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2003 SENATE TRANSPORTATION

SB 2275

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2275**

Senate Transportation Committee

❑ Conference Committee

Hearing Date 2-6-03

Tape Number	Side A	Side B	Meter #
1	X		25-5110
2		X	240-1124
Committee Clerk Signature	Mary K Monson		

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on SB 2275 relating to coordination of benefits for automobile insurance.

Senator Tom Fischer: (District 46) Introduced SB 2275 to raise medical benefits of basic no-fault insurance. It doesn't raise the total amount of no-fault from $30,000 it just readjusts how it is spent.

Rod St. Aubyn: (Representing BC/BS of North Dakota) See attached testimony in favor of SB 2275.

Senator Taylor: Questioned if it is pretty standard in catastrophic instances that the auto insurer will elect to coordinate benefits to $30,000 and if we raise this to $15,000 would that still be the practice.

Rod St. Aubyn: Yes, that is my understanding for the catastrophic. They would probably end up paying the full $30,000 anyway.

Senator Espegard: What percentage of the policyholders does BC have in the state right now?

Rod St. Aubyn: (Meter 1000) It depends on which report you look at. About 80-85%.

Senator Trenbeath: Predictably somebody from the insurance industry will tell us that this will increase our auto insurance premiums. Are you going to tell us it will reduce our medical insurance premiums?

Rod St. Aubyn: It will help reduce future increases.

Pat Ward: (Meter 1164) (Representing the National Association of Independent Insurers and other insurance companies in opposition to this bill.) (Attached packet of ND Insurance Facts and a Proposed Amendment.) This bill is anti-consumer. This bill is an attempt by Blue Cross to shift the coordination of benefits from the present rate of $5,000 to $15,000. In a no fault claim, once the $5000 threshold is hit there is an option to coordinate benefits. That means the bills can be shifted over to the health insurer instead of the auto insurer. The no-fault can still be used to pay the co-payments and deductibles. The consumer is better off with a lower threshold.

(Meter 1400) Discussion about the difference between a $5,000 or $15,000 threshold. This bill would take away benefits the insured has now. A proposed amendment lowering the threshold to $1 was presented.

(Meter 1780) Discussion on whether time and inflation justifies an increase.

Rob Hovland: (Chairman of the ND Domestic Insurers' Association) (Attached testimony and a 1974 letter from the president of BC indicating that a no-fault program is not cost effective.) Opposed to the bill as introduced and in support if amended to reduce the coordination benefits threshold.

Senator Trenbeath: If this is such a drain on auto insurance resources, why can't you tell me that if we adopt this amendment it will lower my insurance rates.

Rob Hovland: If our numbers improve as a result of this changing I will guarantee you that our rates will go down.

Senator Espegard: What is the BC expense ratio?

Rod St. Aubyn: About 8%--basically the cost of doing business.

(Meter 4136) **Mr. St. Aubyn** spoke in response to the amendment. He pointed out that health insurance premiums would go up if the threshold is lowered to $1.

Kent Olson: (Executive Director of the PIA of ND) (Meter 4435) Opposed to SB 2275. This is a take away for the consumer by raising the threshold. Supports the direction of moving to a "0" threshold.

Senator Nething: Can anyone explain the fiscal note?

(Meter 4800) Discussion on the fiscal note. The note did not have narrative on it. A corrected copy of the fiscal note containing the narrative was provided for the committee. (Attached)

The hearing on SB 2275 was closed.

(Side B Meter 240) Discussion about doing a study to repeal the "no-fault" law and amending the bill to a $10,000 threshold.

Senator Nething motioned to **amend** to $10,000, do a study resolution, and sunset the subsection 3 in two years. Seconded by **Senator Espegard**. Roll call vote 4-0-2.

Senator Nething moved a **Do Pass as Amended**. Referred to appropriations. Seconded by **Senator Espegard**. Roll call vote 4-0-2. **Passed**. Floor carrier is **Senator Nething**.

FISCAL NOTE

Requested by Legislative Council
03/11/2003

REVISION

Amendment to: SB 2275

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$0		$0
Expenditures				$0		$0
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The reduced cost of coordinated benefits for NDPERS contracts balances the potential exposures to the Risk Management Fund for providing increased basic no-fault benefits for state owned and leased motor vehicles.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jo Zschomler	**Agency:**	Risk Management Division OMB
Phone Number:	328-6510	**Date Prepared:**	03/11/2003

FISCAL NOTE

Requested by Legislative Council
02/18/2003

Amendment to: SB 2275

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				$75,000		$0
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Risk Management Fund provides automobile liability coverage for state owned and leased motor vehicles which includes $5,000 of basic no-fault benefits. State Fleet provides 15 passenger vans for use by State entities. In each of the past 3 bienniums there has been one rollover accident involving a State owned 15 passenger van that was transporting students. None of these vans were fully occupied at the time of the rollovers but, had they been, under current no-fault law, the Risk Management Fund would be required to pay $75,000 no-fault benefits. If the no-fault limit is raised to $10,000 per passenger, the impact to the State could be $150,000, an additional $75,000 for only one accident. While 15 passenger vans are often operated at less than capacity, there are non State employee passengers in other state owned vehicles that present an exposure under this coverage. There have been no-fault expenditures by the Risk Management Fund for other than 15 passenger van accidents.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

$75,000 for an accident involving a fully loaded 15 passenger van.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jo Zschomler	**Agency:**	Risk Management Division OMB
Phone Number:	328-6510	**Date Prepared:**	02/18/2003

FISCAL NOTE

Requested by Legislative Council
02/06/2003

REVISION

Bill/Resolution No.: SB 2275

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				$150,000		$200,000
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Risk Management Fund provides automobile liability coverage for state owned and leased motor vehicles which includes $5,000 of basic no-fault benefits. State Fleet provides 15 passenger vans for use by State entities. In each of the past 3 bienniums there has been one rollover accident involving a State owned 15 passenger van that was transporting students. None of these vans were fully occupied at the time of the rollovers but, had they been, under current no-fault law, the Risk Management Fund would be required to pay $75,000 no-fault benefits. If the no-fault limit is raised to $15,000 per passenger, the impact to the State could be $225,000, an additional $150,000 for only one accident. While 15 passenger vans are often operated at less than capacity, there are non State employee passengers in other state owned vehicles that present an exposure under this coverage.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

$150,000 for an accident involving a fully loaded 15 passenger van.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jo Zschomler	**Agency:**	Risk Management

Phone Number: 701-328-6510 **Date Prepared:** 02/06/2003

FISCAL NOTE

Requested by Legislative Council
01/21/2003

Bill/Resolution No.: SB 2275

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				$150,000		$200,000
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

$150,000 for an accident involving a fully loaded 15 passenger van.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jo Zschomler	**Agency:**	Risk Management
Phone Number:	701-328-6510	**Date Prepared:**	01/22/2003

30568.0101
Title.0200

Adopted by the Transportation Committee
February 6,2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2275

Page 1, line 2, after "insurance" insert "; to repeal subsection 3 of section 26.1-41-13 of the North Dakota Century Code, relating to coordination of benefits for automobile insurance; and to provide an effective date"

Page 1, line 9, replace "fifteen" with "ten"

Page 1, line 12, replace "fifteen" with "ten"

Page 1, after line 17, insert:

"**SECTION 2. REPEAL - EFFECTIVE DATE.** Subsection 3 of section 26.1-41-13 of the North Dakota Century Code is repealed effective after July 31, 2005."

Renumber accordingly

30568.0101
Title.0200

Adopted by the Transportation Committee
February 6, 2003

2-13-03
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2275

Page 1, line 1, remove "subsection 3 of"

Page 1, line 2, after "Insurance" insert "; and to provide an effective date"

Page 1, line 4, replace "Subsection 3 of section" with "Section"

Page 1, replace lines 6 through 17 with:

"26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

2. As between applicable security basic no-fault benefits are payable as follows:

   a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

   b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.

   c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.

   d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five ten thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental

bodily injury in excess of ~~five~~ ten thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

SECTION 2. AMENDMENT. Section 26.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

2. As between applicable security basic no-fault benefits are payable as follows:

   a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

   b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.

   c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.

   d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

~~3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of five thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or~~

~~savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.~~

3043

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective on August 1, 2005."

Renumber accordingly

Date: 2-6-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2275

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Sunset on Sub Section 3 in 2 yrs. (2005) Amend to $10,000 and add Study Resolution work.

Motion Made By Sen. Nething Seconded By Sen. Espegard.

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch					
Senator Dave Nething	✓				

Total (Yes) 4 No 0

Absent 2

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2275

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number LC 30568.0101 Title .0200

Action Taken Do pass as amended - Refer to appropriations

Motion Made By Sen. Nething Seconded By Sen. Espegard

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch					
Senator Dave Nething	✓				

Total (Yes) 4 No 0

Absent 2

Floor Assignment Senator Nething

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 1:40 p.m.

Module No: SR-29-2766
Carrier: Nething
Insert LC: 30568.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2275: Transportation Committee (Sen. Trenbeath, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2275 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 3 of"

Page 1, line 2, after "insurance" insert "; and to provide an effective date"

Page 1, line 4, replace "Subsection 3 of section" with "Section"

Page 1, replace lines 6 through 17 with:

"26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

2. As between applicable security basic no-fault benefits are payable as follows:

   a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

   b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.

   c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.

   d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first ~~five~~ ten thousand dollars of basic no-fault benefits. A basic no-fault insurer

authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of ~~five~~ ten thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

SECTION 2. AMENDMENT. Section 26.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

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   a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

   b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.

   c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.

   d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

~~3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental~~

~~bodily injury in excess of five thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.~~

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective on August 1, 2005."

Renumber accordingly

2003 SENATE APPROPRIATIONS

SB 2275

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2275 bill & vote

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 2-18-03

Tape Number	Side A	Side B	Meter #
1		X	0-1165
Committee Clerk Signature			

Minutes: Chairman Holmberg opened the hearing to SB 2275. (Meter 23) Senator Tom Fischer, District 46: Introduced the bill as the prime sponsor. He stated that there were some amendments attached to this bill and wanted to allow others to explain the fiscal impact. (Meter 70) Vice Chairman Bowman: what is the fiscal impact of the bill? (Meter 72) Senator Fischer: The original bill was to move the medical expenses from five to fifteen thousand on the no-fault insurance. In committee they amended it to ten thousand, and then there were some amendments put on (30568.0201). (Meter 140) Rod St. Aubyn, Blue Cross/Blue Shield: Explained what the original bill had raised the coordination of benefits level from five thousand to fifteen thousand. What happened the committee amended that down to ten thousand so the net increase in the coordination of benefits has gone from five thousand to ten thousand. The reason is was proposed was because of medical displacement in 1985 was when that five thousand limit was placed and it has not been raised since 1985. Gave a quick overview. (Meter 402) Senator Tallackson: Your shifting the cost to the auto insurance now and raising the no-fault to fifteen?

(Meter 440) Rod St Aubyn: What's actually happening over the course of the years here, the costs have been shifted over to the health insurers since 1985 because medical placement. He gave an example. (Meter 478) Senator Tallackson: Are the auto premiums going to go up? (Meter 500) Rod St. Aubyn: That is a policy decision, the committee is going to have to make on this particular case. Those costs have shifted significantly over the years. The auto insurer is technically liable for the first $30,000. They are allow to coordinate $5,000. They don't know if someone buys insurance if they are a member of a fully insured product or self-insured. Only if it is a fully insured product they have to pay the first five thousand. (Meter 559) Senator Tallackson: It's still going to raise the premium of the auto insurance. (Meter 591) Rod St. Aubyn: Dealing with the fiscal note, it is at $75,000 is based on the risk management area but we do recognize that we will see significant decreases in the worker's comp area. (Meter 630) Senator Krauter: Does the insurance department have any comment? (Meter 660) Jo Schumler, Director of Risk Management for OMB: It is true there will be a shift in the cost but we have to keep in mind, it is not dollar for dollar shift. She talked about the state vehicles and their claims. (Meter 897) Chairman Holmberg closed the hearing.

The Vote.

(Meter 928) There was a motion of a DO PASS from Senator Bowman with a second from Senator Kringstad. Discussion (Meter 944) Senator Kilzer: Not so sure that the fiscal note would be at exactly half of the $150,000, probably in that range, but I think $75,000 would be a little bit higher because not every case would be maxed out. (Meter 983) Senator Mathern: Does this repeal no-fault insurance? And is so, is that figured out in the fiscal note? (Meter 1020) Rod St. Aubyn: On the committee it does reflect the fiscal note because it is just for this biennium. The

repealer would not take affect until August 1, 2005. With the amendment, it also asks for a study of the no-fault. The idea is for the study during the interim to decide whether or not you wish to repeal no-fault. The auto insurers felt that no-fault was not working, (Meter 1099) Senator Tallackson: Thinks it is a good idea for the study. A roll call vote was taken. The bill passed 9 yeas, 4 nays and 1 absent. It goes back to the Transportation committee - Senator Nething.

Date: 2/18
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2275

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Bowman Seconded By Kringstad

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair	✓				
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter		✓			
Senator Kringstad	✓				
Senator Lindaas		✓			
Senator Mathern		✓			
Senator Robinson		✓			
Senator Schobinger	✓				
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Trans ~~Fischer~~ Nething

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 18, 2003 4:25 p.m.

Module No: SR-31-3166
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2275, as reengrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2275 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

SR-31-3166

2003 HOUSE TRANSPORTATION

SB 2275

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2275

House Transportation Committee

☐ Conference Committee

Hearing Date March 13, 2003

Tape Number	Side A	Side B	Meter #
2	x		0.3 to end
		x	4.0 to 47.7
Committee Clerk Signature	Lawsse B. Fisk		

Minutes:

Rep. Weisz opened the hearing on SB 2275, a bill for an Act to amend and reenact section 26.1-41-13 of the North Dakota Century Code, relating to coordination of benefits for automobile insurance; to repeal chapter 26.1-41 of the North Dakota Century Code, relating to motor vehicle no-fault insurance; to provide for a legislative council study; and to provide an effective date.

Sen. Nething: Representing District 12 discussed what SB 2275 was intended to do. It relates to no-fault laws. It zeros in on a specific area. currently no-fault laws -- and I think it is important that we start out with what the current law says -- " Auto insurance companies must provide $30, 000 coverage for certain loses that result from automobile accidents". Automobile accidents -- $30,000 coverage for certain loses -- now what those loses include are 4 kinds -- personal injuries, wage loss, deductibles, and co-payments. So if you are involved in an accident -- those would be the four things that no-fault would cover up to $30,000. That sounds pretty straight forward. but having said that the real meat of the problem and it is the problem this bill attempts

to deal with is what is called coordination of benefits. And those are the provisions of law which currently begin after the first $5,000 of coverage. Keep in mind, now this bill as we amended it, raises this amount for the first $10, 000 of coverage instead of the first $5,000. That's what the amendments are about or that portion of is -- so of that $30,000 we are now talking about the first $10,000 in this bill. What that means is that under coordination of benefits -- is the auto insurer will pay the first $10,000 of coverage and the health insurer steps in and pays the balance. So --once that first $10,000 is paid -- or the first $5,000 as the law presently is -- then the health insurer comes picks up the rest. Now the proponents of the bill and our committee agrees that the reason for adjusting the and increasing this amount has been justified by medical inflation -- and they gave us supporting examples. The proponents say the number of auto accidents result injuries resulting in injuries over $5,000 has tripled in the last four years. You see what has happened is because of inflation and because of the number of accidents that have tripled -- the health providers, that is the health insurance providers are now paying a higher -- more often and its more expensive. On the other hand opponents say that all we are doing is simply shifting the cost from the health insurer over to them -- the auto insurer. While this may happen we felt we are sharing the inflation costs more fairly -- in other words why should -- because we have had inflation since this $5,000 has been set -- why should we place all that burden on to the health insurance carriers. Our committee felt and our amendments show that we wanted to share some of that inflation cost with the auto insurer. Now the opponent of the bill also argue that this increase of the $,5000 will reduce the amount available for the other three things that are covered -- that being wage loss, deductibles and co-pay. But I think it is fair to tell you that did not propose any offsetting loss by an increase in the basic amount from $30,000 to $35, 000. Had

they done that and had that been approved that loss would have been absorbed in the increase. Then the amount available for wage loss, deductibles and co-pays would have remained the same. The opponents also argued that no-fault laws are not working. In some states they are beginning to move away from them. I should also note that as you look at that fiscal note it is appearing a little bit confusing as it does not consider if the injured party was a state employee -- there would be a decrease in the costs. Now we will let the experts explain that fiscal note to you -- hopefully. Now as you can see this issue is somewhat complicated. The fact that self insured plans are those with without health insurance -- are without coordination of benefits further complicates the issue -- so if you have a self insured plan as some businesses do -- then you don't get into this coordination of benefits picture or if you don't have any health insurance there are no benefits to coordinate -- so you are not in the picture and that further complicates the issue. Both sides make convincing arguments that no-fault concept should be looked at.

As the result our transportation decided to do the following: we recognized the cost share, and approved a lower increase to $10,000 instead of the original bill amount of $15,000 for the coordination of benefits. This the first time I have told you about the $15,000. I don't want you to stay with that amount very long but that is what the bill came in at. so now we reduced that to the $10,000. We decided then to take a serious look at the entire no-fault law and the amendments we adopted ask the legislative council to study the no-fault laws. And finally to make sure we get accurate information and a thorough study we proposed repeal of the no-fault chapter of the Century Code in 2005. Then we can come back in 2004 to make a final decision about whether to maintain that repealer or to make modifications to the existing law. We think we have put together a fair bill -- obviously you are going to hear differences and after you have heard all of it

-- I hope that you will see fit to uphold our amendments and if possible -- and you have ideas how to make it better -- we certainly can look at those in a conference committee.

Rep. Weisz: What was the reason you decided to repeal the no-fault -- you obviously decided it should be studied but your are repealing the --

Sen. Nething: There were two reasons -- number 1 -- we really do want to do a study and if we put the repealler in we really think that the meat behind this and the 2 -- the proponents of this bill were also -- I think they liked that portion of the bill because they see a whole myriad of problems out there. And it is happening in other states. There are a couple of states that have repealed it totally and some states that have partial done some things with it -- so it is about time -- and this looked like a good vehicle to us -- the problem has come up with the coordination of benefits issue. The repealler keeps everybody's feet to the fire.

Rep. Price: What year was the $30,000 amount agreed on?

Sen. Nething: 1975

Rep. Price: There was no recommendation from the opponents for the offset -- not only has the health insurance claim increased in the medical but wages are where there were at the time this amount came in -- we have had a a lot of deductible and in co-pay -- Did your committee discuss those at all?

Sen Nething: Not in any detail.

Rod St. Aubyn: Representing North Dakota Blue Cross/Blue Shield spoke in support of SB 2275 as well has helped explain the insurance practices of coordination of benefits. A copy of his written remarks are attached.

Rep. Ruby: (25.1) What is the expense ratio of BC/BS and what per cent of the market do you have?

Rod St. Aubyn: When you get into the per cent of the market -- that really is a tough one because it depends upon the different kinds of coverages you are comparing -- some say 80% -- some -- you have to understand that 80% includes PERS contract with the State --it includes all self insured plans -- which is about a third of our market. So a third of that 80% is self insured. Then as far as our expense ration -- 92 cents out of every dollar for medical services to the insureds.

Rep. Ruby: Because of that 80% do you feel that your exposure is too high -- are you actuarially figuring this into your premiums at this time?

Rod St. Aubyn: I think the per cent of the market is immaterial because if we have 80% of the market we should have 80% of the accidents but it is still spread across all the members. As for actuarially -- yes absolutely we have to. We don't think the cost shift to the medical insurers if fair. Rep. Weisz: Are you in supportive of the no-fault repeal -- can you give us a synopsis of where you stand on this.

Rod St. Aubyn: Well -- from my stand point you repeal no-fault you are going to see such an increase in laws suits, legal fees -- and I am not sure who really gains by that -- there are several attorneys in the room and the attorneys will come out very well if you do.

Rep. Delmore: In Minnesota you gave the $20,000 figure --are they also required to carry the $30,000 or higher ?

Rod St. Aubyn: From our legal staff I think it is something like $40,000 and I think the $20,000 is for other economic loss -- wages.

Rep. Price: Under the coordination of benefits -- for example there is an auto accident and there is a year worth of treatment and do you then at the end of the year go back and go through a coordination of benefits again?

Rod St. Aubyn: Many times if it is a very large costly claim -- it is going to go for many years -- sometimes the auto will pay the thirty thousand and we don't have to do that because they feel that ultimately they are going to pay the thirty thousand anyway. Other then that yes we do.

Rep Price: Going back on that ? example -- I know their coverage was with State Farm and there are two more surgeries to go -- should they continue to go on that -- I know that State Farm did not do what you said and they did not go ahead and pay the $30,000 because we did get some lost wages and a few other things.

Rod St. Aubyn: I think that we have -- but I don't know but it would depend a lot on the type of claim you had -- to be honest I am sure that we would -- but if it would be say five years down the road I am not sure that we would even know that it was related to the same accident if we received another claim -- generally we get medical notices from the surgeons or doctors while that file is open.

Rep. Weisz: Is there any pecking order in the coordination of benefits as which is paid first -- is it based on economic loss?

Rod St. Aubyn: the medical bills come first in most all cases -- because we usually receive those first but not always.

Rob Hovland: He is currently serving as the Chairman of the North Dakota Domestic Insurer's Association. We oppose the increasing the coordination of benefits threshold -- a copy of his prepared written remarks is attached

End of Tape 2 Side A -- continue to Side B - continuation of Rob Hovland's testimony.

Rep.Hawken: (10. 4) What is the per cent of the $30,000 that you pay out -- on the average and how many do you max out?

Rob Hovland: I can't tell you for the industry - - I don't have that information but there was a study down in 2001 and I will follow up and get that information for you . I can see that Mr. Ward does have -- so I am sure that he will make it available to you.

Rep. Hawken: I too have some concerns over that 40 cents for administration -- and I do understand that they do have some special things with the Doctors but I don't think it should be that much difference. that's pretty high.

Rob Hovland: Ladies and gentlemen -- I agree you are preaching to the choir. And its been that way -- you have to realize that you are forcing the auto insurance industry into the health care insurance business to some degree. These people that do this all the time -- I have two employees who do this full time just to review these claims and they are well worth their pay for the claims they find are made -- we need them to try to handle these claims. I have yet to find an insurance company who can cut back on reviewing these medical claims or lower their expenses on this -- it is just a labor intensive task.

Rep. Hawken: You mention changing subject on the no-fault -- you had the example of someone having their hands on the car when they shot someone -- wouldn't that fall under liability?

Rob Hovland: The problem is that it " arises out of or the use of a vehicle" and what our courts have determined is -- well a lot of North Dakota hunt and they do use their cars to hunt and carry guns in their vehicles -- this may also be a liability claim but it is also a no-fault claim.

Rep Hawken: If that Doctor did what you said he -- you should have him up for fraud in about two seconds.

Rep. Weisz: When you pay out your benefits -- the way I read the law -- that first $5,000 that is currently in law -- when it is for economic loss -- how do you determine your if you are going to pay for medical or wage loss -- ? If he is insured with the blues couldn't you pay out all of that for wage loss and the go for coordination of benefit?

Rob Hovland: I am not sure that you could -- what you actually do is to get your insured the maximum amount of coverage you can get them -- if the first $5,000 of medical bills comes in -- they are liable for that and you pay it -- and at that point when bills come in they get paid whether medical bills or wage loss or some other claim that comes under the definition but they are usually paid as they come -- $5,000 goes out the door almost right away. There are some people who don't get to that point but they do have wage loss for extended periods time after that. Some body asked -- how long do the claims go on -- the answer is literally for ever. Also after that first $5,000 is gone -- also you should know that hospitals have an automatic lean so there isn't an option on what we pay when. In many cases when you are talking about chiropractic on down the line we try to work with the insured.

Rep.Thorpe: (14.8) Earlier I think you mentioned if I heard it right you mentioned no-fault premium was around $60 to $120 dollars.

Rob Hovland: On our structure the least amount you can pay on a vehicle and the most you can pay is $260.

Rep. Thorpe: Now does that premium include the uninsured and the underinsured ?

Rob Hovland: No it doesn't -- you pay separately for each one of those coverages.

Rep. Price: You used 2001 U S census Bureau for your first set of figures -- did you for your second ?

Rob Hoyland: That was the Robert Woods Foundation figures -- I didn't get that information from that lady I talked to.

Rep Price: Mr. Chairman those figures came from two different places. In the front of your testimony we have some questions of the points you made and --- you did talk about and you did referenced it also that you are dealing with some cases as far as some -- going to chiropractors and it is really a no-fault auto insurance claim -- they have another injury or something like that and aren't you suing those cases for fraud-- because that is one of the issues we deal with all the time particularly --in medicare and medicaid nationally?

Rob Hoyland: The problem with that -- we don't sue them for fraud -- no. 1 -- there is the mistaken bill --there is the one where a person -- lets say someone is being treated by a chiropractor for a low back problem- they get into an accident and a neck problem -- they treat with the chiropractor for the neck problem but when they treat for the low back they send that bill to us. That is the mistaken bill that we get. When you talk about somebody who claims it was caused by the accident and the chiropractor say it was caused by the accident -- we get into a dispute and here what we are faced with -- the study I referred to in 1991 -- was we were being criticized for being too doing what is called IMEs --Independent Medical Exams -- and I think there have been two studies because the industry has been accused and questioned for going through that process. You have to appreciate if you challenge one of these and you go to court -- your are probably going to spend more on attorney's fees just for pursuing it if you loose you have to pay both sides attorney's fees. So I can tell and I hate to say this but with the trial lawyers

present but we have been writing auto insurance since 1984 and we have never dared to litigate a claim. It is unfortunate but it isn't worth just because of the expense of it. Not only that but you also have the bad faith concern. I guess what I am saying is that we have our hands tied.

Rep. Ruby: (18.4) You mentioned getting the $5,000 and having the rest for wages -- if somebody is not covered by health insurance and you are responsible for $30,000 worth of medical expenses-- do all those expenses go to the medical first and then they are still out of the wage benefits?

Rob Hovland: Tat depends -- again you sit down with your insured and say how should we go through this -- what are you looking at -- generally we pay wage loses as it occurs and we pay medical bills as they occur -- if you have that catastrophic injury where someone comes in and they incur a very bad accident -- say $100,000 at the outset or initially - - often times that money goes directly to the medical bills simply because of the hospital liens and we are automatically liable for it. When you run into a situation -- what I think your question is -- when you have the option when making a decision what do you do? We basically try to work with the insured to get him the maximum -- a lot of it is up to them. If you want us to pay the medical bills -- if you want us to pay the wage loss? We have x amount of money here -- you tell us to some degree. Not always.

Pat Ward: I will pass out my testimony -- you are in a hurry to recess -- Rob has covered a lot of my testimony so I won't take up your time -- but I do want to respond to a couple of the questions that were raise. A copy of his written remarks which he passed around are attached. Incidentally I am Pat Ward representing both the North Dakota Domestic Insurance Companies and State Farm and American Family in opposition to this bill. In response to Rep. Hawken's

question -- I have here a North Dakota Insurance Department study done during the Interim and after the last session with regard to no-fault and IME's because there were suggestions that we were doing too many IME's -- this study proves that wasn't true -- in answer to your question Rep. Hawken -- this study studied over 4,000 claims -- the average amount of benefits paid $3171 -- less than the $5,000 -- so the vast majority of claims the auto insurance is paying the no-fault benefit -- it never even gets to the coordination of benefits. this also has information as to how many claims go to 435 and I will leave this with you. I would like to circulate an amendment we offered in the Senate because felt this bill is anti-consumer and if anything you should lower it to $1.00 instead of raising it -- that is what this proposed amendment would do. One other point I feel -- 2 points I guess -- I feel compelled to the point that really hasn't been addressed -- that is BC/BS does pay the medical bills but if it is an auto accident and their is liability insurance they are entitled to get those bill reimbursed out the settlement. So if there is liability insurance to $100,000 -- 200,000 -- 250,000 and they pay $100,000 in medical bills --there is a lien -- $30,000 lien and they can go after the insurance and there bill paid back and often times they do. Frequently that is an issue when were are settling law suits is the claimant is the payment of the medical bills -- usually they have been paid back. One other point I would like to make -- it hits home for me is --I am self employed --I pay my Blue Cross out of my pocket every month -- my Blue Cross went from $560 to 688 per month -- this year it is over $8,000. It seems that they are constantly taking these benefits -- and keep taking away some the the benefits -- I think you should really consider killing section 1 of this bill. We certainly would like to see the study continued and passed -- we would like to see the repeal thing in there. Colorado has down that -- they have a sunset to take place in July unless they take action to change it.

Kent Olson: He is the Director if the PIA of North Dakota (Professional Insurance Agents) Association - They sell property casualty -- property and home owners insurance on 'main street'. The no-fault bill had a few other benefits in that he wanted to point out -- for example in addition to the normal medical -- the customary -- the usual medical expenses paid after an accident -- there is a $3500 paid for a funeral -- in addition there is a small amount -- about the loss of income -- briefly -- 85% of income of your salary up to a maximum of $150 a week -- very minimal -- no cap on that -- other than dollarwise up to the $30,000 --then there are two other areas of $15.00 per day for what is called a loss of services or $15 per day for replacement services. What the amounts to is and concerns us a agents is if we reduce coverage is this -- if a young couple has two children for example -- and the mom would be injured -- somebody has to bath those kids, do the dishes, etc if dad is traveling, is superintendent of schools it doesn't matter -- so what happens is you have $15 per day up for each of those children on the policy-- to take care of them -- now if you do a quick pencil of 360 days you will find out that you use up per child about $5,000 per year. So -- when the $30,000 is gone -- so our concern is that if you raise the coordination of expenses from $5,000 to $10,000 you are in essence taking away $5,000 of that benefit if and when it should be needed. Now how often is it needed? I think the testimony this morning indicated that there are about $3400 per accident on the average under no-fault claims -- your crash facts indicate -- its around $31 -- 34 hundred -- but on the crash reports there was on -- there is about 4500 accidents per year. So this is about how many how injury accidents there are where you trigger no-fault -- so the benefits -- we as agents see it as a good benefit - we would hate to see it repealed but we see a tug of war going on -- between health care and insurance carriers -- and understand where BC/BS is coming from -- if you can

raise that threshold --it will lower their expense -- we a bigger problem that we would like to see studied -- a definite study -- not just a considered study -- we would like to see an in depth study into no-fault because we think there is too much legal abuse going on -- let me cite a few -- you have heard a couple -- these current trend right now is glasses-- kids glasses are $150 -$200 and with no-fault -- remember there are no questions asked -- there are no second opinions if you break your glasses in the car -- slam the door, hit the mirror -- it doesn't matter -- the bill will be paid in full for those glasses -- if you bump your teeth, your hearing aid -- those types of things are covered -- so what happens is people figure that out quite quickly -- slip and falls were mentioned - - my secretary, her son climbed upon a bale wagon --attached to a truck -- eleven rows of square bales -- he pretends he is in the rodeo on top of those rows of bales, falls off -- shatters his shoulder -- he goes to Mayo -- Rochester to get it fixed -- zonked $30,000 -- luckily the vehicle had no-fault on it for the $30,000 and that took care of it. Another example -- we have had hot tubs -- hitchhiker had -- an insured picked up a hitch hiker in Nebraska -- about two months later he gets a bill from the hitch hiker for all kinds of injuries that allegedly happened while being a passenger in the vehicle but of course the company has no choice but what to pay it. A couple of other examples -- we are not picking on chiropractors but there are some chiropractor that abuse the opportunity -- while not quite fraudulent but they are abuses -- agod example -- my wife and I have older parents -- we had a young daughter --her first two years of her life she was asthmatic and colicky -- my wife sat in a rocking chair and rocked her to sleep every night for 18 months. She tried everything, holistic people, all kinds-- she went to a chiropractor -- it helped -- so they have been going to a chiropractor all their lives-- ever since --my wife's mother a couple of years ago -- I think she was 92 , she was rear-ended on third

street. An she had been going to a chiropractor prior to that and it was $18 or closed to $20 a visit and went up to $28 per visit -- she had a car accident --no matter -- it was no-fault and her bill went to $60 per visit and three times a week -- so we are trying -- if there is a study we think we can look at those kick out those abuses and maybe have some limitations on it. The coverage is good -- we hate to see it repealed from the consumers standpoint but if we are going to get into a tug of war then maybe the chiropractors, doctors, dentists and health providers ought to take a close look because if you repeal this there won't be anybody to collect from. In 1975 medical insurance was $2.70 a vehicle -- no-fault came in, it went to $6.00 per vehicle and it has been going up ever since.

Rep. Weisz: From an agents perspective, if you have an insured who comes in and lets assume they have a Blue Cross policy -- can you -- do you have the flexibility to sit down and direct the costs -- do you use that first $5,000 -- to pay for the wage loss -- you know --

Kent Olson: A good agent will always advise that -- when it is going to hit the $5,000 to preserve their better coverage because the coverages are better because there is no deductible and we shift it to Blue Cross or John Alden or whom ever. We recommend -- we don't have the power to do anything.

Rep. Delmore: (32.6) I had a sister-in-law who was seriously injured by an uninsured -- what would happen if we repeal it -- what recourse would she have other than going against BC/BS

Kent Olson: She had uninsured motorist on her own auto policy -- if the other driver had no insurance or if the limits had been reached she would have no other recourse -- that again then is why we have the mandatory liability insurance coverage requirement.

Rep.Delmore: If it is automatically going to amount to $5,000 loss are you opposed to of going to $35,000 from $30,000?

Kent Olson: Probably the cost but we are agents and we will sell it and we do sell up -- some companies do offer more and do try to sell up -- but is not generally income producing because it no a very high commission. But basically from errors and commissions I want get you -- you buy more coverage.

Rep. Hawken: You said there is no recourse --is this like home owners where if you make more claims your premium goes up --

Kent Olson: I believe there is a specific section in the code which prohibits insurance companies from surcharging no-fault.

Rep. Weisz: You mentioned the average claim was about $3500 -- are half the claim are hire than that?

Kent Olson: I am just repeating what I heard here --I don't know.

Neutral Testimony—

Paula Grossinger: (36.4) Representing the North Dakota Trial Lawyer Association is Executive Director of the Association: Her prepared written remarks attached. She introduced Bismarck attorney, Jeff Weikum --his practice is primarily no-fault and personal injury cases. There are two reason why the trial lawyers were not taking a position on this bill -- the tort valid claim under the no-fault and those that don't -- we are required to represent both -- so we can appear for either one but we are against some one or the other and some one is going to be without either way. There are a lot of people who are on the verge of bankruptcy and the little bit they get from no-fault as the result of an accident does make a difference to them. Mr. Hovland

talked about chiropractors overcharging -- they should charge them in suits for fraud -- he had talked with Richard Rhia, State Attorney for Burleigh county and they do not think it is a prevalent as it is being portrayed. He has put Doctors on the witness stand and he feels that Doctors have to be totally creditable without their creditability they don't last. the insurance companies along with everyone else need creditable doctors as witnesses the same as anyone else. The trial lawyers do support the study of no-fault.

Rep. Weisz. If we repeal no-fault will there be an increase in litigation?

Jeff Weikum: No question.

Rep. Weisz: The insurance companies say they pay the $10 -15,000 claims because they pay more than that for legal cost? What is your perspective about that?

Jeff Weikum: The exact opposite -- I do agree with Mr. Hovland -- we work with them and they are real good they do pay. they are very good on the liability as well. However, Mr. Ward can not stand up and make the same claim for State Farm neither could American Family nor NoDak Mutual -- we have claims going against all these companies all over the place. Center Mutual was a good choice to make that claim.

Rob St. Aubyn: Someone had asked the question about the number claims that actually maxed out the full $30,000 -- in that report that was presented -- I don't know if you saw that but in there it was self reported by the major companies -- the total number of claims June-through November, 2002 the total number was 38. And Kent Olson when he was speaking he was fearing that if you raised it people are going to lose benefits -- the total number claim paid no-fault benefits was 2061. So there are very few people who are maxing out now.

There being no other persons who wished to testify either for or against SB 2275, Chairman

Weisz closed the hearing.

End of hearing record. (47. 7)

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2275 b

House Transportation Committee

☐ Conference Committee

Hearing Date March 20, 2003

Tape Number	Side A	Side B	Meter #
1	x		18.1 to 29.4

Committee Clerk Signature Louesa L. Fjeld

Minutes:

Rep. Weiaz opened the discussion for action on SB 2275. Rep. Price moved to remove Sections 2 , 3, and 4 remove the 'repealer' of the no-fault. Rep. Delmore seconded the motion. On a voice vote the motion carried to approve the amendments.

Rep. Price moved a 'Do Not Pass as amended' motion. Rep. Dosch seconded the motion.

On a roll call vote the motion failed 6 **Ayes** 7 **Nays** 0 **Absent.**

Rep. Hawken moved a 'Do Pass as amended' motion for SB 2275. Rep. Ruby seconded the motion. On a roll call vote the motion carried 7 **Ayes** 6 **Nays** 0 **Absent.**

Rep. Ruby was designated to carry SB 2275 on the floor.

End of record (29.4)

30568.0301
Title.0400

Adopted by the Transportation Committee
March 20, 2003

House Amendments to Reengrossed SB 2275 - Transportation Committee 03/20/2003

Page 1, line 2, replace "; to repeal chapter 26.1-41 of the" with a period

Page 1, remove lines 3 and 4

House Amendments to Reengrossed SB 2275 - Transportation Committee 03/20/2003

Page 2, remove lines 24 through 30

House Amendments to Reengrossed SB 2275 - Transportation Committee 03/20/2003

Page 3, remove lines 1 and 2

Renumber accordingly

Date: 3/20/'03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2275

House **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30568.0101

Action Taken Do Not Pass as amended

Motion Made By Rep. Price Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman		✓	Lois Delmore		✓
Kathy Hawken - Vice Chairman		✓	Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe		✓
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin		✓			
Craig Headland		✓			
Clara Sue Price	✓				
Dan J. Ruby		✓			
Dave Weiler		✓			

Total Yes 6 No 7

Absent 0

Floor Assignment Failed

If the vote is on an amendment, briefly indicate intent:

Date: 3/20/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2276

House **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30568.0101

Action Taken D P as Amend

Motion Made By Rep. Hawken Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman		✓	Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt		✓
LeRoy G. Bernstein		✓	Elwood Thorpe	✓	
Mark A. Dosch		✓	Steven L. Zaiser		✓
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price		✓			
Dan J. Ruby	✓				
Dave Weiler	✓				

Total Yes 7 No 6

Absent

Floor Assignment Rep. Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 20, 2003 2:01 p.m.

Module No: HR-50-5346
Carrier: Ruby
Insert LC: 30568.0301 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2275, as reengrossed: Transportation Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2275 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "; to repeal chapter 26.1-41 of the" with a period

Page 1, remove lines 3 and 4

Page 2, remove lines 24 through 30

Page 3, remove lines 1 and 2

Renumber accordingly

2003 TESTIMONY

SB 2275

Testimony on SB 2275
Senate Transportation Committee
February 6, 2003

Mr. Chairman and committee members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota.

SB 2275 has been introduced to have current law updated to reflect a more accurate cost based on inflationary medical costs. Under the current No Fault law in North Dakota, the auto insurer is responsible for medical and other economic losses up to $30,000. However, the auto insurer can coordinate benefits with a health insurer after $5,000. This means that the auto insurer will pay the first $5,000 of medical costs and will be treated as a secondary payer thereafter. However, for a self-insured person, the auto insurer is responsible for the full $30,000, because ERISA (self-insured plans) are exempt from state regulation such as the $5,000 coordination of benefit provision. As an example, let's assume that an individual has an auto accident, which requires $30,000 worth of medical expenses. Under a fully insured plan, such as BCBSND, the auto insurer picks up the first $5,000 and then the health insurer is responsible for the rest. The auto insurer will normally pick up the co-pays, deductibles, and coinsurance on the balance of the $25,000. For an ERISA plan in this same scenario, the auto insurer is responsible for the full $30,000 specified in ND's No Fault laws. These same amounts have been in the Century Code since 1985, and have not been adjusted for inflation since. The insured is actually paying for the $30,000 worth of coverage, whether they have a fully insured health plan or an ERISA plan. As a comparison, Minnesota's No-Fault statute has no coordination of benefits amounts after the $5,000. In that state, the auto insurer is responsible for the first $20,000, immaterial whether it is an ERISA plan or a fully insured plan.

What has actually happened over the past 18 years is the health insurer has been forced to pick up a greater portion of the medical costs for auto accidents due to medical inflation. As an example, hospitalization for a fractured femur (DRG #235) in 1989 (the earliest date I could get data) had an average daily reimbursement of $419. In 2003, that same average daily reimbursement is $1,070. Using that example, in 1989, the first $5,000 that the auto insurer was responsible for would have paid for about 12 fractured femurs. Today, that same $5,000 would pay for less than 5 fractured femurs. Keep in mind that this law set that $5,000 amount 4 years before my example, making the cost shift even greater. In effect, the rising health care costs as a result of auto accidents has shifted unfairly toward the health insurer.

Another factor greatly affecting our increased costs is the increase in the number of automobile injuries greater than $5,000. From 1998 until 2002, the number of cases we experienced which totaled more than $5,000 has tripled.

It is no surprise to anyone on this committee that the cost of health care and health insurance has risen significantly. We are currently experiencing double digit inflation due to many factors. The opponents of this bill will state that this bill will shift costs from the health insurer to the auto insurer. While this may be true, in actuality, the current law has been shifting costs to the health insurer since 1985. While ND may have the 49th lowest auto insurance rate in country, it could be argued that part of the reason is that some of the costs has been shifted to the health insurance industry. We are not asking to be absolved of all medical costs, such as Minnesota. All that we ask for is that the medical cost increases be shared equally. You are being asked to make a policy decision. By passing this bill you can make a significant effort in holding down some of the future increases in health insurance costs.

I have included a couple of charts demonstrating what BCBSND has experienced in costs due to No Fault Insurance.

Mr. Chairman and committee members, this bill simply recognizes medical inflation by putting the $5,000 amount into today's dollars. I would urge your consideration for a Do Pass on SB 2275 and would be willing to attempt to answer any questions the committee may have.

	BCBSND Charge Trend	Base $5,000
86 vs 85	Data not available	
87 vs 86	Data not available	
88 vs 87	Data not available	
89 vs 88	15.3%	$5,765
90 vs 89	15.6%	$6,664
91 vs 90	12.0%	$7,464
92 vs 91	9.4%	$8,166
93 vs 92	4.7%	$8,549
94 vs 93	7.1%	$9,156
95 vs 94	5.8%	$9,688
96 vs 95	4.4%	$10,114
97 vs 96	5.6%	$10,680
98 vs 97	11.6%	$11,919
99 vs 98	9.0%	$12,992
00 vs 99	8.6%	$14,109
01 vs 00	9.1%	$15,393
02 vs 01*	10.8%	$17,055

* 6 Mo's

	Medical Care CPI	Trend	Base $5,000
1985	113.5		$5,000
86 vs 85	122	7.5%	$5,374
87 vs 86	130.1	6.6%	$5,731
88 vs 87	138.6	6.5%	$6,106
89 vs 88	149.3	7.7%	$6,577
90 vs 89	162.8	9.0%	$7,172
91 vs 90	177	8.7%	$7,797
92 vs 91	190.1	7.4%	$8,374
93 vs 92	201.4	5.9%	$8,872
94 vs 93	211	4.8%	$9,295
95 vs 94	220.5	4.5%	$9,714
96 vs 95	228.2	3.5%	$10,053
97 vs 96	234.6	2.8%	$10,335
98 vs 97	242.1	3.2%	$10,665
99 vs 98	250.6	3.5%	$11,040
00 vs 99	260.8	4.1%	$11,489
01 vs 00	272.8	4.6%	$12,018
02 vs 01*	287.3	5.3%	$12,656

	Medical Care Services CPI	Trend	Base $5,000
1985	113.2		$5,000
86 vs 85	121.9	7.7%	$5,384
87 vs 86	130	6.6%	$5,742
88 vs 87	138.3	6.4%	$6,109
89 vs 88	148.9	7.7%	$6,577
90 vs 89	162.7	9.3%	$7,186
91 vs 90	177.1	8.9%	$7,822
92 vs 91	190.5	7.6%	$8,414
93 vs 92	202.9	6.5%	$8,962
94 vs 93	213.4	5.2%	$9,426
95 vs 94	224.2	5.1%	$9,903
96 vs 95	232.4	3.7%	$10,265
97 vs 96	239.1	2.9%	$10,561
98 vs 97	246.8	3.2%	$10,901
99 vs 98	255.1	3.4%	$11,268
00 vs 99	266	4.3%	$11,749
01 vs 00	278.8	4.8%	$12,314
02 vs 01*	294.7	5.7%	$13,017

Summary of No Fault Auto Health COB Claims

	6 ERISA Contracts		2 ERISA Contracts with COB		5 Fully Insured Plans *		105 Fully Insured Plans	
Auto Insurer's Payments	$180,000	66.85%	$10,000	49.21%	$150,000	32.90%	$525,000	29.45%
BCBSND Payments	$89,273	33.15%	$10,321	50.79%	$306,940	67.10%	$1,257,720	70.55%
Total	$269,273	100.00%	$20,321	100.00%	$456,940	100.00%	$1,782,720	100.00%

* Denotes claims from Catastrophic accidents where auto insurer elected to coordinate benefits.

Pat Ward

NORTH DAKOTA INSURANCE FACTS

4TH LOWEST IN TOTAL PREMIUMS FOR PERSONAL LINES - $257 MILLION

5TH LOWEST COMMERCIAL AUTO PREMIUMS – $71 MILLION

LOWEST AVERAGE AUTO LIABILITY PREMIUMS – $232 PER POLICY

4TH HIGHEST AUTO INSURANCE SELLING EXPENSES

North Dakota = 19.2%
National Average = 17.2%

NORTH DAKOTA LOSS RATIO HOMEOWNERS

2001	296.8%
2000	94.4%
1999	111.4%
1998	57.2%
1997	244.0%

WORST SEATBELT USE

North Dakota = 46.7%
California = 89.3%

North Dakota
Auto Insurance Profit Margins
Ten Year Summary, Percent of Direct Premiums Earned

Line of Business	2000 Total Profit	1999 Total Profit	1998 Total Profit	1997 Total Profit	1996 Total Profit	1995 Total Profit	1994 Total Profit	1993 Total Profit	1992 Total Profit	1991 Total Profit	Avg Total Profit
Personal Auto Liab	13.7	12.4	15.3	11.5	6.8	9.4	1.5	6.4	6.3	7.1	9.0
Personal Auto Phys	-22.8	-0.3	7.6	-21.2	-12.4	-19.0	-3.2	1.2	12.0	4.5	-5.4
Personal Auto Total	5.2	6.0	11.6	-4.2	-2.3	-3.9	-.7	4.0	9.0	5.9	3.1
Comm. Auto Liab	5.9	6.7	10.4	30.1	15.5	4.2	17.0	11.3	15.4	11.1	12.8
Comm. Auto Phys	-11.8	-6.8	5.2	-28.0	-6.7	-15.6	.0	4.6	15.7	1.0	-2.1
Comm. Auto Total	-1.6	1.1	8.2	6.2	6.7	-3.6	10.8	9.1	15.5	7.6	6.0
Total All Lines*	-1.9	-20.4	16.9	-32.8	5.0	-7.8	-6.0	-2.6	11.2	8.6	3.6

*Auto; Home, Farm & Commercial Multiperil; Fire; Allied; Inland Marine; Med Malpractice; Other Liability; Workers Comp; All Other

Sources: National Association of Insurance Commissioners; *Auto Insurance Report*. Note: 1995-2000 data calculated by *Auto Insurance Report* Calculations are estimates, some based on national averages.

North Dakota Commercial Auto Insurers

Groups Ranked by Total 2001 Direct Premiums Written ($000)

Group Name	2001 Premiums	Mkt share 2001	Loss Ratio* 2001	2000 Premiums	Mkt share 2000	Loss Ratio* 2000	1999 Premiums	Mkt share 1999	Loss Ratio* 1999
OLD REPUBLIC GRP	$13,226	18.6%	42.5%	$12,092	19.1%	60.4%	$11,399	19.4%	101.3%
TRAVELERS (CITIGROUP)	$6,120	8.6%	61.5%	$5,111	8.1%	67.7%	$3,973	6.7%	52.4%
ZURICH (FARMERS) INS GRP	$3,421	4.8%	76.5%	$1,948	3.1%	34.0%	$1,852	3.1%	50.3%
EMC INS CO	$3,393	4.8%	61.0%	$3,474	5.5%	141.2%	$3,053	5.2%	62.0%
AUTO OWNERS GRP	$2,708	3.8%	126.6%	$2,418	3.8%	134.8%	$2,162	3.7%	129.9%
STATE FARM	$2,559	3.6%	112.2%	$2,314	3.7%	49.0%	$2,373	4.0%	74.5%
NATIONWIDE CORP	$2,253	3.2%	53.8%	$1,789	2.8%	71.6%	$1,635	2.8%	47.2%
ST PAUL GRP	$2,227	3.1%	70.0%	$1,898	3.0%	89.2%	$1,844	3.1%	43.8%
WR Berkley Corp	$2,121	3.0%	77.3%	$1,790	2.8%	115.3%	$2,129	3.6%	110.9%
Totals	$71,285		77.0%	$63,214		80.3%	$58,884		74.0%

Data Source: National Association of Insurance Commissioners, by permission, and the Auto Insurance Report Database. The NAIC does not endorse any analysis or calculation based upon the use of its data. *Loss Ratio is incurred losses as a percentage of direct premium earned. The ratio does not include dividends or loss adjustment expense. Single year data can be skewed by reserve adjustments.

North Dakota Personal Auto Insurers

Groups Ranked by Total 2001 Direct Premiums Written ($000)

Group Name	2001 Premiums	Mkt share 2001	Loss Ratio* 2001	2000 Premiums	Mkt share 2000	Loss Ratio* 2000	1999 Premiums	Mkt share 1999	Loss Ratio* 1999
STATE FARM	$39,155	15.2%	106.5%	$35,271	14.6%	96.8%	$37,639	15.6%	65.9%
AMERICAN FAMILY INS GRP	$32,014	12.4%	87.6%	$31,777	13.2%	76.9%	$32,513	13.5%	59.6%
NODAK MUT INS CO	$28,583	11.1%	78.1%	$25,877	10.7%	73.7%	$25,533	10.6%	71.8%
WHITE MOUNTAINS GRP	$23,722	9.2%	81.9%	$20,892	8.7%	63.1%	$21,278	8.8%	64.4%
PROGRESSIVE GRP	$13,115	5.1%	79.8%	$8,976	3.7%	77.1%	$6,119	2.5%	53.3%
ZURICH (FARMERS) INS GRP	$12,774	5.0%	89.2%	$12,933	5.4%	71.8%	$12,702	5.3%	60.1%
EMC INS CO	$11,302	4.4%	60.9%	$11,951	4.9%	75.8%	$11,427	4.8%	71.6%
ALLSTATE INS GRP	$8,596	3.3%	87.8%	$10,281	4.3%	76.9%	$11,439	4.8%	67.9%
GRINNELL MUT	$8,002	3.1%	67.0%	$6,387	2.6%	69.9%	$5,813	2.4%	64.3%
CENTER MUT INS CO	$7,407	2.9%	68.3%	$6,308	2.6%	74.8%	$6,354	2.6%	68.5%
AUTO OWNERS GRP	$6,822	2.7%	98.4%	$6,182	2.6%	82.3%	$5,531	2.3%	65.2%
NATIONWIDE CORP	$6,616	2.6%	75.9%	$6,441	2.7%	64.4%	$5,939	2.5%	61.1%
USAA	$5,749	2.2%	90.6%	$5,051	2.1%	107.7%	$4,715	2.0%	54.3%
SAFECO INS GRP	$4,724	1.8%	81.5%	$5,666	2.3%	91.8%	$5,301	2.2%	73.2%
STATE AUTO MUT GRP	$4,513	1.8%	54.2%	$5,049	2.1%	42.5%	$6,011	2.5%	58.8%
BERKSHIRE HATH (GEICO)	$3,757	1.5%	78.2%	$3,863	1.6%	81.9%	$3,269	1.4%	64.8%
Statewide Totals	$257,246		85.0%	$241,474		77.5%	$240,535		64.5%

Data Source: National Association of Insurance Commissioners, by permission, and the Auto Insurance Report Database
The NAIC does not endorse any analysis or calculation based upon the use of its data.
*Loss Ratio is incurred losses as a percentage of direct premium earned. The ratio does not include dividends or loss adjustment expense. Single year data can be skewed by reserve adjustments.

PROPOSED AMENDMENTS OF PATRICK WARD TO SB 2275

Page 1, line 9, overstrike ~~15,000~~, overstrike s in dollars

Page 1, line 12, overstrike ~~15,000~~, replace 15,000 with "one"

Page 1, line 13, overstrike s in dollars

Page 1, lines 16-17, delete "the commissioner shall approve any coordination of benefits plan" and replace with "a coordination of benefits plan shall be included in a policy and filed with the commissioner"

TESTIMONY ON SENATE BILL 2275

My name is Rob Hovland. I am currently the Chairman of the North Dakota Domestic Insurers' Association, and am here to oppose the Bill as introduced, and support the Bill if amended to reduce the coordination of benefits threshold.

In 1975, the North Dakota legislature mandated no-fault insurance. At the time, no-fault insurance was a hot issue on a national level, and the federal government was threatening to pass legislation mandating no-fault insurance if states did not. Nationally, there were six issues no-fault laws were intended to address, but in North Dakota the primary focus was on two things – help people injured in auto accidents get back on their feet, and give consumers a more cost efficient system of having injury related expenses paid. This would be accomplished by having no-fault insurance pay for medical bills until an injured person reached their "maximum medical improvement," and also pay lost wages during the recovery period. Theoretically, fault would not be an issue, so consumers would not incur costs or attorneys' fees to receive payment, insurers would not be spending consumers' premiums on investigating and defending claims, and administrative expenses would be minimal.

It should also be noted that in 1975, there was a great deal of concern about the number of people who did not have health insurance. At that time, Blue Cross/Blue Shield insured over 50% of the people of North Dakota. According to the latest statistics from the United States Census Bureau, over 90% of North Dakotans have health insurance. Blue Cross insures 80 % of the market.

Since no-fault insurance was mandated, several problems have arisen. First, the impact of chiropractic treatment and massage therapy was not taken into consideration, because at that time, chiropractic treatment was not respected as "real" medicine. Consequently, no one anticipated that no-fault carriers would be paying for chiropractic treatment or massage therapy, nor did anyone consider that no-fault insurers would be paying significantly more for chiropractic treatment, when compared to what health insurers pay. Second, the cost of chiropractic treatment and massage therapy increased as soon as it was covered by no-fault insurance. Third, dealing with pre-existing injuries is a major problem. Health care providers, and chiropractors in particular, have incentive to attribute treatments to auto accidents because they receive significantly higher compensation from no-fault insurers than other sources. Consumers have incentive to have treatments attributed to an auto accident because then they don't have to pay a deductible or co-payment. Fourth, unexpected claims handling problems, and the fact that chiropractic treatment and massage therapy may go on for years, have caused administrative expenses to be significantly higher than anticipated when the no-fault statutes were enacted. Finally, unnecessary testing and over-treatment to meet the lawsuit threshold added unanticipated costs.

As a result of these problems, no-fault insurance actually gives consumers less bang for their buck, rather than more. No other line of personal insurance is more expensive to administer. A good example of this is that in 2001, approximately 5% of Center Mutual's business was no-fault insurance, yet almost 20% of our adjusting resources were administrating no-fault claims. Our expense

ratio was at least 40%, and we didn't litigate a single claim. It is fair to say that no-fault insurance is a bad buy for consumers, or at the very least, a much less cost efficient means to pay medical bills than through Blue Cross/Blue Shield.

In theory, the idea of no-fault insurance was not a bad one. Unfortunately, it has not accomplished its intended goals. Currently, there are 24 states that mandate no-fault insurance, and six of those have limits comparable or higher than North Dakota's. In all six of those states, as in North Dakota, it has caused more problems than it has solved. As a result, since 1990, two states repealed their no-fault laws, four more are currently considering repealing, several have reduced the mandatory no-fault limit, and others have made significant changes limiting no-fault coverage. According to the Insurance Research Council, the average cost per claim increased 30% from 1997-2001.

Furthermore, the original intent of the legislature allowing for coordination of benefits was to preserve no-fault insurance for wage loss, deductibles and co-payments. Passing this Bill, as presented by Blue Cross/Blue shield, would frustrate that purpose. Passing it as amended would increase the availability of no-fault benefits for wage loss, deductibles and co-payments.

In 1975, the North Dakota Insurance Commissioner provided testimony that the key to success of any statutorily mandated no-fault program would be the ability to control costs. As he said, if the new system results in higher costs, it simply wouldn't work. Passing the legislation Blue Cross/Blue Shield is proposing today would only exacerbate the higher costs problem. Lowering the

coordination of benefits threshold, however, would give consumers a much better bang for their insurance buck.

Blue Cross
of North Dakota

Hale Laybourn
President

301 Eighth Street South
Fargo, North Dakota 58102
701/235-1191

September 19, 1974

Mr. Shelley Lashkowitz
Member, No-Fault Legislative Committee
801 Black Building
Fargo, North Dakota

Dear Mr. Lashkowitz:

Mr. J. O. Wigen advised me that you are the representative from Fargo serving on the special committee which he appointed to work on a No-Fault Auto Insurance bill. He suggested that I write you with my views so that you can introduce them for discussion at the meeting of the committee to be held on November 8.

We are concerned that present health coverage, be it prepaid health care such as Blue Cross or commercial insurance, be made primary carrier under any No-Fault law. At the present time, if one has Blue Cross, and as you know, over 50% of the population in this state do, his medical and hospital bills are picked up by Blue Cross in the event of an automobile accident. If they have Blue Cross and, incidentally, also have medical coverage under their auto insurance, they, in effect, collect twice. However, most commercial coverage under auto policies is limited to $2,000 to $5,000 maximums which in many cases, does not in any way cover the damage done in a serious accident.

To allow the automobile insurance industry to be prime carrier under No-Fault will increase the cost of medical care considerably without resolving the problem. Blue Cross operates on a 5% to 6% overhead, leaving 94¢ to 95¢ on the dollar to be returned in the form of benefits. The average insurance company has overhead in excess of 21.4% and in many cases, exceeds 40%. Therefore, if the No-Fault law does not name present health carriers as primary, the cost of premiums will rise because of the difference between the commercial carriers' cost of administration and the prepaid non-profits' cost.

You also have to recognize the relationship that Blue Cross has with hospitals and Blue Shield has with doctors. Since this is our only business, we have perfected methods of administration second to none in resolving hospital and medical care bills expeditiously and without the usual red tape. If there is sincere interest in reducing the cost of automobile coverage through a No-Fault law, any legislation proposed which is not recognized prepaid health care already covered as primary would constitute dereliction by those designing the legislation.

We would be happy to discuss this matter with the committee or provide statistical evidence to support the above if given the opportunity. At any rate, we would appreciate your bringing this matter into the discussion at the meeting on November 8.

Sincerely yours,

Hale Laybourn
President

er
cc: Commissioner J. O. Wigen

Testimony on Engrossed SB 2275
House Transportation Committee
March 13, 2003

Mr. Chairman and committee members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota.

SB 2275 was introduced to have current law updated to reflect a more accurate cost based on inflationary medical costs. Under the current No Fault law in North Dakota, the auto insurer is responsible for medical and other economic losses up to $30,000. However, the auto insurer can coordinate benefits with a health insurer after $5,000. This means that the auto insurer will pay the first $5,000 of medical costs and will be treated as a secondary payer thereafter. However, for a self-insured person, the auto insurer is responsible for the full $30,000, because ERISA (self-insured plans) are exempt from state regulation such as the $5,000 coordination of benefit provision. As an example, let's assume that an individual has an auto accident, which requires $30,000 worth of medical expenses. Under a fully insured plan, such as BCBSND, the auto insurer picks up the first $5,000 and then the health insurer is responsible for the rest. The auto insurer will normally pick up the co-pays, deductibles, and coinsurance on the balance of the $25,000. For an ERISA plan in this same scenario, the auto insurer is responsible for the full $30,000 specified in ND's No Fault laws. These same amounts have been in the Century Code since 1985, and have not been adjusted for inflation since. **It is important to stress that the insured is actually paying for the $30,000 worth of coverage, whether they have a fully insured health plan or an ERISA plan.**

As a comparison, Minnesota's No-Fault statute has no coordination of benefits amounts after the $5,000. In that state, the auto insurer is responsible for the first $20,000 of medical expenses, immaterial whether it is an ERISA plan or a fully insured plan. Based on the current law and our most popular $250 deductible plan, a member with a fully insured plan would have to have incurred $297,500 worth of medical expenses before the auto insurer would pay the full $30,000 allowance. If there were such an accident, while the auto insurer would pay $30,000, the health insurer would be required to pay the balance of $267,500.

What has actually happened over the past 18 years is the health insurer has been forced to pick up a greater portion of the medical costs for auto accidents due to medical inflation. As an example, hospitalization for a fractured femur (DRG #235) in 1989 (the earliest date I could get data) had an average daily reimbursement of $419. In 2003, that same average daily reimbursement is $1,070. Using that example, in 1989, the first $5,000 that the auto insurer was responsible for would have paid for about 12 fractured femurs. Today, that same $5,000 would pay for less than 5 fractured femurs. Put a different way, instead of paying the first $5,000, the auto insurer is now only paying about $1,958 in today's dollars. Keep in mind that this law set that $5,000 amount 4 years before my example, making the cost shift even greater. In effect, the rising health care costs as a result of auto accidents has shifted unfairly toward the health insurer.

Another factor greatly affecting our increased costs is the increase in the number of automobile injuries greater than $5,000. From 1998 until 2002, the number of cases we experienced which totaled more than $5,000 has tripled.

It is no surprise to anyone on this committee that the cost of health care and health insurance has risen significantly. We are currently experiencing double digit inflation due to many factors. The opponents of this bill will state that this bill will shift costs from the health insurer to the auto insurer. While this may be true, **in actuality, the current law has been shifting costs to the health insurer since 1985.** While ND may have the 49th lowest auto insurance rate in country, it could be argued that part of the reason is that some of the costs have been shifted to the health insurance industry.

During testimony in the Senate Transportation Committee, opponents stated that the consumer gets a bigger bang for the buck by having medical costs paid by the health insurer instead of the auto insurer. They used charts to show that only $.60 of every dollar is used for claims by the auto insurer, while BCBSND could pay $.92 of every dollar for health claims. As a result, they offered an amendment to lower the $5,000 COB limit to $1. This in effect penalizes our company and one must question why we are being penalized for being more efficient.

The opponents also argued that BCBSND does not have to pay as much for the same medical procedures as the auto insurers because of BCBSND's provider network agreements. Once again, there is nothing preventing the auto insurers in working together to establish a state-wide provider network to negotiate rates with providers. Once again, the auto insurers would rather have us penalized for being aggressive in establishing our network agreements to the benefit of our members. We certainly would not have to have these agreements in place. In fact, it is costly and time consuming to establish and maintain them. However, we feel that it is a significant benefit to our members by holding down health care costs.

The opponents also argued that this bill would actually take away benefits from the members. They stated that if the COB level is raised, there is a lesser amount available for other economic losses, such as lost wages. One Senator questioned if the opponents would like to raise the $30,000 limit up as well to make up for the loss. The opponents objected to that option as well. The opponents also argued that No-Fault laws just don't work and that other states are going away from them.

After hearing the testimony from both sides, the Senate Transportation Committee concluded that inflation has in fact affected the health insurer in a negative way. The Committee agreed to raise the COB limit to $10,000 instead of the proposed $15,000. They also decided that there is merit in studying the whole area of No Fault laws. As a result they adopted amendments to study the issue and to keep both sides active in the study, they proposed to repeal the No Fault laws effective August 1, 2005. The idea is for legislators during the next legislative session to decide if the repealer should be removed.

While we don't support repealing the No Fault laws, we do agree to the reduced proposed COB amount and that this whole area should be studied and a final decision could be made in 2005. We are very willing to participate in the study to determine what is in the best interest of our citizens and our members.

I have included a few charts demonstrating what BCBSND has experienced in costs due to No Fault Insurance.

We are not asking to be absolved of all medical costs, such as Minnesota's $20,000 limit. All that we ask for is that the medical cost increases be shared more equitably. You are being asked to make a policy decision. By passing this bill you can make a significant effort in holding down some of the future increases in health insurance costs and reflect more closely to what the legislature provided in 1985.

Mr. Chairman and committee members, this bill simply recognizes medical inflation by putting the $5,000 amount closer to today's dollars and provides for a study of the entire issue during the interim. I would urge your consideration for a Do Pass on Engrossed SB 2275 and would be willing to attempt to answer any questions the committee may have.

Distribution of Hospitalization Costs

Health Plan Type	$5,000 Hospitalization	$6,000 Hospitalization	$10,000 Hospitalization	$11,000 Hospitalization	$30,000 Hospitalization
Self Insured or No Insurance					
Member Pays	$0.00	$0.00	$0.00	$0.00	$0.00
BCBSND Pays	$0.00	$0.00	$0.00	$0.00	$0.00
Auto Insurer Pays	$5,000.00	$6,000.00	$10,000.00	$11,000.00	$30,000.00
Current Law - SelectChoice 250					
Member Pays	$0.00	$0.00	$0.00	$0.00	$0.00
BCBSND Pays	$0.00	$675.00	$4,275.00	$5,175.00	$24,000.00
Auto Insurer Pays	$5,000.00	$5,325.00	$5,725.00	$5,825.00	$6,000.00
SB 2275 - SelectChoice 250					
Member Pays	$0.00	$0.00	$0.00	$0.00	$0.00
BCBSND Pays	$0.00	$0.00	$0.00	$675.00	$19,000.00
Auto Insurer Pays	$5,000.00	$6,000.00	$10,000.00	$10,325.00	$11,000.00
Current Law - SelectChoice 500					
Member Pays	$0.00	$0.00	$0.00	$0.00	$0.00
BCBSND Pays	$0.00	$450.00	$4,050.00	$4,950.00	$23,500.00
Auto Insurer Pays	$5,000.00	$5,550.00	$5,950.00	$6,050.00	$6,500.00
SB 2275 - SelectChoice 500					
Member Pays	$0.00	$0.00	$0.00	$0.00	$0.00
BCBSND Pays	$0.00	$0.00	$0.00	$450.00	$18,500.00
Auto Insurer Pays	$5,000.00	$6,000.00	$10,000.00	$10,550.00	$11,500.00

TESTIMONY ON SENATE BILL 2275

My name is Rob Hovland. I am currently serving as Chairman of the North Dakota Domestic Insurers' Association. We oppose increasing the coordination of benefits threshold, because increasing the threshold does two negative things – it reduces coverage for consumers while at the same time increases premiums. For every dollar shifted from Blue Cross/Blue Shield, consumers will pay between $2.50 and $3.00 more in no-fault insurance premium. Consumers would be better off if the coordination of benefits threshold were lowered. We do not oppose having a study conducted or discontinuing mandatory no-fault insurance in the future.

In 1975, the North Dakota legislature mandated no-fault insurance. At the time, no-fault insurance was a hot issue on a national level, and the federal government was threatening to pass legislation mandating no-fault insurance if states did not. Nationally, there were six issues no-fault insurance laws were intended to address, but in North Dakota the primary focus was on two things – help people injured in auto accidents get back on their feet, and give consumers a more cost efficient system of having injury related expenses paid. This would be accomplished by having no-fault insurance pay for medical bills until an injured person reached their "maximum medical improvement," and also pay lost wages during the recovery period. Theoretically, fault would not be an issue, so consumers would not incur costs or attorneys' fees to receive payment, and insurers would not be spending consumers' premiums on investigating and defending claims. Therefore, administrative expenses would be minimal.

Coordination of Benefits was designed to give consumers the maximum benefit

for their insurance dollar. If a consumer has both health and auto insurance, no-fault is used for the first $5,000, BC/BS kicks in, and the no-fault insurer then pays all health insurance deductibles, co-insurance payments, and lost wages, up to at least $30,000. By having BC/BS insurance kick in at $5,000, more money is available for lost wages. Obviously, if the threshold is increased as proposed by this bill, less no-fault insurance is available for lost wages, co-payments and deductibles. This is how passing this bill results in a reduction in coverage for consumers.

The other problem created by this bill, in addition to reducing coverage, is that premiums will be increased disproportionate to the benefit consumers receive for the increased premium. In other words, it is a terrible bang for their buck. The reason for this, is because of unanticipated problems that have arisen since no-fault insurance was mandated. First, the impact of chiropractic treatment and massage therapy was not taken into consideration in 1975, because at the time, chiropractic treatment was not respected as mainstream medical treatment. Consequently, no one anticipated that no-fault insurers would be paying for chiropractic treatment or massage therapy, nor did anyone consider that no-fault insurers would be paying significantly more for chiropractic treatment, when compared to what health insurers pay.

Second, the cost of chiropractic treatment increased once it was covered by no-fault insurance. Third, dealing with pre-existing injuries developed into a major problem. Medical providers, and chiropractors in particular, have incentive to attribute treatments to auto accidents because they receive significantly higher compensation from no-fault insurers than from other sources. Consumers have incentive to have treatments attributed to an auto accident because then they don't have to pay deductibles or co-payments.

Fourth, unexpected claims handling problems, and the fact that chiropractic treatment and massage therapy may go on for years, have caused administrative expenses to be significantly higher than anticipated when the no-fault statutes were enacted. Finally, unnecessary testing and over-treatment to meet the lawsuit threshold added unanticipated costs.

As a result of these problems, no other line of personal insurance is more expensive to administer. In 2001, approximately 5% of Center Mutual's business was no-fault insurance, yet almost 20% of our adjusting resources were spent handling no-fault claims. Our expense ratio was over 40%, and we didn't litigate a single claim.

BC/BS, on the other hand, operates at an expense ratio of less than 8%.

Furthermore, no-fault insurers do not have cost containment measures that BC/BS has, nor do no-fault insurers have the ability to implement cost containment measures. Blue Cross/Blue Shield is an expert in medical expenses and have such an enormous share of the market that enables them to enter into preferred provider agreements with medical providers. According to BC/BS's testimony presented to the Senate Transportation Committee on this bill, they insure or manage about 85% of the health insurance market. On the other hand, no auto insurer has control over the market like BC/BS, which makes it impossible for auto insurers to have preferred provider agreements. Auto insurers do not possess BC/BS's expertise, and in effect, have been forced into the medical field. Furthermore, auto insurers also have the additional exposure of "bad faith" in the handling of no-fault claims, which severely restricts their ability to implement any type of cost containment.

It is fair to say that no-fault insurance is a bad buy for consumers, or at the very

least, a much less cost efficient means to pay medical bills than through Blue Cross/Blue Shield. In 1975, advocates of no-fault insurance testified that the key to success of any no-fault program would be the ability to control costs. If the "new" system resulted in higher costs, it simply wouldn't work. Passing the legislation proposed today would only exacerbate the higher costs problem, because shifting more medical costs away from Blue Cross/Blue Shield and on to no-fault insurers will mean consumers will have to pay more premium to get less coverage.

It should be noted that in 1975, there was a great deal of concern about the number of people who did not have health insurance. Significantly more people have health insurance today, as the latest statistics compiled by the United States Census Bureau show that over 90% of North Dakotans have health insurance.

In theory, the idea of no-fault insurance was not a bad one. Unfortunately, it has not accomplished its intended goals. Currently, there are 24 states that mandate no-fault insurance, and six of those states have limits comparable or higher than North Dakota's. In all six of those states, as in North Dakota, it has caused more problems than it has solved. As a result, since 1990, two states repealed their no-fault laws, it is my understanding that four more have considered repealing their no-fault statutes in the past two years, and several others have made significant changes limiting no-fault coverage. According to the Insurance Research Council, the average cost per claim increased 30% from 1997-2001.

We urge a DO NOT PASS vote on increasing the coordination of benefits threshold.

Information presented by Paula J Grosinger, RN Lobbyist #193
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To The Honorable Robin Weisz, Chairman and Members
ND House of Representatives Transportation Committee

Legislation enacting No-fault Automobile Insurance was proposed by insurance companies who viewed it as a way to avoid litigation on claims where fault or causation would be a contentious issue.

When North Dakota enacted No-fault in 1973, one of the benefits to injured claimants was that coverage was supposed to provide relatively quick claims resolution. Victims were supposed to have their medical bills paid without hassle, and without having to sue anyone, so they could receive the care they needed to recover from their injuries and move forward with their lives.

Unfortunately, the promised coverage sometimes evaporates, or fails to fully materialize, for injured individuals. In fact, a number of states have referred to no-fault as "phantom coverage". Not only do insurance companies sometimes fail to provide the coverage necessary to make these individuals whole, some injured victims still have to take their claims to an attorney and even to court.

Other provisions in the no-fault statute force health insurers to eventually cover the care of some injured accident victims even though the motorist paid premiums for the same coverage. This increases the cost of health insurance to other North Dakota residents. Those without health insurance must address a multitude of problems on their own.

The North Dakota Trial Lawyers Association is aware that auto insurers would now like to unburden themselves from responsibility for no-fault injury claims. Over the years they have sought legislation to "stack the system" so they could deny these claims. Now the auto insurance industry lobbyists are in favor of eliminating the threshold for coordination of benefits. This would require all motorists to pay premiums for coverage that provided benefits, as Mr. Ward testified, to only a minute percentage of no-fault claimants. Auto insurers will collect the premiums but health insurers will pay the majority of the claims.

While some issues specific to North Dakota's No-fault statute have already been studied by the Insurance Commissioner at the direction of the Legislature, the North Dakota Trial Lawyers Association believes there may be benefit to a thorough examination of North Dakota's no-fault statute with the opportunity for public comment.

Automobile No-Fault Independent Medical Examinations

Report to the Budget Committee on Health Care Senator Judy Lee, Chairman

September 24, 2002

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Executive Summary

At the direction of the 2001 Legislative Assembly, the North Dakota Insurance Department initiated a study of the North Dakota automobile Independent Medical Examination review process to review the impact that Independent Medical Examinations have on the provision of motor vehicle insurance benefits in the state.

The Department held three public input sessions at which it received oral comments from numerous interested persons. Others filed written comments with the Department. The information gathered from public comments is provided in Part I of the report.

The Insurance Department also conducted a study of the insurance industry relative to the industry's use of Independent Medical Examinations (IMEs) and Independent Records Review (IRR) in the handling of claims. Part II of the report provides the results of the PIP closed claim study which covered the period August 1, 2001, through August 30, 2002.

Certain parties criticized the present IME process, arguing that IMEs at times impact benefits by terminating the benefits prematurely. They argue that the examinations are not independent or impartial, but rather are conducted most often by out-of-state examiners who are hired by the insurance company and who most often are not regularly practicing medical service providers and who depend on the income from the insurance companies for their livelihood. They argue that the examiners, because they are dependent on the insurance industry for their livelihood, are biased in favor of the insurance industry. The critics note that the examiners most often find in favor of the insurance company.

As one solution to the problem, the critics suggest that the state implement some form of alternate dispute mechanism that would involve an impartial review by a third party to settle disputes between the treating provider and the company examiner. They note that an alternative mechanism is especially significant for small claims that are do not justify the hiring of an attorney to pursue the dispute through the expensive legal process.

The insurance industry argues that IMEs are necessary to control questionable claims. It argues that controlling questionable claims allows the company to control no-fault costs, thereby enabling the industry to provide legitimate no-fault benefits at a reasonable cost. The industry also argues that at present the disputes can be settled through the legal process. The industry also notes that any form of alternate dispute resolution will involve more cost to the companies, a cost that will ultimately be passed on to the policyholders.

The interested parties submitted numerous other comments and suggestions that are set forth in the report that is attached.

The Department study notes that several of the other no-fault states have implemented some form of no-fault alternate dispute mechanism, including arbitration, mediation, informal conciliation, or review panels.

Each of the alternative dispute mechanisms involved some expense, with the expense paid by either the claimant, the company, or the state's taxpayers, depending upon the scope of the alternative mechanism and upon the manner in which the alternative mechanism is financed.

Senate Bill No. 2244 invited any recommendations as a result of the study. The Department does not have any specific recommendations. The attached report notes that if the Department were to make a recommendation, that it would be that the Legislature consider an alternative dispute mechanism as an alternative to the formal legal process, especially for smaller claims.

The study does not attempt to estimate the cost of implementing any specific change to the present system, but the Department can do so if a specific change is proposed by any of the interested parties or the legislature.

A summary of comments and proposed changes appears at the end of Part I of the report.

A copy of the Department's docket sheet that lists the parties filing comments is also attached.

Part I

General Discussion

The North Dakota Automobile Accident Reparations Act, N.D. Century Code Chapter 26.1-41, is a remedial act that was designed to reduce litigation, promote prompt resolution of claims, stabilize insurance prices, and provide ready availability of coverage necessary to the provision of accident benefits. (Hillborne v. Nodak Mutual Insurance Company, Cass County District Court, Judge Erickson, May 20, 1999.)

No-fault insurance, as it is known, was designed to encourage quick, informal payments to assure injured plaintiffs are compensated for their injuries. One of the primary purposes of the no-fault law is to avoid protracted litigation over issues of fault or causation. The intent was to secure rapid payment of claims by eliminating the fault controversy and wasteful litigation, similar to the objectives of workers compensation statutes. (Note: See Platz v. Austin Mutual Ins. Co., 2002 N.D. 115, and cites to Weber v. State Farm Mutual Auto Ins. Co., 284 N.W.2d 299, 301 (N.D. 1979).)

The trade-off between "no-fault" and the previous fault based system was that no claim could be pursued against a secured person unless a party first met the "no-fault threshold". N.D. Cent. Code § 26.1-41-08. The law was designed to correct the perceived vices of an entirely fault based system.

N.D. Cent. Code § 26.1-41-11, the North Dakota Auto Accident Reparations Act, requires that an injured person submit to an examination by a physician designated by the no-fault carrier to establish continued eligibility for benefits. The examination, referred to as an Independent Medical Examination or an IME, is criticized by some as being unfair, mostly because the physicians designated by the no-fault carrier are perceived as being biased in favor of the no-fault carrier and against the injured person.

To address the criticism, the 57th Legislative Assembly considered a proposed change to the no-fault law in Senate Bill No. 2288. The proposal was patterned after the Colorado IME system wherein a dispute over the need for continued medical treatment is referred to an IME examiner selected by the parties from a list of five examiners selected by the Colorado Insurance Department. The Department is required to maintain a list of examiners that are willing to perform IMEs.

Senate Bill No. 2288 as initially proposed was never acted upon. It was amended to eliminate the Colorado proposal and to substitute in its place a study of the impact that IMEs have on no-fault benefits. The bill as passed reads:

> Before November 1, 2002, the insurance commissioner shall submit a report to the legislative council regarding motor vehicle insurance independent medical examinations. The report must include an analysis of the impact independent medical examinations have on the provision of motor vehicle insurance benefits in the state; a review of the medical service providers who perform independent medical

examinations; a review of how other states regulate independent medical examinations; and any recommendations.

As directed by the Legislature, the Insurance Commissioner opened an investigation and scheduled three public input hearings, inviting comments from interested persons. Hearings were held in Fargo, Minot, and Bismarck on November 14, 19, and 28, respectively. Witnesses presented approximately six hours of testimony. Injured persons, insurance company representatives, plaintiff attorneys, defense attorneys, chiropractors, a medical service representative, and others submitted testimony. Approximately 40 persons attended. Other interested persons filed written comments. The docket card attached to Part I lists the written comments received from interested persons.

The comments received during the investigation are summarized below. The section titles correspond to the topics referred to in Senate Bill No. 2288. The questions are those that the Commissioner posed to the interested public in the Order requesting public input.

Issue 1

Impact Independent Medical Examinations Have On The Provision Of Motor Vehicle Insurance Benefits In The State

Do IMEs impact the provision of motor vehicle benefits in the state, and if so, how?

1. Complaining parties argue that the no-fault consumers are getting less than that for which they pay. They argue that no-fault insurance is mandatory and the consumer must pay the premiums for coverage, but that benefits are denied if the consumer is injured. They argue that insurance companies use IMEs to terminate no-fault benefits before the injured person is totally healed.

2. Companies argue that they request IMEs only in the most egregious situations and that the relatively infrequent use of IMEs has no significant impact on the provision of motor vehicle benefits in the state. Companies note that very few IMEs are requested when compared to the total number of claims filed and argue that that fact shows that companies are fair in requesting IMEs.

3. Part II statistics show that of 4,371 claims closed during the study, IMEs or IRRs were requested in only 202, or 4.6% of the claims.

4. Companies also note that to be reimbursable, no-fault medical costs must be (1) reasonable, (2) medically necessary, and (3) caused by the accident. They note that the present IME system actually helps control no-fault costs by eliminating treatment that is unreasonable, not medically necessary, or not related to the

accident. They argue that by helping to control no-fault claims costs, the IME process keeps premiums low. In short, companies argue that IMEs help to control unrelated, exaggerated, or excessive claims.

5. Companies also note that most claim disputes involve a low impact motor vehicle accident that results in prolonged treatment for a neck or back injury, a previous injury that required similar treatment, treatment for an injury that does not match the facts of the accident, or treatment that does not match the injury suffered in the accident. They note that the IME is a safeguard for the companies and note that the safeguard is used sparingly, most often only when a treatment becomes questionable. Companies believe that the present IME program is working fine.

6. Part II statistics show that 47% and 37% of the total claims involved neck and back injuries, respectively, but that 83% and 72% of the IMEs involved neck and back claims, respectively.

Do problems exist with the present IME program and, if so, what problems exist? If problems exist with the present IME program, how should the problems be addressed?

7. The Department received numerous comments concerning the problems with the present IME system and received other comments suggesting how to fix the problems.

Most company representatives testified that, for the most part, the no-fault law is working satisfactorily in North Dakota. Other persons testified that it is not.

9. Complaining parties argue that the IME examiner is not independent. They argue that the insurance company hires the examiners and chooses an examiner that is biased in favor of the company. They note that the company most often hires out-of-state examiners that are not practicing providers. They note that the examiners most often rely on the insurance industry for the substantial part, if not all, of their income. As a result, they note that the examiners favor the company in order to continue a good relationship with the company.

10. Companies argue that they are forced to use out-of-state examiners because local doctors are reluctant to do IMEs. Medical representatives report that local doctors are reluctant to do an IME because of the potential for getting involved in litigation.

11. The companies note, in support of their right to select an examiner of the company's choice, that since the injured person selects a treating doctor that is supportive of continuing treatment, the companies should be allowed to select a doctor that the company prefers. Companies note that if there is disagreement between the examining doctors, the disagreement should be settled in the courts.

12. Complaining parties argue that the IME examiner most often is a physician who is not of the same discipline as the treating provider. They note that physicians have a bias against chiropractors and against physical therapists and massage therapists.

13. Part II statistics show that of 148 IMEs, in 71 or 48% the treating provider was a physician and in 68 or 46% the treating doctor was a chiropractor. At the review level, physicians performed 105 of 148 or 71% of the reviews and chiropractors performed 34 or 23% of the reviews.

14. Companies note that very few claims are referred for an IME and that those that are referred are referred because of circumstances that raise questions regarding the injury and the treatment. The companies note that IMEs are requested (1) if a file shows a prolonged treatment for what appears to be a minor injury, (2) if a treatment does not match the alleged injury, or (3) if the alleged injury does not match the alleged accident. At other times an IME is requested if the injured person has suffered a similar injury in a previous accident for which the person was receiving treatment. Companies note that other IMEs are requested treatment involves a provider that has a history of questionable treatment.

What criteria are being used to trigger a request for an IME?

15. Most companies do not have specific criteria for requesting an IME. IMEs are requested if something unusual, a "red flag", appears in the file. These "red flags" include those things as mentioned above, such as (1) prolonged treatment for minor injuries, (2) treatment that does not match the alleged injury, (3) injury that does not match the alleged accident, and (4) a pre-existing condition that is difficult to separate from the alleged injury. Also, companies note certain treating physicians, chiropractors, and physical or massage therapists are suspect and trigger IMEs more often than others.

Are the criteria being used to trigger a request for an IME reasonable? If not, why not?

16. The companies argue that the criteria for triggering an IME as described above are reasonable and note that only the more questionable files are referred for an IME. They also argue that the statistics show that most of the claims are terminated after an IME and argue that these statistics show that companies are conservative when requesting IMEs.

17. Part II of the report provides statistics relative to this issue. It shows that of the 4,371 closed claims studied, a total of 202 claims or 4.6% involved an IME or IRR request. Of the 148 IME claims, 122 or 82.4% were terminated. Of the 54 IRR claims, 29 or 53.7% were terminated.

\re the criteria being used to trigger a request for an IME being applied uniformly and if *!c y are the criteria not being applied uniformly?*

8. Companies argue that the IMEs are being used infrequently and only in those claims that are or become questionable and raise "red flags" and, therefore, are being used uniformly. Other parties complain that IMEs are sometimes requested shortly after an accident, long before a company can identify whether or not a claim is questionable. The survey results from Part II do not indicate that the industry is requesting IMEs or IRRs prematurely. The time period between the date of claim and the IME ranged from 25 to 4,382 days with an average of 639 days, over 21 months.

\re IMEs being requested prematurely and, if so, what is a reasonable time or :ircumstance after which an IME should be requested?

9. The Department's PIP survey discussed in Part II of the report indicates that the time after which an IME is requested varies widely and varies with the circumstances of each claim. As noted above, the average time lapse between the date of filing and the IME was 639 days with the range being from 25 days to 4,382 days (over 12 years).

Vhat costs are involved in the IME process and are the costs reasonable?

:0. The Department's PIP survey discussed in Part II indicates that the average amount of fees and expenses paid by an insurer for an independent medical exam is roughly $1,300, ranging from $150 to $4,649 and that the average of the amount of fees and expenses paid by an insurer for an IRR is roughly $400. It can be said that IMEs are expensive, but it is difficult to determine whether or not the costs are reasonable because the cost must be balanced by the money saved by the companies when improper claims are terminated as a result of an IME.

Issue 2

Are Medical Service Providers Willing to Perform Independent Medical Examinations?

Are practicing North Dakota medical service providers willing to perform IMEs?

1. Even though there are a few North Dakota medical service providers that will conduct an IME, testimony confirms that for the most part North Dakota medical service providers are not willing to conduct an IME. For the most part the majority of the providers are not willing to do so because of the dislike for getting nvolved in a lawsuit. Part II shows that IMEs are being performed by both physicians and chiropractors.

Are medical service providers generally available to perform IMEs within North Dakota?

2. IMEs are performed in North Dakota, although for the most part, not by providers that practice in North Dakota. Companies most often use examiners from out of state because local providers are reluctant to get involved, as noted above. Those practitioners travel to North Dakota or to neighboring communities and do the exams most often within the state or in cities adjacent to the state. At times exams are performed in communities in other states but along the North Dakota border, such as Moorhead, Minnesota.

3. Part II shows that of the 148 IMEs, 61 were conducted in Bismarck, 34 in Moorhead, 13 in Fargo, 10 in Grand Forks, and 7 in West Fargo.

Are the medical service providers performing IMEs qualified to perform the IMEs in question?

4. Complaining parties argue that at times examiners are not of the same discipline as the treating provider and at times are uninformed with respect to the patient's file or the injury. These complaints raise questions regarding the qualifications of the examiner conducting the exam, but not the qualifications of the examiners in general.

5. Part II shows similar statistics for examinations performed by medical doctors and chiropractors. Out of the 148 PIP claims in which a claim was denied after an IME, 21 or 48% of the claims the treating medical service provider was a physician; in 68 or 46% of the claims the provider was a chiropractor. It should also be noted that in 76% of the claims, the examiner was of the same discipline as the treating medical service provider.

Are the medical service providers conducting appropriate IMEs on the injured person before issuing a report?

6. Complaining parties argue that certain exams are not conducted in an appropriate manner. Testimony revealed complaints of medical service providers spending only 5 or 10 minutes on an examination, exams being performed in rented motel rooms, examiners showing little interest in the patient or the injury, and examiners showing behavior that suggests that the results of the exam were pre-determined.

7. Companies argue that if the examination is not appropriate and if an injured person notifies the company of an inappropriate examination that the company will address the concerns with the examiner and correct the problem. They also note that companies are concerned about the allegations of inappropriate exams because an inappropriate examination will harm the company's position if the dispute goes to trial.

8. The information in Part II shows that during the time of the study, only 10 of the 151 claims denied as a result of an IME or an IRR led to the filing of a lawsuit, and of those, only 2 went to trial.

Are the IMEs being performed fairly? If not, explain.

9. Complaining parties argue that IMEs are not performed fairly and that, in fact, IMEs are adverse company exams and are not independent. They argue that often the result seems predetermined and note that a very high percentage of exams result in a recommendation that favors the company, suggesting that the exams are not performed fairly.

10. The statistics in Part II show that 82.4% of the claims that involved IMEs and 53.7% of the claims that involved IRRs were terminated as a result of the IME.

11. Companies argue that the exam process must be conducted fairly otherwise the company's position will be compromised in litigation if the dispute goes to trial.

12. Opposing parties note in response that few of the complaints actually go to trial because of the small amount of money in dispute compared to the costs of going to trial, so that the threat of litigation is not a significant deterrent for the companies. As noted above, the study results in Part II show that only 10 of the 151 claims in which a review was requested led to the filing of a lawsuit and only 2 actually went to trial.

Are the medical service providers being impartial in the examination?

13. Opposing parties argue that the examiners are not being impartial during the examination. They note that the examiner's superficial interest in the exam suggests that the exam results are predetermined. They also argue that the large percentage of exams that are decided in favor of the company suggests that the providers are not being impartial in the examination.

14. Part II of this report provides information relative to the number of claims that reviewed and the results of the review. It shows that even though a large number of claims are terminated after an IME or IRR, the reviewing medical service providers, whether a medical doctor or a chiropractor, seem to recommend similar results and have similar percentages of terminations, with both physicians and chiropractors recommending terminating over 80% of the claims received.

15. In response, companies again note that the company will be prejudiced in a trial if the exams are biased although the attached statistics show that few denied claims result in litigation that goes to trial.

Issue 3

How Do Other States Regulate Independent Medical Examinations?

What states regulate IMEs and how do the regulations in those states differ from the regulations in North Dakota?

1. The 13 no-fault states have a wide assortment of programs and procedures that attempt to facilitate the resolution of disputes over the continuing treatment of no-fault injuries and attempt to control the costs of the IMEs and the costs of medical treatments.

2. Minnesota requires binding arbitration for all disputes for claims of less than $10,000. Examiner must be of the same specialty or profession as the treating provider.

3. New York, Hawaii, District of Columbia, Utah, and other states allow for some form of arbitration--some voluntary, some mandatory.

4. New York law also allows for informal conciliation of disputed claims.

5. Florida allows for mediation of disputes of less than $10,000.

6. Hawaii's mandatory coverage applies to medical treatment only and limits chiropractic and acupuncture treatments to 30. Other PIP coverage is optional.

7. Several states allow the consumer more choices with respect to the level of no-fault coverage desired. Some set mandatory minimum PIP benefit levels and allow the companies to offer additional optional PIP coverage. Other states offer the coverage, but allow the consumer to choose from several plans with varying deductibles, again allowing the consumer more choice in deciding the amount of insurance to purchase.

8. Colorado uses a panel of examiners and provides names of five examiners to the parties in dispute, each of which strike two, leaving the last as the examiner.

9. Several states try to control the costs of no-fault benefits by establishing treatment standards and guidelines, similar to those developed for workers compensation claims. Other states such as Utah have set fee schedules that control the cost of treatment by medical service providers.

10. Pennsylvania has established a peer review board that resolves disputes relating to the necessity of medical treatment. It has also developed a fee schedule for medical treatments.

11. Hawaii requires a medical prescription for chiropractic treatment or message or physical therapy.

12. Florida requires the injured person to pay 20% of cost of medical treatment. Claims must be submitted within 35 days of treatment to be payable. Examiner must be actively practicing.

13. New York maintains a list of examiners and selects the examiner, rather than allowing the insurer to select the examiner.

14. New Jersey refers disputes to a dispute resolution professional. The professional may request a medical review by a medical review organization that may require a separate medical examination by a provider of the same discipline. New Jersey Insurance Department rules include a list of standards for medical review organizations. Examiner must be active practitioners that obtain at least one-half of their income from practice in their area of specialty. The Insurance Department also developed and maintains a schedule of allowable fees for IME examiners for examinations.

15. Utah law allows for independent exams upon request of the company if the policy contains such a provision. To settle disputes the law allows for an examination by a panel of not more than three licensed physicians. The panel must consist of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses. The insurance company selects the examining physicians and pays the costs. Most often the exams are performed by one examiner. Disputes can be settled by either arbitration or by civil action. Every other year the Insurance Department publishes a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person. The Department contracts with Relative Value Studies, Inc., Denver, Colorado, to prepare the fee schedules.

16. Massachusetts law allows the insurance company to schedule exams as necessary. The Company selects the examiner, but as a practice the plaintiff attorneys will refuse to send a claimant to a doctor that is considered unfair.

What states have IME programs that are considered workable?

17. At the time of this report, 13 states have some form of a no-fault program. No-fault states other than North Dakota seem to believe that their programs are working in their state, although each state has groups that praise the program and other groups that criticize the program.

What regulations in other states are preferable to North Dakota's regulations and why?

18. It is difficult to determine whether or not other states' regulations are preferable to North Dakota. For example, Minnesota requires binding arbitration for disputed

claims of less than $10,000. Colorado has developed a panel of examiners, from which the parties select one of five that are recommended by the Insurance Department. The systems are criticized by some and praised by others.

What regulations in other states will improve benefits of motor vehicle insurance?

19. It is difficult to say whether any change in regulations will improve no-fault insurance in North Dakota.

What regulations in other states, if adopted in North Dakota, will decrease the costs of, or the need for, conducting IMEs?

20. It is difficult to tell if any change in regulation will decrease the cost of, or the need for, conducting IMEs.

What regulations in other states, if adopted in North Dakota, will decrease the cost of motor vehicle insurance in North Dakota?

21. It is difficult to tell whether any change in regulation will decrease the cost of motor vehicle insurance in North Dakota.

Issue 4

Recommendations

What changes, if any, should be made to the present North Dakota IME regulations?

1. Even though interested parties made numerous suggestions for change to the present no-fault system, most parties agreed that the present system does what it was intended to do: simplify claims handling, expedite claims payments, and prevent unnecessary litigation over benefits

2. The closed claim study shows that only a small percentage of claims result in IMEs or IRRs, but even so there are concerns regarding fairness of the process. There are also concerns about the lack of recourse for the consumer after the IME, especially for smaller claims.

3. Interested parties suggest implementing an alternative dispute mechanism as an alternative to formal legal action. It should be noted that several of the other no-fault states have implemented such systems.

4. Therefore, if the Department has a recommendation, it would be to consider an optional dispute resolution process as an alternative to the formal legal process. Since the IME process is inherently a hostile or adversarial process, it seems reasonable to provide consumers with access to a process less formal and less expensive than formal litigation, especially for consumer with smaller claims.

5. The Department does not have a specific method in mind as there are a variety of choices and it would best be left to the Legislature to select the method best suited for our consumers.

How will the proposed changes improve the present IME process?

6. While the industry feels the present system is fair, the consumers would benefit should the Legislature establish some form of alternative dispute resolution by having access to a less formal and less expensive alternate dispute process. Consumers consider such a system more fair than the present system.

How will the proposed changes improve the benefits of motor vehicle insurance in North Dakota?

7. Some additional cost will be involved in an alternative dispute process, possibly by both parties, but the cost may be justified. An alternative process will provide consumers with a system for settling disputes that is perceived to be more fair and just than the present system.

How will the proposed changes impact the cost, or the process, of conducting IMEs and the cost of motor vehicle insurance?

8. A revised program most probably will result in additional cost to the system, but the overall cost to the industry and the impact on the overall cost of motor vehicle insurance may be negligible. Without a specific proposal the Department is unable to quantify cost. However, an alternative process would impact very few claims, so that the overall impact on rates should be minimal. Also, it may be that the alternative mechanism may provide other positive benefits, such as reducing the number of claims that end up in litigation or allowing companies to be more aggressive in challenging unjust claims that will offset the additional cost.

Summary of Automobile No-Fault IME Process Comments

Criticisms

1. Injured persons are not being made whole and are not receiving benefits of the insurance protection for which they paid premiums.

2. Injured persons are being subjected to IMEs prematurely.

3. Treatment is being terminated before the injured person is made whole.

4. IME process is not independent or impartial.

5. Insurance companies hire out-of-state doctors that are biased in favor of the insurance company.

6. Doctors rely heavily on IME income from insurance companies and are naturally biased toward the company in order to protect income.

7. Examiners are not of same discipline as treating doctors.

8. Examining physicians have a bias against chiropractic treatment.

9. Doctors from out of state travel to the state to do IMEs, are booked heavily, and do exams superficially with suggestion that the end result is predetermined.

10. Doctors are not familiar with the injured party and only do minimal exam before concluding that no further treatment is necessary.

11. Resorting to litigation to settle IME no-fault treatment disputes is too costly, especially for small claims. They argue that the cost of taking depositions and paying experts to testify is too burdensome for the injured person. They argue that the no-fault law was offered as a way to minimize litigation so the claims, especially small claims, should be settled without forcing the parties to go to litigation.

Industry Response

1. No-fault law is working fine.

2. Very few claims go to an IME.

3. IMEs are requested only for those files that raise "red flags".

4. Claims that end up in dispute involve treatment that does not match the injury or an injury that does not match the facts of the accident.

5. Many IMEs involve pre-existing conditions from previous accidents and are necessary to determine whether treatment is related to present or past injury.

6. IMEs allow the company to control unrelated, excessive, or exaggerated claims or claims not related to the accident, thereby keeping premiums to a minimum.

7. IMEs help control the costs of claims not reasonably medically necessary.

8. Very few claims go to litigation after an IME.

9. Out-of-state doctors are hired because very few local doctors are willing to perform IMEs because of time and bother of getting involved in a lawsuit and possibly a trial.

10. If a doctor is biased, bias will be revealed at the trial and the insurance company will be disadvantaged at the trial.

11. IMEs are not independent and should not be. The injured person selects a treating doctor and can choose a doctor that is friendly toward the injured person. The company has a corresponding right to an opinion by its doctor.

12. Claims that end up in dispute quite often involve a treating physician that has a history of questionable treatment practices.

13. The process works because if a dispute arises between the providers, the dispute can be resolved through litigation.

14. Companies are getting sued all the time. If the patient is truly injured, he or she will find a lawyer willing to sue.

Other States' Solutions

1. Minnesota requires binding arbitration for all disputes for claims of less than $10,000. New York and Utah allow for voluntary arbitration. New York law also allows for informal conciliation of disputed claims. Florida allows for mediation of disputes of less than $10,000. Examiner must be of the same specialty or profession as the treating provider.

2. Colorado uses a panel of examiners and provides names of five examiners to the parties in dispute, each of which strike two, leaving the last as the impartial examiner.

3. Certain states have developed guidelines and standards that govern the treatment of no-fault injuries, similar to those developed for workers compensation claims.

4. Some states have established peer review boards to resolve issues relating to necessity of medical treatment.

5. One state requires a prescription from a medical doctor for chiropractic treatment or massage or physical therapy.

6. Florida requires the injured person to pay 20% of the cost of medical treatment. Claims must be submitted within 35 days of treatment to be payable. Examiner must be actively practicing.

7. New York maintains list of examiners and selects the examiner, rather than allowing the insurer to select the examiner.

8. New Jersey refers disputes to a dispute resolution professional. The professional may request a medical review by a medical review organization that may require a separate medical examination by a provider of the same discipline. New Jersey Insurance Department rules include a list of standards for medical review organizations. Examiners must be active practitioners that obtain at least one-half of their income from practice in their area of specialty. The Department also sets a fee schedule for examinations.

9. Utah law allows for independent exams upon request of the company if the policy contains such a provision. To settle disputes over treatment, the law provides for a panel of three licensed physicians to examine the claimant and testify on the issue of the reasonable value of claimant's medical services or expenses. Panel must consist of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses. The Insurance Department conducts and publishes a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person.

10. Massachusetts law allows the insurance company to schedule exams as necessary. The Company selects the examiner, but as a practice the plaintiff attorneys will refuse to send a claimant to a doctor that is considered unfair.

Other Suggestions

1. Make no-fault coverage optional or eliminate no-fault altogether.

2. Force examiner to disclose amount and history of IME income before examination occurs.

3. Require that the examiner be a regular practicing physician.

4. Require examiner to be of same discipline as the treating doctor.

5. Allow for third exam, with examiner selected by injured person but paid for by insurance company.

6. Allow injured person a voice in selecting the examiner.

7. Allow a third party in the examination room.

8. Video the examination.

9. Require an insured to share in the cost of medical treatment (80/20).

Related Issues

1. Insurance companies complain that they are not able to negotiate discounts from the medical community for services, unlike health insurance companies that negotiate discounts on provider rates, and must pay the highest rates that are charged by the medical service providers. To address this issue:

   a. Some states set fees, sometimes based on workers compensation fee schedules, sometimes on Medicare + 10%.

   b. Some states allow insurance companies to develop a provider network and offer discounts or increased benefits for using the network.

2. Disputes over whether or not no-fault injuries deserve continuing treatment quite often include the dispute over whether or not no-fault benefits should cover "maintenance care" as distinguished from "supportive care". To address this issue, other states:

   a. Allow a specified number of treatments for all care, including maintenance.

   b. Use peer review process to limit number of treatments or otherwise control the care allowed.

   c. Use workers compensation or other guideline for determining care that is medically necessary.

North Dakota Insurance Department
C[illegible] File / Docket Card Report

CO-01-056 **Study of Motor Vehicle Insurance Independent Medical Examinations**
Opened: 7/23/01
Closed:

No.	Filed	Description
1	6/13/01	Comments of Rod Pagel of Pagel Weikum
2	6/13/01	Comments of Craig Boeckel
3	6/14/01	Comments of Pat Ward and Jeff Meert of State Farm
4	6/14/01	Comments of Allstate
5	6/22/01	Comments of Duane Ilvedson
6	6/26/01	Comments of William Dooley of American Family
7	6/29/01	Comments of Richard Jeffries
8	7/3/01	Comments of Pat Ward
9	7/9/01	Questionnaire to Automobile Claims Operations Managers
10	7/12/01	Ltr to Ward, Boeckel, Bossart, and Traynor enclosing questionnaire
[illegible]	10/5/01	Ltr to Fargo Public Library re room reservation
12	10/19/01	Ltr to Ward, Boeckel, Bossart, and Traynor enclosing Order Opening Investigation and draft notice
13	10/19/01	Order Opening Investigation and Scheduling Hearings
14	10/19/01	Affidavit of Mailing
15	10/22/01	Memo to Senate and House Transportation Committees enclosing Order and draft notice
16	10/30/01	Ltr to State Bar Association and Trial Lawyers Association enclosing Order
17	11/8/01	Ltr from Lance Schreiner
18	11/13/01	Comments - Dee Kraft
19	11/13/01	Email from Paula Grosinger
20	11/11/01	Notice from Bismarck Tribune
21	11/14/01	Senate Bill No. 2288
22	11/14/01	Attendance Sheet - Fargo
23	11/14/01	Lee Hagen Exhibit 1 - Dr. Robert H. Fielden's Answers to First Supplemental Interrogatories
[illegible]	11/14/01	Lee Hagen Exhibit 2 - IME Notebooks
25	11/16/01	Comments - Steven Marquart
26	11/19/01	Attendance Sheet - Minot

No.	Filed	Description
27	11/19/01	Comments - R. James Maxson
28	11/20/01	Ltr from Madison Chiropractic re independent review organizations
29	11/23/01	Ltr from Lee Hagen
30	11/28/01	Attendance Sheet - Bismarck
31	11/28/01	Comments - Byron Blowers
32	11/30/01	Comments - Rod St. Aubyn
33	12/3/01	Ltr from Corey Quinton re transcription
34	12/4/01	Ltr to Corey Quinton re transcription
35	12/10/01	Transcription - Fargo Hearing
36	12/10/01	Transcription - Minot Hearing
37	12/10/01	Transcription - Bismarck Hearing
38	12/14/01	Comments - William E. McKechnie
39	12/19/01	Email comment re testimony at Fargo hearing
40	12/26/01	Comments - Michael Williams
41	12/28/01	Comments - American Family (Kathryn Weber)
42	2/7/02	Ltr from Corey Quinton enc check and requesting copy of transcript
43	2/7/02	Ltr to Corey Quinton enc Bismarck transcript
44	2/7/02	Ltr to Bill Herauf enc part of Bismarck transcript
45	2/19/02	Ltr requesting information from Medical Assn, Chiropractic Assn, Physical Therapy Assn, and Massage Therapy Assn
46	4/22/02	Ltr from Wade Burgess, Physical Therapy Association
47	4/30/02	Ltr from Jeffrey Galt, Chiropractic Association
48	6/26/02	Ltr to Bill Herauf enclosing survey
49	7/4/02	Ltr from Bill Herauf
50	9/20/02	NAIC State Survey
51	9/20/02	NAIC No-Fault Auto Insurance: A Survey

9/20/02

Part II

PIP Closed Claim Study

2001-2002

Report
by
the

North Dakota Insurance Department

PIP Closed Claim Study
2001-2002
Report

INDEX

PIP Closed Claim Study
2001-2002
Summary

Background

Senate Bill No. 2288, as enacted by the 57th Legislative Assembly, requires the Insurance Commissioner to submit a report to the Legislative Council regarding motor vehicle insurance independent medical examinations (IME).

Prior to the 57th Legislative Assembly the Department had conducted a limited closed claim survey of Personal Injury Protection/No Fault (PIP) claims (February 2001) for the purpose of providing statistical data to the Legislative Assembly for use in its deliberations on proposed changes to the no-fault laws.

Upon receiving the mandate from the Legislative Assembly to submit a report to the Legislative Council, the Department determined that a second more comprehensive PIP closed claim study was needed in order to collect objective data which could be considered along with other information necessary for the preparation of the required report on IMEs.

PIP Closed Claim Study
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Study Description

The PIP Closed Claim Study – 2001-2002 was conducted with the cooperation of the top 25 automobile insurance writers in the state (based upon year 2000) who then wrote 82% of the total market.

Each company was provided with a reporting form (refer to Exhibit 1 of this report for a copy of the reporting form) to be completed by the claims representative upon closing a no-fault claim file.

For those claims which did not result in an Independent Medical Examination (IME) or an Independent Records Review (IRR), the form required the reporting of 8 data elements. If the claim did result in an IME or IRR, then an additional 18 data elements were required to be completed.

The completed forms were returned to the Department where the data was entered into a database.

The study collected PIP closed claim information from August 1, 2001, through August 30, 2002.

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Data Sheet

Disclaimer: The information contained within is intended to provide a quick and easy read of the data results found in the PIP closed claim study. However, the data listed below is just that, data. Caution must be exercised when trying to draw conclusions on some of the data elements alone. In some instances the volume of actual data is not sufficiently credible to be reliable and in some instances a data element by itself or out of context with other information is unreliable. Please refer to the summary for further clarification, explanation of terms, and interpretation of the data.

Aggregate Number of Claims, IMEs, Terminations, and Lawsuits

	Category	No. of Claims	No. of Claims	Percent
1	Total closed claim count of the top 25 insurance companies for the August 2001 to August 2002 time period	4,371		
	Claims which resulted in an IME		148	3.4%
	Claims which resulted in an IRR		54	1.2%
2	Total IME claims	148		
	IME claimants which were terminated		122	82.4%
3	Total IRR claims	54		
	IRR claimants which were terminated		29	53.7%
4	Total IME terminated claims	122		
	IME claimants who complained or requested reconsideration		31	25.4%
5	Total IRR terminated claims	29		
	IRR claimants who complained or requested reconsideration		6	20.7%
6	Total IME terminated claims	122		
	IME claimants who filed a lawsuit		8	6.6%
7	Total IRR terminated claims	29		
	IRR claimants who filed a lawsuit		2	6.9%
8	Total claimants who filed a lawsuit	10		
	Lawsuits that were resolved by trial		2	20%

	Category	No. of Claims	No. of Claims	Percent
9	Total lawsuits that were resolved by trial	2		
	Results adverse to the company		1	50%
10	Total claimants who filed a lawsuit	10		
	Lawsuits settled prior to trial with results adverse to company		6	60%

Benefits Paid to Claimants

	Category	Total Claims for Category	Average Amount of Benefits Paid
1	Total claims for which a PIP benefit was paid	3,999	
	Average amount of benefits paid		$3,171
2	Average amount of benefits paid for claims in which an IME was done	148	$8,874
3	Average amount of benefits paid for claims in which an IRR was done	54	$7,280

Cost to Companies for IMEs and IRRs

	Category	Total Claims for Category	Range of Cost	Average Cost
1	IME provider fees	148	$150 - $4,454	$1,324
2	IME additional provider expenses	148	$0 - $1,500	$57
3	Total cost to a company for IME provider fees and expenses		$150 - $4,649	$1,381
4	IME claimant costs to attend	148	$0 - $646	$30
5	Total cost to a company for IME provider fees, expenses, and claimant expenses		$220 - $4,844	$1,411
6	IRR provider fees	54	$0 - $1,500	$342
7	IRR additional provider expenses	54	$0 - $1,255	$72
8	Total cost to a company for IRR provider fees and expenses		$0 - $1,834	$414

IME Providers, Exams, and Locations and IRRs

	Category	Total Claims for Category	Claims Affected	Percent
1	Number of IME exams in which the type of examiner differed from the primary provider	148	50	34%
2	Number of IRR exams in which the type of examiner differed from the primary provider	54	16	30%
3	Most frequent IME providers and the frequency in which their exam resulted in termination:			
	Physician #1	20	16	80%
	Chiropractor #1	15	15	100%
	Physician #2	15	12	80%
	Physician #3	10	10	100%
	Physician #4	8	8	100%
4	Most frequent IME company/vendors and the frequency in which their exam resulted in termination:			
	Medical Evaluation, Inc.	38	36	95%
	Mid-America Chiro Consultants	19	17	89%
	No Name Given	12	10	83%
	Certified Medical Evaluations	11	11	100%
	Independent	9	8	89%
5	Most frequent IRR providers and the frequency in which their exam resulted in termination:			
	No Name Given	6	0	0%
	Chiropractor A	5	3	60%
	Chiropractor B	4	3	75%
	Physician A	2	0	0%
	Physician B	2	2	100%
6	Most frequent IRR company/vendors and the frequency in which their exam resulted in termination:			
	National Health Resources	14	11	79%
	Medical Evaluation, Inc.	11	8	73%
	No Name Given	6	0	0%
	Certified Medical Evaluations	4	1	25%
	Concentra	4	0	0%

7	IME locations most frequently used:	148		
	Bismarck, ND		61	41%
	Moorhead, MN		34	23%
	Fargo, ND		13	9%
	Grand Forks, ND		10	7%
	West Fargo, ND		7	5%
8	IMEs performed in state vs. out of state	148		
	In state		100	68%
	Out of state		48	32%

Injury Type and Prior Condition

	Category	Total Claims for Category	Claims Affected	Percent
1	Claims in which the claimant had a similar condition previous to the accident	4,371	550	12.6%
2	IME claims in which the claimant had a similar condition previous to the accident	148	81	54.7%
3	IRR claims in which the claimant had a similar condition previous to the accident	54	15	28%
4	Types of injury in total closed claims:	4,371		
	Neck		2,055	47%
	Back		1,627	37%
	Head		830	19%
	Arm		470	11%
	Leg		501	11%
	Other		1,400	32%
	* Percentages will not add up to 100% as some claims involved multiple injury types.			
5	Types of injury in which IME was performed:	148		
	Neck			
	Back		123	83%
	Head		107	72%
	Arm		23	16%
	Leg		14	9%
	Other		16	11%
	* Percentages will not add up to 100% as some claims involved multiple injury types.		26	18%

6	Types of injury in which IRR was performed: Neck Back Head Arm Leg Other * Percentages will not add up to 100% as some claims involved multiple injury types.	54	 42 37 9 10 11 8	 78% 69% 17% 19% 20% 15%

Timing of Events

	Category	Total Claims for Category	Range of Days	Average Days
1	Length of time PIP claim remained open	4,371	0 – 5,805	334
2	Length of time from the date of claim to the date claimant was informed of a scheduled IME	148	25 – 4,382	641
3	Length of time from the date the claimant was notified of a scheduled IME to the date the IME was performed	148	10 – 569	47
4	Length of time between the exam date and the date upon which IME benefits were terminated	122	1 – 652	83

Note: In the course of our analyzing the data, we noted several inconsistencies in the various date information captured. These inconsistencies may make the above comparisons less reliable as they may skew the results.

Volume and Frequency by Company

	Category	Total Closed Claims	Claims Affected	Percent
1	Companies with the largest number of PIP closed claims and respective IMEs performed:			
	State Farm	1,124	25	2%
	American Family	806	68	8%
	Nodak Mutual	546	11	2%
	Farmers Insurance Exchange	446	11	2%
	Progressive NW	393	3	1%
2	Companies with the largest number of PIP closed claims and respective IRRs performed:			
	State Farm	1,124	5	0%
	American Family	806	5	1%
	Nodak Mutual	546	1	0%
	Farmers Insurance Exchange	446	34	8%
	Progressive NW	393	0	0%
3	Companies with the largest number of IMEs (regardless of overall volume):			
	American Family		68	
	State Farm		25	
	Nodak Mutual		11	
	Farmers Insurance Exchange		11	
	Grinnell Mutual		7	
4	Companies with the largest number of IRRs (regardless of overall volume):			
	Farmers Insurance Exchange		34	
	Allstate Insurance Company		7	
	State Farm		5	
	American Family		5	
	Nodak Mutual		1	

PIP Closed Claim Study
2001-2002
Summary

Findings

In reviewing the statistics summarized in this report, it is important to consider each observation in light of the relative credibility of the data behind it.

Typically when analyzing claim data for frequency information, you need over a thousand claims to obtain fully credible indications (1,084 claims is a common full credibility standard in actuarial literature).

For average claim cost and expenditure information, you need several thousand claims to get fully credible results.

Therefore, you should exercise caution when reviewing some of the observations noted in the study, particularly those observations concerning average claim and expenditure information involving less than a thousand claims.

During the 13-month period from August 2001 through August 2002, the insurers reported closing 4,371 PIP claims. Of these 4,371 closed claims, 3,999 had some form of PIP benefit paid to the claimant. Of these claimants, 202 or 5.1% had an Independent Medical Examination/Independent Record Review (IME/IRR) performed at the discretion of the company. Considering the large volume of claims, this 5.1% is considered a credible indication, and is comparable to the 3.5% figure reported in our previous study of February 2001 (see Exhibit 4). It is fair to say that relatively few PIP claims require an IME/IRR.

Of the 202 claimants that underwent an IME/IRR, 151 or 75% had their benefits terminated as a result of the IME/IRR. This volume of claims is insufficient to be considered credible, but the 75% figure is comparable to the 90% figure reported in our previous study. It is fair to say that a significant majority of PIP claims for which an IME/IRR is used result in a termination of benefits.

Note that of the 3,999 PIP claims that had benefits paid, 151 or 3.8% were terminated as a result of an IME/IRR. Again, as this figure is based upon a large volume of claims, it is considered credible, and shows that relatively few PIP claims have their benefits terminated as a result of an IME/IRR.

Of the 151 claimants whose benefits were terminated as a results of an IME/IRR, 37 (24.5%) requested the company to reconsider their benefits. The volume of claims in this comparison is too low for one to draw any credible conclusions. However, the results are again comparable with those reported in our previous study (28% requested the company to reconsider their position).

Of the 151 claimants whose benefits were terminated as a result of an IME, 10 (6.6%) filed a lawsuit against the company. Two of these lawsuits were resolved by trial, with one resulting in a decision adverse to the company. The volume of claims for these observations is far too low for one to draw any meaningful conclusions. However, they are again consistent with the figures reported in our previous study.

Based upon the 148 claims in which an IME was performed, the fee for the IME provider ranged from $150 to $4,454, with an average of $1,324. Additional provider expense fees ranged from $0 to $1,500, with an average of $57. In total, amounts paid to the IME provider ranged from $150 to $4,649, with an average of $1,381.

Based upon the 54 claims in which an IRR was performed, the fee for the IRR provider ranged from $0 to $1,500 with an average of $342. Additional expenses ranged from $0 to $1,255, with an average of $72. Total expenses paid to the IRR provider ranged from $0 up to $1,834, with an average of $414.

Again, we caution readers from drawing conclusions on the dollar figures noted above due to the small volume of claims supporting these figures.

The data captured on the Closed Claim Survey did allow us to look at the frequency of IMEs/IRRs performed by both the provider and the IME company/vendor. We have summarized that information in the Data Sheet, along with the percentage of times the IMEs resulted in a termination of benefits. While the percentages appear high, caution must be used in drawing conclusions from this summary as the volume of claims behind each provider observation is very small and thus not credible.

Based upon the 148 claims for which an IME was performed, 68% of the IMEs were performed within the state. While 148 claims is insufficient volume to assign significant credibility to the 68% figure, the majority of IMEs in this study were conducted within the state.

Based upon the 148 claims for which an IME was performed, the claimant's primary medical service provider was a physician 48% of the time and a chiropractor 46% of the time. Again, the 148 claims are not of sufficient volume to make the above noted percentages credible. However, within this study IMEs appear to have been required as frequently on claims involving physicians as with chiropractors.

Of the total 4,371 PIP claims, the claimant had a previous similar injury prior to the accident 550 or 12.6% of the time. Of the 148 PIP claims in which an IME was requested, 81 or 54.7% of the claimants had a previous similar injury. Of the 54 claims in which an IRR was requested, 15 or 28% had a previous similar injury. Again, there is not a large enough volume of data to give credible indications, but these comparisons suggest that IMEs and IRRs may be requested more frequently on cases in which a previous similar injury existed.

Looking at claim frequencies by injury type, we see that of the 4,371 total PIP claims, 47% involved neck injuries and 37.2% involved back injuries. Based upon the claim volume, these are credible statistics.

Of the total 202 PIP claims for which an IME/IRR was performed, 81.7% involved a neck injury and 71.3% involved back injuries. The 202 claims is not a sufficiently large enough sample to obtain credible indications; however, the evidence suggests that claims involving neck and back injuries account for a larger portion of IME/IRR claims than they do for the overall PIP claim population.

The claim data shows that the length of time a PIP claim remained open ranged from 0 days up to 5,805 days and averaged 334 days.

For the 148 claims in which an IME was done, the length of time from the date of the claim to the date the claimant was informed of a scheduled IME ranged from 25 days up to 4,382 days with an average time of 641 days.

For the 148 claims in which an IME was done, the length of time from the date the claimant was notified of a scheduled IME to the date the IME was performed ranged from 10 to 569 days with an average of 47 days.

For the 122 claims in which an IME resulted in termination of benefits, the time between the exam date and the date upon which benefits were terminated ranged from 1 day up to 652 days with an average time of 83 days.

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Conclusions

Based upon these figures, we can conclude:

- Of all PIP claims involving some benefits being paid, relatively few require an IME to be performed.
- For those claims in which an IME was performed, the majority tend to result in the termination of benefits.
- Because of insufficient claim volume, we are unable to make any credible observations regarding average costs for providers of IMEs.
- For claims involved in this study IMEs/IRRs were performed more frequently in-state than out-of-state.
- For claims involved in this study the frequency in which an IME was requested where the primary medical provider was a chiropractor is equal to the frequency in which the primary medical provider was a physician.
- For claims involved in this study IMEs/IRRs were requested more frequently on those claims in which a previous similar injury existed.

PIP Closed Claim Study
2001-2002
Summary

xhibits

or reference the following exhibits have been appended to this report:

1. The PIP Closed Claim Study 2002-2002 reporting form used by companies to report data to the Department.

2. A spreadsheet with the numerical data results on an aggregate basis by company.

3. A spreadsheet showing the data results by company for specific items not included in Exhibit 2.

4. The PIP Closed Claim Study Report of February 2001.

EXHIBIT 1

North Dakota PIP Data Collection
Questions for 2001-2002 Closed Claims Study

Complete one form for each closed PIP claim (claimant) from
August 1, 2001, to August 30, 2002

Insurance Company _____

1. Claim number ..... _____
2. Claimant number (in the case of multiple claimants, designate #1, #2, #3, etc.) ..... _____
3. Date of claimed injury ..... _____
4. Type of injury or injuries -
   Circle appropriate injuries: Neck Back Head Arm Leg Other
5. Did claimant have a similar condition/medical treatment prior to date of claimed injury ..... Yes No
6. Date claim filed ..... _____
7. Date the file was closed ..... _____
8. Total amount of PIP (no-fault) benefits paid to the claimant ..... _____

Complete Questions 9 to 26 only if an IME or IRR was performed:

9. Specialty of claimant's primary medical service provider -
   Circle one: Physician Physical Therapist Chiropractor Other
10. What type of review was conducted?
    Circle one: IME-Physical Exam Independent Records Review
11. Date the claimant was informed that an IME was to be performed ... _____
12. Place the IME was performed (city) ..... _____
13. Date the IME was performed ..... _____
14. Were benefits terminated as a result of information from the IME/IRR? Yes No
15. Date the benefits ceased ..... _____
16. Did claimant complain to company or request reconsideration of termination? ..... Yes No
17. Did claimant file a lawsuit against the company as a result of termination? ..... Yes No
18. Was claimant's lawsuit resolved by trial? ..... Yes No
19. Was claimant's lawsuit resolved by trial with a decision adverse to the company? ..... Yes No N/A
20. Was claimant's lawsuit settled prior to trial with a compromised or negotiated settlement? ..... Yes No N/A
21. Name of the IME/IRR medical service provider ..... _____
22. Specialty of IME/IRR medical service provider -
    Circle one: Physician Chiropractor Nurse Other
23. Name of the IME/IRR company/vendor ..... _____
24. Fee paid to the IME/IRR provider for conducting the exam/review ... _____
25. Amount paid to the IME/IRR provider for expenses and other related costs ..... _____
26. Amount paid to the claimant to cover costs to attend the IME (i.e., transportation, lodging, meals, wage loss, etc.) ..... _____

Contact Person _____ Telephone _____

Company Name	...Claim Files Closed	...aid No-Fault Benefits	...quested by Company	...aled as Result...	[illegible]	...d Who Filed...	...Resolved by...	[illegible]	[illegible]
Allied Ins Co	11	10	4	1	1	0	0	0	0
Allied Mutual Ins Co	1	1	0	0	0	0	0	0	0
Allied P&C Ins Co	43	42	1	0	0	0	0	0	0
Allstate Ins Co	213	210	13	5	0	0	0	0	0
AMCO Ins Co	35	34	1	1	0	0	0	0	0
American Family Mutual Ins Co	806	781	73	66	[illegible]	0	0	0	0
American States Ins Co	3	3	1	1	[illegible]	0	0	0	0
Center Mutual Ins Co	165	165	5	5	2	1	0	0	0
Dairyland Ins Co	54	39	0	0	0	0	0	0	0
Dakota Fire Ins Co	131	118	1	0	0	0	0	0	0
Depositors Ins Co	23	23	2	1	0	0	0	0	0
EMCASCO Ins Co	24	20	0	0	0	0	0	0	0
Employers Mutual Cas Co	31	30	1	0	0	0	0	0	0
Farmers Ins Exchange	446	387	45	28	7	1	0	0	0
First Nat Ins Co of America	3	3	0	0	0	0	0	0	0
Grinnell Mut Rein Co	148	148	7	7	7	5	1	1	4
Mid-Century Ins Co	8	8	0	0	0	0	0	0	0
Midwest Cas Ins Co	7	6	2	2	0	0	0	0	0
Milbank Ins Co	71	62	1	1	1	1	0	0	1
Nationwide Mut Ins Co	8	4	0	0	0	0	0	0	0
Nationwide P&C Ins Co	1	1	0	0	0	0	0	0	0
Nodak Mutual Ins Co	546	529	12	9	1	0	0	0	0
North Star General Ins Co	34	33	0	0	0	0	0	0	0
Progressive NW Ins Co	393	271	3	2	0	0	0	0	0
SAFECO Ins Co of America	42	37	0	0	0	0	0	0	0
State Farm	1124	1034	30	22	9	2	1	0	1
	4371	3999	202	151	37	10	2	1	6

EXHIBIT 2

09/19/2002

PIP CLOSED CLAIM STUDY
SUMMARY OF CLAIM FREQUENCIES BY INJURY TYPE

Company Name	FREQUENCY OF INJURY TYPES OVER TOTAL PIP CLAIM SURVEY POPULATION												FREQUENCY OF INJURY TYPES OVER BREWER CLAIM POPULATION											
State Farm	1124	538	48.0%	415	36.9%	208	18.5%	107	9.5%	167	6.5%	366	31.1%	36	26	83.3%	23	76.7%	2	6.7%	4	13.3%	2	6.7%	7	23.3%
American Family Mutual Ins Co	805	408	50.8%	327	40.6%	104	12.9%	67	8.3%	88	11.0%	337	41.9%	73	66	88.0%	55	75.3%	8	11.0%	6	8.2%	9	12.3%	11	15.1%
Nodak Mutual Ins Co	546	248	45.4%	188	34.4%	78	14.3%	38	7.1%	44	8.1%	188	34.8%	12	11	91.7%	9	75.0%	5	41.7%	0	0.0%	0	0.0%	2	16.7%
Farmers Ins Exchange	446	225	50.4%	208	46.6%	102	22.9%	69	15.5%	77	17.3%	113	25.3%	45	33	73.3%	31	68.9%	7	15.6%	8	17.8%	9	20.0%	9	20.0%
Progressive NW Ins Co	383	154	38.2%	123	31.3%	80	20.4%	53	13.5%	49	12.5%	164	41.7%	3	2	66.7%	2	66.7%	0	0.0%	1	33.3%	1	33.3%	0	0.0%
Allstate Ins Co	213	83	38.8%	71	33.3%	62	29.1%	45	21.1%	43	19.2%	28	13.1%	13	10	76.9%	8	61.5%	4	30.8%	4	30.8%	5	38.5%	0	0.0%
Center Mutual Ins Co	165	91	55.2%	68	41.8%	36	23.8%	19	11.5%	20	12.1%	23	13.9%	5	3	60.0%	3	60.0%	2	40.0%	0	0.0%	1	20.0%	0	0.0%
Grinnell Mut Rein Co	146	53	35.8%	43	29.1%	33	22.3%	17	11.5%	11	7.4%	27	18.2%	7	3	42.9%	4	57.1%	0	0.0%	0	0.0%	0	0.0%	2	28.6%
Dakota Fire Ins Co	131	72	55.0%	51	38.9%	24	18.3%	11	8.4%	8	6.1%	35	26.7%	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%
Milbank Ins Co	76	43	56.6%	33	46.5%	29	40.8%	13	18.3%	15	21.1%	35	49.3%	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Dairyland Ins Co	54	20	37.0%	18	33.3%	16	29.6%	8	14.8%	6	11.1%	17	31.5%													
Allied P&C Ins Co	43	18	41.9%	6	14.0%	10	23.3%	4	9.3%	4	9.3%	14	32.6%	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%
SAFECO Ins Co of America	42	26	61.9%	25	59.5%	6	14.3%	1	2.4%	4	9.5%	7	16.7%	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
AMCO Ins Co	35	13	37.1%	8	22.9%	7	20.0%	1	2.9%	0	0.0%	16	45.7%													
North Star General Ins Co	34	16	47.1%	4	11.8%	6	17.6%	4	11.8%	5	14.7%	12	35.3%													
Employers Mutual Cas Co	31	11	35.5%	5	16.1%	7	22.6%	4	12.9%	5	16.1%	8	25.8%	1	1	100.0%	0	0.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%
EMCASCO Ins Co	24	9	37.5%	7	29.2%	4	16.7%	0	0.0%	3	12.5%	5	20.8%													
Depositors Ins Co	23	7	30.4%	7	30.4%	3	13.0%	3	13.0%	3	13.0%	5	21.7%	2	0	0.0%	2	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Allied Ins Co	11	6	54.5%	6	54.5%	3	27.3%	2	18.2%	0	0.0%	5	45.5%	4	4	100.0%	3	75.0%	2	50.0%	1	25.0%	0	0.0%	0	0.0%
Mid-Century Ins Co	8	4	50.0%	3	37.5%	5	62.5%	0	0.0%	0	0.0%	0	0.0%													
Nationwide Mut Ins Co	8	0	0.0%	1	12.5%	0	0.0%	0	0.0%	1	12.5%	6	75.0%													
Midwest Cas Ins Co	7	3	42.9%	4	57.1%	3	42.9%	3	42.9%	2	28.6%	3	42.9%	2	1	50.0%	1	50.0%	1	50.0%	0	0.0%	0	0.0%	1	50.0%
American States Ins Co	3	3	100.0%	2	66.7%	1	33.3%	0	0.0%	0	0.0%	0	0.0%	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
First Nat Ins Co of America	3	2	66.7%	1	33.3%	1	33.3%	0	0.0%	0	0.0%	0	0.0%													
Allied Mutual Ins Co	1	1	100.0%	1	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%													
Nationwide P&C Ins Co	1	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%	0	0.0%													
	4371	2055	47.0%	1627	37.2%	838	19.8%	479	10.9%	501	11.5%	1469	33.6%	282	185	81.7%	144	71.3%	33	15.9%	34	11.9%	27	13.4%	34	16.8%

EXHIBIT 3

EXHIBIT 4

Personal Injury Protection (PIP)
Closed Claim Study Report

Study Period :
June – November 2000

North Dakota Insurance Department
February 2001

Personal Injury Protection (PIP) Closed Claim Study

I. Background

The Insurance Department has over the years received calls and complaints from consumers and attorneys regarding the provisions of the Personal Injury Protection (PIP) or no-fault statute. The issues raised included the need to raise the no-fault limit, the need to change the coordination of benefits limit, the need to address the Independent Medical Examination (IME) process, and the need to provide the consumer with a viable alternative to dispute a termination of benefits. The primary and most frequent concerns have been those regarding the IME process.

The Insurance Department met with the domestic insurance industry to discuss the concerns raised and to determine if specific legislation could be proposed to address some of the concerns. The consensus was that before legislation is proposed it would be prudent to collect information which could be used to help in assessing the need for any change, if any. Further it was felt that the legislature would want data to support any changes that might be proposed.

It was agreed that the Department would conduct a study of PIP (no-fault) claims.

II. Study Description

The Department elected to contact the top 25 insurance carriers (based upon recent market share reports) who write in excess of 82.5% of the business in the state for purposes of the study. The study would require the insurance companies to report specific information regarding all PIP claims closed from June 2000 through November 2000. A form with 10 specific data questions was sent to the companies requesting a reporting deadline of December 15, 2000. See Appendix A for a copy of the letter and questions.

The study is the first attempt at data collection since a target market conduct examination completed in 1990.

III. Study Results

The results of the data collection are found in a chart attached as Appendix B. Note: 24 out of the 25 companies responded with data. The chart lists 19 companies due to the fact that some companies reported with a group, i.e., Allstate and Allstate Indemnity combined their data.

The chart lists the responding companies and groups of companies in order of premium volume from highest to lowest.

The aggregate totals for each of the ten data questions are as follows:

1. PIP Claim Files Closed (June-Nov)	1,747
2. Claimants Paid No-Fault Benefits	2,061
3. Claimants Paid Maximum No-Fault Benefits	38
4. Claimants for Whom an IME was requested by Company	74
5. Claimants Whose Benefits were Terminated as a result of IME	67
6. Claimants Who Complained or Requested Reconsideration after IME	19
7. Claimants Who were Terminated that filed Lawsuit	4
8. Claimants Whose Lawsuits were Resolved by Trial	0
9. Claimants Whose Lawsuits were Resolved by Trial/Adverse to Company	0
10. Claimants Who Settled Prior to Trial /Results Adverse to Company	4

IV. Findings

Credibility – The degree to which one can rely on indications based on a set of data is generally known as credibility. From an actuarial perspective, indications based upon a large volume of data tend to be more credible than those based upon a small volume of data.

- The volume of data from questions 1 and 2 is such that frequency indications may be considered as credible.
- The volume of data from questions 3, 4, and 5 is such that frequency indications may be considered as partially, or marginally credible.
- The volume of data from questions 6 through 10 is such that frequency indications are not credible.

For purposes of analysis it is helpful to demonstrate the significance or relationship in a percentage rather then just numerically.

Using the Total Number of Claimants Paid No-Fault Benefits as a base (2,061) we find that:

- The Number of Claimants Paid the Maximum No-Fault Benefit is 38 or 1.8%. The number of claimants receiving the maximum limit of $30,000 is found to be significantly small. The lack of any substantial frequency in which claimants are routinely demonstrating the need for maximum benefits suggests that the limit is adequate.

- The Number of Claimants For Whom an IME was requested by Company is 74 or 3.6%. The percentage of claimants required to submit to an IME is found to be small. Although this study did not seek this information, a 1990 Insurance Department review of company PIP files indicated a major portion of IMEs occurred in soft tissue injury cases.

Using the Number of Claimants For Whom an IME was requested by Company (74) as a base we find that:

- Claimants Whose Benefits were Terminated as a result of IME is 67 or 90.5%. The number of claimants terminated after an IME is found to be high in relation to the number required to undergo an IME. However, as indicated above the overall number of IMEs is considered to be small in relation to all claimants. The review in 1990 also indicated a high termination rate of 84%.

- Claimants Who Complained or Requested Reconsideration after IME is 19 or 25.7%. Conversely, 74.3% did not request reconsideration from the company following termination.

- Claimants Who were Terminated After IME that filed Lawsuit is 4 or 5.4%. To the extent this number is statistically relevant, the number of claimants who filed a lawsuit after being terminated following an IME is small.

- Claimants Whose Lawsuits were Resolved by Trial is 0 or 0%.

- Claimants Whose Lawsuits were Resolved by Trial/Adverse to Company is 0 or 0%.

- Claimants Who Settled Prior to Trial /Results Adverse to Company is 4 or 5.4%. The number of claimants bringing a lawsuit and with a settlement adverse to the company is small but does represent all lawsuits.

V. Conclusions

The volume of data received in this study is limited which limits the credibility of the data. The data regarding the maximum benefit is marginally credible and in the opinion of the Department suggests that there is no need at this time to increase the maximum benefit limit.

Contact: Larry Maslowski
Director/Senior Analyst, Consumer Protection Division
(701) 328-4976

APPENDIX A

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

COPY

Glenn Pomeroy
Commissioner of Insurance

April 12, 2000

Automobile Claims Department
Allstate Indemnity
3075 Sanders Road, Suite HIA
Northbrook, IL 60062-7127

RE: North Dakota Data Collection Project - PIP Closed Claim Study

Dear Sir/Madam:

Prior to the 1999 legislative session, the North Dakota Insurance Department was exploring ways that it might revise the current PIP (no-fault) laws to address a variety of concerns that have been raised over the years. Your company may even have participated in a 1998 Department survey designed to assess the potential fiscal impact on PIP premiums should some of the contemplated changes become law.

Based upon the scope of the proposals being considered, it was determined not to propose legislative changes in 1999 but rather to conduct an interim general market conduct evaluation to gather more information before proceeding. This decision was reached with the cooperation and input of representatives of the domestic and foreign insurance industry.

The Department and the industry have determined that the most efficient method to collect the desired Data is to conduct a Closed Claim Study on a going forward basis. Enclosed with this letter is a document specifically describing how to conduct the Closed Claim Study.

The top 25 automobile insurance carriers, including your company, are requested to participate in order to provide sufficient volume of data for the study.

Questions pertaining to the study should be directed to Charles Johnson , General Counsel, at (701) 328-4984.

Sincerely,

Glenn Pomeroy
Commissioner
N.D. Insurance Department

GP/njb
Enclosure

April 12, 2000

RE: Data Collection Project - PIP (No Fault) Closed Claim Study

Insurance companies will compile certain no-fault information and report that information to the North Dakota Insurance Department by December 15, 2000. The information being requested will be compiled from North Dakota no-fault claim files only as you close those files between June 1, 2000, and November 30, 2000. As you close those files, we are requiring you to review the closed claim file and provide us with the following information:

1. Total number of PIP claim files closed.

2. Total number of individual claimants that were paid no-fault benefits under those files.

3. Total number of individual claimants that were paid the maximum no-fault benefit payable ($30,000 per person).

4. Total number of individual claimants who received no-fault payments and your company requested an independent medical examination (IME) on those individuals.

5. Total number of individual claimants under all of those closed claim files where no-fault benefits were terminated as a result of the IME.

6. Total number of individual claimants who were advised by you as to the termination of benefits as a result of an IME and who contacted the company to complain or request reconsideration of their claim.

7. Total number of individual claimants who filed a lawsuit for no-fault benefits against the company after terminating benefits.

8. Total number of individual claimants who filed suit against the company for no-fault benefits that were resolved by trial to the court or a jury.

9. Total number of individual claimants who filed suit against the company which were resolved by trial and the decision was adverse to the company.

10. Total number of individual claimants who filed suit against the company and the company settled the matter prior to trial on terms that were adverse to the company.

Format: Excel or Lotus 1,2,3

Results: Send to Mike Andring, North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505

NORTH DAKOTA PIP (NO FAULT) CLOSED CLAIM STUDY

JUNE - NOVEMBER 2000

Company	NAIC #	1999 Written Premiums (000's)	Total # of PIP Claim Files Closed	Total # of Claimants Paid No-Fault Benefits	Total # of Claimants Paid Maximum No-Fault Benefits	Total # of Claimants for Whom IME was Requested by Company	Total # of Claimants where No-Fault Benefits Terminated as a Result of IME	Total # of Claimants Terminated After IME Who Complained or Requested Reconsideration	Total # of Claimants Terminated After IME Who Filed Lawsuits	Total # of Claimants Whose Lawsuits Were Resolved by Trial	Total # of Claimants Whose Lawsuits Were Resolved by Trial With Results Adverse to Company	Total # of Claimants Whose Lawsuits Settled Prior to Trial with Results Adverse to Company
State Farm Companies	25178 25143	$ 37,639	267	326	9	7	7	1	0	0	0	0
American Family Insurance Company	60399 19283	$ 32,513	240	308	6	11	10	2	0	0	0	0
Nodak Mutual Insurance Company	34592	$ 25,533	196	211	3	6	5	1	0	0	0	0
National Farmers Union Property and Casualty Companies	16217	$ 20,274	86	122	4	17	15	2	0	0	0	0
Farmers Insurance Exchange Companies	21652 21687	$ 12,653	153	178	2	11	11	2	1	0	0	1
Allstate Insurance Companies	19232 19240 37907	$ 11,439	170	182	2	1	1	1	1	0	0	1
Dakota Fire Insurance Company, EMCASCO	10863 21407	$ 10,097	77	94	1	0	0	0	0	0	0	0
Center Mutual Insurance Company	34606	$ 6,354	70	85	2	1	1	1	0	0	0	0
Progressive Northwestern Insurance Company	42919	$ 6,119	86	98	2	2	1	0	0	0	0	0
Grinnell Mutual Reinsurance Company	14117	$ 5,813	36	49	0	4	4	3	1	0	0	1
Milbank Insurance Company	41653	$ 5,755	40	44	1	0	0	0	0	0	0	0
Auto Owners Insurance Companies	32700 18988	$ 5,531	68	57	0	3	3	0	0	0	0	0
SAFECO (American States) Companies	37214 24740 19704 19690	$ 5,140	42	60	2	0	0	0	0	0	0	0
USAA Companies	25941 25968 18600	$ 4,714	50	43	0	1	1	0	0	0	0	0
AMCO Insurance Company	19100	$ 2,823	62	75	1	4	4	2	1	0	0	1
Heritage Mutual Companies (incl Greatway)	29793	$ 2,536	72	92	1	1	1	1	0	0	0	0
Dairyland Insurance Company	21164	$ 1,591	26	30	2	4	2	2	0	0	0	0
LeMars Mutual Insurance Company of Iowa	14389	$ 1,433										
Midwest Casualty Insurance Company	36360	$ 591	6	7	0	1	1	1	0	0	0	0
TOTALS		$ 198,548	1,747	2,061	38	74	67	19	4	0	0	4

CPS Annual Demographic Survey
March Supplement

There is also additional background information for this table group.

Contents for Group | Contact: hhes-info@census.gov

Table HI06. Health Insurance Coverage Status by State for All People: 2001 Not poverty univer
under age 15 are included
(Source: Current Population Survey, March 2002. Numbers in thousands.)

		---------- Covered and Not Covered by health insurance du				
	Total	Covered	S.E.	Percent	S.E.	Not Covered
UNITED STATES	282,082	240,875	191	85.4	0.1	41,207
ALABAMA	4,388	3,815	61	86.9	0.5	573
ALASKA	634	534	8	84.3	0.5	100
ARIZONA	5,316	4,365	77	82.1	0.6	950
ARKANSAS	2,657	2,229	39	83.9	0.6	428
CALIFORNIA	34,488	27,770	213	80.5	0.3	6,718
COLORADO	4,410	3,723	53	84.4	0.5	687
CONNECTICUT	3,392	3,047	43	89.8	0.4	346
DELAWARE	791	719	12	90.8	0.4	73
DISTRICT OF COLUMBIA	554	484	9	87.3	0.6	70
FLORIDA	16,348	13,491	129	82.5	0.3	2,856
GEORGIA	8,289	6,912	111	83.4	0.6	1,376
HAWAII	1,213	1,096	17	90.4	0.4	117
IDAHO	1,315	1,105	19	84.0	0.6	210
ILLINOIS	12,331	10,655	112	86.4	0.3	1,676
INDIANA	6,036	5,322	72	88.2	0.4	714
IOWA	2,861	2,645	39	92.5	0.4	216
KANSAS	2,642	2,341	35	88.6	0.5	301
KENTUCKY	3,996	3,505	56	87.7	0.5	492
LOUISIANA	4,390	3,544	63	80.7	0.6	845
MAINE	1,279	1,147	16	89.7	0.4	132
MARYLAND	5,326	4,673	68	87.7	0.5	653
MASSACHUSETTS	6,322	5,802	76	91.8	0.3	520
MICHIGAN	9,892	8,864	98	89.6	0.3	1,028
MINNESOTA	4,922	4,530	63	92.0	0.4	392
MISSISSIPPI	2,799	2,341	43	83.6	0.6	459
MISSOURI	5,525	4,960	72	89.8	0.4	565
MONTANA	892	771	14	86.4	0.6	121
NEBRASKA	1,683	1,523	24	90.5	0.4	160
NEVADA	2,135	1,791	27	83.9	0.5	344
NEW HAMPSHIRE	1,258	1,139	16	90.6	0.4	119
NEW JERSEY	8,470	7,361	85	86.9	0.4	1,109
NEW MEXICO	1,804	1,431	29	79.3	0.7	373
NEW YORK	18,827	15,911	131	84.5	0.3	2,916
NORTH CAROLINA	8,098	6,932	91	85.6	0.4	1,167
NORTH DAKOTA	621	561	9	90.4	0.4	60
OHIO	11,191	9,943	107	88.8	0.3	1,248
OKLAHOMA	3,382	2,762	46	81.7	0.6	620
OREGON	3,462	3,018	48	87.2	0.5	443
PENNSYLVANIA	12,102	10,983	108	90.8	0.3	1,119
RHODE ISLAND	1,043	963	13	92.3	0.3	80

SOUTH CAROLINA	4,009	3,517	55	87.7	0.5	493
SOUTH DAKATO	739	670	10	90.7	0.4	69
TENNESSEE	5,682	5,042	84	88.7	0.5	640
KAS	21,065	16,105	159	76.5	0.4	4,960
UTAH	2,262	1,927	31	85.2	0.5	335
VERMONT	607	549	8	90.4	0.4	58
VIRGINIA	7,105	6,331	94	89.1	0.4	774
WASHINGTON	5,930	5,151	81	86.9	0.5	780
WEST VIRGINIA	1,772	1,539	23	86.8	0.5	234
WISCONSIN	5,336	4,927	67	92.3	0.4	409
WYOMING	488	411	7	84.1	0.6	78

Source: U.S. Census Bureau
Contact: (hhes-info@census.gov) Housing and Household Economic Statistics Information Staff
Last revised: September 23, 2002
URL: http://ferret.bls.census.gov/macro/032002/health/h06_000.htm

Testimony of Patrick Ward in Opposition of SB 2275

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. I represent the North Dakota Domestic Property & Casualty Insurance Companies in opposition to SB 2275. The North Dakota Domestic Property & Casualty Insurance Companies include Nodak Mutual Insurance Company of Fargo, Center Mutual of Rugby, Farmers Union Insurance of Jamestown, Dakota Fire Insurance Company of Bismarck, and Hartland Mutual Insurance Company of Minot. In addition, I also represent the two largest property and casualty companies in North Dakota, State Farm and American Family, who also oppose Section 1 of SB 2275.

SB 2275 was originally proposed by Blue Cross Blue Shield of North Dakota. It is opposed by all property and casualty insurers because it is an attempt to take away the right to coordinate benefits from North Dakota consumers. The bill was amended by the Senate Transportation Committee (page 2, line 15) to raise the current coordination of benefits threshold from $5,000 to $10,000, rather than the $15,000 requested by Blue Cross Blue Shield in the original bill.

In Section 2 of the amended bill, the Senate Transportation Committee repealed no fault to be effective August 1, 2005, which we support. Section 3 calls for a study which we also support. Section 4 simply provides when the repeal in Section 2 becomes effective.

No fault insurance is mandatory coverage with any automobile insurance policy sold in North Dakota. No fault insurance gives consumers less bang for their buck than health insurance, rather than more. No other line of personal insurance is more expensive to administer. High chiropractic bills and over treatment are a few causes of the problem. There are no preferred provider systems and no fee schedule available to property and casualty carriers to limit charges, as there are for large monopolistic health insurers like Blue Cross Blue Shield, and no way other than the costly and controversial independent medical examination review to challenge excessive charges or eliminate them altogether. The no fault expense ratio on claims runs as high as 40%. On the other hand, Blue Cross Blue Shield, because of its size and unique position, has a much more cost efficient way to control bills, and its expense ratio is about 8%.

Currently there are 24 states that mandate no fault insurance and six of those have limits comparable or higher than North Dakota's. In all six of those states, no fault has caused more problems than it has resolved. It is on the chopping block everywhere. As a result, since 1990, two states have repealed their no fault laws, four more are currently considering repealing them, several have reduced the mandatory no fault limit and others have made significant changes limiting no fault coverage.

No fault insurance is set out in Chapter 26.1-41 of the North Dakota Century Code. Basic no fault benefits are sold with each insurance policy in an amount payable for "economic loss" resulting from a motor vehicle accident not to exceed $30,000 per person. This benefit includes medical expenses, lost wages not to exceed $150 per week per person, and funeral, cremation, and burial expenses up to $3,500.

"Economic loss" is defined as "medical expense," rehabilitation expenses, work loss, replacement services loss, survivor's income loss, survivor's replacement services loss, and funeral, cremation, and burial expenses. "Medical expenses" include medical, surgical, x-ray, dental, ambulance, and hospital charges considered "reasonable and customary."

Simply put, each individual passenger in an insured motor vehicle is entitled to $30,000 in basic no fault benefits. Current law provides that once benefits paid out have reached $5,000, the claimant may coordinate benefits with his health insurer. This allows the claimant to have his medical bills paid by the health insurer while allowing him or her the opportunity to use the remaining no fault benefits to pay other expenses such as wage loss, insurance deductibles and co-payments of the health policy.

The average no fault claim of $3,400 (according to a recent Insurance Department study) never reaches that $5,000 threshold. Many of those that do

are because of charges questionably related to the auto accident for unnecessary diagnostic tests, chiropractic and massage treatment.

There is absolutely no benefit to the North Dakota citizen or consumer in allowing Blue Cross Blue Shield, the state's largest health insurance carrier which has a virtual monopoly, to raise the coordination of benefits threshold from $5,000 to $10,000. This simply takes away $5,000 of other available no fault benefits for those who need it. Section 1 of the bill should be killed.

Section 1 of this bill is anti-consumer. Only health insurers will benefit by avoiding $5,000 of medical expenses on alleged auto accident claims they are currently required to pay. The consumer loses in two ways. First, the consumer loses the ability to charge items other than medical expenses to the no fault insurer. Secondly, the higher expenses in administering healthcare costs encountered by property and casualty insurers (which are not health insurance companies), will ultimately be passed on to consumers in increased property and casualty insurance premiums.

We urge you to pass the Study Resolutions and Repeal of No Fault in SB 2275, but revise the bill to delete Section 1, or amend Section 1 to lower the COB amount to $1.00.

PROPOSED AMENDMENTS OF PATRICK WARD TO SECOND ENGROSSMENT OF SB 2275

Page 2, line 15, overstrike ~~ten~~, overstrike s in dollars

Page 2, line 18, overstrike ~~ten~~, replace ten with "one"

Page 2, line 19, overstrike s in dollars

Page 2, lines 22-23, delete "the commissioner shall approve any coordination of benefits plan" and replace with "a coordination of benefits plan shall be included in a policy and filed with the commissioner"