insurance; profitability of motor vehicle insurance companies; adequacy of mandatory coverages; and personal injury protection (PIP) and bodily injury (BI) liability loss costs in Florida and other states;
- examine medical costs, fee schedules and treatment protocols in Florida and other states;
- review attorney involvement in PIP and BI auto insurance claims;
- review additional PIP issues;
- discuss the effect of repealing no-fault in Florida;
- examine the tort-based auto insurance states and the laws in the 11 other no-fault states; and
- offer conclusions and recommendations.

Development of the No-Fault Concept

Once the automobile became integrated into American life, financial responsibility laws were passed to ensure that auto accident victims received compensation.⁶ By the 1950’s mandatory insurance had displaced the system of using financial responsibility laws, with each state’s tort system being used to handle disputes arising out of automobile accidents. However, during the 1960’s concerns began to be voiced regarding some of the perceived shortcomings of the tort system, in particular its ability to handle automobile accident claims in an accurate and expeditious fashion.

Law professors Jeffrey O’Connell and Robert E. Keeton were instrumental in developing the concept of no-fault insurance in the mid-1960’s. These professors and others argued that automobile insurance under the tort system was expensive

⁵ Senate Bill 32-A (Section 19); Ch. 2003-411, L.O.F.

⁶Jerry J. Phillips & Stephen Chippendale, *Who Pays for Car Accidents? The Fault Versus No-Fault Insurance Debate*, pg. 52 (Georgetown Univ. Press 2002).

to purchase and maintain, the system promoted excessive litigation and clogged the court system, delayed payment to automobile accident victims, overcompensated minor injuries while under compensating major injuries, and encouraged fraud.⁷ The proposed solution was a novel one: a system in which each driver insures him or herself, and to the extent of that first-party coverage, tort claims based on fault would be abandoned.

The proponents of no-fault insurance promoted it as a more efficient and fair means of providing redress to automobile accident victims. They believed that this system provides compensation in a swifter fashion than the tort system, and that no-fault would lower the cost of insurance, with both benefits being primarily produced by reducing litigation. With many states encountering rising premium rates, increases in auto-related litigation, and delays in receiving compensation during the 1960's, it was not long before a number of states adopted a no-fault system. Massachusetts was the first state to adopt a no-fault system in 1971, and during the 1970's a total of 16 states switched to a no-fault system. However, no state has adopted a no-fault system since 1976. Furthermore, four states have repealed their no-fault law, the most recent being Colorado in 2003 primarily due to large increases in the cost of auto insurance in that state in recent years.⁸

Legislative History of Florida's No-Fault Law

Automobile Reparations Reform Act of 1971

The Florida Automobile Reparations Reform Act, known generally as the “no-fault law,” was passed by the Florida Legislature on June 4, 1971, and became law effective January 1, 1972.⁹ The law was essentially a compromise between “pure” no-fault¹⁰ and the traditional tort system. According to a report issued by the Department of Insurance in 1977, the passage of the no-fault law in 1971 was signified by the Legislature’s recognition that there was a crisis in the auto insurance market due to the fact that insurance rates were “skyrocketing” because the cost of claims was increasing under the tort system.¹¹

⁷ See Jeffrey O’Connell, *Pocketbook Bias By Lawyers Seen*, Jacksonville Times Union and Journal, March 21, 1971, at H3, H8; See Phillips & Chippendale fn. 6 at 45-47.

⁸ The other three states to repeal their no-fault laws and who currently operate under a tort system are Nevada (1980), Georgia (1991), and Connecticut (1993).

⁹ Chapter 71-252, L.O.F. The legislature amended the name to “The Florida Motor Vehicle No-Fault Law” in 1982. Chapter 82-243. L.O.F.

¹⁰ Under pure no-fault, tort actions for bodily injuries are abolished, and unlimited or high benefits for lost wages and medical expenses are provided. No state has adopted a pure no-fault plan.

¹¹ Florida Department of Insurance, *A Program to Solve the Automobile Insurance Rate Crisis* (March 1977). The increase in auto insurance rates was also due in part to the adoption of the “California Rating Plan” by the Legislature in 1967. (Ch. 67-9. L.O.F.) Prior the 1967, property and casualty (including auto) insurers could not raise their rates without the prior approval of the state Insurance Commissioner. In 1967, Florida adopted the “California Rating Plan” which removed the prior approval authority from the Commissioner and allowed all property and casualty insurers (except for workers’ compensation and employer’s liability insurers) to set their own rates so long as such rates were not excessive, inadequate or unfairly discriminatory. However, in 1970, the

Footnote continued on next page.

This was particularly true in the area of bodily injury liability (BI) insurance, where both the number and amounts of verdicts and settlements had increased enormously. It was said that the Florida auto insurance tort liability system was one where “insurance companies were paying too much for trivial claims and too much for legal fees, leaving too little for those who suffered serious injuries and substantial economic losses.”¹² Prior to the passage of the no-fault law, persons injured in auto accidents could bring suit against the person “at fault” in the accident, and claim compensation from the “at-fault” party for all monetary damages suffered, including medical expenses, lost wages, pain and suffering and mental anguish.

According to one study, Florida’s automobile insurance environment prior to the enactment of no-fault reforms was an unhealthy one.¹³ Professor Jeffrey O’Connell had this to say about the tort liability mechanism in general at a 1971 Senate hearing in Tallahassee: “The present system is about the worst possible....cruel, corrupt, dilatory, expensive and wasteful while it goes about the business of failure.”¹⁴ Philip A. Hart, who was senator of Michigan at this time, said the current structure was “needlessly expensive, often unfair, and generally inefficient.”¹⁵

By passing this significant piece of automobile insurance reform, the Legislature attempted to distinguish between major and minor types of injuries with the aim being to eliminate minor injuries from the tort system.¹⁶ The legislative objectives

Legislature enacted a freeze specifically on auto insurance rates due to the alarming rise in such rates since the passage of the California Plan (Ch. 70-989, L.O.F.). The California Plan was subsequently repealed and Florida returned the power of property and casualty insurance rate regulation to the Insurance Commissioner. *Florida Races Deadline for Insurance Solution*, Florida Times Union and Journal, March 21, 1971; and Prentiss Mitchell, *The Evolution of the Florida No-Fault Law*, (Memo to Senate Banking and Insurance Committee staff in 2005.)

¹² *The Coming of No-Fault Insurance*, The Miami Herald, June 25, 1971.

¹³ Property Casualty Insurers Association of America, *An Evaluation of the Florida Automobile No-Fault Insurance System after Enactment* (June 2005). This study did note that Florida’s market was a competitive one with an adequate number of auto carriers (180 to 190 insurers) and “no single writer or group large enough to unduly influence prices and availability.”

¹⁴ *Id.*

¹⁵ The Miami Herald described the tort process in an editorial stating that: “The trouble with auto insurance is that it was permitted to become a racket. The system of going to court or threatening to go to court produced a whole new breed of lawyers, each with his own stable of medical experts, who wound up as the principal beneficiaries of the auto insurance policies....Can anybody deny that the present liability system has brought on inflated claims and inflated settlements in two-bit cases because the companies figure it would be cheaper than going to court?” The Miami Herald, June 25, 1971.

¹⁶ Wm. Douglas Marsh and Wanda Woodall Radcliffe, *Financial Responsibility and Compulsory Insurance Laws*, Florida Automobile Insurance Law, The Florida Bar (1995). Minimum no-fault coverage limits were established in the no-fault law, and automobile accident victims were required to look first to their own no-fault personal injury coverage for compensation, regardless of who was a fault in the accident.

Footnote continued on next page.

of the law were enumerated by the Supreme Court in *Lasky v. State Farm Insurance Company*, wherein the court wrote that the objectives of no-fault included lessening of court congestion by limiting the number of law suits, reducing automobile insurance premiums, assuring that accident victims would directly receive funds for medical expenses and lost wages, thus avoiding dire financial circumstances with the possible result of increasing public relief rolls, and ending the inequities of the tort system.¹⁷ The Court acknowledged that the Legislature had viewed the traditional tort system of reparations as leading to inequalities of recovery, with minor claims being overpaid and major claims underpaid in terms of their true value; that the tort system of reparation was unduly slow, inefficient and costly; and that the necessity of paying medical bills often forced an injured party to accept an unduly small settlement of his or her claims.

The provisions of the 1971 no-fault reform required each driver to be insured for 100 percent of his or her reasonably necessary medical expenses up to \$5,000 (termed personal injury protection or "PIP"). These PIP benefits also included 85 percent of loss of income¹⁸ and wage-earning capacity (disability benefits), and funeral expenses not to exceed \$1,000 per individual and were provided to the injured insured by his or her own insurer without regard to which party was at fault in an accident. A plaintiff could sue in tort for damages for pain and suffering only if (a) the PIP benefits payable for the injury, or payable but for a policy deductible, exceeded \$1,000, or, (b) the plaintiff either died or suffered an injury or disease consisting in whole or in part of: (1) permanent disfigurement; (2) a fracture to a weight-bearing bone; (3) a compound, comminuted, displaced, or compressed fracture; (4) loss of a body member; (5) permanent injury within reasonable medical probability; or (6) permanent loss of a bodily function.¹⁹

Insurance companies were required under the new law to pay PIP benefits within 30 days of receipt of the claim and medical providers were authorized to charge insurers only a "reasonable" amount for their services to persons injured in auto accidents. An independent mental and physical examination (IME) of an injured person covered by PIP was authorized whenever the condition of such person was material to the claim. Premium reductions were mandated in that rates for financial responsibility coverage were to be reduced by each insurer by 15 percent.

The financial responsibility law's liability insurance coverages (for bodily injury and property damage) were made compulsory as to all owners and vehicles

Economic damages in excess of no-fault policy limits could, however, be sought in a tort action, but suits for noneconomic (pain and suffering) damages were limited to cases involving major types of injuries that exceeded the thresholds in the law.

¹⁷ 296 So.2d 9 (Fla. 1974). Other courts later opined that the purpose of the no-fault scheme is to "provide swift and virtually automatic payment" so that the insured can get on with his or her life. *Government Employees Ins. Co. v. Gonzales*, 512 So.2d 269, 271 (Fla. 3d DCA 1987).

¹⁸ Loss of income benefits were either 100 or 85 percent depending on whether the benefits were to be included in gross income for federal income tax purposes.

¹⁹ PIP deductibles were provided in amounts of \$250, \$500 and \$1,000.

subject to the law.²⁰ The coverage requirements were \$10,000 for bodily injury or death of one person in any one accident, \$20,000 for bodily injury or death of two or more persons, and \$5,000 for damage or destruction of the property of others. In 1972, the bodily injury requirement was increased from \$20,000 to \$25,000 and a year later it was increased to \$15,000/\$30,000.²¹

Property damage coverage was also offered as an optional first-party no-fault coverage in that Florida drivers were allowed to exercise one of three options: they could purchase collision coverage that would pay regardless of fault; they could purchase a new basic property protection coverage that would pay first-party benefits only if the loss was attributable to the fault of another no-fault insured driver; or they could choose not to purchase first-party property damage insurance. This optional no-fault provision was declared unconstitutional by the Florida Supreme Court in *Kluger v. White* in July 1973.²²

Insurance premiums were lowered or at least stabilized for a 2-year period after the passage of Florida's modified no-fault law.²³ However, in the beginning of 1974, premiums increased substantially. Additionally, there were a number of "deficiencies" in the 1971 law.²⁴ The \$1,000 threshold proved to be an ineffective obstacle to those determined to sue for large sums, since medical expenses were provided under the PIP benefits. It tended to encourage bill-padding and over utilization of medical benefits as a device to pierce the \$1,000 threshold.²⁵ Also, the frequency and severity of liability claims for injuries, the claims unaffected by no-fault, increased substantially. Further, there existed the potential for accident victims to receive double recovery, PIP from his or her insurer, and damages from the tortfeasor.²⁶

Subsequent Legislative Changes

The 1976 Legislature corrected some of these problems by replacing the legal liability "dollar threshold" of \$1,000 with a "verbal threshold" requirement by providing that an injured party could sue only if he or she died or suffered loss of a bodily member; permanent loss of a bodily function; permanent injury within a reasonable degree of medical probability; significant and permanent scarring or disfigurement, or serious nonpermanent injury which had a material bearing on

²⁰ Florida's financial responsibility law (Ch. 324, F.S.) requires that motorists prove their ability to provide a minimum level of reimbursement to those suffering damages at the time of the accident. Drivers unable to satisfy this requirement will have certain sanctions applied, including suspension of their driver's license and vehicle registration.

²¹ Chapter 72-297 L.O.F.; ch. 73-180, L.O.F.

²² *Kluger v. White*, 281 So.2d 1 (Fla. 1973). See discussion of this case under the section, "The Constitutionality of the No-Fault Law."

²³ See note 11, *supra*.

²⁴ See note 11, *supra*.

²⁵ In the original law, an injured party who had incurred over \$1,000 in medical expenses could sue for pain and suffering.

²⁶ Patrick F. Maroney, *No Fault Automobile Insurance: A Success or Failure after Eleven Years*, Insurance Counsel Journal, January 1984. This "equitable distribution" problem was eliminated by the Legislature in 1976; ch. 76-266, L.O.F.

the victim's activity and lifestyle during substantially all of the ninety days following the accident.²⁷

According to one study, "Florida's implementation of a verbal threshold ... resulted in a reduction in personal injury auto costs between 1977 and 1980."²⁸ In a report done by the U.S. Department of Transportation, the adoption of a verbal threshold resulted in the percentage of automobile negligence suits to total cases decreasing 58.3 percent in Dade County and 39.3 percent in Duval County for the four-year period ending in 1980.²⁹

The 1976 law also rolled back the bodily injury insurance requirement to \$10,000/\$20,000. Although the Legislature did not require premium reductions as part of the law, it did authorize the Insurance Department to review the level of automobile insurance rates to ensure that premium or rate reductions resulting from the provisions of the law were passed on to policyholders.

Significant anti-fraud criminal provisions were included in the 1976 enactment making auto insurance claims fraud a third degree felony. Also, insurers, adjusters, physicians and attorneys were susceptible to third degree felony charges if they violated certain specified provisions and a Division of Fraudulent Claims was created within the Department of Insurance to enforce the criminal provisions of the insurance code.³⁰

In 1977, Insurance Commissioner Gunter undertook an aggressive campaign to reduce automobile premiums by proposing the elimination of the compulsory bodily injury (BI) and property damage (PD) liability coverages.³¹ These two coverages accounted for 73 percent of each premium dollar. Gunter proposed

²⁷ Chapter 76-266, L.O.F. A dollar threshold specifies a dollar amount that medical costs must exceed before an injured person can pursue a liability claim. A verbal threshold distinguished claims in terms of a description of the injury (for example, "dismemberment" or "significant and permanent loss of an important bodily function"). The Legislature also provided for a \$2,000 maximum deductible.

²⁸ Brian W. Smith, *Reexamining the Cost Benefits of No-Fault*, CPCU Journal (March 1989).

²⁹ U. S. Department of Transportation, *Compensating Auto Accident Victims: A Follow-Up Report on No-Fault Insurance Experiences* (May 1985).

³⁰ The Division is now named the Division of Insurance Fraud. The 1976 Legislature also repealed a collateral source provision which had prohibited defendants in automobile negligence cases from offering proof that a claimant had had certain damages already paid by insurance. Under this change, defendants could now offer such proof and claimants likewise could offer proof of payment of insurance premiums which provided the benefits.

³¹ See note 11, *supra*. Bodily injury liability coverage accounted for 51 percent and property damage liability coverage accounted for 22 percent of total premiums paid for compulsory coverages. These percentages reflected the statewide average cost for each coverage. In Dade County, between 1974 and 1977, bodily injury coverage costs increased to close to 250 percent. The other compulsory coverage, no-fault (PIP), accounted for 18 percent of each premium. Although uninsured motorist coverage was not compulsory (it could be affirmatively refused by the insured), it was included as if it were compulsory, and accounted for 9 percent.

other reforms including a “pure” no-fault plan which would have eliminated rights to sue for noneconomic losses. The Legislature responded by eliminating the requirement for all motor vehicle owners to carry liability (bodily injury and property damage) insurance, reduced first party no-fault benefits, strengthened the anti-fraud language, and increased no-fault deductibles.³²

A year later, in an effort to continue to curb rising rates, the Legislature directed the Department of Insurance to review the rates of all automobile insurers in order to establish a uniform statewide reporting system to classify risks for evaluating rates and premiums for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The 1978 Legislature further tightened the verbal threshold by eliminating the right to sue for certain serious, nonpermanent injuries enacted two years earlier.³³ Therefore, a) permanent injury, b) significant and permanent loss of an important bodily function, c) significant and permanent scarring or disfigurement, and d) death became the only bases for tort suits for pain and suffering. These verbal threshold requirements remain in effect today. Additionally, the Legislature increased the PIP maximum benefit from \$5,000 to \$10,000.

Four years later, the 1982 Legislature made relatively minor changes during its “sunset” review of the no-fault law.³⁴ Funeral benefits were increased from \$1,000 to \$1,750 and optional PIP deductibles were reduced to \$250, \$500, \$1,000 and \$2,000.³⁵

In 1988, the Legislature addressed problems with uninsured motorists by passing the “Motor Vehicle Insurance Reform Act” (Act).³⁶ The Florida Department of Insurance had estimated that thirty-one percent of private passenger motor vehicles operated statewide were totally uninsured, and in Dade County, the number of uninsured automobiles was estimated to be sixty-three percent.³⁷ The Legislature responded by enhancing enforcement of compulsory motor vehicle laws by: mandating that drivers show proof of insurance to law enforcement within 24 hours after an accident and that drivers show proof of insurance annually when registering their vehicle; increasing the reinstatement fee for

³² Ch 77-468, L.O.F. These liability coverages were \$10,000/\$20,000/\$5,000.

Compulsory liability insurance had been mandated under the original no-fault legislation in 1971. The Legislature reinstated compulsory property damage liability coverage in 1988. Under the 1977 law, PIP benefits (medical benefits) were reduced from 100 percent to 80 percent, loss of income benefits from 85 percent to 60 percent, and optional deductibles of \$3,000 and \$4,000 were added.

³³ Chapter 78-374, L.O.F. The 1978 law took effect January 1, 1979. Deductibles of \$6,000 and \$8,000 were authorized. The Legislature also expanded the no-fault law’s applicability to commercial vehicles.

³⁴ Chapter 82-243, L.O.F.

³⁵ Seven years later, funeral expenses were revised as “death benefits” and increased from \$1,750 to \$5,000. Chapter 89-243, L.O.F.

³⁶ Ch. 88-370, L.O.F. For a discussion of the 1988 Reforms, see Robert A. Henderson and Patrick F. Maroney, *Motor Vehicle Insurance Reform: Revisiting the Uninsured Driver*, Fla. St. U. Law Review, 789 (1988).

³⁷ *Id.* at 792.

drivers whose license or registration had been suspended for lack of insurance;³⁸ authorizing law enforcement to seize the tag of a vehicle if the officer determines that the person operating the vehicle is both the owner and is operating the vehicle with a suspended driver's license or registration; requiring insurers to report the renewal, nonrenewal, or cancellation of PIP policies to the Department of Highway Safety and Motor Vehicles (DHSMV) within 45 days of such event; requiring law enforcement to file accident reports with DHSMV under certain circumstances; requiring PIP and PD insurance to be issued, with some exceptions, for a term of six months and that the insured could not cancel the policy during the first third of the policy term; and mandating that drivers obtain \$10,000 for property damage liability coverage.

The 1988 law also created the Motor Vehicle Insurance Task Force to examine motor vehicle insurance issues and on April 1, 1989, the Task Force issued its findings in a report to the Senate President and Speaker of the House of Representatives. The Task Force found³⁹ that the availability of motor vehicle insurance was deemed to be "adequate;" that motor vehicle premiums were "affordable," even though premiums had not decreased, the average premium increase was not excessive and within the national average; that compulsory coverages (property damage and bodily injury liability) offered savings to drivers; and that enforcement practices had improved significantly to ensure drivers purchase the mandatory auto insurance coverages, but that further study was needed.

After the 1988 reforms (and prior to reforms in 2001), various amendments have been made to the law, however, the basic foundation of the no-fault provision has not substantially changed. Noteworthy amendments to the general auto law include the following: In 1989, the \$10,000 property damage liability coverage requirement could also be met by purchasing \$30,000 for combined PD and BI in any one accident; a Motor Vehicle Task Force was also created to examine various auto issues.⁴⁰ That same year, funeral benefits were increased to \$5,000 and renamed death benefits.⁴¹ In 1990, insurers were mandated to include a binding arbitration provision in PIP policies as to claims disputes between insurers and providers of medical services or supplies. PIP mediation of claims

³⁸ The proceeds from the increased reinstatement fee were used by the DHSMV to develop a more sophisticated data processing system to monitor motor vehicle drivers.

³⁹ Specific findings by the panel were: a) as to *availability* of motor vehicle insurance, the capacity of insurers serving Florida's drivers was found to be adequate to meet the needs of providing mandated insurance coverages; b) regarding *affordability* of motor vehicle insurance, though premiums had not decreased, their average increase was found not to be excessive and well under the national averages; c) with respect to the impact of *compulsory property damage liability insurance* on the cost of collision coverage, the Task Force found that property damage liability insurance may offer savings to drivers ranging from \$2 to \$18 for motorists who presently carry collision coverage; d) concerning *compulsory bodily injury liability*, the savings may be from \$4 to \$94.02 for motorists who now carry uninsured motorist coverage; and, e) *enforcement practices* had improved significantly to ensure compliance with mandatory coverages, but further study was recommended.

⁴⁰ Chapter 89-238, L.O.F.

⁴¹ Chapter 89-243, L.O.F.

was also provided.⁴² In 1991, insurers were allowed to provide an option to insureds to utilize preferred providers for medical benefits.⁴³ In 1993, the Legislature repealed the collateral source provision (s. 627.7372, F.S.) which required a jury to deduct from its verdict the value of all benefits received by the injured claimant from any other collateral source. However, the primary PIP collateral source provision (s. 627.736(3), F.S.) was left intact as was the general collateral source law (s. 768.76, F.S.) that applies to all tort actions, including auto liability actions.⁴⁴ A 1994 act provided that insurers could be in violation of the Insurance Code for failing to timely provide benefits to insureds.⁴⁵ A year later, recovery agents were authorized to seize license plates of motor vehicles whose registration had been suspended under a three county (Broward, Dade and Hillsborough) pilot project.⁴⁶

In 1998, provisions were added providing for: a) 30 and 60 day billing limits for providers and standardized medical statements and codes; b) revised geographical requirements for independent medical examinations (IMEs) of claimants; c) established time period for medical records requests by insurers; and d) specified methods for determining a "prevailing party" entitled to attorney's fees and costs when a dispute between an insurer and a medical provider is arbitrated.⁴⁷ The Florida Supreme Court struck the arbitration provision as a denial of access to the courts and the attorney fee provision as a violation of due process in *Nationwide Ins. Pinnacle Medical*.⁴⁸ In 1999, the Legislature allowed policyholders to elect a deductible amount in combination with the exclusion of wage loss benefits under PIP in exchange for lower premiums; required insurers to give insureds 30 days' advance written notice of renewal premium; and revised certain premium payment methods.⁴⁹

2000 Grand Jury Report and No-Fault Reforms of 2001 and 2003

The Legislature enacted major no-fault reforms in 2001, which were largely in response to the findings of rampant PIP fraud in Florida by the Fifteenth Statewide Grand Jury.⁵⁰ As a result of the 2000 Grand Jury's investigation, a report⁵¹ was issued containing seven legislative recommendations which included

⁴² Chapter 90-119, L.O.F.

⁴³ Chapter 91-106, L.O.F.

⁴⁴ Chapter 93-245, L.O.F.

⁴⁵ Chapter 94-123, L.O.F.

⁴⁶ Chapter 95-202, L.O.F.

⁴⁷ Chapter 98-270, L.O.F.

⁴⁸ 753 So.2d 55 (Fla. 2000)

⁴⁹ Chapter 99-381, L.O.F.

⁵⁰ Chapter 2001-271 and ch. 2001-163, L.O.F. See Grand Jury report under: <http://myfloridalegal.com>.

⁵¹ The 2000 Grand Jury report defined PIP fraud as follows: 1) the illegal solicitation of accident victims for the purpose of filing for PIP benefits and motor vehicle tort claims; 2) brokering patients between doctors, lawyers and diagnostic facilities, as well as attendant fraud, which can include the filing of false claims; 3) billing insurers for treatment not rendered; 4) using phony diagnostic tests or misusing legitimate tests; 5) inflating charges for diagnostic tests or procedures through brokers; and 6) filing

Footnote continued on next page.

requiring the regulation/licensure of medical facilities; adopting a medical fee schedule for PIP reimbursement similar to the workers' compensation fee schedule; providing insurers more time (30 days) to review fraudulent claims; making charges for magnetic resonance imaging (MRIs) unenforceable, unless such charges are billed/collected by the 100 percent owner/lessee of the equipment (to remove incentives for brokering); providing that an insurer or PIP accident victim does not have to pay for services rendered by any provider or attorney who has solicited the victim; prohibiting the release of accident (crash) reports except to specified persons (e.g., victim, insurance company); and increasing the penalties for persons who unlawfully obtain accident reports.

The 2001 Legislature enacted every Grand Jury recommendation except one (adopting a medical fee schedule for PIP reimbursement),⁵² made legislative findings concerning the severity of PIP fraud, and adopted the following key provisions:⁵³

- Required certain health care clinics to register with the Department of Health (DOH) and have licensed physicians as medical directors or specified health care practitioners as clinical directors;
- Defined "medically necessary" services, applied a workers' compensation fee schedule to limit the charges for six medically necessary procedures, and adopted a percentage of the Medicare fee schedule for magnetic resonance imaging (MRI) tests;
- Provided that insurers/insureds were not required to pay claims by "brokers;"
- Required that insurers receive a 7-day notice of intent to litigate via a "demand letter" for overdue claims;
- Limited access to vehicle accident (crash) reports so that illegal solicitation activity could be curtailed; provided exemption of such reports from public records law for 60 days after date report filed; and increased penalties for use of such reports for commercial solicitation;
- Created a civil cause of action to allow insurers to sue individuals under certain circumstances; and
- Required insurers to specify items on claims which were reduced, omitted, or declined; mandated medical providers give insurers specific information regarding charges and treatments; and expanded the provider billing time frames to 35 and 75 days (i.e., a provider was now allowed 35 days to bill the insurer; however, if the provider notified the insurer of the initiation of medical treatment of a PIP insured within 21 days after the

fraudulent motor vehicle tort lawsuits. According to the Grand Jury, "certain people have turned the \$10,000 of personal injury protection coverage into their own personal slush fund."

⁵² The Legislature did adopt fee schedules for a limited number of procedures.

⁵³ Chapter 2001-271, L.O.F. and ch. 2001-163, L.O.F. Other changes included: providing that the "spiritual healing" provision does not affect determinations of what services are medically necessary; elevating the severity ranking of specific insurance fraud crimes; eliminating the medical payments provision, if available in a policy, to apply to the 20 percent portion PIP did not cover; and applying stricter standards for independent medical examinations (IMEs).

first treatment, the provider would then have 75 days to submit the statement of charges to the insurer).

The following year, the Senate President created a Select Committee on Automobile Insurance/PIP Reform⁵⁴ to study automobile insurance costs along with alleged abuses and fraud relating to PIP. The Committee issued its report in March 2003 and the Legislature enacted the majority of the Committee's recommendations during the 2003 session, which include these key provisions:⁵⁵

- Strengthened the regulation of health care clinics by requiring licensure under the Agency for Health Care Administration (rather than DOH); required clinics to be inspected, meet financial and other criteria; and provided criminal penalties for unlicensed clinics;
- Expanded the PIP presuit demand letter to apply to all PIP disputes and increased the time period for insurers to respond to such letters from 7 business to 15 calendar days;
- Specified criteria as to "reasonable" charges for services;
- Created and strengthened various criminal penalties for PIP fraud;
- Required DOH to establish by rule a list of diagnostic tests that are not "medically necessary;"⁵⁶

⁵⁴ See note 4, *supra*.

⁵⁵ Chapter 2003-411, L.O.F., (Florida Motor Vehicle Insurance Affordability Reform Act). Other changes included: creating new crimes for soliciting accident victims, intentionally causing auto accidents, presenting false auto insurance cards, and disclosing confidential crash reports; increasing the ranking and penalties for various auto insurance crimes; authorizing health provider licensing boards to discipline providers for upcoding PIP claims or for billing for services not rendered; defining terms like "knowingly," "properly completed," "upcoding," "downcoding," and "lawful;" prohibiting PIP insurers and insureds from paying for charges that are not lawful, contain false/misleading statements, or are improperly uncoded or unbundled; clarifying that the Medicare fee schedule be tied to the consumer price index; revising coding and billing requirements for bills/statements for medical services; prohibiting insurers from systematically "downcoding;" providing anti-fraud financial incentive to consumers; prohibiting solicitation of PIP accident victims (by any means other than advertising) during the 60-day period the crash report is confidential and prohibiting lawyers, providers and clinic owners or medical directors from soliciting (for PIP or vehicle tort claims) business by means of in-person or telephone contact after 60 days have lapsed from the date of the accident; requiring DOH, AHCA, and DFS to report to the Senate President and House Speaker by Dec. 2004, as to the implementation of this bill and any recommendations (See Findings section of this report for the agencies recommendations); and, repealing the \$10 increase pertaining to Licensed General Lines Agents.

⁵⁶ The Department of Health enacted its rule (64B-4.003, F.A.C.) on January 7, 2005, designating four tests as not medically necessary: 1) Spinal Ultrasound; 2) Surface Electromyogram (SEMG); 3) Somatosensory Evoked Potential; and 4) Dermatome Evoked Potential. A chiropractor challenged the validity of one of the tests (surface electromyogram (SEMG) and the Administrative Law Judge invalidated the challenged portion of the rule finding that it exceeded the agency's rulemaking authority. The matter is now on appeal before the First District Court (*D.O.H. v. Richard W. Merritt, D.C.*, Case No. 1DO5-729; L.T. DOAH 04-1149RX).

- Mandated that only Florida licensed physicians do IME's, prohibited insurers from "materially" changing an opinion in an IME report, and required retention of such reports for 3 years;
- Provided PIP benefits could not be paid to an insured if he/she committed any PIP insurance fraud if admitted to in a sworn statement or established in court and allowed insurers to recover such benefits if previously paid;
- Mandated the Financial Services Commission adopt a "disclosure and acknowledgment form" that providers/insureds must execute at the initial treatment of the insured;⁵⁷ and provided that the FSC may increase the PIP \$10,000 benefit if it determines that cost savings have been realized due to PIP reforms;⁵⁸
- Eliminated the \$2,000 PIP deductible; changed the PIP deductible to provide that it must be applied to 100 percent of medical expenses, rather than the current 80 percent of expenses PIP pays, changed the calculation of the deductible so that the full \$10,000 PIP benefit can be obtained; and allowed an injured party to recover the deductible amount from the at-fault driver;
- Prohibited providers from forgiving collection of co-payments or deductibles on PIP claims as a general business practice; and
- Provided that effective October 1, 2007, the Florida Motor Vehicle No-Fault law is repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.⁵⁹

After the close of the 2003 legislative session, various provider groups expressed concern about complying with the various medical clinic licensure requirements (chapter 400, Part XIII, F.S.) which had been enacted under the 2003 reforms. The 2004 Legislature responded by exempting numerous providers from the ambit of the clinic provisions.⁶⁰

⁵⁷ The Commission adopted the form on March 8, 2004, as Rule 69O-176.013(2), F.A.C., which is available under the web site for the Office of Insurance Regulation.

⁵⁸ The FSC has not made such a determination.

⁵⁹ The affected sections are: ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S. Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

⁶⁰ Ch. 2004-298, F.S., provided for exempting from clinic licensure these entities: End-stage renal disease providers; Therapy providers (speech, occupational, and physical) which are Medicare-certified; Birth centers; Clinical laboratories; Charitable clinics - 501(c)(3) or (4); Entities owned or operated by the federal or state government; Hospitals and entities they own; A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered under s. 627.419, F.S. (includes dentists, optometrists, podiatrists; chiropractors, physicians); Entities that provide only oncology or radiation therapy services by physicians; and entities that provide neonatal or pediatric hospital-based healthcare services. The legislation also provided that mobile clinics and portable equipment providers be included in the definition of a clinic and therefore subject to licensure; changed the date for filing a clinic license application with AHCA; defined a clinic chief financial officer as an individual with a bachelor's degree in finance, accounting, or a related field, and who is the person responsible for the preparation of a clinic's billing; in an MRI clinic that bills less than 15 percent of its scans

Footnote continued on next page.

The following table (Table 1) highlights the important historical changes to personal injury protection benefits and deductibles, bodily injury and property damage requirements, and the tort threshold provisions that the Legislature has enacted since the inception of the no-fault law.

TABLE 1
**Statutory History of Key Provisions for Personal Injury Protection (PIP),
 Bodily Injury (BI) and Property Damage (PD) Liability Coverages, PIP
 Deductibles, and Tort Threshold**

YEAR	CHAPTER LAW	PIP BENEFITS/DEDUCTIBLES	TORT THRESHOOD	BODILY INJURY	PROPERTY DAMAGE
1971	Ch. 71-252	\$5,000 total PIP benefit: 100% medical; 85% lost wages; \$1,000 funeral; PIP deductibles: \$250, \$500 and \$1,000; Property Damage no-fault coverage ⁶¹	\$1,000 monetary threshold or a verbal threshold	\$10,000/\$20,000	\$5,000
1972	Ch. 72-297			\$25,000	
1973	Ch. 73-180			\$15,000/\$30,000	
1976	Ch. 76-266	\$2,000 maximum deductible	\$1,000 monetary threshold eliminated; verbal threshold revised	\$10,000/\$20,000	
1977	Ch. 77-468	PIP benefit reduced: 80% medical; 60% lost wages; added \$3,000 and \$4,000 deductibles		BI repealed	PD repealed
1978	Ch. 78-374	Increased PIP benefit to \$10,000 (effective Jan. 1, 1979); Added \$6,000 and \$8,000 deductibles	Strengthened verbal threshold		
1982	Ch. 82-243	Increased funeral benefit: \$1,750; Reduced maximum deductible to \$2,000			
1988	Ch. 88-370				PD reinstated: \$10,000
1989	Ch. 89-238				\$30,000 PD/BI
1989	Ch. 89-243	Increased funeral benefit: \$5,000, renamed it "death" benefit			
2001	Ch. 2001-271	Defined benefits/services to be "medically necessary"			
2003	Ch. 2003-411	Eliminated \$2,000 PIP deductible; changed calculation of PIP deductibles			

Source: Prepared by the Senate Banking and Insurance Committee staff

to PIP insurers, the chief financial officer may ensure that the billings are not fraudulent; revised licensure provisions; and revised the definition of a clinic medical director.

⁶¹ Property damage coverage was also offered as an optional first-party no-fault coverage, however, the Florida Supreme Court struck down this provision as unconstitutional in *Kluger v. White*, 281 So.2d (Fla. 1973).

The Constitutionality of the No-Fault Law

Florida courts have addressed various provisions of the no-fault law; however, the law was initially challenged on constitutional grounds. Shortly after the law was enacted, it was attacked primarily on due process, equal protection and access to court issues and the law has survived in most instances. The challenge concerned the issue of the “right of access to courts” clause of the Florida Constitution which provides: “The courts shall be open to every person for redress of any injury....”⁶² In *Kluger v. White*, the Supreme Court found invalid the property damage provision that precluded suit for vehicular damages under \$550.⁶³ The appellant in *Kluger* had elected to forgo purchasing property damage coverage and under the law could not sue in tort because the damage to her car did not exceed \$550. Because she did not purchase such coverage, she was left without any remedy even though she was not at fault in the accident. The Court declared the property damage threshold provision unconstitutional, asserting that because property damage coverage was not mandatory, parties who did not meet the \$550 threshold were impermissibly denied court access. The Court found that the abolishment of action in tort for property damages less than \$550 was a denial of access to courts because no reasonable alternative to the tort action was available to the appellant.

In 1974, the high court in a sweeping opinion declared the basic tenets of the no-fault reform to be constitutional. In *Lasky v. State Farm Mutual Insurance Co.*, the personal injury protection provisions were challenged on grounds of denial of the rights of access to courts, due process, trial by jury and equal protection of the laws.⁶⁴ The Court found, with one exception, that the personal injury protection provisions provided a sufficient alternative to a traditional tort action.⁶⁵ The Court distinguished *Kluger* by noting the law held invalid in the former case had abolished *all* right of recovery for property damage under a specified amount, but that in the instant case recovery for pain and suffering was denied for personal injury *only* when the threshold requirements were not met. The Court emphasized that personal injury protection (PIP) was compulsory, whereas property damage protection was optional and with regard to the latter provided no reasonable alternative to the tort system because there was a total deprivation of the right to recover for property loss under \$550.

⁶² Fla. Const. Art. I, s. 21.

⁶³ 281 So.2d 1 (Fla. 1973). The property damage coverage provision under s. 627.738, F.S., held invalid in *Kluger* was an optional first-party coverage as opposed to the third-party property damage liability coverage mandated under s. 627.7275, F.S.

⁶⁴ 296 So.2d 9 (Fla. 1974).

⁶⁵ The Court held that the threshold provision, which allowed recovery for pain and suffering if the injury involved a fracture of a weight-bearing bone, constituted a denial of equal protection. That provision discriminated among members of the class of persons injured in accidents who had no permanent injury and less than \$1,000 in medical expenses. The Court reasoned that a person who sustained a broken toe (a weight bearing bone) could sue, yet a person who suffered a fractured skull (not a weight bearing bone) and did not suffer permanent injury or \$1,000 in medical expenses, could not maintain an action for pain and suffering.

In *Lasky*, under a quid pro quo analysis, the Court found that prompt recovery of major expenses and immunity from negligence in the PIP law was considered a fair exchange for the waiver of tort action rights. The Court stated:

“Protections are afforded the accident victim in the Act in the speedy payment by his own insurer of medical costs, lost wages, etc., while foregoing the right to recover in tort for these same benefits and (in a limited category of required insurance); furthermore, the accident victim is assured of some recovery even where he himself is at fault. In exchange for his former right to damages for pain and suffering in the limited category of cases where such items are preempted by the Act, he receives not only a prompt recovery of his major, salient out-of-pocket losses--even where he is at fault--but also an immunity from being held liable for the pain and suffering of the other parties to the accident if they should fall within this limited class where such items are not recoverable.”

Eight years later, the Supreme Court again affirmed the principle tenets of the no-fault law elucidated in *Lasky* in the *Chapman v. Dillon* case.⁶⁶ The appellee in *Chapman* argued that, during the years since *Lasky*, the Legislature had amended the no-fault provisions and these new provisions no longer provided a reasonable alternative to the right to sue in tort and thus constituted a denial of due process, equal protection, and denial of access to the courts. The Court held that the legislative amendments, i.e., lowering the PIP benefits and increasing the amount of permitted optional deductibles, did not necessarily result in reduced compensation and increased litigation.⁶⁷ The Court reasoned that an injured person would still receive prompt payment for his major and salient economic losses even where he himself is at fault, that the legislative changes still provide a reasonable alternative to traditional action in tort and thus have not fundamentally changed the essential characteristics of the no-fault law.

There have been many cases further refining the no-fault provisions in the intervening years; however, the essential characteristics of the no-fault law have not been overturned.

Current Automobile Insurance Provisions

Under Florida law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability insurance.⁶⁸ Many drivers purchase

⁶⁶ 415 So.2d 12 (Fla. 1982).The *Chapman* court concluded that the no-fault law as codified in the 1979 statutes was constitutional.

⁶⁷ In 1977, personal injury protection (PIP) benefits (medical and disability) were reduced from 100 to 80 percent as were loss of income benefits from 85 to 60 percent. Optional deductibles were increased up to \$4,000. Ch. 77-468, L.O.F.

⁶⁸ Section 627.736, F.S., and s. 627.7275, F.S. However, motorists who finance their automobile or are required to meet financial responsibility requirements may have to purchase other coverages. Compliance with financial responsibility provisions may be met by holding a motor vehicle liability policy (BI/PD); posting a satisfactory bond of a surety company with the Department of Highway Safety and Motor Vehicles (DHSMV), cash or securities deposited with DHSMV, or a self-insurance policy issued by DHSMV

Footnote continued on next page.

“optional” coverage’s in addition to the required insurance.⁶⁹ Florida law requires drivers to carry the mandatory insurance continuously throughout the licensing and registration period.⁷⁰

Mandatory Coverages

Personal Injury Protection (PIP)

The Florida Motor Vehicle No-Fault law requires owners or registrants of motor vehicles to maintain personal injury protection (PIP) coverage at all times.⁷¹ A personal injury protection policy pays up to \$10,000⁷² without regard to fault for bodily injury sustained in a motor vehicle accident by the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured motor vehicle. The coverage also extends to children who suffer an injury while riding a school bus. The amount paid is:

- 80 percent of all reasonable expenses for medically necessary medical services;
- 60 percent of disability benefits for any loss of gross income and earning capacity per individual from inability to work proximately caused by the injury in the auto accident;
- 100 percent of replacement services (e.g., child care, housekeeping, and yard work), and
- A \$5,000 per individual death benefit.

The owner, registrant, operator, or occupant of the PIP-insured vehicle is immune from tort actions (and, conversely, may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of the accident *except* in cases of:

- (1) Significant and permanent loss of an important bodily function;
- (2) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
- (3) Significant and permanent scarring or disfigurement; or
- (4) Death.

These provisions are known as the “verbal threshold” which means that claimants must meet one of these specific criteria regarding the type of injury or severity of disability to file a liability claim for non-economic damages. However, a party

(s. 324.031, F.S.).

⁶⁹ Coverages are generally uniform and motor vehicle insurance policies are approved by the Office of Insurance Regulation prior to issuance.

⁷⁰ Any part-time or seasonal resident living in Florida as least 90 days of the year is required to carry PIP and PD insurance.

⁷¹ Sections 627.730-627.7405, F.S. The classes of vehicles covered under the no-fault provisions apply to self propelled vehicles, with four or more wheels, that are registered and licensed in the state. This class includes a “private passenger” vehicle like a sedan or SUV which is not used for business purposes and a “commercial” vehicle which is any motor vehicle that is not a private passenger vehicle. Motorcycles and government vehicles are excluded.

⁷² The \$10,000 is per person per accident (s. 627.736(1), F.S.).

may sue for economic damage not covered by PIP, such as the 20 percent of medical bills not covered by PIP and amounts that exceed the \$10,000 limit.

Florida law allows limited alternatives to the standard PIP policy. Insurers are required to offer a PIP policy with a deductible of up to \$1,000.⁷³ Insurers are allowed, but not required, to offer PIP limits above \$10,000 or PIP medical benefits may be increased to 100 percent and lost wages increased to 80 percent. In addition, under s. 627.736(10), F.S., an insurer may offer an insured a PIP “preferred provider” policy in which additional benefits are provided if medical providers⁷⁴ from the insurer’s preferred provider network are used by the insured if injured in an auto accident. However, if the injured insured uses a non-preferred provider, that insured is still entitled to the statutorily required level of benefits under his or her no-fault policy. The preferred provider policy option is not widely offered.

Property Damage Liability (PD)

Current law also requires vehicle owners to obtain \$10,000 in property damage (PD) liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident.

TABLE 2
Summary of Mandatory Motor Vehicle Insurance Coverages

TYPE	DESCRIPTION	MANDATORY
Personal injury protection (PIP)	Regardless of fault, PIP covers: 80% of all reasonable expenses for necessary medical services, 60% of lost wages, 100% of replacement services, and \$5,000 in funeral expenses; covers the insured, household relatives, pedestrians, and passengers without PIP coverage.	Florida motorists must carry at least \$10,000 PIP insurance.
Property damage liability (PD)	Covers damages to other people’s property caused by the insured or members of the insured’s household.	Florida motorists must carry at least \$10,000 of PD insurance.

⁷³ For example, if an auto accident results in \$10,000 in medical bills:

If there is no deductible:

Total medical bills \$10,000
 Total Insurance Co. pays: \$8,000 (80 percent)
 Total Policyholder pays: \$2,000 (20 percent)

If there is a \$1,000 deductible:

Total medical bills: \$10,000
 Minus \$1,000 deductible \$9,000
 Total Insurance Co. pays: \$7,200 (80 percent of \$9,000)
 Total policyholder pays: \$2,800 (\$1,000 plus 20 percent of \$9,000)

⁷⁴ Licensed health care providers an insurer may use are those licensed under the following chapters: 458 (Physician), 459 (Osteopathic), 460 (Chiropractic), 461 (Podiatric), and 463 (Optometry).

Optional Coverages

Many drivers purchase additional automobile coverages such as: bodily injury liability, uninsured motorist, collision, comprehensive, medical payments, towing, rental reimbursement and accidental death and dismemberment. Generally, insurance companies may not require motorists to purchase any of these optional coverages. However, many insurers will not issue a policy limited to PIP/PD unless BI coverage is also purchased.

Bodily Injury Liability Coverage (BI)

This coverage provides protection for motorists involved in vehicular accidents who are at fault and cause bodily injury to third parties. Bodily injury (BI) coverage pays the medical bills and lost wages of third parties up to the policy limits and provides legal representation and payment of attorneys' fees to the insured, if sued. This type insurance was originally mandated in Florida in 1971 to provide up to \$10,000 reimbursement for injury to one person in any one accident and \$20,000 for injury to two or more persons. As noted earlier in this report, the Legislature subsequently repealed this mandatory coverage in 1977 due to affordability and compliance problems.

Uninsured Motorist Coverage (UM)

First enacted by the Florida Legislature in 1961, uninsured motorist or UM coverage provides a basis for persons to directly insure themselves against the effects of bodily injuries caused by others who were legally liable, but uninsured or underinsured.⁷⁵ Such coverage pays for medical expenses and lost wages, after PIP coverage is exhausted, and includes payment for pain and suffering. UM also provides "excess coverage" which means that when a motorist is injured because of the negligence of another, the injured party is able to collect from the liability insurance of the negligent motorist and from his or her own uninsured motorist insurance if the negligent motorist is unable to provide full reimbursement. UM coverage may be affirmatively refused by the insured and is available in "stackable" and "non-stackable" coverages.⁷⁶ Bodily injury liability policies must include UM coverage at limits equal to those for BI insurance, unless the coverage is rejected or lower limits are elected by the insured.

Other Optional Coverages

Collision coverage pays for repair or replacement to the insured's own vehicle, regardless of who causes the accident while comprehensive provides payment for losses from incidents other than collision, such as fire, theft, windstorm, flood, or vandalism. It also covers damages caused by falling objects or hitting an animal. Medical payments coverage pays the medical expenses of the insured and passenger up to the limits of the policy, regardless of fault. Towing coverage of

⁷⁵ Ch. 61-175, L.O.F. (1961) An underinsured motorist is a motorist who has purchased bodily injury liability insurance with a limit that is lower than the amount necessary to provide full reimbursement.

⁷⁶ Stackable UM coverage means that the coverage limits for each car insured under a motorist's policy may be added together. Non-stackable UM coverage only pays up to the limits for one insured vehicle.

the insured's car is usually limited by a dollar amount. Rental reimbursement coverage provides reimbursement for vehicle rental up to a specified limit. Accidental death and dismemberment provides coverage regardless of fault, up to the policy limits.

TABLE 3
Summary of Optional Motor Vehicle Insurance Coverages

TYPE	DESCRIPTION	OPTIONAL
Bodily injury liability (BI)	Pays for bodily injury expenses caused by the insured or members of the insured's household to third parties in accident; pays economic damages (medical bills and lost wages) and non-economic damages (pain and suffering) of third parties up to policy limits; provides legal representation and attorneys' fees to the insured, if sued.	Optional, but it is required for those subject to the **Financial Responsibility Law (ch. 324, F.S.): \$10,000 per person/\$20,000 per accident for bodily injury of another person; \$10,000 for PD; or a \$30,000 combined bodily injury/property damage limit. Mandated in 1971, but repealed in 1977.
Uninsured motorist (UM)	Covers insured and passengers if injured by uninsured or underinsured negligent party; pays medical expenses and lost wages exceeding PIP benefits, and pain and suffering.	Optional, but insurers must offer up to the same limits as bodily injury liability limits purchased.
Collision	Pays for repair and replacement of an insured's motor vehicle, regardless of fault. However, if the other driver is at fault and has property damage liability coverage, the insured may attempt to recover under the other driver's policy rather than the insured's own policy.	Optional.
Comprehensive (Comp.)	Pays for repair or replacement of an insured's vehicle for losses from incidents other than collision, such as theft, vandalism, or flood.	Optional.
Medical payments (Med. Pay)	Pays for medical expenses for the insured up to the limits of the policy, regardless of fault.	Optional.

****Persons causing accidents with bodily injury or are convicted of certain offenses (e.g., DUI) must carry liability insurance.**

Source: Prepared by Senate Banking and Insurance Committee staff

Financial Responsibility Law

The philosophical underpinning of the financial responsibility law is to protect the tortfeasor involved in a vehicular accident from financial disaster resulting from a judgment rendered against him or her in a court of law and to compensate an accident victim for injuries received in an accident. Florida's Financial Responsibility Law was enacted in 1947 and currently requires proof of ability to

pay monetary damages for bodily injury and property damage liability arising out of motor vehicle accidents or serious traffic violations.⁷⁷ However, the owner and operator of a motor vehicle need not demonstrate financial responsibility until after the accident. At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverage required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to two or more persons, and \$10,000 in the event of injury to property of others, or \$30,000 combined single limit. If the owner or operator of the vehicle was not financially responsible at the time of the accident, his driver's license is suspended as well as the registration of the owner of the vehicle. An individual can comply with the Financial Responsibility law in several ways: liability insurance, surety bond, deposit of cash or securities, or self-insurance.⁷⁸

As noted above, compulsory insurance provisions must be maintained continuously throughout the registration or licensing period. However, financial responsibility requirements, sometimes referred to as "one free bite" laws, do not take effect until after a motorist has been involved in an accident or serious traffic violation.

Methodology

Committee staff collected relevant automobile data from various stakeholders: Florida Department of Financial Services, Office of Insurance Regulation, Agency for Health Care Administration, Department of Health, State Attorney's Office, National Association of Insurance Commissioners, national and state research institutions and universities, associations, insurance companies, attorney representatives, fraud investigators, and medical groups. Interviews were also conducted with representatives with these entities.⁷⁹

A sampling approach was used to obtain information via a survey which was sent, in conjunction with the Insurance Committee of the Florida House of Representatives, to the top thirty one insurers representing 82 percent of the premium volume in the state for private passenger auto insurance.⁸⁰ Nineteen insurers representing 62 percent of the market responded to most of the survey questions. Also included within the survey were insurers representing the larger "non-standard"⁸¹ companies writing private passenger automobile insurance in the state. The survey reflects data for 2004 (and for other specified years) and is weighted for each insurer's market share.

⁷⁷ Ch. 47-23626, L.O.F.

⁷⁸ Section 324.031, F.S.

⁷⁹ Committee staff would like to thank all the individuals who provided valuable information for this report.

⁸⁰ Commercial vehicle insurers were not sampled for this report.

⁸¹ Companies that specialize in "non-standard" auto policies write policies for people with poor driving (bad accident) records, live in "high-risk" neighborhoods (where theft and vandalism losses are high), drive special, high-performance cars, or who have not driven long enough.

A separate survey was sent to representatives with the Academy of Florida Trial Lawyers, Florida Medical Association, Florida Chiropractic Association, Florida Osteopathic Medical Association and the Florida State Massage Therapy Association, known collectively as the “Coalition.” A survey was also sent to the Florida Hospital Association, the Florida Orthopaedic Society, and the Florida Chiropractic Society.

Findings

Is Florida's No-Fault System Working?

Florida and eleven other states, the District of Columbia, and Puerto Rico have enacted no-fault laws generally as a means to quickly and fairly compensate automobile accident victims without regard to fault. To summarize, no-fault provisions were intended to do the following:

- assure that persons injured in accidents are compensated promptly, adequately, and fairly by their own insurer, without regard to fault;
- end the inequities and costs of recovery under the traditional tort system;⁸²
- reduce the proportion of personal injuries that result in litigation; and
- lower automobile insurance costs.

In an effort to evaluate how well these goals have been achieved, this portion of the report will address the following issues.

Availability of Motor Vehicle Insurance

Motor vehicle insurance is readily available for Florida drivers. A significant indicator of the availability of motor vehicle insurance in the state is portrayed by the small and still declining number of drivers who must obtain coverage in the residual or involuntary market from the Florida Automobile Joint Underwriting Association (FAJUA), known as the “insurer of last resort.”⁸³

The FAJUA was created in 1973 to provide motor vehicle insurance to applicants who are unable to procure such insurance through the voluntary or competitive market due to a variety of factors, including poor driving history or status as first-

⁸² This would also include transaction costs. Insurers' transaction costs include expenditures for insurance personnel who process claims and expenditures for insurers' legal fees and related expenditures. Claimants' transaction costs include expenditures for legal fees and related expenses. These costs include both the “allocated loss-adjustment expenses,” which are assigned to a specific claim (primarily the insurers' legal fees and related expenses) and the “unallocated loss-adjustment expenses,” which are not assigned to a specific claim (primarily the cost of the claims personnel who process claims).

⁸³ Sections 627.311 and 627.351 F.S. The activities of the Association can be analogized to that of a private automobile insurer although it is operated by an 11 member Board of Governors appointed by the Chief Financial Officer, insurers, and agents. The Office of Insurance Regulation regulates FAJUA activity in that rate filings, form content, and plan of operations changes are subject to prior approval by the Office before they become effective.

time drivers. Every insurer authorized to write automobile liability insurance or automobile physical damage insurance in Florida is required to be a member of the association. Expenses, losses, and profits of the association are apportioned among the insurer members in the ratio of their representation in the voluntary Florida market.

As of June 30, 2005, there were only 1,546 private passenger vehicles insured by the FAJUA as compared to 40,482 in 2002. Table 4 below illustrates that the FAJUA in 2004 had just a 0.32 percent statewide market share of earned premiums, insuring less than one half of 1 percent of vehicles registered in the state. However, due in part to the sharp decline in premium volume, it was necessary for the FAJUA to begin assessing member companies in September 2004.⁸⁴ The association had not assessed their membership for almost twenty years.

The makeup of the population of insured drivers within the FAJUA is comprised of approximately 63 percent as having just the minimum required coverages (PIP and PD), with the remaining 37 percent having PIP and PD along with other coverages.

TABLE 4
Florida Automobile Joint Underwriting Association Premium/Market Share/Policies in Force for Private Passenger Auto (1997-2004)

Year	EARNED PREMIUM INDUSTRY TOTAL (\$)	FAJUA EARNED PREMIUM (\$)	FAJUA MARKET SHARE	FAJUA PRIV. PASS. VEHICLES INSURED
2004	11,698,127,197	37,860,875	0.32%	6,696
2003	10,693,902,638	54,800,351	0.51%	27,796
2002	9,402,942,649	61,175,771	0.65%	40,482
2001	8,249,198,660	19,457,026	0.24%	27,136
2000	7,878,513,253	10,132,579	0.13%	8,127
1999	7,610,973,977	14,343,221	0.19%	11,677
1998	7,318,818,982	27,923,398	0.38%	16,074
1997	7,484,190,120	38,962,127	0.52%	57,042

Source: Florida Auto JUA and the Office of Insurance Regulation

As shown in Table 4, FAJUA earned premiums (as compared with earned premiums of motor vehicle insurers statewide), market share, and the number of vehicles in force have been in a steady decline. Thus, the continuing ability of the voluntary market to absorb additional FAJUA policies is evidence that insurance

⁸⁴ According to representatives with the FAJUA, the amount of each assessment is determined by the cash flow requirements of the FAJUA. (September 2004: Assessment was \$16,400,000, of which \$7 million was distributed back to member companies to close out policy year 1992; January 2005: Assessment was \$15,800,000 of which \$6,435,000 was distributed to member companies to close out policy year 1993; April 2005: Assessment was \$4,800,000; July 2005: Assessment was \$2,200,000; and the next assessment will go out in October which is estimated to be \$3,960,000.

has remained available in the Florida market. Now in 2005, the FAJUA can be said to serve as it was originally intended to be, as an insurer of last resort.

In 2004, there were 372 insurers writing personal auto insurance in Florida. Table 5 illustrates the total number of insurers and total premiums written over the past six years for private passenger (personal) auto. The total premiums written have increased over this period even though the number of companies has declined.

TABLE 5
Total Number of Insurers Writing Private Passenger Auto Insurance in Florida (1999-2004)

YEAR	TOTAL NUMBER OF INSURERS	TOTAL PREMIUMS WRITTEN
2004	372	\$11,881,650,364
2003	383	11,050,959,038
2002	389	9,796,140,119
2001	388	8,493,793,987
2000	386	7,553,681,210
1999	401	7,367,189,605

Source: Office of Insurance Regulation

Table 6 shows the direct written premiums and statewide market share by company for the top thirty private passenger automobile carriers in the state representing an 82 percent cumulative market share. Table 7 illustrates the same information for the top twenty commercial automobile insurers which represents a cumulative market share of 51 percent.

TABLE 6
Top Thirty Private Passenger Automobile Insurers by Written Premium

COMPANY NAME	DIRECT	STATEWIDE
State Farm Mutual Auto Insurance Company	2,274,611,679	19.17
Allstate Insurance Company	944,852,443	7.97
Geico General Insurance Company	692,121,075	5.83
Progressive American Insurance Company	457,290,535	3.85
Nationwide Mutual Fire Insurance Company	383,372,872	3.23
Progressive Auto Property Insurance Company	374,557,465	3.16
Progressive Express Insurance Company	373,656,337	3.15
Allstate Property & Casualty Insurance Co.	338,507,352	2.85
State Farm Fire and Casualty Company	335,284,893	2.83
Government Employees Insurance Company	321,147,394	2.71
United Services Auto Association	291,559,542	2.46
Allstate Indemnity Company	285,297,995	2.41
United Automobile Insurance Company	270,257,517	2.28
Direct General Insurance Company	236,244,181	1.99
Geico Indemnity Company	225,776,196	1.90
Mercury Insurance Company of Florida	214,616,578	1.81
USAA Casualty Insurance Company	200,484,952	1.69
Geico Casualty Company	172,718,403	1.46

Liberty Mutual Fire Insurance Company	168,557,273	1.42
First Floridian Auto & Home Insurance Co.	149,700,005	1.26
Illinois National Insurance Company	123,039,269	1.04
Hartford Insurance Co. of the Midwest	121,642,109	1.03
Property & Casualty Insurance Co. of Hartford	108,518,339	0.91
Metropolitan Casualty Insurance Company	107,963,015	0.91
Safeco Insurance Company of Illinois	87,575,822	0.74
Ocean Harbor Casualty Insurance Company	87,100,555	0.73
Florida Farm Bureau General Insurance Co.	85,686,241	0.72
Dairyland Insurance Company	81,873,436	0.69
U.S. Security Insurance Company	77,093,385	0.65
Nationwide Mutual Insurance Co.	74,721,562	0.63

Source: Office of Insurance Regulation

TABLE 7

Top Twenty Commercial Automobile Insurers by Written Premium In Florida (2004)		
COMPANY NAME	DIRECT PREMIUMS WRITTEN (\$)	STATEWIDE MARKET SHARE (%)
Progressive Express Insurance Company	229,880,508	11.48
Auto-Owners Insurance Company	128,878,705	6.43
State Farm Mutual Auto Insurance Company	63,729,164	3.18
Aequicap Insurance Company	62,192,252	3.11
Allstate Indemnity Company	58,480,012	2.92
Allstate Insurance Company	54,080,811	2.70
Lincoln General Insurance Company	48,971,684	2.45
Zurich American Insurance Company	41,344,202	2.06
Traveler's Property Casualty Co. of America	40,459,169	2.02
Universal Underwriters Insurance Company	36,201,273	1.81
Philadelphia Indemnity Insurance Company	35,963,973	1.80
Empire Fire & Marine Insurance Company	31,716,552	1.58
St. Paul Fire & Marine Insurance Company	31,686,108	1.58
US Security Insurance Company	31,598,971	1.58
Hartford Underwriters Insurance Company	26,573,598	1.33
Continental Casualty Company	23,151,944	1.16
National Indemnity Company of the South	23,140,186	1.16
Liberty Mutual Fire Insurance Company	21,102,641	1.05
Integon National Insurance Company	20,817,969	1.04
Westfield Insurance Company	20,100,259	1.00

Source: Office of Insurance Regulation

Compliance with Mandatory Vehicle Insurance Laws

A significant factor to consider in evaluating Florida's current no-fault insurance provisions is whether motorists comply with purchasing the two compulsory auto

insurance coverages, personal injury protection (PIP) and property damage liability (PD). Reducing the number of uninsured drivers can help lower insurance costs for all drivers.

There are an estimated 14,847,416 licensed drivers in Florida and a total of 17,942,272 registered vehicles according to the 2004-2005 estimates from the Department of Highway Safety and Motor Vehicles (DHSMV). Of the over 17 million vehicles, there are an estimated 13,715,866 registered passenger cars and trucks.

To obtain driver compliance, Florida has enacted tough, comprehensive and effective enforcement provisions. Motorists must show evidence of insurance at the time of application for vehicle registration with the DHSMV,⁸⁵ when purchasing or renewing license tags for vehicles, and such proof must be carried at all times while operating a motor vehicle.⁸⁶ Motorists are subject to civil and in some cases criminal sanctions should they violate these provisions.⁸⁷

Carriers are required to notify the DHSMV when a policy is canceled or non-renewed.⁸⁸ When DHSMV is notified, the department must suspend the driver's registration and license of the owner or operator of the vehicle after giving notice and an opportunity to the owner to obtain replacement coverage.⁸⁹ Fees for reinstatement are imposed upon drivers whose license is suspended ranging from \$150 to \$500.⁹⁰

In addition to the fees, those suspended drivers are required to obtain minimum noncancellable coverage for a period of 2 years as a condition of reinstatement. When the license or registration of a vehicle owner has been suspended for noncompliance with the Financial Responsibility Law for 30 days, a law enforcement officer may seize the vehicle's license plate.⁹¹ Furthermore, any person whose driver's license has been suspended who knowingly drives any motor vehicle while such license is suspended is guilty of a second degree misdemeanor for a first conviction, and is subject to more serious criminal charges upon subsequent convictions.⁹²

⁸⁵ The DHSMV must refuse to issue a vehicle registration if the applicant cannot show proof of insurance coverage under s. 320.02(5)(a), F.S.

⁸⁶ Section 320.02(5), F. S. and s. 316.646, F.S. Insurers are required to issue uniform proof-of-purchase insurance cards to their insureds. The card contains a statement notifying the applicant that presenting proof of insurance when such coverage is not in force is a first-degree misdemeanor.

⁸⁷ Section 316.646, F.S.

⁸⁸ Section 627.736(9)(a), F.S.

⁸⁹ Section 627.733(6), F.S.

⁹⁰ Section 627.733(7), F.S.

⁹¹ Section 324.201, F.S.

⁹² Section 322.34(2), F.S.

Also, an owner of a motor vehicle who fails to obtain the required insurance at the time of an accident shall have no immunity from tort liability and is personally liable for the payment of PIP benefits.⁹³

Florida's vehicle insurance laws depend on individual compliance and thus require extensive government effort to detect and sanction persons who do not comply with the law. In the past several years these efforts have greatly reduced the number of uninsured drivers in the state. The provisions described above for monitoring, detecting and sanctioning of uninsured motorists have resulted in Florida being heralded as a leader among other states in this area of enforcement.⁹⁴

According to figures maintained by the DHSMV, the actual uninsured vehicle rate has been reduced from 31 percent in 1992, to 4 percent as of July 2005.⁹⁵ In other words, 96 percent of vehicles are insured. According to staff with the DHSMV, the efforts to reduce the number of uninsured drivers has involved the collective efforts of several agencies (county tax collectors, local and state law enforcement, the courts system) and insurance companies, however, their agency is primarily responsible for detecting and enforcing compliance.

In Table 8, the percentage rates of insured vehicles are presented on a county-by-county basis. Although the county totals indicate an 87.45 percent compliance rate, DHSMV staff state that the actual total is 95.95 percent when calculating the percent of vehicles that are insured but not inputted into their database.⁹⁶

⁹³ Section 627.733(4), F.S.

⁹⁴ Office of Program Policy Analysis and Government Accountability, *Review of the Uninsured Motorist Program Administered by the Department of Highway Safety and Motor Vehicles* (1995).

⁹⁵ This figure is based on the timeliness and accuracy of insurance information submitted by carriers to the DHSMV's database. When vehicles are identified as not having insurance on the DHSMV database, the owners are sent a notice requiring them to provide proof of insurance, failing which their licenses would be suspended. When owners provide such proof, the details of their policy are sent to insurance companies for verification. If the insurance company does not submit a denial, then the policies are deemed valid.

⁹⁶ Total Non Commercial (non-fleet) Vehicles: 11,729,543; Total Commercial (non-fleet) Vehicles: 1,054,557

Total percentage of insured vehicles:	87.4505
Transaction errors not updated:	6.0000
Negative verification (ESTIMATED):	2.5000
TOTAL INSURED:	95.9505
TOTAL UNINSURED:	4.0495

DHSMV staff indicates that the 6 percent ("transaction errors") represents the percentage of vehicles insured and reported by the industry, but that due to technical errors, the data could not be updated by the DHSMV reporting system. The 2.5 percent (negative verification) represents the percentage of vehicles reported as insured by the driver and verified as such by the insurer, but such data was not put into the DHSMV system.

TABLE 8
Percentage of Insured Vehicle Statistics for Non Commercial Vehicles by County in Florida
July, 2005

COUNTY	PERCENTAGE OF INSURED VEHICLES	COUNTY	PERCENTAGE OF INSURED VEHICLES	COUNTY	PERCENTAGE OF INSURED VEHICLES
Alachua	88.07	Hendry	86.60	Palm Beach	87.37
Baker	87.33	Hernando	88.61	Pasco	87.98
Bay	86.69	Highlands	86.19	Pinellas	88.08
Bradford	87.49	Hillsborough	87.08	Polk	86.55
Brevard	89.33	Holmes	86.86	Putnam	85.65
Broward	87.33	Indian River	87.60	Santa Rosa	87.46
Calhoun	86.31	Jackson	86.15	Sarasota	86.92
Charlotte	87.55	Jefferson	86.21	Seminole	89.29
Citrus	88.70	Lafayette	86.96	St. Johns	88.26
Clay	88.36	Lake	88.32	St. Lucie	87.13
Collier	86.06	Lee	86.37	Sumter	87.49
Columbia	86.92	Leon	87.53	Suwannee	86.57
Dade	87.65	Levy	85.98	Taylor	88.77
DeSoto	84.91	Liberty	85.86	Union	86.60
Dixie	84.39	Madison	86.73	Volusia	87.87
Duval	86.77	Manatee	87.31	Wakulla	87.53
Escambia	87.10	Marion	87.19	Walton	87.72
Flagler	87.17	Martin	87.59	Washington	87.15
Franklin	81.52	Monroe	86.55	TOTAL	87.45
Gadsden	82.88	Nassau	87.69		
Gilchrist	86.33	Okaloosa	87.75		
Glade	85.98	Okeechobee	85.66		
Gulf	86.09	Orange	87.87		
Hamilton	87.40	Osceola	85.98		

Source: Department of Highway Safety and Motor Vehicles (July 2005)

Efforts to Combat Motor Vehicle Insurance Fraud and Abuse

Florida's Chief Financial Officer estimates that insurance fraud costs the average Florida family as much as \$1,500 a year in increased premiums and higher costs for goods and services. Motor vehicle insurance fraud and abuse constitutes a

large part of these costs.⁹⁷ Therefore, efforts to reduce fraud and abuse are critical to maintaining a viable no-fault insurance system in this state.

In the past five years the Legislature has enacted significant motor vehicle anti-fraud reforms which were primarily in response to recommendations contained in the 2000 Grand Jury Report on PIP fraud issued by the Fifteenth Statewide Grand Jury.⁹⁸ These legislative measures included:

- creating new crimes for soliciting accident victims, intentionally causing accidents, presenting false auto insurance cards, and disclosing confidential crash reports;
- elevating the rankings and penalties for motor vehicle insurance related crimes;
- increasing the minimum mandatory sentence for participating in an intentional automobile accident for the purpose of making a PIP claim and soliciting an accident victim with the intent to commit fraud;
- prohibiting payments to brokers;
- requiring a medical fee schedule for certain diagnostic procedures;
- licensing medical clinics within the Health Care Clinic Unit under the Agency for Health Care Administration;
- establishing an anti-fraud reward program under the Division of Insurance Fraud within the Department of Financial Services;
- funding of two assistant state attorney (ASA) and two paralegal positions in the Dade County Prosecutor's office to prosecute primarily motor vehicle insurance fraud;⁹⁹ and
- funding 12 additional positions (10 of which are investigators) for the division in 2005.¹⁰⁰

The primary agency established to investigate motor vehicle as well as all insurance fraud is the Division of Insurance Fraud (DIF) which employs 172 persons of which 128 are sworn law enforcement officers.¹⁰¹ Founded in 1976, the Division's sworn personnel investigate all types of criminal insurance fraud under s. 626.989, F.S. Division officers may make warrantless arrests upon probable

⁹⁷ Insurance fraud involves intentional deception or misrepresentation intended to result in an unauthorized or illegal benefit (e.g., billing for services not rendered). Insurance abuse usually involves charging for services that are not medically necessary, do not conform to professionally recognized standards, or are unfairly priced. Abuse may be similar to fraud except that it is not possible to establish that the abusive acts were done with an intent to deceive the insurer.

⁹⁸ Ch. 2001-271, 2001-163, and 2003-411, L.O.F. See discussion under the section entitled Legislative History of Florida's No-Fault law.

⁹⁹ An ASA and paralegal position were funded beginning in FY 2003-2004 by the Florida Automobile JUA and the association has continued funding the two positions in the ensuing period. On Sept. 6, 2005, the JUA Board approved funding the positions for FY 2006-2007. Another ASA and paralegal position were funded through the Insurance Regulatory Trust Fund in FY 2005-2006 for the Dade County Prosecutors Office.

¹⁰⁰ Some of these detective positions will investigate motor vehicle insurance fraud.

¹⁰¹ The Division has nine field offices: Pensacola, Tallahassee, Jacksonville, Ocala, Tampa, Orlando, Ft. Myers, Plantation, and Miami.

cause for criminal violations established as a result of an investigation. The general laws applicable to arrests by state law enforcement officers apply to DIF investigators.

Insurance companies authorized to do business in Florida and other specified persons must report suspected fraud to the division and are protected from civil liability, provided the information is reported in good faith.¹⁰² Further, insurers are required to adopt anti-fraud plans and to establish and maintain anti-fraud units within their companies to investigate insurance fraud.¹⁰³

According to the Director of the Division of Insurance Fraud, the fraud statistics contained in Tables 9 and 10 indicate the severity of the challenge in enforcing PIP fraud violations as the number of fraud referrals escalates. Personal injury protection fraud referrals have increased over 400 percent from 2002-2003 (615 referrals) to 2004-2005 (2,628).¹⁰⁴ The Division is able to open less than 25 percent of these referrals, according to the Director. The Director suggests that part of the reason for the rise in PIP fraud (as well as all insurance fraud) referrals is the ease by which insurance companies and consumers can now report fraud to the division by use of the "e-file" web-based reporting system through the DFS website.¹⁰⁵

The prior legislative reforms have led to successes for the division in that the number of arrests and prosecution presentations have dramatically increased over the past three years. The number of PIP arrests have increased by 74 percent from 2002-2003 (172) to 2004-2005 (299) and cases presented for prosecution have increased by 49 percent during the same period (170 to 253).¹⁰⁶

The total number of PIP referrals for the period from 2002 to 2005 was 3,942, the number of criminal investigations opened was 927, the number of arrests made was 676, and 533 cases were presented for prosecution. Personal injury protection fraud constitutes approximately 15 percent of all the fraud referrals to the division (2002-2005), yet accounts for 26 percent of the total fraud arrests and 23 percent of all the fraud cases referred for prosecution.

¹⁰² Section 626.989, F.S.

¹⁰³ Section 626.9891, F.S.

¹⁰⁴ The 2005 information is from January through July 2005.

¹⁰⁵ Referrals made prior to 2004 were filed in writing with supporting documentation. PIP fraud referrals increased from 615 (2002-2003) to 699 (2003-2004).

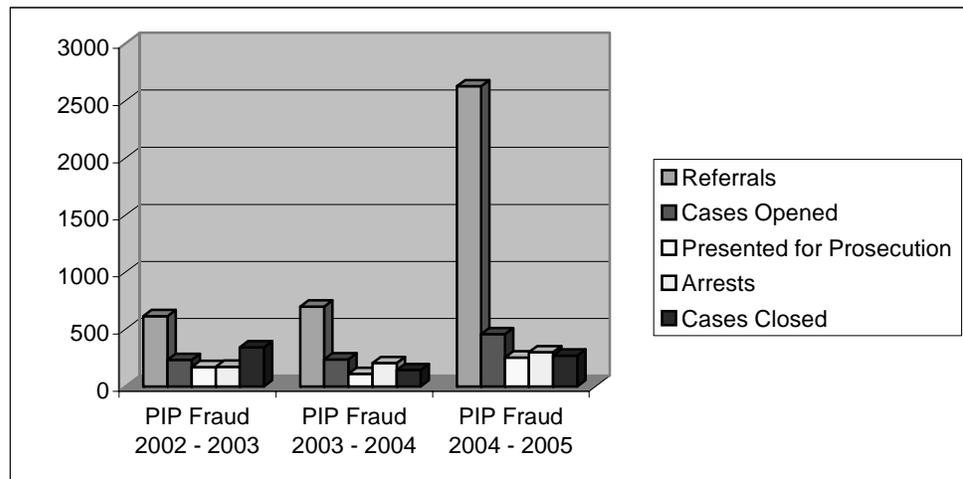
¹⁰⁶ Over \$32 million in restitution was awarded to insurance victims last year according to DIF records.

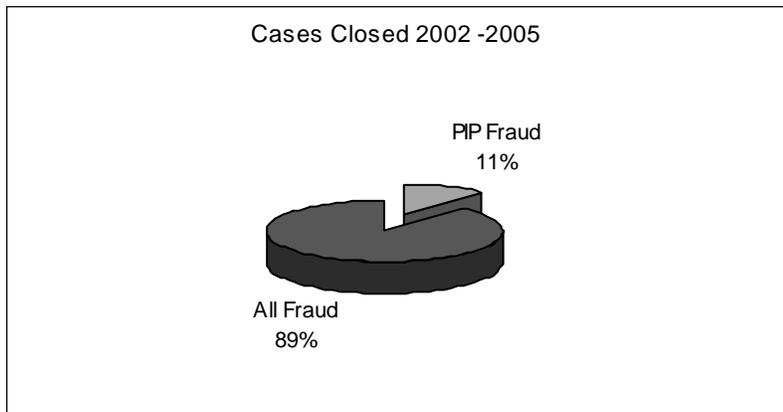
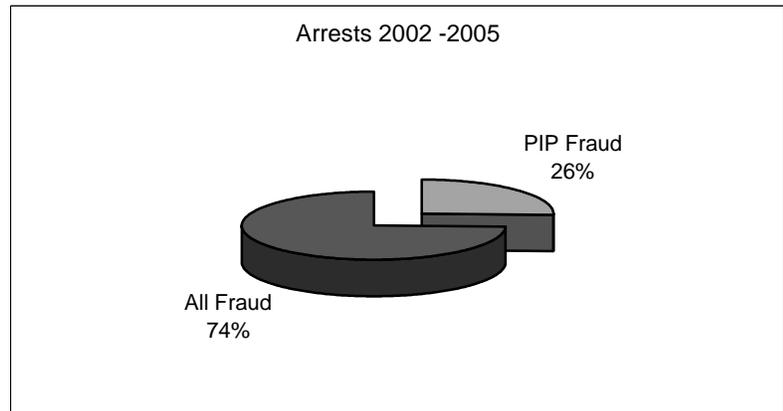
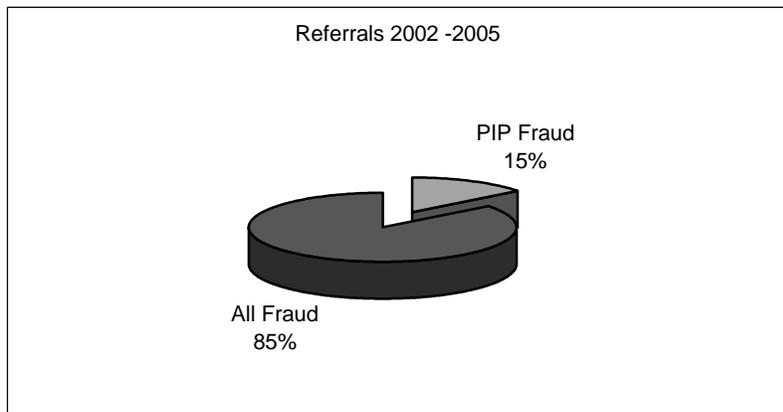
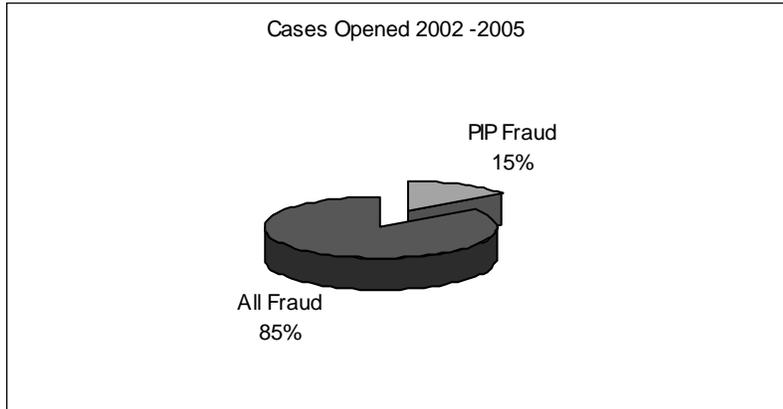
TABLE 9
PIP Fraud Statistics from 2002 – 2005 for the Division of Insurance Fraud

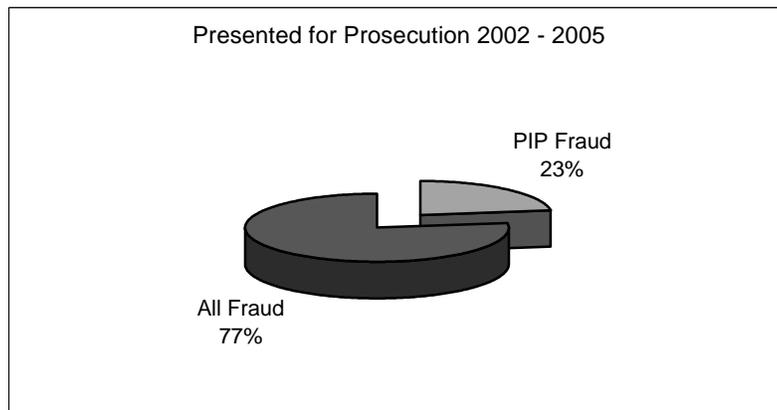
2002 - 2003	PIP FRAUD STATEWIDE	ALL FRAUD STATEWIDE
Referrals	615	5,781
Cases Opened	232	1,764
Cases Closed	342	2,946
Arrests	172	626
Presented for Prosecution	170	458
2003 - 2004		
Referrals	699	5,912
Cases Opened	237	1,618
Cases Closed	143	1,329
Arrests	205	573
Presented for Prosecution	110	576
2004 - 2005		
Referrals	2,628	11,416
Cases Opened	458	1,828
Cases Closed	270	1,544
Arrests	299	764
Presented for Prosecution	253	761
2002 - 2005 Totals		
Referrals	3,942	23,109
Cases Opened	927	5,210
Cases Closed	755	5,819
Arrests	676	1,963
Presented for Prosecution	533	1,795

Source: Department of Financial Services (2005 data as of July 2005)

TABLE 10
PIP Fraud Statistics for 2002-2005







The incidents of motor vehicle insurance fraud and abuse are at an all time high with health care fraud the leading cost “driver” according to the Director of DIF. A survey of auto claims by the Insurance Research Council (IRC) in 2002 supports this assertion.¹⁰⁷ The IRC examined whether any elements of fraud or buildup appeared in medical treatment received by auto injury claimants.¹⁰⁸ In summary, the study found that claimants whose claims were judged to involve fraud or buildup visited greater numbers of different types of medical providers and made significantly more visits to medical providers than other claimants. As a result, average total charges from medical providers were much higher among suspected fraud and buildup claims. Claims with the appearance of fraud or buildup were significantly more likely than other claims to involve X-rays, magnetic resonance imaging (MRI), and electromyography (EMG). Claims judged to involve fraud or buildup were more likely than other claims to involve charges for pain clinic treatment and durable medical equipment. Further, treatment by chiropractors, physical therapists, and alternative medical providers was more prevalent among claims with the appearance of fraud or buildup than among claims without the appearance of those factors. Chiropractors and physical therapists accounted for a larger share of total charges for medical providers among claims with the appearance of fraud or buildup than among other claims.¹⁰⁹

Florida’s no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud,¹¹⁰ staging (faking) car crashes,¹¹¹

¹⁰⁷ Insurance Research Council, *Fraud and Buildup in Auto Injury Insurance Claims* (2004). The IRC reviewed 72,354 claims that closed with payment which involved thirty-two insurers, representing 58 percent of the 2002 private passenger auto insurance market in the United States.

¹⁰⁸ The IRC survey refers to the appearance of “fraud” as the misrepresentation of key facts of a claim and “buildup” as the intentional inflation of an otherwise legitimate claim.

¹⁰⁹ The survey also found that claims with the appearance of fraud and buildup were much less likely to involve hospital treatment (either in the emergency room only or admission for one night or longer) than claims without the appearance of fraud and abuse.

¹¹⁰ A health care clinic means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider (s. 400.9905(4), F.S.).

¹¹¹ Health care clinic fraud and staged accidents are the most common types of PIP fraud.

manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering (referring patients to medical providers for a bounty), according to representatives with the division.

Personal injury protection fraud is more prevalent in major metropolitan areas like Miami-Dade County which has been the focus of the majority of staged crashes investigated by the division.¹¹² In the past 24 months, the Miami-Dade office has received 277 complaints or referrals about staged crashes alone, investigated 116 of these, and arrested 260 offenders associated with PIP fraud. Also, more than 60 individuals have now been charged under the 2003 law that mandated minimum mandatory 2-year prison terms for staging vehicle crashes.

According to division officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act).¹¹³ Current figures indicate that over 65 percent¹¹⁴ of the more than 2,435 medical clinics licensed by the Agency for Health Care Administration (AHCA) statewide are located in Dade, Broward, and Palm Beach counties.¹¹⁵ Moreover, 4,590 clinics are exempt from licensure and are therefore subject to no state regulation.¹¹⁶ Division intelligence indicates that “hundreds” of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud, according to DIF officials.¹¹⁷ The types of crimes perpetrated by these clinics often involve fraudulent providers (who fabricate their credentials, bills, or the office itself);¹¹⁸ medical mills that

¹¹² On February 18, 2005, the division arrested 30 individuals in one day who had participated in varying degrees in staging vehicle crashes to fraudulently obtain and distributing PIP funds from victim insurance companies.

¹¹³ Part XIII, Chapter 400, F.S. The clinic program is administered by the Health Care Clinic Unit within the Agency for Health Care Administration. The Unit has a 50 person staff, including 26 persons located in 8 field offices.

¹¹⁴ National Insurance Crime Bureau, White Paper: *Addressing Personal Injury Protection Fraud through the Florida Medical Fraud Task Force* (August 2005). The Florida Medical Fraud Task Force is made up of NICB agents, DIF detectives, and insurance company investigators and focuses primarily on clinics providing PIP services to persons involved in automobile accidents in South Florida. Often these “investigations surround soft tissue injuries and chiropractic treatment.” (Page 3 of White Paper.)

¹¹⁵ Data as of September 2005. Officials with AHCA state that of the 2,435 licensed clinics, a total of 40 licenses have been denied and 23 of these were denied due to background screening issues. Twenty-eight clinics are in litigation with the agency and there are 154 applications currently being reviewed for licensure. Currently, the Unit receives about 50 license and 100 certificate of exemption applications a month.

¹¹⁶ A clinic is not required to obtain an exemption certificate from AHCA under the Act. This figure does not count the clinics that have decided not to file for an exemption certificate with AHCA.

¹¹⁷ Division of Insurance Fraud Budget Request, FY 2005-2006. See also NICB White Paper, at note 122.

¹¹⁸ Recently, five medical clinics in the City of Hialeah were dismantled along with the arrest of 6 people which involved sham invoices worth over \$2 million.

provide treatments that are not medically necessary,¹¹⁹ purposely miscode diagnosis, inflate bills or charge for services that are not rendered; or “doc in the box” schemes where often older medical providers are paid for the use of their license.

Representatives with both AHCA and DIF have found that because there is no oversight over exempt clinics under the Act and because there is such a PIP fraud problem among clinics (especially those exempt from licensure), that all clinics that accept PIP reimbursement should be required to obtain an exemption certificate which would be applicable for a 2 year period (and be subject to new exemption application filings), and that AHCA personnel be authorized to inspect exempt clinics.¹²⁰ Insurance companies that investigate PIP claims are frustrated by the lack of agency oversight over exempt clinics under the Act, according to these representatives.

Officials with AHCA have found that various fraudulent motor vehicle insurance acts currently prohibited under Part I of ch. 817, F.S., are not disqualifying offenses for clinic licensure.¹²¹ Adding these criminal provisions to the Act would prohibit persons convicted of these motor vehicle crimes from obtaining a clinic license.

The staff with the Division of Insurance Fraud and the Dade County prosecutor also echoes that the 2001 and 2003 legislative PIP fraud reforms were critically important in helping them combat and prosecute PIP fraud. However, these representatives have found that several types of fraudulent vehicular acts need to be criminalized, which include:

- Creating documentation of a motor vehicle crash that did not occur with the intent to make a motor vehicle claim. These “paper accident” schemes are committed by numerous individuals and although there is a current penalty for submitting a false insurance claim,¹²² a more specific and severe penalty is needed to deter this activity. DIF officials state that

¹¹⁹ On September 22, 2005, 17 physicians, physical therapists, a physician’s assistant and others were sentenced to prison in Miami for fraudulently billing Medicare and private insurance companies for approximately \$5.5 million of medical services, medical equipment, medications, and physical therapy that was either not provided or was medically unnecessary. The scheme involved several clinics, medical supply and durable medical equipment companies paying kickbacks to Medicare beneficiaries to serve as patients of the clinics and three other medical companies. For each of the patients, the defendants falsified doctors’ notes and patient medical records, adding false patient complaints, fabricating diagnoses and treatment plans, and ordering unnecessary tests, medications, equipment, and physical therapy.

¹²⁰ AHCA currently inspects licensed clinics under s. 400.9915, F.S., to verify the information submitted in connection with the license application or renewal. Also, the agency may make unannounced inspections of licensed clinics to determine that the clinic is in compliance with the Act and applicable rules.

¹²¹ These crimes include presenting a false or fraudulent motor vehicle insurance application to an insurer; presenting a false or fraudulent vehicle insurance card; and obtaining a motor vehicle with the intent to defraud.

¹²² Section 817.234, F.S.

individuals steal blank police vehicle crash forms, fill them out and submit them to their insurer. Adding the specific crime of a paper accident to the criminal code and making it a second degree felony with a 2 year minimum mandatory sentence (as provided for planning or participating in an intentional motor vehicle crash)¹²³ would be an effective deterrent.

- Prohibiting persons from soliciting or receiving any bribe in return for accepting medical treatment from a health care provider or health care facility (i.e., clinic). There are individuals who are “professional patients” according to DIF officials who solicit money in exchange for accepting medical treatment. This provision would make it a third degree felony to commit this type of crime.
- Obtaining vehicle crash reports by specified individuals is a third degree felony under s. 316.066, F.S. There is an exception in this provision to allow “victim services programs” to obtain such reports. DIF officials have found that this exception is too broad and allows individuals to obtain such reports posing as members of such programs.
- Vehicle accident citation logs maintained by police are typically released to the public (e.g., reckless or careless driving reports). Division representatives state that oftentimes these reckless or careless driving incidents involve vehicular accidents. Thus, runners can obtain these logs to solicit accident victims for fraudulent providers or attorneys. Preventing the release of these logs is important to stop this type of activity.
- Require health care clinics licensed under chapter 400, F.S., to post anti-fraud reward signs that indicate individuals may receive rewards for furnishing insurance fraud information under the DIF reward program.¹²⁴ Division officials state that informing clinic patients about fraud rewards would encourage the deterrence of fraudulent PIP activity. The agency recommends that AHCA should have the authority to inspect clinics to ensure that the posting requirement is met since AHCA is currently to do on site clinic inspections.

The resources of the Division of Insurance Fraud are limited primarily due to the serious challenge of recruiting and retaining qualified investigators (sworn law enforcement officers).¹²⁵ The Florida Department of Law Enforcement (FDLE)

¹²³ Section 817.234(9), F.S.

¹²⁴ Section 626.9892, F.S.

¹²⁵ Division Budget Request for 2006-2007. The DIF requested 21 law enforcement positions; increased salaries for beginning and veteran investigators to establish salary parity; overtime funds for investigators because there is a lack of such funds to absorb workload increases brought on by major loss events (e.g., hurricanes or other catastrophes); increased salaries for specified investigators; 3 prosecutors for Miami, Orlando, and Tampa; replacement of 20 motor vehicles; radio equipment; an anti-fraud plan database and an anti-fraud reward program secure database; analyst notebook
Footnote continued on next page.

best mirrors the DIF in terms of complexity of investigative matters and the FDLE currently starts detectives at \$44,921, whereas the Division salaries begin at \$38,783. There is a high separation rate of trained fraud investigators who leave for higher paying positions with other police agencies, particularly the FDLE. Within the past five years, 36 sworn personnel (out of 128) or 28 percent separated from the Division, on average taking with them 7 years of law enforcement experience. Recruitment by higher paying law enforcement agencies has created an environment that entices job migration.

Officials with the Division also state that there are an insufficient number of experienced, proficient prosecutors to process these complex PIP fraud cases through the criminal justice system. There are now two full-time PIP fraud prosecutors serving the Dade State Attorney's Office. Division officials assert that the success the agency has experienced by obtaining dedicated PIP prosecutors in Dade County (e.g., increases in cases handled, convictions, increases in sentences imposed) validates recommending a prosecutor for Orlando and for Tampa.¹²⁶

Unreasonable Denial of Claims by Insurers

When the law limits policyholders' ability to sue for pain and suffering damages under the no-fault system, that limitation is given in exchange for PIP benefits that are tendered promptly by the insurance company. It is extremely important that insurers not engage in practices that delay or deny benefits without a reasonable basis or in bad faith.¹²⁷ When insurers engage in such behavior, they use the no-fault system to harm Florida's citizens by denying access to needed and contracted for health care and wage loss benefits, and rely on the limitations on lawsuits contained in the PIP law to avoid having to pay these benefits. Though staff found no evidence that such practices on the part of insurers are widespread, it is clear that such acts by insurers do occur in Florida.

For instance, a Target Market Conduct Examination by the Office of Insurance Regulation of a non-standard insurer in Florida revealed that, during 2002, the insurer had over 6,034 new PIP claims opened but as of December 2003, only 88 of these claims had been paid. Though fraud and abuse is an ongoing problem in PIP, it strains credulity to believe that 98.5 percent of claims an insurer receives cannot be paid in a timely fashion due to fraud on the part of policyholders. The particular insurer was fined \$75,000 for failure to: comply with requirements for the return of unearned premium,¹²⁸ adjust claims timely,¹²⁹ pay PIP benefits timely,¹³⁰ report possible fraudulent claims¹³¹ and other violations.

software; and wireless communications systems.

¹²⁶ The partnership formed between DIF investigators and prosecutors ensures that fraud cases are a priority and therefore timely and effectively prosecuted.

¹²⁷ Insurance companies can be sanctioned under a number of provisions in the insurance code: OIR market conduct examinations and investigations (s. 624.3161-624.319, F.S.); bad faith civil remedy provision (s. 624.155, F.S.); and the unfair trade practices provision (s. 627.951-626.99, F.S.).

¹²⁸ Section 627.7283, F.S.

¹²⁹ Section 626.877, F.S.

¹³⁰ Section 627.736, F.S.

¹³¹ Section 626.989(6), F.S.

It should be noted that complaints against this insurer have fallen by half from fiscal year 2002-2003 to fiscal year 2004-2005 according to the OIR. However, the experience of this insurer shows that policyholders, medical providers and attorneys are not the only parties that attempt to break the rules of the no-fault system for their own benefit. This example illustrates the importance of insurance regulators deterring such practices from occurring.

Affordability of Motor Vehicle Insurance

An important factor which should be utilized in assessing this state's no-fault law is to evaluate whether motor vehicle insurance is affordable. Several aspects concerning affordability are examined including the average rate level changes over the past several years for the larger auto insurance writers in the state, the average automobile insurance premiums Florida drivers pay for all coverages, and how Florida compares with other states as to average expenditures and average premiums.

Table 11 indicates the overall rate change for past six years for the top thirteen companies which represent 62 percent of the statewide market share for private passenger automobile insurance written in the state. This includes all insurers with at least a 2 percent share of the market or greater. The table shows significant rate increases from 2001 to 2003, followed by rate decreases in 2004 for BI and PD and increases of less than one percent for PIP, UM and MP. These more favorable results generally correspond with the time period when the last PIP reforms were enacted.¹³² According to the Office of Insurance Regulation, this favorable experience is continuing in 2005 as many insurers are maintaining current rate levels or filing for small rate increases or decreases, with a few exceptions.

In particular, personal injury protection rates have shown recent improvement with a negligible increase of 0.6 percent in 2004. But this follows three straight years of double-digit increases from 2000 to 2002 plus a 7.4 percent increase in 2003. Industry stakeholders acknowledge that the 2003 reforms have been effective in contributing to these improved results, but similar results are occurring nationwide, believed to be attributable to fewer accidents, improved safety features of automobiles such as front and side air bags and anti-lock brakes, and a more competitive automobile insurance market.

¹³² Ch. 2003-411, L.O.F., took effect October 1, 2003.

TABLE 11
Florida Private Passenger Auto Top 13 Companies (62 % Market Share)
Statewide Weighted Average Rate Level Changes

Year	ANNUAL PERCENT RATE CHANGE BY COVERAGE				
	BI	PD	PIP	UM	MP
2004	(2.5)%	(1.3)%	0.6%	0.8%	0.2%
2003	9.7%	2.7%	7.4%	16.5%	15.6%
2002	18.8%	9.7%	23.1%	25.9%	15.5%
2001	9.0%	9.8%	17.6%	2.5%	10.3%
2000	0.6%	5.1%	10.0%	0.6%	4.3%
1999	0.7%	3.1%	3.3%	0.4%	(1.0)%

Source: Office of Insurance Regulation

The affordability of auto insurance is best reflected by the premiums individuals pay for coverage. The risk classifications which insurers use in setting insurance premiums are age, gender, driving history, type of vehicle, usage of the vehicle (personal or business), and geographic location. Additionally, drivers may qualify for premium discounts for such things as having a good driving record (free of accidents or violations) or completing a driver-improvement course. Also, companies may offer discounts for safety equipment like anti-lock brakes, front or side air bags, anti-theft devices and vehicle recovery systems.

Table 12 gives examples of auto insurance premiums in four Florida cities. It illustrates the average annual premiums for six major insurers over a four year span (2002-2005).¹³³ The table shows the premiums for the five primary automobile coverages and the percentage change each year, for three typical drivers.¹³⁴ For four of the five coverages (PIP, liability, collision and comprehensive), the figures for 2004-2005 show a reduction in insurance premiums in all but a few examples with minor increases. However, the premiums for uninsured motorist (UM) coverage reflect significant, double-digit increases in 2005.

¹³³ See Note (6) after Table 12.

¹³⁴ The coverages are personal injury protection, bodily injury and property damage liability, uninsured motorist, collision, and comprehensive. The source of this information is from Consumer Services within DFS which surveys the companies and publishes the results on the agency's website.

TABLE 12
AVERAGE ANNUAL PREMIUM
MAJOR PRIVATE PASSENGER INSURERS
(2002-2005)
Jacksonville

Year	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2005	\$140	\$124	\$448	\$353	\$333	\$1,292	\$51	\$56	\$74	\$405	\$227	\$1,216	\$144	\$65	\$303	\$1,092	\$805	\$3,333
2004	\$138	\$128	\$461	\$352	\$352	\$1,351	\$46	\$49	\$61	\$411	\$243	\$1,218	\$140	\$72	\$299	\$1,086	\$844	\$3,390
2003	\$142	\$121	\$467	\$297	\$300	\$1,100	\$46	\$45	\$68	\$429	\$273	\$1,303	\$150	\$80	\$308	\$1,064	\$819	\$3,245
2002	\$110	\$104	\$299	\$282	\$269	\$845	\$35	\$33	\$41	\$457	\$255	\$998	\$163	\$67	\$279	\$1,047	\$728	\$2,463

Annual Percentage Change (Jacksonville)

Years	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2004-2005	1.3%	-3.4%	-2.9%	0.3%	-5.4%	-4.4%	10.9%	15.5%	21.1%	-1.4%	-6.4%	-0.2%	3.0%	-10.1%	1.5%	0.6%	-4.6%	-1.7%
2003-2004	-2.6%	5.8%	-1.2%	18.3%	17.3%	22.9%	-0.7%	8.2%	-10.8%	-4.2%	-11.0%	-6.5%	-7.2%	-9.4%	-2.8%	2.0%	3.1%	4.5%
2002-2003	28.6%	16.1%	56.1%	5.4%	11.6%	30.1%	33.8%	35.2%	64.9%	-6.1%	7.3%	30.5%	-7.9%	19.5%	10.3%	1.7%	12.5%	31.8%

Tallahassee

Year	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2005	\$90	\$81	\$276	\$284	\$271	\$1,046	\$46	\$51	\$70	\$408	\$234	\$1,276	\$134	\$62	\$287	\$962	\$699	\$2,954
2004	\$90	\$85	\$291	\$290	\$294	\$1,127	\$42	\$45	\$58	\$419	\$253	\$1,290	\$136	\$69	\$296	\$976	\$747	\$3,062
2003	\$103	\$89	\$332	\$272	\$274	\$1,004	\$45	\$44	\$69	\$446	\$282	\$1,353	\$145	\$74	\$292	\$1,012	\$764	\$3,048
2002	\$84	\$80	\$222	\$269	\$256	\$796	\$33	\$33	\$41	\$476	\$263	\$1,030	\$155	\$64	\$261	\$1,016	\$695	\$2,350

Annual Percentage Change (Tallahassee)

Years	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2004-2005	0.0%	-4.1%	-5.0%	-2.0%	-8.0%	-7.2%	9.1%	12.5%	19.5%	-2.6%	-7.6%	-1.1%	-1.5%	-10.6%	-3.3%	-1.5%	-6.4%	-3.5%
2003-2004	-13.1%	-4.9%	-12.4%	6.6%	7.3%	12.3%	-7.0%	2.7%	-15.3%	-6.1%	-10.2%	-4.6%	-6.3%	-6.8%	1.6%	-3.5%	-2.2%	0.4%
2002-2003	23.5%	11.7%	49.5%	1.2%	7.1%	26.2%	39.5%	34.7%	66.8%	-6.2%	7.4%	31.3%	-6.1%	16.5%	11.7%	-0.4%	9.9%	29.7%

TABLE 12 (continued)

Orlando

Year	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2005	\$151	\$136	\$491	\$334	\$319	\$1,215	\$54	\$60	\$76	\$389	\$224	\$1,152	\$124	\$59	\$261	\$1,052	\$798	\$3,195
2004	\$156	\$163	\$529	\$341	\$397	\$1,327	\$49	\$61	\$65	\$407	\$261	\$1,206	\$126	\$70	\$273	\$1,078	\$951	\$3,399
2003	\$163	\$139	\$544	\$293	\$298	\$1,095	\$49	\$47	\$71	\$410	\$262	\$1,246	\$129	\$69	\$263	\$1,043	\$815	\$3,218
2002	\$126	\$120	\$342	\$284	\$273	\$851	\$35	\$36	\$44	\$441	\$282	\$954	\$137	\$70	\$233	\$1,023	\$780	\$2,424

Annual Percentatge Change (Orlando)

Years	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2004-2005	-3.3%	-16.8%	-7.2%	-2.1%	-19.7%	-8.4%	11.0%	-1.1%	17.4%	-4.3%	-14.3%	-4.5%	-2.0%	-14.8%	-4.3%	-2.5%	-16.2%	-6.0%
2003-2004	-4.3%	16.9%	-2.7%	16.4%	33.5%	21.2%	0.0%	29.1%	-8.9%	-0.7%	-0.3%	-3.2%	-2.1%	0.5%	3.9%	3.4%	16.8%	5.6%
2002-2003	29.4%	16.0%	58.9%	3.0%	9.0%	28.6%	37.7%	32.4%	62.7%	-7.0%	-7.3%	30.6%	-6.0%	-0.2%	12.7%	2.0%	4.4%	32.8%

Miami

Year	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2005	\$243	\$221	\$791	\$512	\$486	\$1,958	\$106	\$116	\$156	\$585	\$313	\$1,761	\$379	\$157	\$801	\$1,825	\$1,292	\$5,468
2004	\$232	\$225	\$790	\$509	\$513	\$2,041	\$98	\$104	\$133	\$581	\$333	\$1,722	\$382	\$193	\$818	\$1,802	\$1,367	\$5,503
2003	\$220	\$187	\$734	\$417	\$419	\$1,580	\$104	\$100	\$159	\$581	\$365	\$1,753	\$384	\$202	\$801	\$1,705	\$1,273	\$5,026
2002	\$195	\$187	\$529	\$413	\$395	\$1,248	\$76	\$76	\$95	\$620	\$350	\$1,388	\$428	\$177	\$801	\$1,733	\$1,185	\$3,801

Annual Percentage Change (Miami)

Years	PIP			Liability			Uninsured Motorist			Collision			Comprehensive			Total		
	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C	Ex A	Ex B	Ex C
2004-2005	4.7%	-1.7%	0.1%	0.6%	-5.2%	-4.0%	8.2%	11.2%	17.8%	0.6%	-6.2%	2.3%	-0.7%	-18.8%	-2.0%	1.3%	-5.5%	-0.6%
2003-2004	5.7%	19.9%	7.7%	22.2%	22.5%	29.2%	-5.8%	4.0%	-16.4%	0.0%	-8.6%	-1.8%	-0.7%	-4.5%	2.1%	5.6%	7.5%	9.5%
2002-2003	12.4%	-0.1%	38.7%	0.9%	6.1%	26.6%	37.1%	32.0%	66.7%	-6.3%	4.1%	26.3%	-10.3%	14.0%	0.0%	-1.6%	7.4%	32.2%

NOTES TO TABLE 12 :

(1) PIP limits are \$10,000. Liability limits for 2002 and 2003 are 10,000/20,000/10,000; Liability limits for 2004 and 2005 are 25,000/50,000/10,000. Uninsured Motorist limits are 10,000/20,000. Comprehensive has a \$100 deductible. Collision has a \$250 deductible.

(2) Example A (Ex A) is a 40 year-old married female. There are no youthful operators. She has one moving violation for speeding less than 15 miles per hour over the speed limit within the past 18 months. She drives a 3-year old sport utility vehicle valued at \$25,000. She drives 15,000 miles annually.

(3) Example B (Ex B) is a 71 year-old married male. He has had one moving violation for failing to obey a stop sign within the past 18 months. He drives an 8-year old car valued at \$10,000. He drives 10,000 miles annually for pleasure.

(4) Example C (Ex C) is a single 18 year-old male driver who lives with his family. He has had no accidents or moving violations during his two-year driving history. He drives a 5 year-old car valued at \$15,000. He drives 12,000 miles annually for school, work, and pleasure.

(5) Rates presented were determined by averaging the rates for the following companies: Government Employees Insurance Co, Liberty Mutual (Fire) Insurance Co, Nationwide Mutual Fire Ins Co, Progressive American (Express) Insurance Co, State Farm Mutual Automobile Ins Co, and United Services Automobile Assn. Rates were provided by each company.

(6) The 2002 rates included Progressive Express Insurance Co, while the 2003-2005 rates included Progressive American Insurance Co. The introduction of Progressive American Insurance Company's rates included a reassessment of the class relativities. This reassessment resulted in higher rates for young males. Therefore, some of the percent increase seen for Ex C in the 2002-2003 time period is due to this class relativity change. Although this reassessment affected all classes, it is most pronounced in Ex C (18 year old male) shown here.

The Florida Automobile Joint Underwriting Association, the insurer of last resort, provided committee staff with average PIP rates for comparison purposes with the average PIP rates featured in Table 12. The FAJUA rates for “Example C” driver¹³⁵ were \$1,732 (Miami), \$717 (Orlando), and \$423 (Tallahassee). The average PIP rates in Table 9 for “Example C” driver were \$791 (Miami), \$491 (Orlando), and \$276 (Tallahassee).

Another factor used in assessing affordability is how Florida compares with other states as to average expenditures and average premiums for automobile insurance. According to the 2002 rankings published by the National Association of Insurance Commissioners (Table 13), Florida ranked 14th among the states (including the District of Columbia) when calculating combined average premiums per insured vehicle for private passenger automobile insurance (\$931.15) and 13th when calculating average expenditures (\$870.35). Florida ranked well above the countrywide average premiums (\$879.99) and average expenditures (\$773.68) for auto insurance.¹³⁶

The column in the table entitled “Combined Average Premium Per Insured Vehicle” represents the average cost of an auto insurance policy in the state that contains all three (liability, comprehensive, and collision) coverages.¹³⁷ The column entitled “Average Expenditure Per Insured Vehicle” measures what consumers in the state spent, on average, for auto insurance.¹³⁸

¹³⁵ See Table 12.

¹³⁶ Representatives with the NAIC state that while these comparisons are helpful, because of differences as to policyholder classifications, vehicle characteristics, or the selection of specific limits or deductibles, direct comparisons between state results could be misleading. There are also differences as to state auto and tort laws, rate filing laws, traffic conditions or other demographics.

¹³⁷ The combined average premium per insured vehicle is calculated by summing the average premiums for the three coverages (combined liability, collision, and comprehensive).

¹³⁸ The state average expenditure is the total written premium for the combined liability (BI, PD, and in no-fault states, PIP), collision, and comprehensive coverages divided by the liability written car-years (exposures) in that state. This assumes that all insured vehicles carry liability coverage, but do not necessarily carry the physical damage coverages, collision and/or comprehensive. A written car year is equal to 365 days of insurance coverage for a single vehicle and is the standard measure of exposure for automobile insurance.

TABLE 13
2002 State Average Expenditures and Premiums for Personal Automobile Insurance

STATE	AUTO INSURANCE SYSTEM	COMBINED AVERAGE PREMIUM PER INSURED VEHICLE (AND RANKING)	AVERAGE EXPENDITURE PER INSURED VEHICLE (AND RANKING)	POPULATION DENSITY RANKING (2000)
New Jersey	Choice/NF	\$1,283.87 (1)	\$1,112.86 (1)	2
New York	No-Fault	\$1,240.24 (2)	\$1,087.38 (2)	7
District of Columbia*	NF Optional	\$1,191.87 (3)	\$1,040.02 (3)	1
Rhode Island	Tort	\$1,095.57 (4)	\$937.18 (6)	3
Louisiana	Tort	\$1,064.54 (5)	\$926.03 (7)	23
Massachusetts	No-Fault	\$1,062.39 (6)	\$983.59 (4)	4
Connecticut	Tort	\$1,057.57 (7)	\$964.57 (5)	5
Colorado	Tort**	\$1,051.37 (8)	\$914.06 (8)	38
Alaska	Tort	\$1,034.00 (9)	\$883.57 (11)	51
Nevada	Tort	\$1,011.20 (10)	\$887.46 (10)	44
Arizona	Tort	\$991.66 (11)	\$877.19 (12)	37
Delaware	Tort/Add-On NF	\$990.91 (12)	\$907.12 (9)	8
Michigan	No-Fault	\$986.71 (13)	\$839.25 (14)	16
Florida	No-Fault	\$931.15 (14)	\$870.35 (13)	9
West Virginia	Tort	\$918.41 (15)	\$776.23 (21)	30
Maryland	Tort/Add-On NF	\$910.05 (16)	\$837.34 (15)	6
Minnesota	No-Fault	\$885.84 (17)	\$800.44 (16)	32
Georgia	Tort	\$883.35 (18)	\$739.16 (22)	19
Texas	Tort/Add-On NF	\$881.74 (19)	\$791.39 (17)	29
California	Tort	\$880.47 (20)	\$777.93 (20)	13
Countrywide		\$879.99	\$773.68	
Washington	Tort/Add-On NF	\$879.11 (21)	\$787.62 (18)	26
Pennsylvania	Choice/NF	\$871.77 (22)	\$783.37 (19)	11
New Mexico	Tort	\$860.48 (23)	\$699.37 (28)	46
Hawaii	No-Fault	\$840.00 (24)	\$736.43 (23)	14
Mississippi	Tort	\$820.10 (25)	\$678.75 (31)	33
South Carolina	Tort/Add-On NF	\$818.03 (26)	\$702.44 (26)	22
Kentucky	Choice/NF	\$815.64 (27)	\$685.11 (29)	24
Oklahoma	Tort	\$809.04 (28)	\$650.00 (34)	36
Arkansas	Tort/Add-On NF	\$806.27 (29)	\$670.12 (32)	35
Utah	No-Fault	\$806.18 (30)	\$700.05 (27)	42
Illinois	Tort	\$801.75 (31)	\$725.51 (25)	12
Montana	Tort	\$792.84 (32)	\$627.89 (39)	49
New	Tort	778.64 (33)	\$730.60 (24)	21

Florida's Motor Vehicle No-Fault Law

Missouri	Tort	\$776.21 (34)	\$666.16 (33)	28
Oregon	Tort/Add-On NF	\$765.36 (35)	\$681.65 (30)	40
Alabama	Tort	\$756.51 (36)	\$625.95 (40)	27
Tennessee	Tort	\$747.67 (37)	\$631.64 (38)	20
Wyoming	Tort	\$744.50 (38)	\$580.32 (47)	50
Indiana	Tort	\$741.54 (39)	\$646.38 (35)	17
Kansas	No-Fault	\$738.35 (40)	\$585.71 (45)	41
Vermont	Tort	\$734.31 (41)	\$644.16 (36)	31
Ohio	Tort	\$713.67 (42)	\$639.43 (37)	10
Nebraska	Tort	\$712.79 (43)	\$589.09 (43)	43
Virginia	Tort/Add-On NF	\$712.69 (44)	\$625.32 (41)	15
North Carolina	Tort	\$697.57 (45)	\$587.69 (44)	18
South Dakota	Tort/Add-On NF	\$694.46 (46)	\$540.45 (50)	47
North Dakota	No-Fault	\$683.97 (47)	\$532.81 (51)	48
Wisconsin	Tort/Add-On NF	\$671.39 (48)	\$609.46 (42)	25
Maine	Tort	\$671.25 (49)	\$584.67 (46)	39
Idaho	Tort	\$669.13 (50)	\$560.05 (48)	45
Iowa	Tort	\$638.56 (51)	\$546.54 (49)	34

* The District of Columbia is not a true no-fault or tort state. Policyholders have the option to buy no-fault coverage. Those that do so and are involved in an accident then have the option of accepting the no-fault benefits or file a tort claim against the at-fault party.

** Colorado utilized a No-Fault system until July 1, 2003. Colorado was a no-fault state when the statistics for combined average premium and average expenditure were tabulated.

A correlation exists between the population density and cost of auto insurance in a state, as reflected in the above table. For the six densest no-fault states—Florida, Hawaii, Massachusetts, New Jersey, New York, and Pennsylvania—the average cost of an auto insurance premium with combined coverage in 2002 was \$1,037.98. In the six least dense no-fault states—Kansas, Kentucky, Michigan, Minnesota, North Dakota, and Utah—the average cost was \$819.45, a difference of \$218.53. This correlation can also be seen in tort states. For example, Rhode Island and Connecticut are both among the states with the highest population densities and the highest premiums. Florida ranks eighth nationally for population density and features major urban centers such as Miami, Tampa/St. Petersburg, Orlando, and Jacksonville. As such, though certain legislative changes to Florida's auto insurance laws would have an effect on premium cost, the correlation between population density and auto-premium cost is unlikely to be eliminated regardless of whether Florida utilizes a no-fault or tort system.

Profitability of Auto Insurance Companies

Automobile insurance carriers writing private passenger auto policies in 2003 in Florida appear to be earning profits that are comparable with insurers countrywide. This data is from the NAIC Report on Profitability for 2003 which provides a consistent view of the underwriting and investment experiences of the

private passenger and commercial auto insurance industry for each line of insurance in each state.¹³⁹

Table 14 illustrates the profitability of automobile insurance in Florida and countrywide over the three-year period, 2001-2003. For 2003, the total percent of return on net worth for Florida private passenger auto was a healthy 10.3 percent, slightly better than the countrywide rate of return of 9.4 percent. However, for the two prior years (2002 and 2001), Florida private passenger auto was well below the countrywide average with a negative 1.3 percent rate of return on net worth compared to the countrywide 4.1 percent return. The results were even lower in 2001, with a negative 3.5 percent return in Florida, compared to a 2 percent return countrywide.

Economic analysis indicates that auto insurance is an “average risk” industry (average compared to all business in the United States). This is due to the insurance companies’ ability to diversify risk through the law of large numbers, reinsurance, spread of risk, management of growth, etc. According to actuaries from the Office of Insurance Regulation, the profits that companies in Florida have made in comparison to countrywide benchmarks indicate that they made average to slightly less than average profits over the past 3 years.

TABLE 14
Profitability Report -- Percent Of Return On Net Worth
Florida and Countrywide Auto Insurance
(2003-2001)

Year	Private Passenger Auto Liability	Private Passenger Auto Physical	Private Passenger Auto Total	Commercial Auto Liability	Commercial Auto Physical	Commercial Auto Total
2003						
Florida	8.1%	17.8%	10.3%	1.1%	25.2%	4.7%
Countrywide	6.3%	16.4%	9.4%	7.2%	23.3%	10.1%
2002						
Florida	(5.3)%	11.7%	(1.3)%	(11.3)%	10.5%	(8.1)%
Countrywide	0.6%	11.7%	4.1%	1.2%	13.5%	3.5%
2001						
Florida	(7.4)%	8.1%	(3.5)%	(0.5)%	11.3%	1.3%
Countrywide	0.6%	5.3%	2.0%	(0.3)%	6.7%	1.0%

Source: National Association of Insurance Commissioners

¹³⁹ The NAIC Report on Profitability illustrates profit on insurance transactions and return on net worth for each state and countrywide. Profit on insurance transactions is equal to underwriting profits plus investment gain on insurance transactions minus estimated federal income taxes.

Florida law authorizes the Office of Insurance Regulation to regulate motor vehicle insurance rates to protect the interests of consumers.¹⁴⁰ The office reviews such rates according to prescribed criteria in order to determine if they are inadequate, excessive, or unfairly discriminatory.¹⁴¹ Insurers are provided different procedural options in making rate filings.¹⁴² One provision in the law, the “excess profits” section, is designed to protect consumers against overreaching by insurers.¹⁴³ Originally enacted in 1977, the law was intended to provide a retrospective rating method in order to protect Florida motorists from excessive motor vehicle insurance rates.¹⁴⁴ This mechanism allows the office to refund to policyholders “excess profits” earned by carriers over a 3-year period. Auto insurers must annually file data with the office to determine if excessive profits have been realized. Refunds must be paid, on a pro-rata basis, to persons who were insured on the last day of the 3-year period. In years past, any excess profits have been minimal, arguably as a result of the office’s regulation. In fact, according to information provided by the office, no private passenger automobile insurer has made excess profits, pursuant to the provisions of the law, in the past five years.

¹⁴⁰ Section 627.0651, F.S. The term “rate” means the unit charged by which a measure of exposure is multiplied to determine the premium. “Premium” means the amount paid to an insurer for the issuance or delivery of the policy.

¹⁴¹ Pursuant to s. 627.0651, F.S., rates are deemed “inadequate” if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply. Rates are “excessive” if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered, and rates are “unfairly discriminatory” in relation to another in the same class if it clearly fails to reflect equitably the difference in expected losses and expenses.

¹⁴² Section 627.0651, F. S., provides insurers with two procedural options in the filing of rates. Under the first option, known as “file and use,” an insurer must give the department 60 days advance notice of a rate change and may not implement the rate change during the pendency of the review process. The rate is deemed approved if the department does not issue notice to the insurer of its preliminary findings within 60 days of filing. Alternatively, the insurer can exercise a “use and file” option, by which the insurer implements a rate change and gives the department notice within 30 days thereafter. However, if the insurer exercises this option, the department may order the insurer to refund that portion of the rate ultimately determined to be excessive.

¹⁴³ Section 627.066, F.S.

¹⁴⁴ Chapter 77-468, L.O.F. Currently, excess profits are realized if an insurer’s actual underwriting profit exceeds the anticipated (approved) underwriting profit, plus 5 percent, over this 3 year period. The anticipated underwriting profit is expressed as a percentage of premiums, averaged over this 3 year period. For example, if the approved, anticipated underwriting profit is 4 percent per year, for example, excess profits are realized if the actual underwriting profit exceeds 9 percent per year. The investment income an insurer earns does not trigger any excess profits. However, the investment income is important in the initial determination by the office in the rate filing, as to the amount of the allowable underwriting profit, which is zero or greater.

Adequacy of Motor Vehicle Coverage

Another factor to consider in assessing the no-fault provisions is whether personal injury protection (PIP) adequately compensates motorists for their injuries. The PIP benefit level, currently \$10,000, determines how much compensation for economic loss people receive under no-fault.¹⁴⁵ The original law provided first-party PIP benefits up to a maximum amount of \$5,000, and this amount was subsequently increased to its present level in 1979.¹⁴⁶

In considering the proper level of PIP benefits, staff received responses from insurers representing 62 percent of the statewide private passenger premium volume, when asked for the percentage of claimants that reached the \$10,000 limit in PIP payments. The insurers replied (weighted for market share) that 26 percent of PIP claimants or slightly more than one quarter reached the maximum \$10,000 PIP limit.¹⁴⁷ In other words, approximately 74 percent of claims were below the \$10,000 benefit level. These same insurers also responded that the average PIP payment per claimant was \$4,906. However, a much higher amount of \$7,009 for the average paid PIP claim was reported for Florida for the second quarter of 2005 in the "Fast Track" data detailed in the following section of this report. This significant difference is apparently because the staff questionnaire asked for the average PIP payment *per claimant*, while the Fast Track data reports the average payment *per claim*, with includes amounts paid to two or more persons under the same PIP policy for the same accident.

Another relevant factor to consider is the inflationary impact on the PIP benefit level. The \$10,000 PIP benefit level enacted in Florida in 1979 is worth only \$3,982 today (September, 2005) based on the increase in the Consumer Price Index (CPI) since that time.¹⁴⁸ Considered a different way, the \$10,000 limit would be \$25,110 in September 2005, if increased at the CPI rate.

PIP Loss Costs in Florida and Nationwide

The primary source for monitoring current trends in auto insurance loss costs in Florida and other states is the Fast Track Monitoring System. Insurance companies representing more than half of the private passenger market report quarterly loss data and claims costs within 45 days of the end of each quarter. Three statistical agents collect Fast Track data: the Property Casualty Insurers

¹⁴⁵ A person who has economic damages not compensated by PIP may sue the at-fault driver. For example, this includes the 20 percent of medical benefits and 40 percent of lost earnings that PIP does not cover as well as economic losses over \$10,000.

¹⁴⁶ The increase was adopted by the Legislature in 1978, but was effective January 1, 1979.

¹⁴⁷ Most carriers based their response on a "per claimant basis" as requested. For example, if three persons were injured in a single auto accident, each person's PIP claim is reported separately. But, some companies reported on a "per claim" (i.e., per accident) basis, which aggregates the total payments to multiple claimants for each accident.

¹⁴⁸ Data submitted by the Office of Insurance Regulation.

Association of America (PCI), the National Independent Statistical Service, and the Insurance Services Office (ISO). The results for all three are summarized and reported by PCI and is made available to state insurance departments. The most recent PCI Fast Track Data includes results through the second quarter of 2005, which is analyzed below.

The Fast Track data computes a “pure premium” for PIP (and other auto coverages) which is the total amount of paid PIP losses, divided by the number of insured car years. In other words, the “pure premium” reflects the average amount that is paid in losses annually for each insured car. This figure does not include any expenses of the insurer (salaries, agent commissions, defense costs, etc.) Table 15 below, shows the PIP pure premium and related claims data for Florida from 2000 through the 2005, 2nd quarter.

TABLE 15
Florida PIP Claims Costs and Frequency

PRIOR 4 QTRS. ENDING	PAID CLAIM FREQUENCY	ARISING CLAIM FREQUENCY	AVERAGE LOSS	PURE PREMIUM
2000, 4th qtr.	1.91	2.72	\$5,333	\$101.70
2001, 1st qtr.	1.90	2.70	\$5,518	\$104.76
2001, 2nd qtr.	1.91	2.70	\$5,650	\$107.65
2001, 3rd qtr.	1.93	2.72	\$5,668	\$108.33
2001, 4th qtr.	1.93	2.76	\$5,717	\$110.41
2002, 1st qtr.	1.93	2.77	\$5,784	\$111.63
2002, 2nd qtr.	1.96	2.77	\$5,840	\$114.69
2002, 3rd qtr.	1.95	2.78	\$6,073	\$118.37
2002, 4th qtr.	2.02	2.75	\$6,053	\$122.21
2003, 1st qtr.	2.02	2.72	\$6,172	\$124.95
2003, 2nd qtr.	2.01	2.69	\$6,194	\$124.68
2003, 3rdqtr.	2.00	2.66	\$6,260	\$125.02
2003, 4th qtr.	1.94	2.62	\$6,414	\$124.47
2004, 1st qtr.	1.94	2.60	\$6,498	\$126.14
2004, 2nd qtr.	1.92	2.58	\$6,645	\$127.63
2004, 3rd qtr.	1.95	2.56	\$6,503	\$127.07
2004, 4th qtr.	1.92	2.60	\$6,551	\$125.47
2005, 1st qtr.	1.86	2.62	\$6,781	\$126.07
2005, 2nd qtr.	1.83	2.64	\$7,009	\$127.92

Source: Property Casualty Insurers Association of America, Fast Track Monitoring System Report, 2005, 2nd Qtr.

“Paid claim frequency” -- number of paid claims per 100 insured cars. Paid claims do not include claims where the paid amount is zero. Only one PIP claim, the medical claim, is included for each claimant.

“Arising claim frequency” -- number of new claims per 100 insured cars. The definition may vary from company to company and may be based on claim notices,

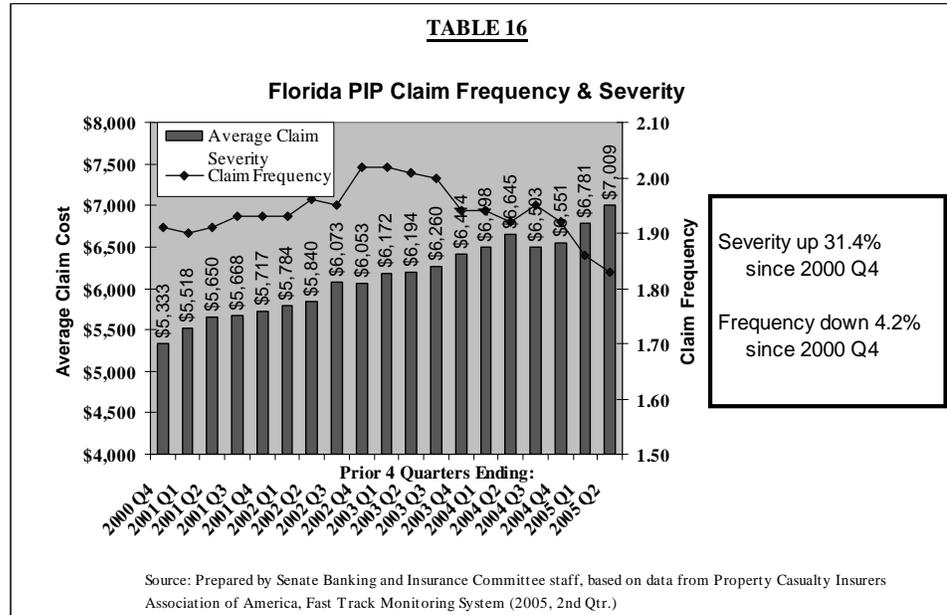
claims for which a reserve is established, claims incurred, etc. A claim may be shown as "arising" even if it later closes without payment.

"Average loss" -- paid loss/number of paid claims. Losses do not include any expenses.

"Pure Premium" -- paid loss per insured car.

Table 15 shows that for the first half of the period reported, the Florida PIP pure premium increased 22.9 percent, from \$101.70 to \$124.95 as of 2003 (Q1). But, for the second half of the period, the pure premium leveled off, increasing only 2.4 percent from \$124.95 as of 2003 (Q1), to \$127.92 as of 2005 (Q2). This is one indication that there has been some recent improvement in the Florida PIP loss experience, whether due to legislative reforms or other factors.

The recently improved results for PIP claims costs (pure premium) is primarily a function of claims frequency (the number of claims) rather than claims severity (the amount paid per claim), as illustrated in Table 16.



Tables 15 and 16 show that Florida PIP claims frequency initially rose from 1.91 paid claims per 100 vehicles in 2000, to a peak of 2.02 for 2003 (Q1), but then began to decrease, reaching a low of 1.83 for the most recent report for 2005 (Q2). Meanwhile, the average paid loss for PIP has increased to its highest level of \$7,009 as of the most recent quarter, which is a 31.4 percent increase from the \$5,333 average loss in 2000. There was a decrease in the average loss during the last half of 2004, before rising again to new highs in the first half of 2005.

Although the PIP loss costs are showing recent improvement, the results are less impressive when compared to the other states, as shown in Table 17, below.

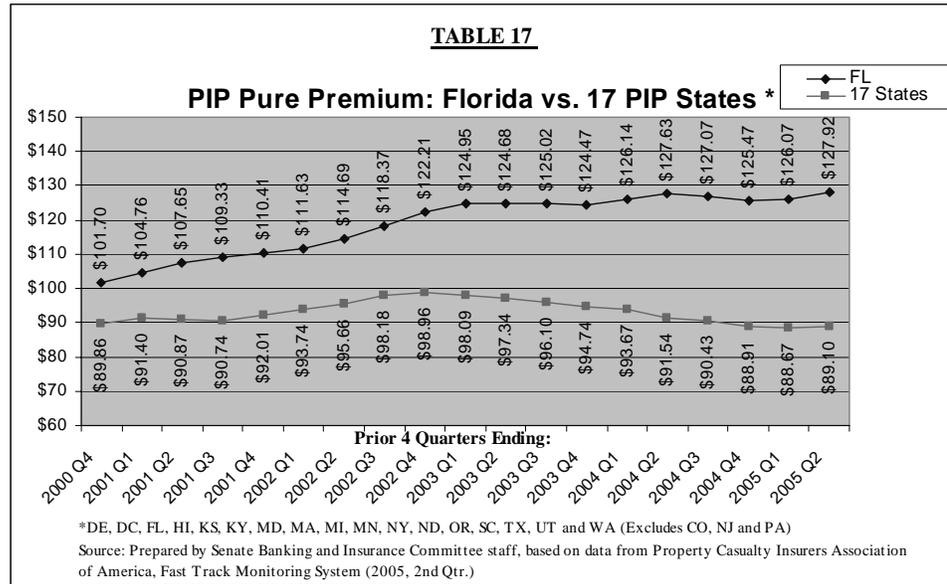
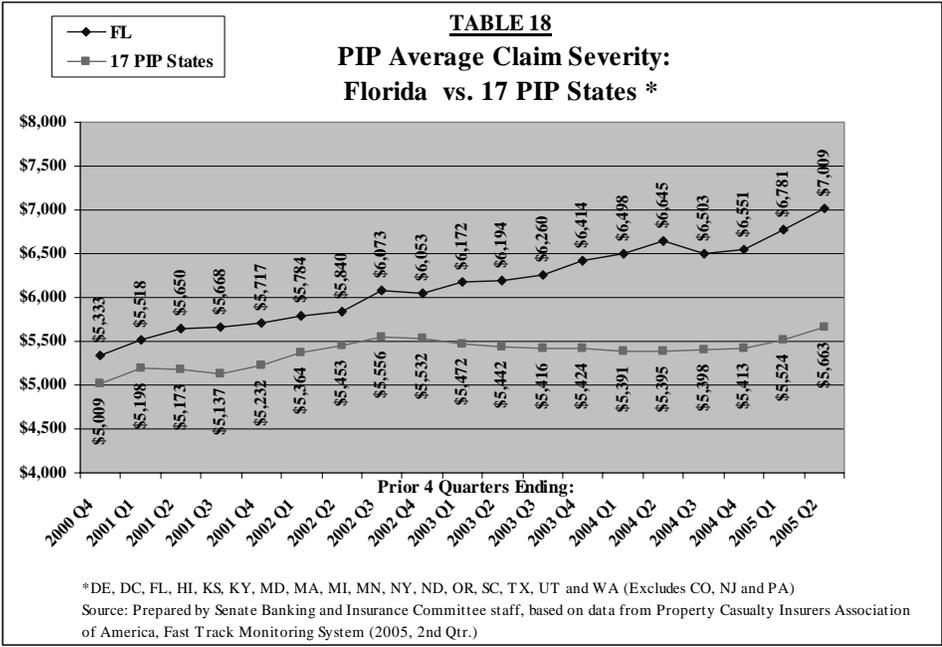


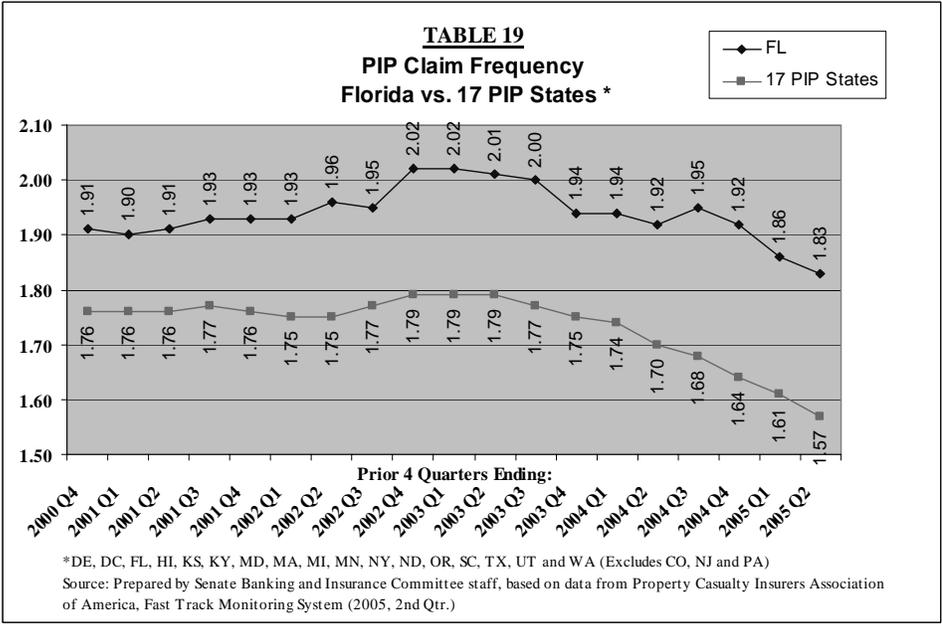
Table 17 compares the PIP pure premium in Florida to seventeen states (including Florida) that provide PIP coverage. The PCI Fast Track report used for this table averages data from these seventeen states to compute countrywide PIP results.¹⁴⁹ In 2000, the Florida average loss per insured vehicle (\$101.70) was 13.2 percent above the national average (\$89.86). The gap widened as Florida loss costs continued to outpace the national average. As of the 2005, 2nd quarter, the Florida pure premium (\$127.92) was 69.7 percent greater than the seventeen-state average (\$89.10).

Further comparisons between Florida and the selected seventeen PIP states on claims severity and claims frequency reflect similar results, as shown in Tables 18 and 19.

¹⁴⁹ The seventeen states are Delaware, Florida, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, North Dakota, Oregon, South Carolina, Texas, Utah, and Washington, plus the District of Columbia. These include eleven of the thirteen no-fault states (including D.C.), plus six of ten states that provide PIP coverage as an “add on” without restricting the right to sue in tort. PCI excludes Colorado which repealed its no-fault law, Pennsylvania, a no-fault state which has changed its auto insurance system multiple times, and New Jersey, a no-fault state which has had unusual residual market problems that may skew the results. PCI also excludes four add-on states (Arkansas, South Dakota, Virginia, and Wisconsin) for reasons unknown to committee staff. See Tables 23 and 24 for a classification and summary of each state’s auto insurance laws.



In 2000, the average PIP claim in Florida (\$5,333) was 6.5 percent above the average of the seventeen PIP states (\$5,009). By 2005 (Q2), Florida's average claim (\$7,009) climbed to 23.8 percent above the average (\$5,663). (Table 18)

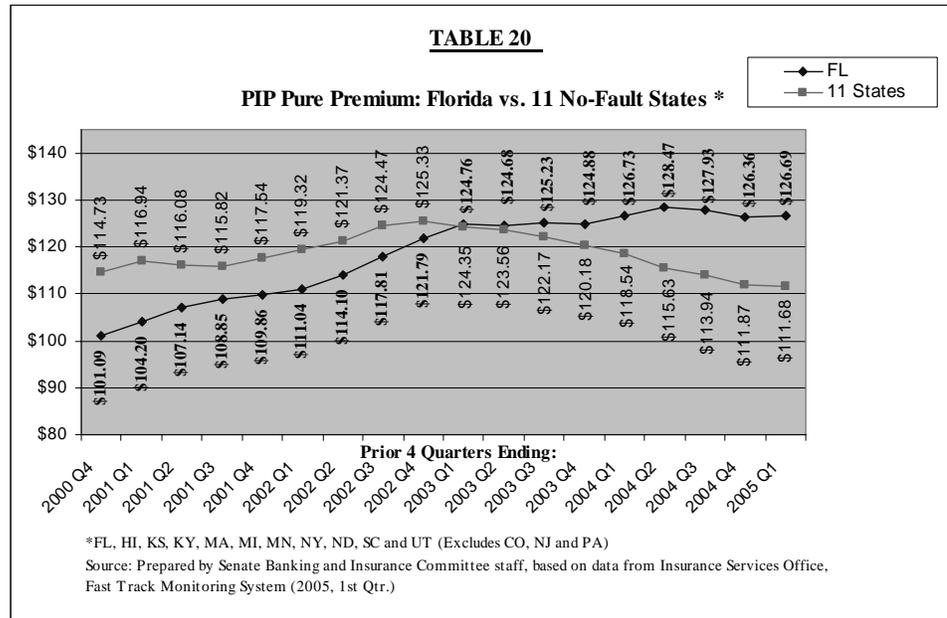


Even though PIP claim frequency in Florida is going down, it remains well above the average of the seventeen PIP states, and the gap has grown larger over the past five years. In 2000, Florida's PIP claim frequency (1.91) exceeded the national

average (1.76) by 8.5 percent. By 2005 (Q2), even though the Florida claim frequency had improved (1.83), it was 16.6 percent above the national average (1.57). (Table 19)

The previous tables compared Florida's PIP loss experience to the seventeen states used by PCI in its report of Fast Track "countrywide" PIP data. A different group of eleven states is used by the Insurance Services Office (ISO) in its report on the same Fast Track data. ISO uses only the no-fault states that restrict lawsuits in tort and, with one exception, does not include the "add-on" PIP states that do not limit the right to sue.¹⁵⁰ Each organization uses its own judgment as to which states have auto insurance laws and systems that are sufficiently similar to group together to report "countrywide" PIP loss experience.

Tables 20, 21, and 22 compare Florida to the eleven no-fault states used by ISO for its countrywide PIP exhibits in its Fast Track Report for 2005, 1st quarter, (the latest report available at the time of this committee report). Note, however, that the PCI Fast Track report used for Tables 15-19 was for the second quarter of 2005. This results in different amounts shown for Florida data for prior quarters, because different insurers report the data for any given quarter as insurers are added or dropped and also due to corrections to prior data errors.



¹⁵⁰ The eleven states are Florida, Hawaii, Kentucky, Kansas, Massachusetts, Michigan, Minnesota, New York, North Dakota, South Carolina, and Utah. These include all of the no-fault states that restrict the right to sue in tort, except Pennsylvania and New Jersey (also excluded by PCI for reasons explained in the previous footnote.) ISO also excludes Colorado which repealed its no-fault law. But, ISO includes one "add on" PIP state, South Carolina, that does not restrict lawsuits in tort. After committee staff inquired as to this inclusion, a representative of ISO stated that it has now been decided to exclude South Carolina from future ISO reports of countrywide PIP experience.

When compared to eleven no-fault states¹⁵¹ in Table 20, the Florida PIP pure premium (average loss per insured vehicle) compares more favorably than when compared to the seventeen PIP states in Table 17. But, even when compared to the eleven no-fault states, the increase in the Florida pure premium has greatly outpaced the average. In 2000, the Florida pure premium (\$101.09) was 11.9 percent below the eleven-state average (\$114.73), but by 2003 Florida's PIP loss costs surpassed the average. As of 2005, 1st quarter, the Florida pure premium was 13.4 percent above the average of the eleven no-fault states. Florida loss experience has shown recent improvement in the last two years, but not the level of improvement experienced in other states. This same pattern is reflected in looking at PIP claims severity and claim frequency, in the following tables.

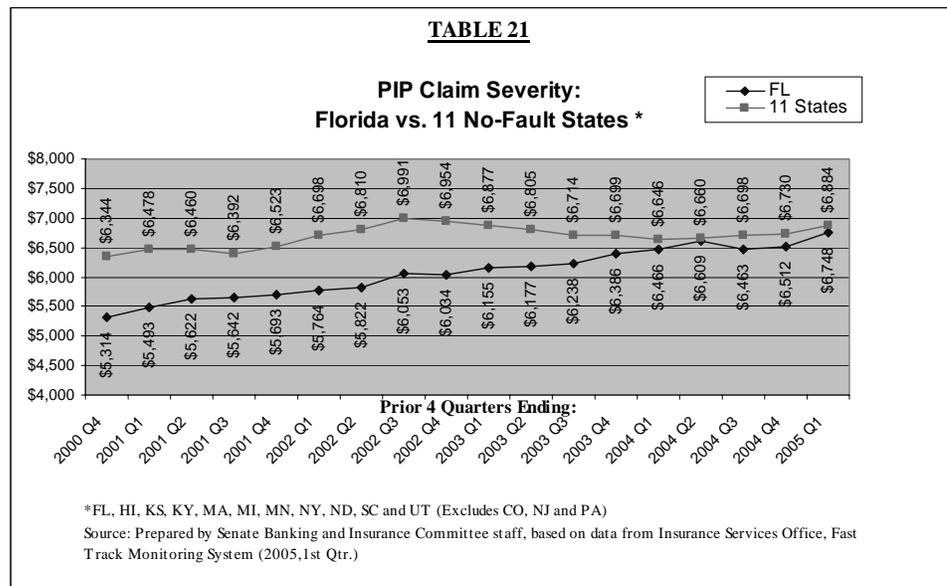
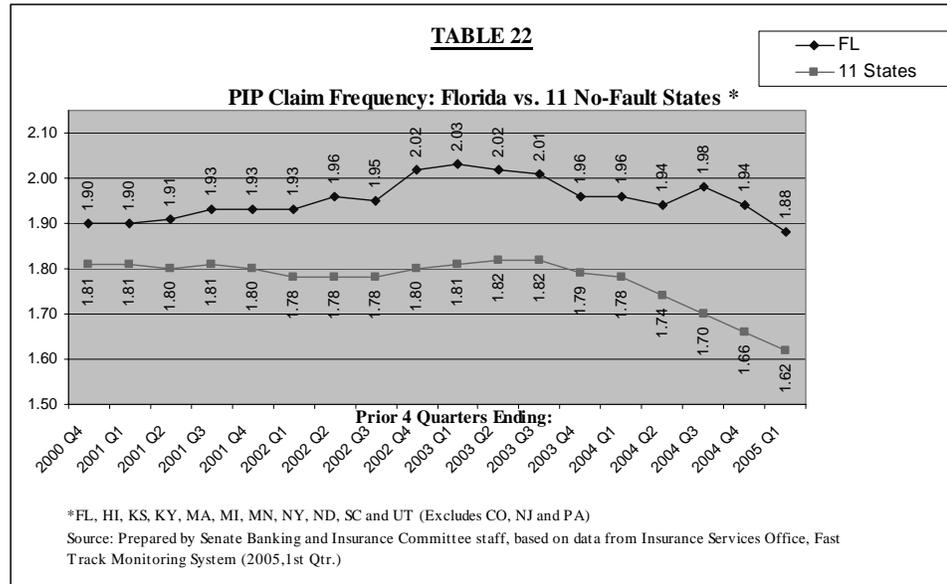


Table 21 shows that Florida's PIP claim severity was well below the average of the eleven no-fault states in 2000, but is now very close to the average. In 2000, the average paid PIP claim in Florida (\$5,314) was 16.2 percent below the eleven-state average (\$6,344). But by 2005, the average claim in Florida (\$6,748) was only 2.0 percent below the average (\$6,884).

¹⁵¹ This report refers to the eleven states grouped by ISO as "no-fault states" even though one state, South Carolina, is an add-on state, as explained in the prior footnote. Also, as noted, the no-fault states of New Jersey and Pennsylvania are excluded.



Florida PIP claims frequency has decreased or remained relatively steady in recent years. But, when compared to eleven no-fault states, as depicted in Table 22, the Florida PIP claims frequency has consistently been above the average. This gap widened in 2004, putting Florida claim frequency 17.5 percent above the eleven-state average by 2005.

Bodily Injury (BI) Liability Loss Costs in Florida and Nationwide

BI Liability Claims Frequency

No-fault laws are intended to reduce the number of liability lawsuits for bodily injury. In general, Florida and the other no-fault states have been proven successful in doing so. In its 2004 study, *Trends in Auto Injury Claims*, the Insurance Research Council (IRC) compared the bodily injury (BI) liability claim frequency rate by state in 2003. The countrywide average was 1.05 paid BI claims per 100 insured cars. Only one no-fault state, Massachusetts, exceeded the countrywide average, but it had the highest BI claim frequency rate in the country at 2.55. Florida ranked 28th among all states (including the District of Columbia) with a BI claim frequency rate of 0.89, which was below the countrywide average. But, Florida was the third highest among the thirteen no-fault states (including the three “choice” states and Colorado which was a no-fault state in 2003), behind only Massachusetts (2.55) and Utah (0.92). The five states with the lowest BI claim frequency rate in 2003 were all no-fault states -- Kansas (0.34), Hawaii (0.31), Minnesota (0.30), Michigan (0.18), and North Dakota (0.16). After Massachusetts, the next 24 states with the highest BI claims frequency were tort states (including nine “add-on” states that provide PIP coverage without limiting lawsuits). As concluded in the IRC study, most no-fault states have low BI claim

frequencies because of the tort thresholds that require claimants to establish that their injuries are serious to seek noneconomic damages.

The IRC study also compared the increase in the BI claims frequency rate from 1980 to 2003, which increased 19 percent nationwide, from 0.88 to 1.05. The Florida rate of increase was the fourth highest in the country, increasing by 128 percent, from 0.39 to 0.89 over this period. But, as noted above, it still remained below the countrywide BI claims frequency average.

Another way the IRC study analyzed the frequency of BI claims was to look at the number of BI claims paid for every 100 property damage (PD) claims. This is a better measure of the impact of the legal system, because it tends to equalize the differences in the accident rates among the states which influences the number of BI claims. This measure (the BI to PD claims frequency ratio) shows the likelihood that a BI claim will be paid for an auto accident for which a PD claim is paid. In 2003, the nationwide average rate was 26.4, or slightly more than one in four auto accidents with a paid PD claim resulted in a paid BI claim. Florida and the other no-fault states had ratios much lower than this average. Florida ranked 36th among all states with a ratio of 22.1 BI claims per 100 PD claims, which was even lower than its ranking of 28th for BI claims frequency. The no-fault states prove more effective in limiting BI claims by this measure, with Massachusetts being the only no-fault state above the countrywide average, ranking 10th. The lowest five states were all no-fault states -- the same five states with the lowest BI claims frequency. Among the thirteen no-fault states, Florida ranked third, the same ranking as for BI claims frequency.

The Florida ratio of BI claims to PD claims, though ranked 38th in 2003, increased at a much greater rate than the countrywide average from 1980 to 2003. The IRC study found that the nationwide average BI to PD claims ratio increased 48 percent, from 17.9 to 26.4 over this time period. Florida had the fifth highest rate of increase in the nation, increasing 132 percent, from 9.5 to 22.1.

BI Liability Claims Severity

While no-fault states are successful in reducing the number of BI liability claims, they generally have the highest average BI payments (claims severity). This is not surprising, due to the tort thresholds which prevent smaller or less serious claims from being filed. Only claimants with the more costly or serious claims are allowed to pursue BI claims.

The IRC study cited above found that the average paid BI claim in the country was \$10,928 in 2003. The eleven states with the highest BI claims were all no-fault states, with the highest being Michigan at \$32,280, which is considered to have the strongest verbal tort threshold of any no-fault state. Florida ranked 11th highest with an average BI claim of \$15,922. But, this was lower than most no-fault states, as Florida also ranked 11th among the thirteen no-fault states.

Over the period from 1980 to 2003, the nationwide BI claims severity increased 121 percent, as the average claim went from \$4,955 to \$10,928. Compared to this average, Florida experienced an extremely low rate of increase of 53 percent, as its average claim went from \$10,414 to \$15,922, which was the 5th lowest rate of increase of any state in the nation. Only one no-fault state (Hawaii) had a lower rate of increase.

BI Liability Claims Costs (Pure Premium)

The last two sections looked at BI claims frequency and BI claims severity. The combination of the two produces the BI claims costs per insured vehicle, also referred to as the pure premium.

The IRC study found that in 2003, the nationwide average BI pure premium was \$114.20. Florida ranked 11th in the country with a BI pure premium of \$141.36. Florida ranked 4th among no-fault states, behind Massachusetts (1st at \$223.82), New York (5th at \$174.51), and New Jersey (a “choice” state, 10th at \$154.30). These four states were the only no-fault states to have a BI pure premium above the nationwide average.

In looking at the trend from 1980 to 2003 in BI loss costs (pure premium), the national average increased 161 percent, from \$43.73 to \$114.20. The Florida rate of increase was much greater, at 251 percent, going from \$40.24 in 1980, when Florida was below the U.S. average, to \$141.36, well above the 2003 average. Only two no-fault states, Kentucky (a choice state) and Utah, experienced higher rates of growth in BI loss costs.

In summary, Florida has relatively high BI loss costs, estimated to be 11th highest in the nation in 2003, which is higher than most no-fault states. Both claims severity and claims frequency have played their parts. When compared to all states, Florida has below-average claims frequency, which indicates that its tort threshold is generally successful in limiting the number of BI claims. But, Florida's claims frequency is higher than most no-fault states, even when the accident rate is neutralized as a factor. So, this indicates that the Florida tort threshold may not be as effective as other no-fault state thresholds, despite Florida's use of a verbal threshold that is perceived to be stronger than a monetary threshold. Once the threshold is pierced, the amount of the BI claim in Florida is well-above the national average, even though it is lower than all no-fault states but one.

Another study by IRC analyzed a two-week sample of closed claims in 2002 from four no-fault states -- Colorado, Florida, Michigan, and New York.¹⁵² The study

¹⁵² Insurance Research Council, *Analysis of Auto Injury Insurance Claims From Four No-Fault States: Colorado, Florida, Michigan, New York* (2004). (Hereinafter, cited as *IRC Analysis of Four No-Fault States*) The IRC surveyed thirty-two auto insurers representing 58 percent of the U.S. private passenger auto insurance market. For the four states combined, the two-week sample totaled 6,102 PIP claims and 2,831 BI claims.

found that 42 percent of Florida PIP claimants overcame the tort threshold and were eligible to make a liability claim, second to Colorado, at 45 percent. A much lower percentage of PIP claimants were judged eligible for a liability claim in New York (22 percent), and Michigan (12 percent). The Michigan verbal threshold is generally viewed as the strongest and is discussed in more detail later in this report in *Tort Thresholds in No-Fault States*.

Medical Costs in Florida; Fee Schedules and Treatment Protocols

Premium rates for PIP increased significantly from 2002 to 2003, as shown in Table 11, increasing almost 60 percent over this period. And as shown in Tables 15 and 16, the increase in PIP loss costs has been largely due to increased claims severity, i.e., the increased amount paid for the average PIP claim. The growth in PIP payments, in turn, is primarily driven by increased medical costs.

Nationally, healthcare spending among privately insured individuals in the United States increased 9.6 percent in 2002, four times faster than the U.S. economy (which grew 2.7 percent per capita in dollars).¹⁵³ A study in the *Health Affairs Journal* found that this growth is largely attributable to two factors: increased usage of medical services and increases in per service costs. Increases in hospital spending made up the greatest proportion of the overall increase, followed by spending on provider services and prescription drugs. The study found that hospital prices increased 5.1 percent in 2002, the largest increase in 10 years, half of which stemmed from increases in hospital price inflation.

A 2004 survey of automobile insurance claims by the Insurance Research Council indicates that the cost of medical treatment increased rapidly in all states from 1997 to 2002.¹⁵⁴ Average losses for PIP claimants increased at a higher rate than both the consumer price index (CPI) rate of inflation and the rate of medical care inflation. According to that study, average PIP losses increased 6.9 percent annually from 1997 to 2002. In comparison, the annualized rate of inflation for all items as measured by the CPI was 2.3 percent per year, while the rate of medical

¹⁵³ *Tracking Healthcare Costs: Trends Stabilize but Remain High in 2002*, B.C. Strunk and P.B. Ginsburg, *Health Affairs Journal*, June 18, 2003.

¹⁵⁴ Insurance Research Council, *Auto Injury Insurance Claims: Countrywide Patterns in Treatment, Cost and Compensation* (2003), pg. 7, 8. (Hereinafter, cited as, *IRC Auto Injury Insurance Claims*). The IRC study collected information on 72,354 closed auto insurance claims (each representing a single claimant) paid in 2002. Thirty two auto insurers, constituting 57.9 percent of the private passenger auto market in the United States in 2002, participated in the study. Claimants from all 50 states were included in the survey. Each insurer provided surveys for a two-week sample of claims closed with payments during the spring and summer of 2002. The 2002 study is the fifth to be conducted by the IRC, with prior studies having been conducted in 1997, 1992, 1987 and 1977.

care inflation was 4 percent per year. The increase in PIP losses was largely driven by an increase in average medical expenses of 47 percent over that five year period, compared to 10 percent for wage losses. The result is that medical expenses consist of an increasingly greater share of both losses incurred by PIP claimants (88 percent) and the amounts paid by insurers to those claimants (87 percent).

The Insurance Research Council analysis found that certain treatments are particularly more expensive in Florida than found in Michigan, New York or Colorado. For instance, the average total amount charged by chiropractors for treatment of PIP patients in Florida (\$4,837) was three times that charged in Michigan (\$1,522) and New York (\$1,549).¹⁵⁵ The survey indicates that chiropractic costs rose at a much higher rate for the surveyed PIP claimants nationally than for surveyed BI claimants.¹⁵⁶ In 1997, the average cost of a chiropractic visit for a PIP claimant was \$102, a lower rate than the \$110 charged to BI claimants. However, in 2002 the rate charged a PIP claimant had risen to \$166 while the fee for a BI claimant rose at a more moderate rate to \$130.¹⁵⁷ Emergency room treatment also accelerated quickly from 1997 to 2002, with the average total charge per claimant in Florida rising from \$1,048 to \$2,104.¹⁵⁸

The Insurance Research Council study also found that the cost of physical therapy treatment increased significantly. The average amount charged per visit by a physical therapist increased by \$94 in Florida from 1997 to 2002, well below the increases of \$32 in Michigan and \$40 in New York over the same period. Nationally, the cost per visit for a physical therapist increased by \$73 in surveyed PIP states compared with a \$45 increase in surveyed tort states.¹⁵⁹ The rising cost of these services far outpaced the 4 percent annual rate of medical inflation during 1997 to 2002. For instance, in Florida, the increase in physical therapist charges specified above averaged 12.4 percent annually for this period. General practitioner costs also increased significantly, particularly for Florida. The study found that the average cost per visit for a general practitioner in Florida was \$276 in 2002, nearly \$100 higher than in 1997. This cost was also \$110 higher than in Colorado and \$126 higher than in New York.¹⁶⁰

Since medical treatment is the primary cost driver for PIP coverage, some states have enacted PIP medical fee schedules in an attempt to contain such costs. New York provides that charges for health services under its PIP law cannot exceed those contained in the state's worker's compensation fee schedule.¹⁶¹ For treatments that are not included in the worker's compensation fee schedule, the

¹⁵⁵ See *IRC Analysis of Four No-Fault States*, (fn. 152) at pg. 23-24.

¹⁵⁶ See *IRC Auto Injury Insurance Claims* (fn. 154) at pg. 60-61.

¹⁵⁷ *Id.*, pg. 61.

¹⁵⁸ See *IRC Analysis of Four No-Fault States* (fn. 152) at pg. 22.

¹⁵⁹ See *IRC Analysis of Four No-Fault States* (fn. 152) at pg. 24-25.

¹⁶⁰ See *IRC Analysis of Four No-Fault States*, (fn. 152) at pg. 24, 25.

¹⁶¹ N.Y. Ins. Law s. 5108(a).

state superintendent of insurance, chairman of the worker's compensation fee schedule board, and the commissioner of health are authorized to establish by rule and regulation fee schedules for such treatments.¹⁶² New Jersey also has a PIP fee schedule, but limits fees to the 75th percentile of the practitioners within the region.¹⁶³ New Jersey authorizes the commissioner of insurance to contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which must be adjusted biennially for inflation and to add new medical procedures. Oregon also has a fee schedule for PIP benefits that is tied to its worker's compensation fee schedule.¹⁶⁴

New Jersey also has adopted treatment protocols for treatment rendered under PIP coverage.¹⁶⁵ The utilization protocols must be recognized by national standard setting organizations, national or state professional organizations of the same discipline as the treating provider, or those designated or approved by the commissioner of insurance in consultation with the applicable licensing boards in the New Jersey Division of Consumer Affairs.

Though Florida does not have a PIP fee schedule, except for certain diagnostic tests, Florida does apply a fee schedule under its worker's compensation law¹⁶⁶ and for Medicaid.

Health care providers are not required by law to adhere to a fee schedule or utilization protocols for PIP in Florida except for a limited number of specified diagnostic procedures. For all other procedures, medical health providers may only be compensated for "medically necessary" services and may only charge "a reasonable amount...for the services and supplies rendered."¹⁶⁷ Charges in excess of the amount customarily charged are prohibited. In determining whether a charge is reasonable "consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute" along with "reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages" and "other information relevant to the reasonableness of the reimbursement of the service, treatment or supply."

Due to rapidly rising costs for many diagnostic tests in Florida, the Legislature enacted several exceptions that make certain diagnostic tests subject to the worker's compensation medical fee schedule under s. 440.13, F.S.¹⁶⁸ Also, nerve

¹⁶² N.Y. Ins. Law s. 5108(b).

¹⁶³ N.J. Rev. Stat. 39:6A-4.6 (2004). New Jersey divides itself into three regions for the purpose of setting its fee schedules. See *New Jersey Automobile Fee Schedule*. <http://www.state.nj.us/dobi/aicrapg.htm>

¹⁶⁴ Or. Rev. Stat. s. 742.525 (2004).

¹⁶⁵ N.J. Rev. Stat. 39:6A-3.1a and 39:6A-fa.

¹⁶⁶ Chapter 440, F.S.

¹⁶⁷ Section 627.736(5), F.S.

¹⁶⁸ Section 627.736(5)(b)2., F.S, provides that he diagnostic tests subject to the worker's

Footnote continued on next page.

conduction testing (if medically necessary), cannot exceed 200 percent of the Medicare Part B fee schedule for the area where treatment was rendered.¹⁶⁹ Magnetic resonance imaging (MRI) tests cannot exceed 175 percent of the Medicare Part B fee schedule, unless offered at facilities accredited by specified organizations, in which case 200 percent of the Medicare Part B fee schedule may be charged.¹⁷⁰ Additionally, the Department of Health is authorized and has adopted by rule a list of diagnostic tests deemed not to be medically necessary for use in treating bodily injuries covered by PIP benefits.¹⁷¹

Medicare is subject to a fee schedule pursuant to federal law. Each year the Centers for Medicare and Medicaid Services of the Department of Health and Human Services revises the fee schedules and covered benefits under Medicare. The Medicare fee schedule classifies different patient conditions and illnesses into diagnosis related groups (DRG) and reimbursement amounts vary depending on the region of the country where treatment is rendered.¹⁷² Medically necessary hospital stays are covered by Medicare Part A. Medicare Part B (Medical Insurance) covers medically necessary doctors' services, outpatient medical and surgical services and supplies, diagnostic tests, ambulatory surgery center facility fees for approved procedures, and durable medical equipment. Part B coverage also covers outpatient mental health care, outpatient occupational and physical therapy, home health care, and various preventive medical screenings.¹⁷³

Thus, fee schedules or contract for fee arrangements are commonly used to limit health care costs for workers' compensation, Medicaid, and Medicare and some no-fault states have also used such measures to control PIP costs. Insurers are the primary supporters of medical fee schedules and medical treatment protocols for PIP and uniformly voiced that support in the surveys they submitted to staff. In response to the argument that fee schedules and utilization protocols may limit access to quality health care, insurers respond that Florida has not experienced a shortage of treating physicians for worker's compensation, Medicare, or Medicaid. Insurers contend that the current requirement that fees for treatment reimbursed by PIP be "reasonable" is of limited effect and is expensive to litigate, and must ultimately be determined by a jury. Enactment of a fee schedule and

compensation fee schedule are cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography.

¹⁶⁹ Section 627.736(5)(b)3., F.S. The Medicare Part B fee schedule for 2001 is used, as adjusted yearly to reflect changes in the Consumer Price Index for All Urban Consumers in the South Region as determined by the U.S. Bureau of Labor Statistics in the Department of Labor.

¹⁷⁰ Id.

¹⁷¹ Section 627.736(5)(b)6., F.S. The rule adopted by the Department of Health was challenged and is on legal appeal.

¹⁷² Florida Hospital Association, *Medicare 101: An Overview of Medicare Payment Systems* (2005), pg. 1.

¹⁷³ See, Centers for Medicare & Medicaid Services, *Medicare & You 2006*, the official government handbook on Medicare, which can be found online at <http://www.medicare.gov/publications/pubs/pdf/10050.pdf>

utilization protocols would not only limit medical expenses but would also reduce litigation and further reduce costs and premiums.

Insurers also contend that fraud is likely to be reduced if a fee schedule and utilization protocols are enacted by preventing unnecessary and overpriced treatment. The 2003 Senate Select Committee on Automobile Insurance PIP Fraud received considerable testimony regarding abusive and fraudulent practices by some health care providers. The Division of Insurance Fraud states that health care clinic fraud is the most common type of auto insurance fraud in the state. Insurers recommended that utilization protocols be enacted with any PIP fee schedule in order to prevent overutilization of services as a way to recover amounts reduced by the fee schedule.

The committee staff survey indicated that most medical providers and plaintiff attorneys oppose medical fee schedules and medical treatment protocols. The opponents noted that such measures operate as governmental price controls and are contrary to the values of the free market. Opponents claim that some physicians may choose not to accept PIP claimants and that problems of access to quality care will develop that are similar to those asserted to exist in the Medicaid, Medicare and worker's compensation system in Florida. Utilization protocols are similarly problematic because they force medical treatment into a "one size fits all" mold and often prevent a treating physician from exercising his or her expertise regarding treatment. Opponents also argue that the legislative changes to the no-fault law enacted in 2001 and 2003 have been effective in reducing fraud and unnecessary litigation as evidenced by increased fraud arrests and the declining number of PIP lawsuits. Additionally, the cost of automobile insurance has leveled off in Florida and that the state does not find itself in an auto insurance crisis, evidenced by a competitive auto insurance market, few drivers in the joint underwriting association, and a low number of uninsured. As such, the PIP system in Florida should be considered to be in good working order and "drastic measures" such as medical fee schedules and treatment protocols are unnecessary.

In January 2005, the Department of Financial Services issued its report and recommendations entitled "*Study of PIP Insurance Changes: Effect of Changes Pursuant to the Florida Motor Vehicle Insurance Affordability Reform Act of 2003.*" The report recommended adopting a mandatory fee schedule for all medical services covered by PIP. The effect of this provision would serve to eliminate disagreement about the reasonableness of amounts charged and remove inflated billing from the cost drivers of the PIP system, according to the report.

Attorney Involvement in PIP and BI Auto Insurance Claims

Reduced Insurance Litigation Related to PIP

Insurance litigation in Florida has decreased significantly from 2001 through 2004, according to information obtained from the Department of Financial Services. The Department receives service of process for law suits filed in all county courts against insurers authorized in Florida. Officials with the Department assert that the vast majority of these law suits are PIP cases and believe that the decrease in litigation is attributable to the 2003 PIP reforms.¹⁷⁴ The total number of insurance law suits has decreased by 68 percent from 2001 to 2004 and there was an abrupt reduction from 50,180 law suits filed in 2003 to 21,446 suits filed in 2004.

Insurance Lawsuits Filed Against Insurers in County Court

<u>Year</u>	<u>Number of Lawsuits</u>
2001	67,437
2002	62,314
2003	50,180
2004	21,446

The DFS reports that the reduction from 2003 to 2004 “was attained when the (15-day pre suit) demand letter requirement was expanded to all PIP actions...”¹⁷⁵ For the specific provisions cited by insurers as most (and least) effective, see *Related Litigation Issues; Positions of Interest Groups*, below.

Effect of Attorney Involvement

Another benchmark to consider in examining the no-fault system is attorney involvement in auto injury insurance claims. When attorneys are involved in settling such claims, the amounts of economic losses and payments, the types of treatment that claimants undergo, and the length of time for claims to settle may

¹⁷⁴ *Study of PIP Insurance Changes (Effect of Changes Pursuant to the Florida Motor Vehicle Insurance Affordability Reform Act of 2003*, Florida Department of Financial Services, January 2005.

¹⁷⁵ *Id.* The demand letter is a condition precedent to filing “any action” under s. 627.736, F.S. It is a written notice to the insurer of intent to initiate litigation unless specified benefits are paid by the insurer. If the insurer pays the claim, plus interest within 15 calendar days, the claimant is prohibited from bringing an action against the insurer for nonpayment or late payment of a claim. If the demand letter involves an insurer’s withdrawal of payment for future treatment, no action may be brought against the insurer if within 15 days the insurer mails a written statement of the insurer’s agreement to pay for such treatment and pays a specified penalty. Any insurer who engages in a general business practice of not paying valid claims until receipt of the notice commits an unfair trade practice under the Insurance Code.

all be affected. The Insurance Research Council (IRC) in its 2004 study of closed auto injury claims for four no-fault states (Colorado, Florida, Michigan, and New York) analyzed attorney involvement in PIP and BI cases.¹⁷⁶ The IRC found that approximately one-third or 34 percent of all Florida PIP claimants hired attorneys in 2002, representing only a slight increase from 1997 (33 percent). Attorney involvement in PIP claims was significantly higher in larger cities in the state, like Miami, when compared to the level in Florida overall. In that city, 50 percent of PIP claimants had attorney representation.¹⁷⁷

Attorney involvement in PIP claims correlated with claimants visiting a greater number of different medical professionals in Florida. The IRC survey showed that PIP claimants represented by an attorney were treated by 2.6 different types of medical providers, while nonrepresented claimants averaged 1.7 different medical providers. Also, charges for certain medical professionals appeared more often with attorney involvement in PIP claims. For example, more than half (51 percent) of represented PIP claimants went to a chiropractor in this state compared to about one-quarter (24 percent) of nonrepresented claimants.

In 2002, the percentage of BI claimants in Florida who hired an attorney was 68 percent which represents a decrease from five years previously (1997) when the percentage of BI claimants who secured attorney services was 73 percent.¹⁷⁸ Medical costs for represented Florida BI claimants in the survey were more than 200 percent higher than those for nonrepresented claimants. Represented BI claimants also averaged more diagnostic procedures and visited more medical professionals than nonrepresented claimants in this state. The represented BI claimants visited medical providers 3 times more often on average than those without an attorney.

In viewing the IRC survey results, however, one can reasonably assume that attorneys are more likely to represent claimants who have more serious injuries requiring medical treatment from a greater number of medical providers. To this extent, the findings of the IRC study are not particularly surprising. But, the greater use of chiropractors by represented PIP claimants is not so apparent, and may be an indication of cost build up associated with attorney representation.

According to the IRC data, claimants with no attorney involvement received faster BI claim settlements in Florida.¹⁷⁹ Approximately 71 percent of nonrepresented claimants settled their BI claim within six months, compared with 17 percent for claimants represented by an attorney. Just 14 percent of claimants without attorneys took more than a year to settle their claim while 50 percent of represented claimants took that long to settle the claim.

¹⁷⁶ See *IRC Analysis of Four No-Fault States* (fn. 152).

¹⁷⁷ *Id.* at pg. 31.

¹⁷⁸ *Id.* at pg. 49.

¹⁷⁹ *Id.* at pg. 52.

Again, however, the IRC survey results appear to be stating the obvious. Claimants who hire an attorney apparently believe they are not receiving adequate compensation from the BI insurer and are, themselves, unwilling to settle the claim quickly. The claimant and the insurer are in an adversarial mode which would be expected to delay final settlement.

Committee staff received responses from carriers representing 74 percent of the premium volume for private passenger automobile insurance in Florida. However, most of the insurers did not respond to questions pertaining to attorney involvement in PIP or BI cases, some saying that the data was not available. When asked about the total attorney fees paid to claimant attorneys under PIP coverage for the past three years, only eight insurers representing 23 percent of market responded. Based on these responses, committee staff computed the amount paid for PIP attorney fees as a percentage of each insurer's earned premium for PIP, and also as a percentage of PIP incurred losses. This limited data from eight insurers, weighted for market share, indicates a downward trend over the period from 2002 to 2004. Attorney fees paid to PIP claimants amounted to 7.22 percent of PIP earned premium in 2002; 6.13 percent in 2003; and 4.13 percent in 2004. As a percentage of PIP incurred losses, the attorney fee payments accounted for 9.01 percent of incurred losses in 2002; 9.14 percent in 2003; and 5.20 percent in 2004.

Related Litigation Issues; Positions of Interest Groups

Overall, insurers responding to the committee staff survey felt that the following 2001 and 2003 legislative reforms were most effective:

- The 15-day presuit demand letter because it significantly reduced the number of litigated claims. (See, *Reduced PIP Litigation in Florida*, above.)
- Application of a fee schedule under Medicare and workers' compensation for specified diagnostic tests because it has led to a reduction in medical costs.
- Licensure of health care clinics; however, there are too many loopholes in the present law allowing most clinics to be exempt from licensure.
- Time limits imposed on providers to provide a statement of charges to insurers; however, the 21/75 day exception¹⁸⁰ should be reduced or eliminated because it allows many providers to bulk bill and reach the \$10,000 PIP limit before insurers have the opportunity to review charges and is beyond the time within which an independent medical examination (IME) is effective.
- Increased criminal penalties for PIP-related fraud.

¹⁸⁰ Currently, providers are allowed 35 days to bill the insurer; however, if the provider notifies the insurer of the initiation of medical treatment of a PIP insured within 21 days after the first treatment, the provider has 75 days to submit the statement of charges to the insurer.

Several insurers noted that the least effective reforms were:

- Disclosure and acknowledgment form because it is limited to the initial visit by the insured and few insureds know what they are signing.
- Patient log because it is not legally enforceable.
- Civil action for insurance fraud is not useful because it is predicated upon the fraudulent party being convicted or pleading nolo contendere, which seldom occurs.

Virtually all carriers singled out attorney fee reform as a paramount issue for the Legislature to address in curbing PIP and BI auto costs. These reforms included:

- Eliminating or limiting:
 - The “one-way” attorney fee provision under s. 627.428, F.S.;
 - The “Contingency Risk Multiplier” in PIP attorney fee awards;
 - The “bad-faith” civil remedies provision under s. 624.155, F.S.;
 - and,
- Establishing a pre-suit procedure for settling claim disputes.

Insurers are divided over whether adopting the above reforms along with enacting a medical fee schedule with utilization protocols (discussed previously in this report) is sufficient to salvage the no-fault system or whether the system is too badly broken to be repaired, and thus should be allowed to sunset. Insurers that favor the sunset option assert that the 2001 and 2003 reforms were not sufficiently effective; that PIP severity rates continue to increase; that the system is fraught with fraud and abuse; and is imposing additional costs on Florida drivers without providing commensurate benefits.

On the other side of this debate are the Academy of Florida Trial Lawyers (AFTL), the Florida Medical Association (FMA), the Florida Chiropractic Association (FCA), the Florida Osteopathic Medical Association (FOMA), and the Florida State Massage Therapy Association (FSMTA), known collectively as the “Coalition.” The Coalition asserts that the PIP law should be reenacted and opposes any change in the law as to attorney fees, litigation reform or imposing a medical fee schedule/utilization protocols on PIP providers. The Coalition states that the 2001 and 2003 legislation has been successful in fighting fraud, reducing litigation, and reducing costs and cite as evidence the following:

- The increase in PIP fraud arrests;
- The large reduction in PIP law suits due to the enactment of the 15 day pre-suit demand letter and other reforms; and
- The auto market is competitive and rates are slowing down.

One-Way Attorney Fees, Contingency Risk Multipliers, and Bad Faith

An insurance company must pay attorney's fees under s. 627.428, F.S., if it loses in court to its insureds or beneficiaries under an insurance policy or contract. However, if the insurer prevails, their fees are not paid by the losing side. This is often referred to as the "one-way attorney's fee" provision. This provision applies to all first-party insurance litigation (including PIP disputes) and has been part of Florida's insurance laws since 1893.¹⁸¹ Florida is not the only state to have this type of fee arrangement in insurance cases. States such as New Jersey, Pennsylvania, Missouri, Washington, West Virginia, North Carolina, and Idaho have variations of the one way attorney fee provision.

Personal injury protection litigation involves insurance companies and providers, and only in rare cases involves insureds. This is because providers have insureds execute an "assignment of benefits" in which insureds assigns all rights, benefits, obligations and duties to providers for the purpose of allowing providers to recover PIP benefits due insureds pursuant to their insurance policy.

Florida courts use two different common law methods to calculate attorney's fees: Lodestar and Contingency Risk Multipliers. In cases where the statutes require the losing party to a lawsuit to pay the victor's attorney's fees, the court applies the "lodestar" approach to calculate the fees to be paid to the winning attorney, basically the number of hours expended by the attorney on a particular case, multiplied by an hourly rate. In some cases, that fee is multiplied by an amount ranging from 1 to 2.5 if the court finds that the client would not have been able to obtain competent counsel without the possibility of the multiplier (i.e., "contingency risk multiplier"). The court determines the amount of the multiplier by analyzing *after the fact* what the attorney's likelihood of success was at the start of the trial.

In 1985, the Florida Supreme Court determined that the lodestar approach "provided a suitable foundation for an objective structure" in calculation of the fee an attorney is to be paid when the Florida Statutes require the loser in a lawsuit to pay the winner's attorney's fees.¹⁸² In a PIP case, this occurs when the insured or insured's beneficiary wins a lawsuit against an insurer. Florida's application of the lodestar calculation uses eight factors contained in Rule 4-1.5 of the Florida Bar Code of Professional Responsibility to determine a proper attorney's fee.¹⁸³ The

¹⁸¹ Chapter 4173 (No. 59), 1893 Laws of Florida. The one-way attorney fee provision is also referred to as a fee-shifting statute.

¹⁸² *Florida Patient's Compensation Fund v. Rowe*, 427 So.2 1145 at 1150 (Fla. 1985).

¹⁸³ Those criteria are as follows:

1. The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill required to perform the legal service properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

Footnote continued on next page.

lodestar approach may be summarized by saying that a court determines the number of hours reasonably expended by the attorney and a reasonable hourly rate for those services, and multiplies the two together to arrive at the lodestar amount.¹⁸⁴

In certain cases, a Florida court may utilize a contingency risk multiplier to add to the fee calculated under the lodestar methodology. The Florida Supreme Court has stated that a contingency fee multiplier is useful in determining a reasonable fee in a tort or contract case (e.g., insurance contract) where a risk of nonpayment is established.¹⁸⁵ The primary rationale for a contingency risk multiplier is to provide access to competent counsel for those who could not otherwise afford it.¹⁸⁶ The court examines three factors in determining whether a multiplier is necessary and if it finds that a contingency risk multiplier should be applied, then determines what the amount of the multiplier should be by examining the likelihood of success for the attorney at the outset of the trial.¹⁸⁷ If the trial court determines that success was more likely than not at the outset, it may apply a multiplier of 1 to 1.5; if the trial court finds that the likelihood of success was even, then a multiplier of 1.5 to 2.0 may be used; and if success was unlikely at the outset, then

-
3. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.
 4. The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained.
 5. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client.
 6. The nature and length of the professional relationship with the client.
 7. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.
 8. Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation. This factor is not used by a court in setting the lodestar amount, but is a key factor utilized when a contingency risk multiplier is applied by the court.

¹⁸⁴ *Rowe*, 427, So.2d at 1150-1151. In determining the number of hours reasonably expended by the attorney, the court is to look at "the novelty and difficulty of the question involved" in the litigation. In determining the hourly rate for services, the court should take into account all the factors enumerated in Rule 4-1.5 of the Florida Bar Code of Professional Responsibility, except for the time and labor required, the novelty and difficulty of the question involved (since these two factors are used in determining the reasonable number of hours for the lawyer to have expended on the litigation); the results obtained, and whether a fixed or contingent fee arrangement was utilized.

¹⁸⁵ *Standard Guaranty Insurance Co. vs. Quanstrom*, 555 So.2d 828, 834 (Fla. 1990).

¹⁸⁶ *Bell v. S.U.B. Acquisition Company, Inc.*, 734 So.2d 403, 407 (Fla. 1999).

¹⁸⁷ *See Quanstrom*, 555 So.2d at 834. The factors are: 1. Whether the relevant market requires a contingency fee multiplier to obtain competent counsel; 2. Whether the attorney was able to mitigate the risk of nonpayment in any way; and, 3. The amount involved in the case, the result obtained, and the type of fee arrangement between the attorney and client.

a multiplier of 2.0 to 2.5 may be used. Thus, the court is allowed to enhance an attorney's fee up to 2 and one half times the lodestar amount.

In 1992, the U.S. Supreme Court eliminated fee enhancement (such as that created by contingent fee multipliers) beyond the lodestar amount in most federal cases.¹⁸⁸ In *Dague*, the Supreme Court held, "The fee shifting statutes generally do not permit enhancement of a fee award beyond the lodestar amount to reflect the fact that a party's attorneys were retained on a contingent-fee basis."¹⁸⁹ Then, in 2003, the Florida Supreme Court ruled in *Sarkis v. Allstate Insurance Company*¹⁹⁰ that a contingent fee multiplier cannot be used to enhance attorney fees authorized under the offer of judgment statute found in s. 768.79, F.S. The *Sarkis* court ruled that the offer of judgment statute is intended to be a sanction, which is a different goal than that of a contingency fee multiplier, which seeks to provide access to courts. The Court also noted that the offer of judgment statute was designed to achieve the goal of quicker, less expensive litigation. This goal is at odds with the contingent fee multiplier which attempts to provide access to courts and encourages the filing of more lawsuits. The Fifth Circuit Court of Appeals earlier this year certified to the Florida Supreme Court the question of whether a multiplier may be applied to enhance an award of attorney's fees granted under a fee-shifting statute such as s. 627.428, F.S. (one-way attorney fee provision).¹⁹¹

As noted above, federal and state courts are re-examining the need for an enhancement of the risk multiplier under a fee shifting statute primarily because the lodestar amount is presumed to be a "reasonable" fee without an enhancement and because the parties in insurance litigation are now on equal footing.¹⁹² Patients have assigned their benefits to the medical provider or medical facility, and that provider or corporation does not have trouble finding a lawyer. The multiplier may have outlived its usefulness in the face of the realities of PIP litigation where plaintiffs' firms have the assets and manpower to outlast their smaller predecessors in extended litigation. Many of the cases before Florida courts are brought by corporate plaintiffs, utilizing PIP litigation as much for bill collection as for litigation.¹⁹³

For example, in Seminole County, Judge Erickson, in his Order on Plaintiff's Motion for Attorneys' Fees, ruled that in PIP cases involving an assignment of benefits to a provider, the multiplier should decrease, even to zero, because the

¹⁸⁸ *City of Burlington v. Dague*, 505 U.S. 557 (1992)

¹⁸⁹ *Dague*, 505 U.S. at 1221.

¹⁹⁰ 863 So.2d 210 (Fla. 2003)

¹⁹¹ *Holiday v. Nationwide Mutual Fire Insurance*, 864 So.2d 1215 (Fla. 5th DCA 2004) and *Bluegrass Art Cast, Inc. v. Consolidated Erection Services, Inc.*, 870 So.2d 196 (Fla. 5th DCA 2004)

¹⁹² *Rethinking the Application of Contingency Risk Multipliers in Fee Awards (Should Florida Courts Recede from *Quanstrom*?)* The Florida Bar Journal, October 2005.

¹⁹³ *Id.*

plaintiff attorney's desire to obtain such work.¹⁹⁴ Judge Erickson opined that a PIP benefits assignment case has evolved into a situation where the parties are now on equal footing.¹⁹⁵

The "bad faith" provisions in the Insurance Code under s. 624.155, F.S., allow an insured to sue their own insurer in a first party breach of contract case where the insured alleges that the insurer failed to act in good faith to settle claims when it should have done so, had it acted fairly and honestly towards the insured with due regard for the interests of the insured. The effect of this law allows the insured to sue beyond the limits of their policy and for tort-type, as opposed to contract-type, damages.¹⁹⁶

Insurers argue that the one-way attorney fee law is unnecessary since it was enacted (more than one hundred years ago) when there was no state regulation of insurers, as there is today, or laws to sanction carriers for treating insureds unfairly. For example Florida's insurance code strictly regulates insurers and contains numerous provisions to penalize insurers, such as unfair practices laws, insurer market conduct examinations and investigations, criminal sanctions under the authority of the Division of Insurance Fraud, and investigation of insurer complaints lodged with the Division of Consumer Services within DFS.

These companies assert that the cumulative effect of the one-way attorney fee, lodestar, contingency risk multiplier, and bad faith provisions encourage litigation and punish carriers. Plaintiff attorneys are motivated to file suits over relatively small claim amounts because of the potential of obtaining large attorney fees. Carriers, when faced with potentially large attorney fee awards, chose to pay claims that they would otherwise dispute rather than take a chance in court. This risk of litigation ends up being a cost driver in a no-fault system that was intended to reduce litigation, not promote it, insurers argue.

The Coalition emphasizes that changing any of these provisions to benefit insurers' bottom line will greatly inhibit the ability of certain parties (particularly poor insureds) to obtain competent representation in difficult PIP cases. They argue that eliminating the "one-way" attorney fee provision would allow insurance companies to further delay, deny or reduce legitimate claims by insureds. Also, insurers can get attorney fees now under s. 57.105, F.S., if the claim against the

¹⁹⁴ *Peter J. Godleski d/b/a/ Central Florida Orthopedic & Neurology Specialists a/a/o Stefany Groover v. Nationwide General Insurance Company*, 11 Fla. L. Weekly Supp. 855(a) (18th Judicial Circuit in and for Seminole County, July 8, 2004).

¹⁹⁵ *Id.* Judge Erickson concluded that the multiplier should apply only in those situations where it was originally intended where the patient, who is on unequal economic terms with their insurer, has to look "high and low to find that rare lawyer willing to take these kinds of cases."

¹⁹⁶ Third parties may also sue insurers under s. 624.155(3)(b)4, F.S.

carrier is not supported by the material facts necessary to establish the claim or if a valid proposal for settlement was made to the plaintiff.¹⁹⁷

It would appear that from a public policy perspective, the use of the contingency risk multiplier, in particular, conflicts with the goals and purposes of the no-fault law. As the Florida Supreme Court stated in the *Sarkis* case in 2003, it is “beyond dispute that the multiplier was created to promote litigation, not to limit it.” In contrast, the goals of the no-fault system were to reduce litigation and court congestion. Further, plaintiffs and insurers are now on equal footing in litigating disputes and there is no need to impose the risk multiplier (to induce securing the services of counsel) in PIP cases. Reducing the multiplier and limiting its applicability would serve the original goals of the no-fault law.

Pre-Suit Resolution Procedure to Settle PIP Disputes

The great majority of insurers are in favor of a pre-suit mechanism to avoid needless litigation. Currently, any mediation that is done to settle auto disputes is after litigation has commenced and parties have retained counsel. Insurers assert that by the time of court-ordered mediation, attorney fees typically have become the driving force behind the litigation. However, some insurers also argue that the need for pre-suit mediation would be reduced if a medical fee schedule and utilization protocols were in place since the reasonableness of the fee and the appropriateness of the treatment would be subject to less litigation.

The Coalition emphasizes that courts already have the authority to require mediation of PIP disputes. Also, the 15 day pre-suit demand letter is a form of voluntary mediation of sorts since an insurer has 15 days to review the claim and determine whether to pay to resolve the dispute without attorney fees or additional costs. Even if the matter is not resolved at that time and the suit is filed, the carrier can stop incurring additional fees and costs at any time by paying the claim.

One difficulty with mandating a pre-suit dispute resolution program for PIP cases is the time and expense involved for providers and in limited cases insureds, to settle disputes with insurers. Arguably, providers would have to take time away from work to prepare and attend dispute resolution meetings with insurers or have to hire counsel which would involve further costs. Some insurers point to the dispute resolution program in New Jersey as a model for Florida to adopt. However, there are costs involved with the New Jersey model. That state has hired full time professionals to resolve PIP disputes and their decisions are binding on all parties. When disputes involve diagnosis or medical necessity issues, the matter is referred to a medical review organization for determination. The organization's determination on the dispute is presumed to be correct by the dispute professional, which presumption may be rebutted by a preponderance of the evidence. If the dispute resolution proceeding results in a determination that the services were medically necessary and appropriate, reimbursement is made

¹⁹⁷ Section 768.79, F.S.

with interest payable to the provider. Should the Florida Legislature consider the issue of requiring a pre-suit resolution program, it must address the costs and time concerns noted.

Additional Issues under the Current PIP Law

The following are additional areas of concern regarding the no-fault law that have been identified:

- Because of the many legislative changes since 1971, the no-fault statutes are confusing for not only novices, but also judges and experienced practitioners. Reorganizing the no-fault law in a logical and more easily understandable fashion would reduce confusion and help to ensure that the enactments of the Legislature are followed correctly.
- It is unclear whether Medical Payments coverage and PIP benefits above the \$10,000 minimum are subject to the statutory requirements for PIP benefits.
- Claimants are currently required to produce a sworn statement of their earnings for purposes of demonstrating loss of gross income and earning capacity to insurers. Generally, an employer produces the sworn statement for an employee. However, in the case of a self-employed person, the person seeking wage loss benefits is the same person signing the sworn statement, creating a potential moral hazard for the claimant.
- Insurers currently have 15 days to respond to a pre-suit demand letter for overdue PIP benefits (benefits an insurance company has not paid within 30 days after receiving notice of a covered loss). Insurers assert additional time is needed because 15 days is not sufficient time to evaluate the merits of a demand letter for overdue benefits and determine if the claim should be paid.
- Injured parties are generally permitted to reserve PIP disability benefits for payment as lost wages. However, the law does not clearly address this issue and there is often miscommunication or uncertainty between the insurer and policyholder whether this has been done.
- The priority of payment for PIP claims involving multiple insurance carriers is uncertain, leading to litigation.
- Currently, a medical provider must bill a PIP insurer in a statement of charges within 35 days of rendering medical treatment. An exception exists if the provider submits to the insurer a notice of initiation of treatment within 21 days after the provider's first examination or treatment of the claimant. In that case, the statement of charges may include charges for treatment or services rendered within 75 days of the statement's postmark date. This extended 75-day period provides an opportunity for unnecessary and excess treatment and makes it more likely that the \$10,000 PIP benefits will be exhausted. This compromises the insurer's ability to utilize an independent medical examination. Reducing the 75 day time period may help fight fraud and abuse by allowing insurers greater oversight regarding medical treatment and the

ability to utilize IME's before all PIP medical coverage benefits have been used.

- Some medical providers do not provide patients with a written bill disclosing the treatment rendered and charges for such treatment, or do so in forms that are difficult to understand. Requiring providers to provide such a bill at the time of treatment would help auto accident victims be on guard against excessive and expensive treatment that needlessly exhausts PIP benefits and enable them to report it to their insurer.
- Policyholders, medical providers, and their representatives sometimes face difficulty in obtaining from insurers a written report itemizing all payments made or a copy of the applicable insurance declarations page and insurance policy. This information is useful in ensuring that an insurer is abiding by the policy contract in its provision of benefits and making timely payments.
- There appears to be an inordinate amount of litigation regarding whether a properly binding assignment of benefits has been made, and which providers have priority when multiple assignments have been made. There are not clear requirements for creating a valid assignment of benefits, for determining priority of payment under multiple assignments of benefits, and for revocation of assignments by policyholders, all of which lead to uncertainty and litigation.
- Amounts payable from an insurer must bear simple interest at the rate applied to judgments in s. 55.03, F.S., or the rate established in the insurance policy, whichever is greater. However, on amounts repayable to an insurer, the insurer does not collect interest on the payment.
- Medical records from medical providers that are submitted during the litigation discovery process are sometimes created after the fact, creating an avenue for claiming a right to reimbursement for treatment that may or may not have been rendered.
- Current law is not clear regarding which persons are subject to an examination under oath. Additionally, there is no set hourly rate payable to a person for an examination under oath, which can lead to excessive charges.
- Often insureds fail to attend required independent medical examinations.
- Sometimes insurers do not receive notice of the existence of a claim for months or even years after an accident occurs.
- Insurers may bring a civil action for insurance fraud pursuant to section 627.736(12), F.S., only if a party has been convicted, plead guilty or plead nolo contendere for insurance fraud associated with a PIP claim. This requirement greatly limits the insurer's ability to bring such an action and is dependent on state prosecution of the provider. If prosecution is not pursued, an insurer cannot recover damages for practices such as presenting a claim with false or fraudulent treatment or items, rendering physician services when unlicensed, or providing material misleading information to the insurer. Such a civil cause of action could be effective in preventing such practices.

- Sometimes the parties to a PIP lawsuit “venue shop” to have PIP lawsuits tried in counties where it is believed that the party is more likely to have a “favorable outcome.” This is problematic when venue is transferred to a jurisdiction where the injured party does not reside, is not where the accident occurred, or (in the case of an assignment of benefits) is where treatment was rendered.

Effect of Repealing No-Fault in Florida

It is difficult to predict the overall results of repealing no-fault in Florida and returning to a tort system. But, certain ramifications are likely. The most direct effect of repealing the no-fault statutes would be to eliminate the requirement that vehicle owners purchase PIP coverage and that insurers offer this coverage. This can be viewed as a “savings” by deducting the premium for PIP, but it is a savings due to a loss of coverage. Examples of current average PIP premiums in four cities are shown in Table 12, which vary greatly depending on various factors, but range from \$90 to \$243 for a 40-year old married female with one moving violation, and from \$276 to \$791 for an 18-year old single male with no accidents or violations.

If no-fault is repealed, the only mandatory insurance requirement remaining would be property damage liability of \$10,000. Florida does not mandate bodily injury liability insurance, unless triggered by the Financial Responsibility Law due to certain accidents or violations. Presumably, the Legislature would consider mandating BI liability if no-fault is repealed. But even without the mandate, over 90 percent of vehicles currently have BI coverage, according to the results of the survey sent to insurers by committee staff. Insurers representing 62 percent of the private passenger auto market responded that over 92 percent of their policies include BI coverage in addition to the mandatory PIP/PD coverage (weighted for market share). However, smaller “non-standard” companies that write high-risk drivers are much more likely to sell policies limited to mandatory PIP/PD.

The cost of bodily injury (BI) liability insurance will increase if no-fault is repealed. This is due to the fact that some of the injuries that are currently compensated by PIP will instead be compensated under BI. These will generally be for non-permanent injuries which do not pierce the tort threshold under the current law, so they are likely to be for amounts that are less than the current average BI claim. But, in addition to economic damages, these accident victims with non-permanent injuries would also be allowed to pursue claims for non-economic damages, which is currently prohibited. So, BI liability will absorb additional costs for non-economic damages as well.

Similarly, the cost of uninsured motorist coverage (UM) will also increase due to the repeal of no fault, though not likely as much as BI, but for the same reason. Certain injuries that are now compensated by PIP will, instead, be compensated by UM. These are the injuries for which the other driver is at fault, but either does not have BI liability or does not have sufficient BI to cover the damages. So, BI is

the “first level of defense” that will shield UM from some of these claims, but UM will still absorb some additional loss (which also includes non-economic damages). But, if the Legislature mandates BI liability, it will act to decrease UM premiums, depending on the level of enforcement and the increased percentage of drivers who purchase BI coverage. The more drivers that have BI coverage (and the higher the BI limits purchased), the lower the UM premiums. But, given the large percentage of drivers who already carry BI coverage (over 90 percent based on committee survey results), there is limited opportunity for UM savings by mandating BI.

Auto insurers would be relieved from paying attorney’s fees in most auto injury cases if no-fault is repealed. The statutory requirement to pay attorneys’ fees applies only if the insured (or his assignee) successfully sues his own insurer. In a third-party liability suit, the insurer is generally not required to pay attorney’s fees to the plaintiff, unless it is determined that the insurer acted in bad faith in denying the claim. Therefore, even though BI costs will increase if PIP is repealed, the costs associated with payment of attorney fees in PIP cases will generally not be transferred to BI.

Costs associated with health care provider fraud and abuse are likely to be reduced if no-fault is repealed, because this problem is primarily associated with PIP claims, more so than liability claims. The PIP requirements for timely payment of any “reasonable” charge, regardless of fault, provides an easier opportunity for health care fraud and abuse than a liability situation where fault of a third party must be established and claims payments are not subject to statutory time frames, interest penalties, and attorney fee awards. Therefore, those PIP injuries that will be transferred to BI for compensation may have lower medical expenses. Some auto insurers, however, may economically suffer from the repeal of no-fault, relative to their competition. These are the insurers that serve the “non-standard” or high-risk market and write a much higher percentage of minimum coverage, PIP/PD-only policies. These insurers, which are typically the smaller, Florida-domestic insurers, have established their underwriting criteria and claims handling based primarily on PIP and PD liability claims of high-risk drivers, rather than BI liability claims. Converting to a fault-based liability system is a much more significant change affecting premium volume and business operations than for the larger, national insurers writing standard risks.

The premium effects on PIP and BI described above have been reflected in Colorado. After no-fault was repealed in that state in 2003, drivers were no longer required to purchase PIP, which is the primary source of “savings” under the new law, by deducting the PIP premium. The percentage savings is greater for drivers who purchase the minimum mandatory liability coverage, which has averaged about 31 percent according to the Colorado Department of Insurance and about 21 percent for drivers with full coverage policies. But, according to the Chief Actuary for the department, BI liability rates have increased about 50 percent and UM rates have increased about 30 percent due to the repeal. But, the net effect is still a lower overall premium, due to dropping expensive PIP coverage. Most insurers

continue to offer Medical Payments coverage in Colorado that is similar to PIP, but usually for lower limits and providing coverage only for medical expenses, not lost wages. Also, insurers generally have more discretion in their policies to limit medical benefits under Medical Payments coverage, in contrast to PIP benefits subject to statutory requirements.

If no fault is repealed, fault must be established in every accident that results in an injury to determine who is liable. Florida is a comparative fault state, meaning that the percentage of fault will also need to be allocated among the parties to the accident. Granted, that is the current law for property damage claims, so this is already required for two-party accidents. For bodily injury, however, this is likely to result in longer periods of time for insurers to make payments and to finally resolve claims, and may be an issue that has to be litigated. One of the purposes of no-fault was to reduce these types of transaction costs and to allow a greater percentage of the premium dollar to be paid in benefits. But, the increased PIP litigation in Florida between insurers and health care providers regarding medical necessity and reasonableness of charges has compromised this goal. The committee staff survey asked for the insurers to estimate their loss adjustment expenses for PIP and BI, respectively, which staff converted to a percentage of the earned premiums for PIP and BI. The results are as follows, weighted for market share, for the 19 insurers responding, representing 62 percent of the market:

PIP Loss Adjustment Expenses as Percentage of PIP Earned Premiums:

2002	15.86%
2003	13.53%
2004	10.85%

BI Liability Loss Adjustment Expenses as Percentage of BI Earned Premium:

2002	12.24%
2003	10.35%
2004	11.21%

The survey results indicate that insurers paid a greater percentage of PIP premiums in loss adjustment expenses than for BI in 2002 and 2003, but slightly less in 2004. This indicates that the goal of reducing expenses under no-fault as compared to tort is generally not being met, but there is evidence of recent improvement.

As the cost arguments in favor of no-fault fade, given the relatively high cost of coverage in Florida and many no-fault states, the social benefit of no-fault is increasingly cited as the main value of the system. Persons without health insurance are assured of at least \$10,000 in coverage if they are injured in an auto accident. This may be the only source of payment if the uninsured person was at fault or the other driver who was at-fault driver does not have BI liability insurance. Even if the at-fault driver has BI liability coverage, proof of fault is not likely to be clearly established when the injured party is seeking medical treatment, so the health care provider is not assured of coverage.

Health care providers stand to be the biggest losers if no-fault is repealed. PIP is one of the few remaining insurance systems that pays billed charges, as long as they are “reasonable.” If no-fault is repealed, the health care provider would first look to the victim’s health insurer, if any, for payment, which is likely to be at a discounted rate or subject to a “usual and customary” fee schedule. Other accident victims may have no health insurance, resulting in uncompensated care, in cases where the victim was at fault or the at-fault driver does not have liability insurance. Even if an at-fault driver has liability coverage, health care providers are likely to wait longer for payment, as compared to PIP.

The no-fault law appears to meet the goal of compensating victims and their medical providers much more timely than under a traditional tort system. A study by the Insurance Research Council compared BI and PIP in the number of days between the report of injury and the first payment.¹⁹⁸ First payment was received within 30 days for 35 percent of PIP claimants, but only for 16 percent of BI claims. First payment was received within 90 days for 80 percent of PIP claimants, but only for 31 percent of BI claimants. It took more than one year for the first payment to be made for 27 percent of BI claims, but only for 4 percent of PIP claims.

Health insurance costs are also likely to increase if no-fault is repealed. The health insurance system will be forced to absorb additional costs of auto accident victims who are at fault or hit by an under-insured driver. According to information from the Colorado Department of Insurance, initial rate filings by health insurers reflected an average premium increase of about 1.5 percent directly due to the repeal of no-fault, ranging from about 0.5 percent to 5 percent.

Persons who have health insurance, i.e., the substantial majority of Floridians, will no longer be required to purchase PIP coverage that duplicates their health coverage, if no-fault is repealed. It is true that PIP has broader coverage than health insurance, including coverage for lost wages, coverage for passengers and pedestrians, and coverage that serves to fill gaps for deductibles and co-insurance amounts not paid by health policies. But, the lion’s share of PIP coverage is for the insured’s medical expenses that would otherwise be covered by a health insurance policy. Persons who do not have health coverage would still be likely to have the opportunity to purchase Medical Payments coverage under their auto policy, but insurers would not be required to offer this coverage (unless mandated by law as done in “add-on” states.)

The repeal of no-fault would return to the more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of a vehicle. It also is generally

¹⁹⁸ *IRC, Auto Injury Insurance Claims* (2003), (fn. 154) pg. 91.

viewed favorably by the public as a fairer system consistent with views of personal responsibility.

There will be additional lawsuits against at-fault drivers, primarily for cases where the injury is non-permanent or does not otherwise pierce the verbal threshold of the current no-fault law. But, there will be decreased litigation between insurers and health care providers over PIP payments (although evidence indicates such lawsuits have already declined as noted previously). It is unknown what the net effect will be on the court system if no-fault is repealed. But, Florida has the reputation of being a litigious state, and the prospect of opening the courts for pain and suffering awards for additional auto injuries will probably be taken to its fullest advantage.

National Overview of Auto Insurance and No-Fault Laws

When an automobile accident occurs in the United States, the system under which an insurance claim is handled by an insurer and perhaps adjudicated in court depends on the state law governing the accident. Two major systems are utilized throughout the country: the tort system or the no-fault system, with certain variations. All states require drivers to obtain some type of insurance coverage or otherwise meet financial responsibility requirements and further require insurers to offer certain coverage. The requirements for all fifty states are summarized in Table 23, which follows the narrative overview below.

Tort-Based States

The majority of states (38) utilize the tort system. In tort states, when an accident between two or more drivers occurs, the at-fault party is liable for the damages (medical, economic, property damage, and pain and suffering) of the other parties to the accident. Parties seeking redress for their injuries do so from the at fault driver, and must prove negligence on the part of that party.

No-Fault States

In the other twelve (12) states, the law mandates first party PIP no-fault coverage for medical benefits, wage loss, and death benefits, and a limitation is placed on pain and suffering lawsuits. The no-fault auto insurance system compensates automobile injury victims under PIP insurance without regard to fault. Generally, each party to an accident receives compensation under his or her PIP coverage to pay for medical treatment, rehabilitation, replacement services, lost wages and funeral expenses related to the accident. In return for the provision of PIP benefits without regard to fault, accident victims cannot sue for general damages (pain and suffering) unless a tort threshold is met.

Tort-Based System with Add on PIP Benefits

Ten of the thirty-eight tort based states require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or

lawsuit.¹⁹⁹ Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; seven do not, but require insurers to offer PIP coverage.²⁰⁰ Add-on states are not considered to be no-fault, because they make no attempt to achieve one of the two major goals traditionally pursued by no-fault legislation: lowering premium costs through reducing litigation.

Choice No-Fault Auto Insurance System

Three of the twelve no-fault states—New Jersey, Pennsylvania, and Kentucky—offer consumers a choice between purchasing PIP coverage and traditional tort liability coverage which does not include PIP benefits. Whether a no-fault or tort based premium is more expensive in a choice state depends on factors such as the amount of PIP benefits provided, the type of no-fault threshold being used, and other factors.²⁰¹ Because of the correlation between population density, greater numbers of accidents, and higher premiums, drivers who live in large cities are more likely to purchase the cheaper PIP coverage, while those living in less populated areas more often select the tort based coverage.²⁰²

Bodily Injury Liability Coverage in Tort and No-Fault States

All but two of the thirty-eight tort states require the purchase of bodily injury liability coverage.²⁰³ In standard tort states, the \$25,000/\$50,000 requirement is

¹⁹⁹ Property and Casualty Insurance Association of America, *Personal Auto Profile* (November 2004).

²⁰⁰ Delaware, Maryland and Oregon require the purchase of PIP insurance. Arkansas, South Carolina, South Dakota, Texas, Virginia, Washington and Wisconsin require insurers to offer PIP insurance.

²⁰¹ Stephanie Owings Edwards, *Choice Automobile Insurance: The Experience of Kentucky, New Jersey and Pennsylvania*, pg. 34-35 (Journal of Insurance Regulation Fall 2004). In Kentucky and New Jersey, most policyholders purchase no-fault insurance. More than 90 percent of Kentuckians select no-fault insurance because the tort threshold is only \$1,000 (a minimal barrier to pain and suffering suits) and the fact that the price of insurance under the tort system is 10 percent greater in Kentucky than under no-fault. In New Jersey, 90 percent of policyholders also choose to purchase insurance under a no-fault system. New Jersey policyholders can save over \$500 a year by selecting the no-fault, due to use of a verbal tort threshold, medical fee schedules and treatment protocols.

²⁰² Laureen Reagan, *Determinants of the Selection of Full or Limited Tort Auto Insurance in Pennsylvania: An Empirical Analysis*, (Boston: Kluwer Academic Publishers 2001) For instance, in Philadelphia around 60 percent of insureds choose to purchase no-fault insurance. However, in Pennsylvania counties where premiums are lower than the state average, only 33 percent choose no-fault.; See Owings Edwards fn. 139 at pg. 36.

²⁰³ New Hampshire and Tennessee do not require BI coverage if the driver complies with alternative financial responsibility requirements.

the most prevalent minimum coverage (12 states).²⁰⁴ Other coverages used in such states include \$20,000/\$40,000 (4 states), \$15,000/\$30,000 (5 states), and \$10,000/\$20,000 (3 states). Among the ten tort states with PIP add-on coverage, the most common BI requirement is \$25,000/\$50,000 that six states require,²⁰⁵ while \$20,000/\$40,000 is used in two states.²⁰⁶ (See Table 23.)

All no-fault states except Florida require a minimum amount of bodily injury liability coverage. Bodily injury coverage provides coverage for the insured driver's legal liability for injuries caused to another person if the claimant's damages exceed PIP benefits or the claimant pierces the state's threshold. Florida has a requirement for BI liability coverage for persons subject to the Financial Responsibility Law of \$10,000 per person, \$20,000 per accident, or a combined \$30,000 in coverage for bodily injury and property damage. Florida's minimum requirement for BI coverage is among the lowest in the nation. Among no-fault states similar in size and population density to Florida, New Jersey and Pennsylvania require bodily injury coverage of \$15,000/\$30,000, Massachusetts and Hawaii require \$20,000/\$40,000, and New York requires \$25,000/\$50,000 coverage.

Uninsured/Underinsured Motorist Coverage

Uninsured motorist bodily injury coverage provides benefits to the policyholder in the event that the policyholder or other occupants of the policyholder's vehicle are injured by an at-fault motorist without liability insurance, a motorist with insufficient liability coverage to pay for the motorist's damages, or in a hit-and-run. Five no-fault states²⁰⁷ require the purchase of uninsured motorist BI coverage. Six no-fault states, including Florida, require insurers to offer uninsured motorist BI coverage. Among tort states, a majority requires insurers to offer uninsured motorist bodily injury coverage, with a sizeable minority of states mandating such coverage. Uninsured motorist coverage for property damage is seldom made available in no-fault states, with the product not offered for sale in Florida and eight other states. The coverage is more commonly available in tort states, a majority of which either require the purchase of coverage or an offer of coverage.

²⁰⁴ Colorado, Georgia, Idaho, Indiana, Missouri, Montana, Nebraska, New Hampshire, Rhode Island, Tennessee, Vermont, and Wyoming.

²⁰⁵ Arkansas, Oregon, South Dakota, Virginia, Washington, and Wisconsin.

²⁰⁶ Maryland and Texas. The other add-on state, Delaware, uses \$15,000/\$30,000 limits.

²⁰⁷ Massachusetts, Minnesota, New Jersey, New York, and North Dakota are the states that require the purchase of uninsured motorist coverage.

However, collision coverage is available in all states, which pays for damage to the insured's vehicle due to an accident, regardless of fault.

Table 23 identifies the type of auto insurance system adopted by each state (either no fault, choice, tort add-on, or tort), and each state's requirements for BI and PD liability and uninsured motorist coverage.

TABLE 23

State Auto Insurance Systems (color-coded by state name) and Requirements for BI and PD Liability and Uninsured Motorist Coverage

STATE	MIN. BI/PD	UM PD	UM BI	STATE	MIN. BI/PD	UM PD	UM BI
Florida*	10/20/10 or 30K comb.	No	Mandatory Offer	California	15/30/5	Required/Insured May Reject	Mandatory Offer
Hawaii	20/40/10	Required w/ \$50 Deductible	Mandatory Offer	Colorado	25/50/15	Mandatory Offer w/ Request	Mandatory Offer
Kansas	25/50/10	No	Mandatory Offer	Connecticut	20/40/10	No	Mandatory Offer
Massachusetts	20/40/5	No	Required	Georgia	25/50/25	Required w/ \$250 Deductible	Mandatory Offer
Michigan	20/40/10	No	No	Idaho	25/50/15	No	Mandatory Offer
Minnesota	30/60/10	No	Required	Illinois	20/40/15	Required/Insured May Reject	Required
New York	25/50/10	No	Required	Indiana	25/50/10	Required/Insured May Reject	Mandatory Offer
North Dakota	25/50/25	No	Required	Iowa	20/40/15	No	Mandatory Offer
Utah	20/50/15 or 65K comb.	Required w/ \$250 Deductible	Mandatory Offer	Louisiana	10/20/10	Required w/ \$250 Deductible	Mandatory Offer
Kentucky	25/50/10 or 60K comb.	No	Mandatory Offer	Maine	50/100/25	No	Required
New Jersey	15/30/5	Required w/ \$500 Deductible	Required	Mississippi	10/20/05	Required/Insured May Reject	Mandatory Offer
Pennsylvania	15/30/5	No	Mandatory Offer	Missouri	25/50/10	No	Required
Arkansas	25/50/25	Required/Insured May Reject	Mandatory Offer	Montana	25/50/10	No	Mandatory Offer
Delaware	15/30/10	Required	Mandatory Offer	Nebraska	25/50/25	No	Required
Maryland	20/40/15	Required w/ \$50-\$250 Deductible	Required	Nevada	15/30/10	No	Mandatory Offer
Oregon	25/50/10	Required w/ \$200 or \$300 Deductible	Required	New Hampshire**	25/50/25	Required	Required
South Carolina	25/50/25	No	Required	New Mexico	15/30/5	Required w/ \$250 Deductible	Required
South Dakota	25/50/25	No	Required	North Carolina	30/60/25	Required w/ \$100 Deductible	Mandatory Offer
Texas	20/40/15	Required w/ \$250 Deductible	Mandatory Offer	Ohio	12.5/25/7.5	Required if no Collision Cov.	Mandatory Offer
Virginia	25/50/20	Required w/ \$200 Deductible	Required	Oklahoma	10/20/10	No	Mandatory Offer
Washington	25/50/10	Required if UMBI Purchased	Required	Rhode Island	25/50/25	Required if no Collision Cov.	Mandatory Offer
Wisconsin**	25/50/10	No	Required	Tennessee**	25/50/10 or 60K comb.	Mandatory Offer if UMBI Purchased	Mandatory Offer
Alabama	20/40/10	No	Mandatory Offer	Vermont	25/50/10	Required w/ \$150 Deductible	Required
Alaska	50/100/25	Required/Insured May Reject	Mandatory Offer	West Virginia	20/40/10	Required w/ \$300 Deductible	Required
Arizona	15/30/10	No	Mandatory Offer	Wyoming	25/50/20	No	Mandatory Offer

No-fault State	Choice State	Tort/Add-On State	Tort State
-----------------------	---------------------	--------------------------	-------------------

* BI only required if driver is subject to Financial Responsibility Law

** Insurance is not compulsory in this state if driver complies with financial responsibility requirements

Review of State No-Fault Laws

Twelve states have no-fault auto insurance systems, but no two states are alike. Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah all take different approaches to no-fault legislation. Coverage amounts, deductibles, mandated coverages, the tort threshold for a pain and suffering claim, the use of fee schedules or treatment protocols, and more all vary widely among the states. Table 24 provides detail on each state's requirements, following a narrative description of key differences.

Required Level of PIP Limits

One primary difference among the no-fault states is with regard to the minimum amount of PIP coverage that must be purchased. Florida requires \$10,000 in PIP coverage, with 5 states requiring greater amounts of coverage and 6 requiring the same or a lesser degree of coverage. The states that mandate the highest minimum levels of PIP coverage are Michigan²⁰⁸ (requires PIP policies to provide unlimited medical benefits), New York (\$50,000), Minnesota (overall \$40,000 minimum with \$20,000 for medical costs and \$20,000 for lost income, replacement services and funeral expenses), and New Jersey (\$15,000).²⁰⁹ Utah (\$3,000), Pennsylvania (\$5,000) and Massachusetts (\$8,000) require the lowest amounts of minimum coverage.

Allocation of PIP Benefits

No-fault states also differ in specifying limitations on PIP benefits for different types of economic loss or specifying how such benefits must be allocated. Florida's PIP reimburses the insured up to the policy's PIP limit for 80 percent of reasonable medical expenses, 60 percent of wage loss based on gross income, and \$5,000 in funeral benefits. Most no-fault states differ from Florida in that they do not place a percentage limitation on the reimbursement for medical treatment up to the PIP policy limits. Massachusetts limits its PIP medical benefits to \$2,000 of the minimum \$8,000 PIP limit, but this corresponds to the state's no-fault threshold of \$2,000 for bringing a bodily injury claim. Minnesota is the only other no-fault state that puts a limit on medical expenses, allocating half of its \$40,000 PIP minimum for medical expenses.

Florida is in line with the majority of no-fault jurisdictions in paying a percentage of lost income benefits under PIP, and though the percentage is lower than most states, it is one of the few states not to put a monetary cap on the amount of lost wages benefits that can be recovered in a given week or month. The death benefit

²⁰⁸ Michigan is the only state to utilize a statutory reinsurer—The Michigan Catastrophic Claims Association—to pay large losses (all losses that exceed \$250,000).

²⁰⁹ New Jersey requires \$250,000 in PIP benefits for catastrophic injuries.

is higher in Florida than in most other PIP no-fault states. Florida is also more generous than most states in the provision of replacement services, paying 100 percent of the cost up to the PIP limit.

Tort Thresholds in No-Fault States

All twelve no-fault states limit the right to bring a bodily injury suit in court that includes non-economic (pain and suffering) damages. The limitation on filing a tort claim is accomplished through a tort threshold that the injured party must meet to be allowed to file a tort suit for such damages.

Each state has either a “verbal” or “monetary” threshold. Florida and the other four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury that must be met. Besides Florida, a verbal threshold is used in Michigan, New Jersey,²¹⁰ New York,²¹¹ and Pennsylvania.²¹² The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000.²¹³ Under a monetary threshold, once the injured party has medical expenses of a certain amount, the insured may bring a tort suit including non-economic damages. Verbal thresholds are more difficult to meet than monetary thresholds. In a monetary threshold, any injury can allow a tort suit if the medical expenses reach the threshold amount. Verbal thresholds are more difficult to meet because the injury must meet the statutory description of a serious injury.

The verbal tort thresholds used by five no-fault states differ in the degree of injury that must be met. Generally, a verbal threshold will be increasingly restrictive to the degree that it:

- Restricts pain and suffering suits to only the most serious injuries;

²¹⁰ N.J. Stat. Ann. s.39:6A-8 (2004). New Jersey allows a bodily injury suit for insureds who select the no-fault option in that state only in the event of: (1) death, (2) dismemberment, (3) significant disfigurement or significant scarring, (4) a displaced fracture, (5) loss of a fetus, or (6) permanent injury within a reasonable degree of medical probability other than scarring or disfigurement. New Jersey defines an injury as “permanent” when a body part or organ has not healed to function normally and will not do so with further treatment.

²¹¹ N.Y. Ins. Law s.5104 (2004). New York does not allow recovery for non-economic damages except for serious injury. Serious injury is defined in N.Y. Ins. Section 5102 as: (1) death, (2) dismemberment, (3) significant disfigurement, (4) fracture, (5) loss of a fetus, (6) permanent loss of a body organ, member, function, or system, (7) permanent consequential limitation of use of a body organ or member, or (8) a non-permanent medically determined injury or impairment that prevents performance of substantially all usual daily activities for 90 or more of the 180 days following the accident.

²¹² 75 Pa. Cons. Stat. 1705 (2004). Pain and suffering damages are not available for an insured who selects the limited tort option unless the injuries qualify as a serious injury, which is defined in 75 P.C.S. 1702, as: (1) death, (2) serious impairment of a body function or permanent serious disfigurement.

²¹³ See Table 24 for the threshold amounts in each no-fault state.

- Contains fewer circumstances in which a pain and suffering suit can be brought; and
- Contains specific statutory definitions of the injury necessary to bring a pain and suffering suit.

The verbal threshold in Florida allows tort suits for pain and suffering only in the event of: (a) permanent injury, (b) significant and permanent loss of an important bodily function, (c) significant and permanent scarring or disfigurement, or (d) death.²¹⁴ The verbal threshold in Michigan is considered the most restrictive, as it permits pain and suffering suits only for: (a) serious impairment of a body function,²¹⁵ (b) permanent serious disfigurement, or (c) death.²¹⁶ A “permanent injury” is not sufficient in itself to meet the Michigan threshold, as it is in Florida. “Permanent injury” is not defined in the Florida no-fault law, other than a requirement that it be “within a reasonable degree of medical probability.” Also, while Florida allows suits in the event of significant and permanent scarring, Michigan does not. Michigan’s verbal threshold acts as a stronger barrier to PIP claims than the threshold in Florida. During 2003, the number of paid bodily injury claims in Michigan was 0.18 per 100 insured vehicles, while in Florida the rate was at 0.89 per 100 insured vehicles.²¹⁷ It should be noted that while Michigan utilizes a very strict verbal threshold, it is used in conjunction with a PIP system that provides unlimited medical benefits to all insureds. Policyholders in Michigan receive the most generous no-fault medical benefits package in the nation, and thus it can be argued that this justifies a more restrictive tort threshold for pain and suffering damages.

²¹⁴ Section 627.737, F.S.

²¹⁵ Mich. Stat. 500.3135(7), (2004). “Serious impairment of body function” is defined in Michigan as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life. Florida does contain a definition of significant and permanent loss of an important bodily function, but it is worth noting that Florida requires permanency in its statutory language while Michigan does not.

²¹⁶ Mich. Stat. s.500.3135(1), (2004).

²¹⁷ See *Trends in Auto Injury Claims* (2004), Insurance Research Council, pg. 21.

TABLE 24
No-Fault Personal Injury Protection Benefits by State

STATE	SYSTEM	PIP COVERAGE	MEDICAL BENEFITS	WAGE LOSS BENEFITS	PIP REPLACEMENT SERVICES
Florida	No-Fault	\$10K	80% up to PIP limit	60% of gross income	100% up to PIP limit
Hawaii	No-Fault	\$10K	100% up to PIP limit	Optional max of \$2K/month; \$12K total	Not Included in PIP
Kansas	No-Fault	\$4.5K	100% up to PIP limit	\$900/month for 1 yr.	\$25/day for 1 year
Massachusetts	No-Fault	\$8K	\$2K within 2 years	75% of avg. weekly wage for 1 yr.	Up to \$8K PIP Limit
Michigan	No-Fault	No Limit	Unlimited	85% lost income for 3 yrs; \$4.4K/mon. max.	\$20/day for 3 years
Minnesota	No-Fault	\$40K	\$20K	85% of loss up to \$250/week; \$20K total	\$200/week after 7 days
New York	No-Fault	\$50K	100% up to PIP limit	80% up to \$2K/month for 3 years	\$25/day for 1 year
North Dakota	No-Fault	\$30K	100% up to PIP limit	85% or \$150/week	\$15/day
Utah	No-Fault	\$3K	100% up to PIP limit	85% gross inc. or \$250/wk for 1yr	\$20/day for 1 year
Kentucky	Choice	\$10K	\$1K	\$200/week	\$200/week
New Jersey	Choice	\$15K	\$15K	85% or \$100/week for 1 year	\$42/day for 1 year
Pennsylvania	Choice	\$5K	\$5K	Optional \$2.5K/month of at least \$50K max.	Not Included in PIP
State	System	PIP Coverage	Funeral/Survivor	Statutory PIP Deductibles	Tort Threshold
Florida	No-Fault	\$10K	\$5K Death	\$250 \$500 \$1K	Verbal
Hawaii	No-Fault	\$10K	\$2K Funeral	\$100 \$300 \$500 \$1K	\$5K
Kansas	No-Fault	\$4.5K	\$2K/\$25 per day for 1 yr.	None	\$2K
Massachusetts	No-Fault	\$8K	Up to \$8K PIP limit	\$100 \$250 \$500 \$1K \$2K \$4K \$8K	\$2K
Michigan	No-Fault	No Limit	\$1.75K-\$5K/1 yr. wage	Insurance Commissioner Approval	Verbal
Minnesota	No-Fault	\$40K	\$2K/\$200 per week	None	\$4K
New York	No-Fault	\$50K	\$2K Survivor	None	Verbal
North Dakota	No-Fault	\$30K	\$3.5K/\$15 per day	None	\$2.5K
Utah	No-Fault	\$3K	\$1.5K/\$3K	None	\$3K
Kentucky	Choice	\$10K	\$200 per week Survivor	\$250 \$500 \$1K	\$1K
New Jersey	Choice	\$15K	\$1K/Wage & Replacement	\$500 \$1K \$2K \$2.5K	Verbal
Pennsylvania	Choice	\$5K	\$2.5K/\$25K Accidental Death	None	Verbal

Recent Developments in No-Fault States

The Battle Against PIP Fraud in New York

During the year 2000, medical no-fault costs in New York rose by 32.1 percent, more than twice the increase that second place Florida experienced that year.²¹⁸ This was a tremendous increase over 1999 when claims costs rose in New York by 11.1 percent and 1998 when the increase was only 4.5 percent.²¹⁹ Fraud was cited as a primary cause of the increase.²²⁰ During 2003, the New York Insurance Frauds Bureau received 17,253 no-fault fraud reports, over triple the amount of reports received in 1995.²²¹ The cost of fraud was estimated to cost New York policyholders \$388 million during 2002. No-fault fraud in New York takes many of the same forms as in Florida, with accidents being staged, “runners” being used to organize accidents and refer those involved to unscrupulous medical providers and attorneys, and fake medical treatment and damages being asserted to insurers and in lawsuits.

No-fault insurance fraud in New York was also becoming more violent. State insurance fraud investigators in New York state that no-fault insurance fraud was ceasing to be a white collar crime, but instead was attracting a hardened criminal element.²²² Persons with serious prior criminal offenses apparently saw the lack of meaningful penalties for no-fault fraud in New York as an opportunity to exploit. New York investigators took a sample of 50 suspects arrested in the Frauds Bureau, of which 31 had a total of 143 prior arrests in addition to their arrests for insurance fraud. The arrests included 1 murder, 16 gun possessions, 31 narcotics violations, 17 robberies, 18 burglaries, 9 assaults, 5 sexual offenses which included 4 forcible rapes, and 46 other crimes.²²³ The New York experience shows that if auto insurance fraud is allowed to fester, the problem will only increase, and attract a more dangerous criminal element.

As the problem of no-fault fraud continued to grow and auto insurance premiums increased, insurance companies, the New York Insurance Frauds Bureau, and local prosecutors began to work together to address the situation. Insurers staged a

²¹⁸ Insurance Information Institute, *No-Fault Medical Fraud in New York State: Problems and Solutions*, pg. 1 (2001).

²¹⁹ See *id.*

²²⁰ New York has a medical fee schedule, therefore the increase in no-fault costs cannot in large part be attributable to medical inflation.

²²¹ Statement by August D'Aureli, Supervising Investigator of the Insurance Frauds Bureau in the New York State Insurance Department, made before the New York Senate Standing Committee on Insurance, (February 9, 2004); See *No Fault Fraud in New York State* fn. 166 at pg. 2; *The 2000 Report to the Governor and the Legislature of the State of New York on the Operations of the Insurance Frauds Prevention Act*, New York Insurance Frauds Bureau, January 15, 2001.

²²² *Id.*

²²³ *Id.*

media awareness campaign in order to bring the problem of no-fault fraud into the public consciousness. Reporters accompanied investigations of bogus medical clinics and fake crashes, and news reports about no-fault fraud and its effect on premiums were featured in newspapers and newscasts.²²⁴ The increased public awareness led to increased interest by local prosecutors in attacking the problem. Insurers worked closely with law enforcement and prosecutors, such as conducting no-fault fraud workshops to help inform law enforcement about the nature and degree of the problem.²²⁵

Federal, state and local law enforcement officials jointly conducted long term investigations such as "Operation Gateway," which involved "accident victims" or "jump-ins," who claimed injuries in accidents that never occurred.²²⁶ The operation also involved runners, who coordinated the fictitious accidents and then directed the jump-ins to medical clinics where they were treated by unscrupulous medical professionals. The scam was perpetrated by a management group that used seven medical clinics it had established using the names and licenses of medical providers who sold their ability to establish a medical clinic for a fee.²²⁷ The entire scheme involved thousands of medical claims submitted to insurers. Using informants, wire taps, search warrants, and a large scale ruse designed to gather many of the perpetrators in one place in order to be arrested, dozens of arrests were made.

Regulatory changes also helped to reduce fraud in New York. The time limit for filing a claim was reduced from 90 to 30 days, and the period of time allowed for submitting bills was reduced from 180 to 45 days.²²⁸ These changes reduced the ability of fraudulent providers to render treatment for long periods of time without any oversight from an insurer. New York also recently enacted legislation requiring the state to establish standards and procedures for investigating and decertifying health care providers who engage in deceptive billing or fraudulent practices, who would then no longer be authorized to receive payment for medical services rendered under no-fault insurance.²²⁹

The focused effort to combat fraud in New York paid dividends quickly. PIP claim frequency dropped 21 percent from the four quarter of 2000 to the fourth quarter of 2004. The average PIP claim also dropped from a high of over \$8,500 in 2002 to \$5,867 by the end of 2004, below the national average in many other

²²⁴ Staff interview with Robert A. Hartwig, Senior Vice President and Chief Economist for the Insurance Information Institute (August 18, 2005).

²²⁵ Staff interview with Bernie Bordeau of the New York Insurance Association (September 4, 2005).

²²⁶ See fn. 220, Statement by August D'Aureli.

²²⁷ Though New York restricts the ownership of medical clinics to licensed medical providers, fraudulent clinics remained a problem as some providers accept illegal payments in return for being listed as the owner of the medical clinic.

²²⁸ See N. Y. Comp. Codes R. & Reg. 68.

²²⁹ The bill was A08376, which was signed into law in New York on August 2, 2005.

PIP states. No-fault arrests by the New York Insurance Fraud Bureau rose from 50 in 2000 to 182 in 2002, and fraud reports began to fall by 2004.²³⁰ In November 2004, the New York State Insurance Department cited insurance industry data that showed the overall loss ratio (i.e., liability and no-fault) in the private passenger market had dropped significantly since 2002. Largely due to the success in combating fraud, the New York State Insurance Department approved rate cuts of at least 5 percent for many major insurers.²³¹

Colorado's Switch from No-Fault to Tort

On July 1, 2003, Colorado switched from a no-fault auto insurance system to a tort based system. The change was motivated primarily by the fact that Coloradoans were paying some of the highest auto insurance premiums in the country under the state's no-fault law. The average expenditure for automobile insurance in Colorado rose from fourteenth nationally in 1998 to eighth in 2002.²³² From 2001 to 2002, the combined average premium in the state rose \$116.27 to \$1051.37, the largest such increase in the nation.²³³

The dramatic rate increase in Colorado was fueled in large part by the increase in PIP claimed economic losses. From 1997 to 2002, average claimed economic losses (medical expenses, wage loss, and other out-of-pocket expenses) rose 122 percent.²³⁴ By way of comparison, such losses increased by 37 percent in Florida during that period. Large increases in claimed medical losses were also apparent in Colorado and appear to be a primary cause of the increased economic losses and rising premiums, as the average claim rose from \$4,020 in 1997 to \$9,033 in 2002.²³⁵

Two facets of the state's no-fault law appear to have encouraged the increase in premium costs. Colorado PIP benefits were extremely generous, providing \$50,000 in coverage for medical services, \$50,000 for rehabilitative services, and over \$20,000 for lost wages and essential services costs.²³⁶ Colorado no-fault regulations also required insurers to offer the choice of expanded PIP coverage up to a \$200,000 total limit.²³⁷ In 2001, Colorado's pure premium for PIP coverage

²³⁰ Information provided by Robert P. Hartwig of the Insurance Information Institute, *New York PIP Insurance Update: Is New York's No-Fault Crisis Solved?* (June 2, 2005).

²³¹ See *id.* The rates cuts were for State Farm, GEICO, Travelers, Metropolitan Life, Nationwide, Progressive Northeastern, and GMAC.

²³² National Association of Insurance Commissioners 2001/2002 Auto Insurance Database: Average Premiums and Expenditures 1998-2002: Table 4 Average Expenditure.

²³³ National Association of Insurance Commissioners 2001/2002 Auto Insurance Database: Average Premiums and Expenditures 1998-2002: Table 5 Combined Average Premium.

²³⁴ See *IRC Analysis of Four No-Fault States*, fn. 152, pg. 2.

²³⁵ See *IRC Analysis of Four No-Fault States*, fn. 152 at pg. 20.

²³⁶ Colorado Health Institute, *The Jury's Out: Monitoring the Shift From No-Fault to a Tort Auto Insurance System in Colorado* pg. 6 (2005).

²³⁷ See *IRC Analysis of Four No-Fault States*, fn. 152 at pg 12.

was second only to Michigan, which offers unlimited PIP medical benefits. In addition, Colorado's tort threshold was set relatively low at \$2,500 in medical expenses.²³⁸ Colorado closed claims examined for 2002 by the Insurance Research Council indicate that 45 percent of PIP claimants were eligible to pursue a BI claim which could include non-economic damages.²³⁹ Among those who did file a bodily injury claim, 95 percent overcame the Colorado tort threshold by exceeding the \$2,500 amount.

Colorado now requires all drivers to carry bodily injury liability coverage limits of \$25,000/\$50,000 with property damage coverage of \$15,000. The state requires insurers to offer uninsured motorist bodily injury and property damage coverage. Medical payments coverage is not required to be offered, but the Colorado Division of Insurance indicates that most insurers offer the coverage.²⁴⁰

Concerns have been raised regarding Colorado's shift to a tort system. Representatives of Colorado hospitals argue that there is likely to be an increase in the number of patients without medical insurance who visit emergency room departments due to car accidents.²⁴¹ As a result, hospitals expect to render more uncompensated care, which would cause increased financial pressure on said institutions.²⁴² The switch to tort may also have negative effects on the cost and availability of health insurance. Because PIP coverage has priority of payment for medical benefits until the coverage is exhausted, it reduces the amount that must be paid out of health insurance coverage when an auto accident occurs. With the elimination of PIP, health insurance will have to pay these benefits, which may increase its cost and reduce availability. Persons without health insurance may also be harmed. Supporters of no-fault state that PIP is the only form of health insurance coverage that many people with limited income have. Under a tort-based system, an accident victim with medical injuries may have a longer wait to receive benefits from the at-fault party's insurer and thus be placed in financial distress. Other supporters of the PIP system in Colorado argue that the savings from switching to a tort system are illusory and argue that policyholders are simply paying less because they are receiving less coverage. The first-party medical payments coverage that Coloradans can purchase generally has limits of \$5,000 to \$10,000, far lower than the PIP benefit of \$50,000 for medical treatment that was available in that state. These critics state that purchasing the same level of coverage under the newly enacted tort system in Colorado will actually cost more than under the old no-fault system.²⁴³

²³⁸ The tort threshold in Colorado could also be exceeded if the claimant's injuries resulted in death, permanent injury, disability or temporary disability, dismemberment, serious disfigurement.

²³⁹ See *IRC Analysis of No-Fault States*, fn. 152 at pg. 12, 13.

²⁴⁰ See the Colorado Division of Insurance "Answers to Frequently Asked Question About Auto Insurance at <http://www.dora.state.co.us/insurance/consumer/autoaqcon.pdf>.

²⁴¹ See *The Jury's Out* fn. 230 at pg. 11.

²⁴² See *The Jury's Out* fn. 230 at pg. 12.

²⁴³ *Car Insurance Rate Savings Back Under Review*, Pueblo Chieftain September 23, Footnote continued on next page.

Insurers in Colorado have generally been supportive of the switch to a tort system, primarily because of the elimination of rapidly rising PIP costs. With drivers no longer forced to purchase PIP coverage, policy costs have been reduced in the state. According to a survey conducted by the Property and Casualty Insurers Association of America comparing the cost of a policy under the PIP system during June 2003 before the repeal and in July 2005 under the tort system, the average rate dropped from 16.1 percent to 21.7 percent if \$5,000 in medical payments coverage is purchased under the new law, with an even greater reduction in premium cost if no medical payments coverage is purchased.²⁴⁴ An analysis of the yearly Auto Insurance Premium Comparison promulgated by the Colorado Division of Insurance also shows premium reductions under tort law.²⁴⁵ Supporters of the conversion to tort also argue that the elimination of no-fault increases consumer choice. Many consumers already have health insurance plans that are capable of paying medical bills arising from an auto accident, making PIP coverage a duplicative, unnecessary expense. Whereas those who want first party coverage for medical expenses caused by an auto accident will be able to purchase medical payments coverage as part of their automobile insurance policy. Finally, with regard to the argument that PIP coverage is the only health insurance coverage that some persons have, supporters of the repeal of no-fault in Colorado note that the purpose of automobile insurance is not to act as a minimum health insurance coverage.

It is still too early to know what the full ramifications of the switch from no-fault to a tort based system will be in Colorado. But, premium costs are likely to decrease in part because Colorado's PIP benefits were very generous, totaling well over \$100,000 before the repeal.

Conclusions and Recommendations

Florida has a costly automobile insurance system with serious problems, though not at a "crisis" level. The market is competitive and coverage is readily available.

2005.

²⁴⁴ Property and Casualty Insurers Association of America Research Bulletin 05-015, *Colorado Personal Auto Rate Trends From No-Fault to Tort* (August 31, 2005).

²⁴⁵ A comparison was made between the February 2005 *Auto Insurance Premium Comparison: A Survey of Private Passenger Automobile Insurance Costs in Colorado* published by the Colorado Division of Insurance and the December 2002 report of the same name. The survey examines the cost of the minimum premium required by law for different hypothetical drivers in the cities of Denver, Littleton, Pueblo, Grand Junction and Ft. Collins. The median premium for each hypothetical was lower in the 2005 survey, but the reduction in price varied greatly. For instance, a married 35 year old male driver with no accidents or traffic convictions in the past three years and an excellent driving record while living in Denver had an average premium reduction of almost \$250. However, the same driver living in Ft. Collins had a reduction of \$61.

Auto insurance premiums in Florida for combined coverage ranked fourteenth in the nation for 2002, the most recent ranking published by the National Association of Insurance Commissioners. Florida experienced significant premium increases, particularly for PIP coverage, from 2000 through 2003. But, this has been followed by rate decreases or very small increases in 2004 and 2005, which may be due, in part, to reforms enacted in 2003, but which also reflect nationwide trends. Industry data reflects that PIP loss costs in Florida have also leveled off in 2004 and early 2005, but they have continued to outpace other no-fault states for at least the last five years. Loss costs for bodily injury liability insurance in Florida are also well above the national average and higher than most no-fault states, indicating that Florida's no-fault law is not particularly effective in reducing BI costs.

High medical costs and utilization of medical services continue to drive PIP costs and the incidents of PIP fraud and abuse, primarily involving health care fraud, are at an all time high. Anti-fraud measures have helped to increase the number of arrests and prosecutions, but the resources of the Division of Insurance Fraud are limited.

The no-fault law does meet the goal of compensating victims (and their medical providers) much more timely than under a traditional tort system. But, the efficiencies expected from no-fault due to decreased litigation and expense related to proving fault have not been fully realized due to the expenses associated with investigating and litigating the cost and utilization of medical services reimbursed by PIP. However, reforms enacted in Florida in 2003 appear to have been effective in reducing such litigation.

Inflation has significantly eroded the mandatory \$10,000 PIP benefit level enacted over 26 years ago.²⁴⁶ About one in four PIP claimants reach the limit, according to a staff survey of insurers. But, the no fault law allows the injured party to sue the at-fault driver for medical expenses and other economic damages above the PIP limits. Increasing required PIP limits will increase premiums for all vehicle owners. The concerns regarding Florida's high premium level and affordability of coverage tend to overshadow concerns regarding the adequacy of PIP limits.

Committee staff offers the following major recommendations:

1. Reenact the no fault law, provided that additional reforms are enacted to control costs, most importantly, a medical fee schedule as listed below.
2. Adopt a medical fee schedule for PIP, set at a specified percentage above the Medicare fee schedule. In addition to helping control PIP medical costs, a fee schedule would also reduce litigation over the reasonableness

²⁴⁶ The \$10,000 PIP benefit took effect on January 1, 1979.

of medical fees and thereby reduce PIP loss adjustment expenses and attorney fee awards by insurers.

3. Eliminate or limit the contingency risk multiplier for attorney fee awards in PIP cases.

Committee staff offers the following recommendations related to PIP fraud and health care clinics:

1. Increase funding to the Division of Insurance Fraud to equalize salaries comparable to investigators with the Florida Department of Law Enforcement and provide for PIP fraud prosecutors in Orlando and Tampa. The total recommended funding for FY 2006-2007 would be: \$774,161.²⁴⁷
2. Increase the criminal penalty to a second degree felony with a 2-year minimum mandatory sentence (as current law provides for staging a vehicle accident) for creating documentation of a motor vehicle accident that did not occur (i.e., "paper" accidents where no actual crash takes place).
3. Criminalize the solicitation of bribes in return for accepting health care treatment.
4. Restrict access to police accident citation logs related to an accident, as current law provides for vehicle crash reports.
5. Narrow the provision allowing "victim services programs" to have access to crash reports.
6. Require all clinics that accept PIP reimbursement and that qualify for an exemption from licensure to apply to AHCA for an exemption certificate limited to 2 years and subject to a renewal application, and authorize AHCA to inspect such clinics.
7. Require that motor vehicle insurance fraud crimes under Part I of chapter 817, F.F., be disqualifying offenses for clinic licensure.
8. Mandate that clinics post anti-fraud reward signs.

Committee staff offers the following recommendations to address additional problems in the no-fault law:

²⁴⁷ The Division has recommended other resources in its 2006-2007 budget request; however; these requests are beyond the parameters of this report.

1. Reorganize the statutory provisions of the no-fault law in a more logical and more easily understandable fashion.
2. Remove the requirement that a person be convicted or plead guilty or nolo contendere for insurance fraud in order for a PIP insurer to have a civil action for insurance fraud pursuant to section 627.736(12), F.S. Allow an insurer to bring a civil action for insurance fraud if a person presents a claim and a court determines that the person knew or should have known that the claim is false or fraudulent, or meets certain other specified criteria.
3. Clarify that medical payments coverage and PIP benefits above the \$10,000 minimum are subject to the requirements that apply to PIP benefit requirements.
4. Require self-employed persons to produce reasonable proof of net income and loss of earning capacity for the purposes of demonstrating loss of gross income and earning capacity to insurers.
5. Increase the number of days an insurer has to respond to a pre-suit demand letter for overdue PIP benefits from 15 to 21 days.
6. Clarify that if an insured elects to have disability benefits reserved for lost wages, the insured must notify the insurer in writing.
7. Clarify the priority of payment for PIP claims involving multiple insurance carriers.
8. Reduce the number of days within which a health care provider must submit a statement of charges to an insurer from 75 to 50 days, if the provider notifies the insurer within 21 of initiation of treatment.
9. Require PIP medical providers to give patients a written bill at the time of treatment specifying the treatment rendered and charges for such treatment in plain language and to maintain a copy as part of the patient's medical records.
10. Require insurers to provide policyholders, medical providers, and their representatives, upon request, with a written report itemizing all payments made and a copy of the insurance declarations page and insurance policy.
11. Clarify the requirements regarding a valid, binding assignment of benefits and for priority of payment under multiple assignments of PIP benefits.
12. Require that all amounts repayable to an insurer include an interest penalty.

13. Require that providers produce medical records at the time of request in order to be admissible in court.
14. Specify which persons are subject to an examination under oath and specify the hourly rate payable to a person for an examination under oath.
15. Require insureds to attend independent medical examinations (IMEs).
16. Require that notice to an insurer of the existence of a claim must be reported within 1 year of the accident's occurrence.
17. Restrict venue for a PIP lawsuit to the jurisdiction where the injured party resides or where the accident occurred. If an assignment of benefits has been made, venue would be where the health care services were performed or the accident occurred.