

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2288

2001 SENATE TRANSPORTATION

SB 2288

## 2001 SENATE STANDING COMMITTEE MINUTES

### BILL/RESOLUTION NO. SB 2288

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-9-01;2-16-01

| Tape Number                                      | Side A | Side B | Meter #              |
|--|--------|--------|----------------------|
| 1  |        | x      | 23.2- End            |
| 2  | x      |        | 0.0-44.6             |
| 2-16-01 1  | x      | x      | 13.4-23.7; 39.1-48.1 |
| Committee Clerk Signature <i>Sharon Schaefer</i> |        |        |                      |

Minutes: SB 2288 relates to motor vehicle insurance independent medical examinations.

**Senator Fischer:** (District 46; Supports) See attached proposed amendments. States that this is one of the most important issues of this session. This would amend and specifically change procedures for obtaining independent medical exams and make the system work fair and evenhanded. The No Fault law has been in effect since 1972 and for the most part has worked well. Goes on to explain the No Fault law. States that there is \$30,000 of insurance to pay for medical expenses and portion of wage loss no matter who was at fault. Insurance companies get to choose the doctors for clients to see. Sounds fair until you find out how it really works. Goes on to tell about his own personal experience with his accident, doctors, procedures, IME, and his insurance company. Many people he's talked to have had their benefits cut off. Legislation he is proposing is stripped to it's simplest form; the names of five doctors are considered for the job of conducting an IME, the insurance company strikes two names off the list, injured person then strikes two names off the list and the remaining one is the one to perform the IME. Opposition to

this bill will state that this will raise premiums. How so? Insurance companies calculate their premiums now in the worst case scenarios and therefore premiums shouldn't rise.

**Gary Lindemann:** (Jamestown; Supports) See attached testimony.

**Michele Sigl:** ( Employed with Dickson & Purden Law Office as a paralegal, Supports) See attached testimony.

**Senator Mutch:** D you personally have a grievance?

**Michele Sigl:** Yes, I've been in an accident and have experienced these problems.

**Vendora Gappert:** (New Salem housewife; Supports) Gives her own negative personal experiences from an accident involving herself and her husband in 1997 including injuries, doctors, court case, and insurance company problems.

**David Bossart:** ( N.D.Trial Lawyer Association; Lobbyist # 584 Supports) See attached testimony.

**Sonna Anderson:** (ND Trial Lawyer Association; Lobbyist #332; Supports) See attached testimony.

**Rod St. Anxyn:** ( Blue Cross/Blue Shield ND; Lobbyist #216; Supports) Supports this bill.

**Paul Traynor:** (Nodak Mutual; Opposes) This is a pro-consumer bill and would raise auto insurance rates. No Fault Insurance is tough to underwrite, it's not consistent or stable. A study commission is needed to analyze this system because it's outdated. We can make it better. In 1972, auto insurance was put into health insurance business. ND doctors won't take on these situations insurance companies and clients have to go elsewhere to find doctors. Arbitration could be an option. Government, to a degree, does not belong in this type of situation. Be cautious when someone tells you that it's only the insurance industry , attorney's too need to be looked at.



**Page 3**  
**Senate Transportation Committee**  
**Bill/Resolution Number SB 2288**  
**Hearing Date 2-9-01**

**Senator Bercier:** Why won't the doctors in ND take on these claims?

**Paul Traynor:** They don't want to get involved in the legal system and they don't need the work.

**Patrick Ward:** (ND Domestic Insurance; Opposes) See attached testimony.

Hearing closed.

Hearing reopened on 2-16-01.

**Senator Fischer:** ( District 46; Supports) See attached testimony.

**Sonna Anderson:** ( NDTLA; Lobbyist # 332; Supports) See attached testimony.

**Senator Mutch:** How would you find the medical examiners?

**Senator Fischer:** Insurance companies could work this out. I'd like to see random doctor assignment.

Hearing closed.

Committee reopened on 2-16-01.

Senator Mutch motions to Do Not Pass. Seconded by Senator Bercier. Roll call 1 taken. 3-3-0.  
**FAILED.**

Senator Stenehjem hands out proposed amendments.

Senator O'Connell moves to accept proposed amendments. Seconded by Senator Bercier. Roll call taken. 5-1-0. Senator O'Connell motions to Do Pass as amended. Seconded by Senator Espegard. Roll call taken. 4-2-0.

Committee closed.

**FISCAL NOTE**  
Requested by Legislative Council  
02/20/2001

Bill/Resolution No.:

Amendment to: SB 2288

**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.*

|                | 1999-2001 Biennium |             | 2001-2003 Biennium |             | 2003-2005 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| Expenditures   | \$0                | \$0         | \$15,000           | \$0         | \$0                | \$0         |
| Appropriations | \$0                | \$0         | \$15,000           | \$0         | \$0                | \$0         |

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

| 1999-2001 Biennium |        |                  | 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

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

Engrossed Senate Bill No. 2288 requires that the Insurance Department prepare a report that analyzes the impact that independent medical examinations (IMEs) have on the provision of no-fault benefits, review medical service providers who perform such exams, and review how other states regulate those exams.

Except for the study of the impact of IMEs on no-fault benefits, the Department anticipates being able to gather the needed information and prepare a report in the normal course of the Department's business. We anticipate asking no-fault companies, doctors, chiropractors, trial attorneys, and injured persons to participate in various surveys. The Department will analyze the surveys and prepare the report using in-house resources so that no impact on the General Fund is anticipated.

A study of the impact of IMEs on no-fault benefits, however, will require an expenditure beyond the Department's present appropriation. The Department proposes to contract with one or more impartial medical persons to review no-fault files in which an IME has been requested. That person will be asked to determine whether or not the decision of the IME is supported by the evidence in the file. To do so will require contracting with doctors or chiropractors at a cost estimated to be between \$75 to \$150 per hour. The review is estimated to take between 1 and 1.5 hours per file. The Department believes that at least 100 files should be reviewed to provide meaningful data.

The Department believes that an appropriation of \$15,000 would allow sufficient money in which to conduct a meaningful study. The Department will negotiate price and, depending on the results of the negotiation and the length of time the examiner takes to review files, will review as many files as possible

within the budgeted funds. We expect to be able to review in excess of 100 files with the \$15,000 appropriation.

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.*

None

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.*

General fund expense will increase by \$15,000 for the 2001-2003 biennium.

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.*

|                      |                    |                       |                      |
|----------------------|--------------------|-----------------------|----------------------|
| <b>Name:</b>         | Charles E. Johnson | <b>Agency:</b>        | Insurance Department |
| <b>Phone Number:</b> | 328-2440           | <b>Date Prepared:</b> | 03/05/2001           |

**FISCAL NOTE**  
Requested by Legislative Council  
02/01/2001

**REVISION**

Bill/Resolution No.: SB 2288

Amendment to:

**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.*

|                | 1999-2001 Biennium |             | 2001-2003 Biennium |             | 2003-2005 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| Expenditures   | \$0                | \$0         | \$81,500           | \$0         | \$72,000           | \$0         |
| Appropriations | \$0                | \$0         | \$81,500           | \$0         | \$72,000           | \$0         |

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

| 1999-2001 Biennium |        |                  | 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

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

This bill establishes a personal injury protection program that will facilitate the resolution of disputes over treatment of auto accident injuries. The Commissioner of Insurance must establish the program and oversee its operation. It is expected that the establishment of the program and its first year of operation will require .5 FTE-clerical at an estimated cost of salary and benefits of \$10,000 annually and 1.0 FTE-program administrator at an estimated cost of salary and benefits of \$30,000 annually, for a total cost of \$40,000 for the first year. After the program is established and has operated for a year, it is expected that the positions could be combined to require .5 FTE-clerical at a cost of \$10,000 annually and .75 FTE-program administrator at a cost of \$22,500 annually, for a total cost of \$32,500 annually. We also estimate an increase in operating expenses for supplies, materials, telephone costs, and others of \$4,000 per biennium and an estimated cost of equipment, including file cabinets, office furniture, and computer equipment of \$5,000 per biennium for the first biennium and \$3,000 per biennium thereafter.

**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.*

None

**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.*

General fund expense will increase by \$81,500 for the 2001-2003 biennium and by \$72,000 per biennium thereafter.

**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.*

**Insurance Department:**

- a. Salaries and wages increased by \$72,500 for 2001-2003 biennium.
- b. Operating expense increased by \$4,000 for 2001-2003 biennium.
- c. Equipment expense increased by \$5,000 for 2001-2003 biennium.

Includes 1.5 FTE first year, 1.25 FTE thereafter.

|                      |                    |                       |                      |
|----------------------|--------------------|-----------------------|----------------------|
| <b>Name:</b>         | Charles E. Johnson | <b>Agency:</b>        | Insurance Department |
| <b>Phone Number:</b> | 328-2440           | <b>Date Prepared:</b> | 02/02/2001           |

**FISCAL NOTE**  
Requested by Legislative Council  
01/23/2001

Bill/Resolution No.: SB 2288

Amendment to:

**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.*

|                | 1999-2001 Biennium |             | 2001-2003 Biennium |             | 2003-2005 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       | \$0                | \$0         | \$72,500           | \$0         | \$65,000           | \$0         |
| Expenditures   | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| Appropriations | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |

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

| 1999-2001 Biennium |        |                  | 2001-2003 Biennium |        |                  | 2003-2005 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
| \$0                | \$0    | \$0              | \$0                | \$0    | \$0              | \$0                | \$0    | \$0              |

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

This bill establishes a personal injury protection program that will facilitate the resolution of disputes over treatment of auto accident injuries. The Commissioner of Insurance must establish the program and oversee its operation. It is expected that the establishment of the program and its first year of operation will require .5 FTE-clerical at an estimated cost of salary and benefits of \$10,000 annually and 1.0 FTE-program administrator at an estimated cost of salary and benefits of \$30,000 annually, for a total cost of \$40,000 for the first year. After the program is established and has operated for a year, it is expected that the positions could be combined to require .5 FTE-clerical at a cost of \$10,000 annually and .75 FTE-program administrator at a cost of \$22,500 annually, for a total cost of \$32,500 annually.

**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.*

None

**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.*

\$40,000 first year; \$32,500 each year thereafter

**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.*

The Insurance Department appropriations would have to be increased by \$72,500 for the 2001-2003 biennium and by \$65,000 for each biennium thereafter.

|               |                    |                |                      |
|---------------|--------------------|----------------|----------------------|
| Name:         | Charles E. Johnson | Agency:        | Insurance Department |
| Phone Number: | 328-2440           | Date Prepared: | 01/31/2001           |

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2286**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

*amend*  
**SECTION 1. INSURANCE COMMISSIONER - INDEPENDENT MEDICAL EXAMINATION REPORT TO LEGISLATIVE COUNCIL.** Before November 1, 2002, the insurance commissioner shall submit a report to ~~each member of~~ the legislative assembly 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."

Renumber accordingly



February 16, 2001

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2288**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. INSURANCE COMMISSIONER - INDEPENDENT MEDICAL EXAMINATION REPORT TO LEGISLATIVE COUNCIL.** 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."

Renumber accordingly

2-16  
1

Date:  
Roll Call Vote #:

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2288**

Senate Transportation

Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Mutch Seconded By Bercier

| Senators                      | Yes | No | Senators          | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Senator Stenehjem, Chairman   |     | X  | Senator O'Connell |     | X  |
| Senator Trenbeath, Vice-Chair |     | X  | Senator Bercier   |     | X  |
| Senator Mutch                 | X   |    |                   |     |    |
| Senator Espgaard              |     | X  |                   |     |    |
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Total (Yes) 3 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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

X TIE

2-16  
Date:

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2248

Senate Transportation

Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number 10734.0102

Action Taken

Move Amendment

Motion Made By

O'Connell

Seconded

By

Bercier

| Senators                      | Yes | No | Senators          | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Senator Stenehjem, Chairman   | X   |    | Senator O'Connell | X   |    |
| Senator Trenbeath, Vice-Chair | X   |    | Senator Bercier   | X   |    |
| Senator Mutch                 |     | X  |                   |     |    |
| Senator Espgaard              | X   |    |                   |     |    |
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Total (Yes) 5 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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

2-14  
ote #: 3

2288

## Committee

or



10734.a02

## De Pass as Amended

**Seconded  
By**

O'Connell

Esperando

[illegible]

4

2

0

Espejard

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

**REPORT OF STANDING COMMITTEE**

**SB 2288: Transportation Committee (Sen. Stonehjem, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2288 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. INSURANCE COMMISSIONER - INDEPENDENT MEDICAL EXAMINATION REPORT TO LEGISLATIVE COUNCIL.** 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."

Renumber accordingly

2001 HOUSE TRANSPORTATION

SB 2288

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2288

House Transportation Committee

☐ Conference Committee

Hearing Date March 8, 2001

| Tape Number                                       | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1   | x      |        | 0       |
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| Committee Clerk Signature <i>Laurie B. Fisher</i> |        |        |         |

Minutes: Rep. Weisz - Chairman opened the hearing on SB 2288 as engrossed: A BILL for an Act to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations.

Sen. Fischer: I am senator of District 46 south Fargo. I appear here today to support 2288 -- I don't have a lot of testimony because the bill was changed dramatically in senate from a program that would put together a process for giving independent medical exams to a study idea insurance commissioner and a report to next assembly. So am still supporting the study; however, I would ask the committee if they are very daring or reckless to step out of the box and amend this bill back to its original form. We could deal with it a conference committee on the senate side. I don't have any other information -- the study idea is a positive measure and I think if this committee feels as though that is the option they want to take I would ask you to support that.

Rep. Weisz - Chairman ( 101 ) What do you expect to get out of the study?

Sen. Fischer: The study itself I think is because -- I don't know exactly what the study is going to entail -- I would hope they would take a look at exactly how independent medical exams are done -- people I have talked to -- I have experienced the process myself a couple of years ago -- when I was in a car accident and -- we all have no-fault insurance. We pay the premium on no-fault-- I probably had spent \$2500 in no-fault coverage -- and all of a sudden I was told I needed an independent medical exam -- I had been seeing two physicians for a period of about 2 or 3 years and the independent medical exam that was done -- by the insurance -- paid for by the insurance company and I was told that I had to take -- or I would loose coverage-- was done in an office building in Moorhead --it took about 12 minutes -- and he refuted everything the physicians I had seen -- for several years; and that there wasn't anything wrong with me that a little -- whatever would take care of -- I don't know -- he never did recommend anything -- except that I didn't have any injuries -- in examining the doctor that took the exams -- he said well I only do about 8 of these a week -- I only do it about 4 times a month and I do it only about 10 months a year. For each exam he is paid \$1200. So what it comes down to is that the doing independent medical exams -- this particular doctor was making in excess of a 1/2 million dollars a year. I have that in deposition -- if you would like to examine that -- in fact video but the fact of the matter is that the original bill addressed -- the concerns of -- one of the big concerns I have is -- that I know there are a lot of people in the state that don't have health insurance. If they are denied -- right now, the -- no-fault insurance has not been looked at since 1972 -- right now you have 30,000 of no-fault and 5,000 medical, after 5,000 your health insurance has to pick up the tab --- after 5,000 -- there are some deductibles that the insurance pay but the balance of that no-fault is delegated to -- lot of work and if you don't have health insurance to fall back on to get that medical care --



how are you going to get back to work? That is not part of this bill but I think that needs to be looked at -- at the same time there forcing it on the health insurance providers and I think one of the health care providers will address this -- I think it really has to be looked at in the context of -- how do we put together a crew of physicians that the person who has been in an accident can have two -- the insurance company can take two and the other physician would be doing independent medical exam that would be for everyone. It would be a real exam. One of the doctors -- that I have consulted -- I asked him if he ever did any -- he said I have done them but they don't like mine. I said why is that? Because you would get same exam -- the insurance company would get the same exam as the one I give you when you come in to me. That was his quote. But that is where the bill is at when I introduced it in the transportation committee on the senate side. They felt they wanted to study it. Much like Garrison Diversion.

Rep. Jensen: ( 428 ) Why did they want to study -- I take it there was substantial opposition --  
Sen. Fischer: Exactly, the insurance companies were threatening to raise premiums, but my feeling there is the actuaries have already done -- when you pay your premium they have already figured in the \$30,000 that they may have to pay in no-fault -- As I stated on the floor of the Senate I mean they have figured in that I am going over a cliff and -- so as far as I am concerned the insurance companies threat is if they are going to use independent medical exams to shorten the availability of no-fault then our premiums could drop -- they are threatening a premium raise as if this is not -- if you can't access the \$5000 that in no-fault insurance we should have premium reduction.

Sona Anderson: I am a lobbyist. I represent the North Dakota Trial Lawyers Association and I am here to speak in favor of 2288. I spoke in favor of it in its original version. I speak in favor of the

amended version as well. Senator Fischer asked you to step out of the box. I think that would be great. North Dakotans are required to purchase insurance on their vehicles. A portion of the policy pays for the medical treatment and injuries suffered in an accident. These payments are made on their own insurance policy regardless of who is at fault in the accident. The present law requiring independent medical exams are in use provides that the insurance company can require you to have an independent medical exam conducted by an examiner of their choice and the insurance company will make the determination either to continue or to stop paying benefits based on that examiners opinion. As I read this, resolved were hundreds injured motorist who have had their benefits cut off after seeing an out-of-state examiner. Several North Dakota persons testified on February 9th of their going to Moorhead and to Minneapolis and receiving cursory examinations had never met. Some medical opinions were issued after a 10 minute exam which cut them off from their benefits. Those who had health insurance could transfer their cost to their health coverage. David Bossert, a Fargo attorney testified there is a small pool of well paid IME examiners who almost always determine that the injured party does not need further treatment. This a problem that needs to be addressed. Senator Fischer introduced SB 2288 to make sweeping changes following a program adopted in Colorado. He envisioned a panel to choose examiners in a way that would insure there would be at least one truly impartial and independent medical examiner who would not be beholden to either side and who would make an independent decision. The Senate recognized there may exist a problem in IME needs but we are not convinced or 'snoekered?' by SB 2288 was the right one. SB 2288 was amended directing the Insurance Commissioner to study the effects of IME's --- what impact they have upon the state -- how other states regulate IME's -- and make recommendations for the next

session. We support the study and will if requested assure that direct and reliable data will be collected and furnished. This our way of supporting SB 2288.

Pat Ward: I represent the North Dakota Domestic Insurance companies. I am here to testify in support of SB 2288 as engrossed. I strongly opposed the bill in its original form. I am passing out copies of a study which has already been done. Copies of Mr. Ward's testimony and handouts are attached.

Rep. Jensen: ( 1522 ) Would it be possible for you to give us the same kind of information that was given us in the hypothetical stage or the example which you have just given us? Or the one Senator Fischer has given us -- you know without revealing any of the particulars - so we would know exactly the extent of the records that were reviewed ahead of time -- the other kinds of criteria that was some of Senator Fischers that was not reviewed -- I guess I would be reassured if -- or to be able to verify that all of that was indeed have these happen in Senator Fischer's behalf --

Pat Ward: I do not have access -- because obviously the privacy issue -- to Senator Fischer's records -- however, Senator Fischer did come in here with Dave Bossert as an attorney who was the plaintiff's attorney from Fargo -- and he did mention that a deposition was taken of the IME doctors -- so it is my suspicion that Senator Fischer probably filed a law suit because he disagreed with the report of the Independent Medical examination -- I don't know whether he settled that law suit -- or how that was resolved. It is possible that like other cases he had prior problems with his back -- I believe he referred to back problems when he was in the Senate -- he may have -- you know -- or that entered into the profile I am talking about - -I do know that the three other plaintiffs that were involved in -- the Senate side that came in and talked -- of the four

at least one -- because that one actually had the case -- against the law firm and when that case went to the jury trial, she lost her case in front of the jury -- in other words the jury believed that the independent medical examining doctor did a better job than the treating doctor in determining whether her injuries were related to the car accident.

Rep. Jensen: ( 1679 ) I guess I would -- feel better if I could have verification of what he had said and it is one thing we all have statements to make -- it is nice to have backup supporting the statements -- that is what I am looking for --

Pat Ward: I guess we can only do that if we have a release from Senator Fischer and he tells us what the insurance company is dealing with .

Gary Thune: I appear on behalf of the American Insurance Association. I will be very brief with my comments as the engrossed version of the bill the American Insurance Association supports, basically the simplified things Pat Ward has said with regards to the prior study. We welcome the additional information a more intense study -- done through the Insurance Commissioner's office.

Rep. Weisz - Chairman ( 1779 ) there being no one else wishing to appear for or against SB 2288 we will close the hearing on receipt of any further testimony.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2288 B

House Transportation Committee

☐ Conference Committee

Hearing Date March 16, 2001

| Tape Number                                     | Side A | Side B | Meter #  |
|---|--------|--------|----------|
| 2   |        | x      | 5,730    |
|   |        |        | End 6170 |
| Committee Clerk Signature <i>Lauren B. Zink</i> |        |        |          |

Minutes: Rep. Weisz - Chairman opened the discussion for action on SB 2288.

Following discussion:

Rep. Hawken: I move a "Do Pass" for SB 2288.

Rep. Jensen: I second that motion.

On a roll call vote the motion carried: 8 yeas 5 nays 1 Absent

Rep. Price was designated to carry SB 2288 on the Floor.

END ( 6170 ).

Date: 3/16  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2288

House Transportation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By Rep. Harman Seconded By Rep. Jensen

| Representatives              | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Robin Weisz - Chairman       |     | ✓  | Howard Grumbo   | ✓   |    |
| Chet Pollert - Vice Chairman |     | ✓  | John Mahoney    |     | ✓  |
| Al Carlson                   | ✓   |    | Arlo E. Schmidt | ✓   |    |
| Mark A. Dosch                |     | ✓  | Elwood Thorpe   |     | ✓  |
| Kathy Hawken                 | ✓   |    |                 |     |    |
| Roxanne Jensen               | ✓   |    |                 |     |    |
| RaeAnn G. Kelsch             | ✓   |    |                 |     |    |
| Clara Sue Price              | ✓   |    |                 |     |    |
| Dan Ruby                     | ✓   |    |                 |     |    |
| Laurel Thoreson              | A   |    |                 |     |    |
|                              |     |    |                 |     |    |
|                              |     |    |                 |     |    |
|                              |     |    |                 |     |    |
|                              |     |    |                 |     |    |

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep Price

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

**REPORT OF STANDING COMMITTEE (410)**  
March 16, 2001 12:18 p.m.

Module No: HR-46-5823  
Carrier: Price  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2288, as engrossed: Transportation Committee (Rep. Welsz, Chairman) recommends  
DO PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2288  
was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2288



### Suggested Amendments to SB 2288

1. ¶2. – Line 20, insert after "healthcare":  
"licensed in this state,"
2. ¶3. – Line 4, after "examination" insert the following:  
"at a location within the State of North Dakota, reasonably convenient for the individual to be examined"
3. ¶3. – Line 9, delete "if practical" and insert:  
"Unless good cause is shown"
4. ¶4. – Line 21, after "five" insert:  
"business"
5. ¶4. – Line 28, insert the following after "examination":  
"If requested by the insurer, the cost to be paid shall include wage loss, meals and all reasonable travel and lodging expenses."
6. ¶8. – Line 13, after "proceeding" insert the following:  
"related to the issue of benefits under this chapter,"
7. ¶8. – Line 20, after "proceeding" insert the following:  
"related to the issue of benefits under this chapter,"
8. ¶8. – Line 21 after "benefits", through line 28 "practitioners" delete:  
~~A claim for relief, including a proceeding alleging any cause of action under the tort of bad faith breach of the insurance contract, arising out of any action taken by the insurer which is consistent with the agreed upon findings, opinions, and conclusions of two of the three health care practitioners may not be brought or maintained against the insurer; except that the insured or injured individual entitled to benefits may bring a civil proceeding alleging that clear and convincing evidence rebuts the findings, opinions, and conclusions of two of the three health care practitioners.~~
9. ¶8. – Line 29, delete the word "only" after "pay."
10. ¶8. – Line 30, after the word "denied" insert the following:  
"and all interest required by N.D.C.C. 26.1-41-09(2)."

My name is Gary Lindemann. I live at 300 23<sup>rd</sup> Avenue NE, Jamestown, North Dakota. I work at Russ Davis Wholesale in Jamestown and am 44 years old, married and have two children. I am here to speak in favor of Senate Bill 2288.

I was rear-ended by an Airborne Express pickup on March 29, 2000.

I am insured by Nodak Mutual Insurance Company and have been for approximately the past 10 years. Prior to March 29, 2000, I have never had a no-fault claim with Nodak.

I went to the doctor the day after the accident. Dr. Webster said that I suffered a cervical strain injury of my neck. He gave me some medication. I continued to have problems. My neck was VERY tender. I went back to the clinic in Jamestown about 10 days later and saw my family doctor, Dr. Curtis Nyhus, who started me on physical therapy and changed my medication.

By 3 months following the accident, I was getting bad headaches when I did any degree of activity or even riding in a car. I had pain going down into my shoulders, more on the right side. Dr. Nyhus scheduled me to be seen by a neurologist. I saw Dr. Ryan Harrington in Fargo the end of July, approximately 4 months after I was injured. He found significant muscle spasms and a very tender trigger point. He ordered a trigger point injection and talked to Dr. Nyhus about ordering additional physical therapy. I had physical therapy at Jamestown Hospital during August of 2000.

Dr. Nyhus wrote a letter to Nodak Mutual on August 14, 2000, in which he stated:

"Gary has been having difficult time with his neck, and he has been found to have cervical disc disease along with herniated discs. He is presently undergoing physical therapy and restriction of activities to hopefully get this to settle down. Right at the present time he is unable to do any physical work."

I did not have any herniated discs in my neck or neck problems before being injured

in this accident.

I tried everything I could to get better. I had trigger point injections, physical therapy, various medications. I did everything my doctors and therapists asked me to do. I was miserable!

To make matters worse, I went to see my insurance company's claim representative at the end of August or beginning of September, and he told me they were going to schedule me for an Independent Medical Evaluation. I later received a letter dated September 5, 2000 (just a little over 5 months after I was injured) telling me that I was scheduled for the IME on October 23, 2000, at the EastTen Clinic in Moorhead, Minnesota. I wasn't even told what doctor I would be seeing there. I was seen by a doctor from Edina, Minnesota, by the name of Dr. Joel Gedan in Moorhead, Minnesota on October 23, 2000. He spent less than 1 hour with me, which included asking me questions and examining me. It was my understanding that if I failed to go to this examination I would lose any no-fault benefits that I had paid for because I would not be cooperating under the terms of my insurance policy.

I also understand that under the terms of my insurance policy that I am required to submit to physical and mental examinations by physicians selected by my insurance company when and as often as they may reasonably require.

Nodak Mutual withheld payment of outstanding medical expenses incurred as a result of injuries from my accident until I was examined by their doctor. The company did pay unpaid medical expenses through November 15, 2000, but based on the information in the IME doctor's report, refused to pay any and all expenses since that time.

Dr. Gedan concluded that I would not benefit from further medical treatment relating to my car accident and that I was able to do lawn mowing and housecleaning duties. As a result of Dr. Gedan's "Independent Medical Examination," Nodak Mutual wrote a letter saying they would be "unable to provide any additional benefits under the 'personal injury protection' portion of Mr. Lindemann's auto policy as a result of the accident of March 29, 2000."

I continue to have problems with my neck from this accident.

This whole process of how Nodak Mutual treated me has been very frustrating to me. I was trying everything I could to get the help I needed to get better and my own insurance company instead of helping me, I felt, were just trying to get rid of me. My treating doctors tell me that I continued treatment and care, and yet my insurance company, Nodak Mutual, refuses to pay for that treatment and care. I do have health insurance through my job, but I am required to pay deductibles and co-payments.

I don't understand why a Twin Cities doctor is allowed to do these examinations. Why should I be required to go to Moorhead, Minnesota, to be examined by a doctor who isn't even licensed in North Dakota? Nodak told me I had to attend the "Independent Medical Examination."

It doesn't seem right to me that my agent tells me that I have \$30,000 of no-fault coverage to pay medical expenses and wage loss, and I pay the premium, but when a tragedy like this happens, the picture changes substantially. I can't understand how an insurance company can cut off benefits like this. This problem is never known by an insured until a life-changing accident like this occurs. Then you are dealing with not only

the injuries, but I feel abused by my OWN insurance company. Aren't they supposed to be helping me? If not, why do I pay them a premium for this coverage?

While I do not know all the details of the proposed Bill you are considering regarding IMEs, I understand that it will at least provide some reasonable guidelines that must be followed by an insurance company before they can have someone like me examined and then terminate no-fault benefits that I was counting on to pay my medical expenses from an accident for which I was not responsible. I urge you to seriously consider adopting this legislation for people like me and other people in my situation.

Thank you for listening to me.

Mr. Chairman and members of the committee, my name is Michele Sigi and I live north of Mandan. I'm 34 years old, married, and have 2 children. I'm here to speak in favor of Senate Bill 2288. I'm employed as a paralegal in the law offices of Dickson and Purdon here in Bismarck. I have been a paralegal and worked in law offices for 9 years. I have had considerable experience in the IME process. My experience comes not only from working in a law office that represents individuals injured in automobile accidents but also from the standpoint of someone who has been injured in a car accident and forced to submit to an IME by my insurance company and had benefits terminated.

I have seen and experienced first hand the frustration and pain that an innocent injured party experiences who is legitimately injured, needs medical treatment and then has the rug pulled out from under them by their own insurance company as the result of an IME. It is devastating if you have been injured in an auto collision and expect your medical expenses to be taken care of as a result of insurance protection you paid for, and relied on, only to find out that your own insurance company does not believe you. You are required to go to be examined, perhaps out of state, by some doctor you've never met, who examines you for less than one hour, and then concludes that you need no further medication, physical therapy, or treatment of any kind, and that you can work normally. Those people, while they may have health insurance to fall back on, nevertheless have to pay deductibles and co-pay amounts with money they many times don't have.

I have seen firsthand, the stress, anxiety and fear in people who are already injured due to no-fault of their own, and have these benefits terminated. It is a very serious and real problem. We see it in virtually all of the clients we represent.

When one of our clients is forced to go to an IME arranged by their own insurance company, we know, before the cursory exam is even conducted, what the result is going to be. The result is almost always the same. After the company receives the IME report they cut off their insureds benefits and the injured party has no recourse.

I often think about these people, citizens of North Dakota, who have bought and paid for no-fault insurance benefits, who do not have a lawyer to represent them and are left out in the cold. What do they do? Who do they turn to for help?

It is my understanding that the legislature created the right of insurance companies to compel their insureds to attend these IME's. As a person who has experienced this firsthand and who oftentimes sees people in the same situation, it only seems fair to me that the legislature now set up guidelines such as provided by Senate Bill 2288 and the rules to be established under them. This bill will make the process a fair one for all parties concerned.

I sincerely urge you to approve this legislation.

## **Comments by David Bossart, Fargo, North Dakota**

Mr. Chairman and members of the Senate Transportation Committee, my name is David Bossart. I'm here to speak in favor of SB 2288.

I practice law in my own firm in Fargo. I have been an attorney for over 35 years. During that time I have represented innumerable clients who have been subjected by their own insurance companies to so-called "Independent Medical Exams," or "IMEs" as they are known and, as a result of those IMEs were denied any further payments for medical care.

The no-fault laws were enacted in 1973 to assure people injured in auto accidents that their medical bills would be paid promptly and without hassle and the need to sue anyone. In 1985, the legislature gave insurance companies the unbridled right to have their insureds subjected to so-called IMEs without any specific guidelines to be followed by the insurance companies. It wasn't long before the IME process was being abused.

The facts are that in North Dakota when an IME is requested by a no-fault insurance company of its own insured, in an overwhelming majority of the cases after receiving the IME doctor's report, the benefits to the insured are terminated. This places the insured, as you have heard, in a very

difficult position. While the insurance company saves money by cutting off its insured's no-fault benefits and the doctors make money doing IMEs, the poor insured is without money from his or her no-fault coverage to pay for the medical care their treating doctors tell them they need to get better.

The IME business is indeed, "big business." It is not unusual, for someone like me who represents injured people, to find that doctors who do a lot of no-fault and defense insurance IMEs, make large sums of money, some in the hundreds of thousands of dollars. While the IME doctors make all that money, the unfortunate insured party may be without any no-fault benefits they were counting on to pay their medical expenses.

Without any guidelines to follow, the opportunity for abuse is too great. Senate Bill 2288 will retain the right of the insurance carrier to have IMEs conducted while at the same time protecting the rights of the person being examined.

Every right under law should come with responsibilities and safeguards. The Constitution allows search and seizure of individuals but the law sets out the guidelines that must be followed when that right is exercised. Insurance companies should not complain at all about this bill or any guidelines to be set up under it.



As of 1998, there were 211,000 PIP -- No-Fault policies in effect in North Dakota. Only 1.05% of those ever paid benefits. (Insurance Research Counsel (1998).) Insurance companies have had many years with literally no limit of their right to do these IMEs. It's time to fix the problem and institute the guidelines and regulations established by SB 2288.

Just because this room is not full of people who have had their no-fault benefits cut off, do not be misled -- they are out there. This bill will impact many North Dakota citizens positively. It will protect their rights to benefits they bought and paid for.

This is not a "Lawyer Bill" -- In fact it is an "Anti-Lawyer Bill" because:

- A. Many people come to see lawyers because their benefits have been cut off.
- B. Insurance companies cutting off their insureds' no-fault benefits creates business for lawyers.
- C. If this bill is passed and IMEs are done fairly and objectively by doctors who are not just selected by the insurance company, there will be a greater chance of fairness for the insured in the IME process and I believe a significant decrease in the termination of no-fault benefits.

Thank you for listening to me. I urge your support of this important consumer bill, and I am happy to answer any questions you may have.

**David R. Bossart**  
**1220 Main Avenue**  
**Fargo, North Dakota**  
**701-271-8030**

**Testimony supporting SB 2288**  
**Submitted by the North Dakota Trial Lawyers Association**  
**February 9, 2001**

**Members of the Transportation Committee:**

My name is Sonna Anderson, I am an attorney practicing in Bismarck, and I am a registered lobbyist (#332) for the North Dakota Trial Lawyers Association. On behalf of the Trial Lawyers Association, I speak in support of Senate Bill 2288.

North Dakotans are required to purchase insurance on their vehicles. The Personal Injury Protection portion (PIP) of the policy is designed to pay for the medical treatment for injuries suffered in an accident. These payments are to be made by one's own insurance policy, regardless of who is at fault in the accident and the premiums for this benefit are paid for by the insured.

Section 26.1-41-11 of the North Dakota Century Code was adopted in 1985.

Whenever the mental or physical condition of a person is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the person shall submit to mental or physical examination by a physician designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.

As you have already heard in testimony offered this morning, the industry practice has been to force injured North Dakotans to submit to a brief examination by an IME doctor, often brought in from Minneapolis to do a cursory examination with the expectation that the IME doctor will determine that the injury is either non-existent or the result of some event other than the automobile accident. The end result is that the injured North Dakotan is left without PIP benefits and without any real recourse against their insurance company.

SB 2288 would simply ensure that the IME examiner is a fair and impartial examiner, not one employed with the expectation of making a finding in the company's favor. This legislation is modeled after Colorado Law. According to the information we have received from Colorado, it has worked very well. I am attaching a copy of the regulations adopted by Colorado authorities. They are simple to read and very straightforward.

We understand that the cost of funding this program in Colorado has been less than originally expected. The cost is less than \$1.00 per PIP insurance policy in place in the state.

We believe that this program has merit. It will provide a fair and objective panel of physicians who will not be beholden to either the injured North Dakotan or the Insurance Company. On behalf of the citizens of North Dakota, we ask that you vote to support SB 2288.

Thank you. I would be happy to answer any questions you may have.

**Regulation 5-2-9****Have a Question?****Amended Regulation 5-2-9****PERSONAL INJURY PROTECTION EXAMINATION PROGRAM**

**Section 1 Authority**  
**Section 2 Basis and Purpose**  
**Section 3 Rule**  
**Section 4 Enforcement**  
**Section 5 Severability**  
**Section 6 Effective Date**  
**Section 7 History**

**Section 1 Authority**

This regulation is promulgated by the Commissioner under the authority granted in §§ 10-1-109, and 10-4-706(6)(a), C.R.S.

**Section 2 Basis and Purpose**

The purpose of this regulation is to implement the Personal Injury Protection (PIP) examination program enacted under § 10-4-706, C.R.S., and as specifically directed by the General Assembly in § 10-4-706(6)(a), C.R.S.

**Section 3 Rule****A. DEFINITIONS**

1. **Claim:** A request for payment of a PIP benefit submitted to the insurer on or after January 1, 1997 for which reasonable proof under Regulation 5-2-8 has been provided and which was not subject to an Independent Medical Examination (IME) prior to January 1, 1997.
2. **Days:** When referred to in this regulation shall mean business days.
3. **Disputed PIP Claim:** A claim, or any portion thereof, which the insurer is either investigating pursuant to Regulation 5-2-8 or gives notice that it is denying. A disputed PIP claim may include a claim the insurer is investigating, even though the insurer has paid or may be paying other claims for benefits.
4. **IME Program Administrator:** The person or entity selected by the Commissioner to administer the PIP examination program, whose name, business address and telephone number may be obtained from the Division of Insurance.
5. **PIP Examination:** Any in-person physical or psychological examination, unless other review of records or evaluation is appropriate and agreed to by the parties.

**B. STANDARDS AND CONDITIONS FOR MEMBERSHIP ON THE PIP EXAMINATION REVIEW PANEL**

An applicant for panel membership shall complete the PIP IME registration form as required by the IME Program Administrator. By submitting a completed registration form for panel membership to the IME Program Administrator, a health care practitioner certifies he/she:

1. is qualified to serve on the panel and shall abide by all applicable statutes, rules and regulations; and
2. is actively engaged in the practice of his/her profession as defined in §10-4-706(6)(c), C.R.S.; and
3. shall personally perform a PIP examination when selected; and
4. shall promptly notify the parties to the claim of any circumstances that, in his/her judgment, constitute a conflict of interest with respect to a particular claim; and
5. shall promptly notify the IME Program Administrator of any circumstances that might disqualify the individual from panel membership in general; and
6. upon notification of being selected as an examiner for a particular claim, shall schedule the PIP examination to occur no later than fifteen (15) days from receipt of written notification, unless the parties consent to a later date; and
7. shall complete the IME report and "IME Report Summary Sheet" prescribed by the Commissioner within fifteen (15) days after the PIP examination appointment; and
8. is familiar with the provisions of §10-4-706(6), C.R.S., and the provisions of this regulation applicable to panel members; and
9. consents to the terms and conditions set forth in §§10-16-601 through 10-16-606, C.R.S., regardless of whether he/she is a "doctor" as defined in §10-16-602(1), C.R.S.; and
10. shall not become a treating provider for the PIP claimant; and
11. shall perform the PIP examination in an impartial and objective manner; and
12. shall promptly respond to a request from a party to a PIP claim for copies of records from a previous PIP examination performed by such panel member regarding such claim; and
13. shall promptly notify the IME Program Administrator of any changes in information on his/her membership application, including fees.

Failure to comply with these provisions may result in removal of the panel member from membership on the PIP Examination Review Panel by the IME Program Administrator.

### **C. REQUESTING A PIP EXAMINATION**

1. A party to a PIP claim may request a PIP examination when there is a disputed claim or when the party is dissatisfied with the findings, opinions and conclusions of a PIP review panel member. An insurer, other than an insurer using a managed care plan, shall obtain any PIP examination through the PIP examination program.
2. The requesting party shall submit a request to the IME Program Administrator on a form titled, "IME Request Form," prescribed by the Commissioner. The completed request form may be mailed or faxed to the IME Program Administrator. Concurrently, the requester shall notify the other party and the treating provider whose care is to be reviewed, of the request.
3. The requesting party shall specify the professional specialty of the health care practitioner who will perform the PIP examination. Where practical, such professional specialty shall be the same as that of the treating health care practitioner whose treatment, opinions, diagnosis, plan of treatment, prognosis, statement of causation, or recommendations are intended to be reviewed; except that psychiatrists, psychologists, and neuropsychologists may review one another's treatment and opinions to the extent that the reviewing expert is qualified to address the specific issues which arise in a particular case.
4. In those circumstances in which several professional specialties are treating the injured party for the same injury whose treatments and opinions are sought to be reviewed in an IME, the requesting party shall designate the professional specialty of the particular health care practitioner whose treatment and opinions are intended to be reviewed.
5. In those circumstances where a PIP examination report recommends future treatment, the requesting party may designate the same PIP examiner who made such recommendations to perform a subsequent PIP examination or the requesting party may request a list of five PIP examiners as set forth in section 3. D. 1.
6. An injured party under a managed care plan may request a PIP examination only after exhausting all internal grievance and review procedures available under the managed care plan. Once all internal grievance and review procedures have been exhausted, the insurer shall provide written notice to the injured party of the injured party's right to seek a PIP examination. In the event that no internal grievance and review procedures are available under the managed care plan, the injured party has the right to request a PIP examination upon denial of the claim by the insurer.
7. If an injured party who elected to receive benefits pursuant to a managed care plan chooses to be treated exclusively outside the network, the PIP benefits are no longer being provided through a managed care arrangement and the insurer is entitled to obtain a PIP IME. Treatment exclusively outside the network means treatment the injured party elects to receive outside the network, after treating both inside and outside the network for a period of time, without returning to a network provider.

### **D. SELECTION OF THE PANEL MEMBER AND PREPARATION OF RECORDS**

1. Upon receipt of a completed "IME Request Form", the IME Program Administrator shall prepare a list of five panel members using a revolving selection process based on the practice specialty requested and taking into account the geographical location of the claimant. Incomplete request forms may be returned to the requester by the IME Program Administrator and the selection postponed until a complete form is submitted. If the parties agree that a specific health care practitioner shall perform the PIP examination, rendering the list unnecessary, the insurer shall prepare a "Request For IME" form and a "Notice of IME" form and send them to the IME Program Administrator and the claimant. The selected health care practitioner shall be required to complete and submit the "PIP IME Report Summary Sheet" as prescribed by the Commissioner. If the injured party is residing outside the State of Colorado, the IME requester has the option to pay all reasonable expenses to bring the injured party back to the State of Colorado for the PIP examination, or select a licensed practitioner of the same specialty as the treating practitioner if available, and agreed upon by both parties, in the state in which the injured party resides.

2. No later than five days after receipt of the completed IME Request Form, the IME Program Administrator shall transmit the list of five panel member names to the requester by mail or fax. The IME Program Administrator shall include with the list a copy of each panel member's completed information forms.

3. Within five days after receiving the list of panel member names, the requester shall strike through two names on the list and forward the list, together with the application forms corresponding to the remaining names on the list, to the opposing party, by fax or by mail. Concurrently:

a. if the requester is the insurer, the insurer shall also send to the claimant an index of the records relevant to the disputed claim. The insurer shall denote which of the records it intends to submit to the selected panel member, listing the records in reverse chronological order (most recent first) and identifying the date and general nature of each record;

b. if the requester is the claimant, the claimant shall notify the insurer whether such claimant elects to have the insurer prepare the records file. If the claimant so elects, the insurer shall, promptly furnish the claimant with an index of the records in the insurer's file relevant to the disputed claim and the claimant shall promptly return to the insurer copies of any additional records, not already identified on the insurer's index, to be included for the PIP examination. All records identified by the insurer and any additional records identified by the claimant will be submitted to the panel member. If the claimant does not elect to have the insurer prepare the records, the claimant shall send to the insurer an index of the records he/she intends to submit for the PIP examination, listing the records in reverse chronological order and identifying the date and general nature of each record.

c. The requester of the PIP examination shall telephone the other party to confirm the other party's actual receipt of the list and all enclosed materials.

d. All communication from the treating practitioner, the claimant, the



claimant's representative, the insurer or the insurer's representative to the PIP examiner or concerning the PIP examination shall be in writing with copies sent to the other parties.

4. Within five days after actual receipt of the list of names from the requester, the other party shall strike through two of the names remaining on the list and return the list, reflecting both parties' strikes, to the IME Program Administrator and provide a copy to the requester. Concurrently:

a. If the requesting party is the insurer the claimant shall send to the requester copies of all records the claimant intends to submit to the selected panel member, that are not already identified on the requester's index of records. The claimant's records shall be in reverse chronological order to enable the requester to compile a complete file for submission to the selected panel member in accordance with section 3. E. 2. of this regulation.

b. If the requesting party is a claimant who has elected to have the insurer prepare the records, such insurer shall follow the procedures set forth in Section 3. E. 2. of this regulation for submitting the records to the selected panel member. If the requester (claimant) has not so elected, the insurer shall send to the requester copies of all records the insurer intends for submission to the selected panel member, that are not already identified on the requester's index of records. Such records shall be in reverse chronological order to enable the requester to compile a complete file for submission to the selected panel member in accordance with section 3. E. 2. of this regulation.

5. The parties shall make every effort to avoid duplication of records submitted to the selected panel member, however, the party preparing the records for submission shall not omit any record whatsoever without obtaining the written consent of the other party. Parties may supplement the records file through the party preparing such file, but only within the time period established in section 3. E. 2. of this regulation.

6. Unless both parties agree otherwise, the failure of a party to forward the list of panel member names within that party's designated time period shall result in forfeiture of such party's right to strike names from the list. Upon being notified and confirming that such forfeiture has occurred, the IME Program Administrator shall select two of the remaining names on the list to be stricken.

7. To obtain a subsequent PIP examination, the party requesting the subsequent PIP examination shall follow the procedures set forth above in this regulation for requesting PIP examinations.

8. If the selected panel member knows of or becomes aware of any conflict that may prevent him/her from rendering an impartial and objective evaluation, the panel member shall notify the IME Program Administrator and an additional name will be provided to the parties to allow the selection process to be repeated.

#### **E. SCHEDULING THE PIP EXAMINATION AND SUBMISSION OF RECORDS**

1. Upon receipt of the list indicating the name of the panel member selected, the insurer shall promptly complete the "Notice of PIP IME" as prescribed by the Commissioner and shall send the completed notice to the parties, the selected panel member, and the treating provider under review. The selected panel member shall schedule the PIP examination to occur within fifteen (15) days after actual receipt of the notice (see section 3. B. 6.), unless the parties agree to a later date, and the panel member shall notify the parties of the date, time and location of the PIP examination. If the selected panel member cannot schedule the PIP examination within fifteen (15) days and the parties cannot agree on a later date, either party may request that the selected panel member be disqualified and a new name be provided by the IME Program Administrator. A specific date shall be set, even if, by mutual agreement of the parties, only a review of records is sought. If the parties have agreed upon a health care practitioner without necessity of the list of names, the insurer shall prepare the "Request for PIP IME" and the "Notice of PIP IME" and send them to the IME Program Administrator. If the PIP examination is a reevaluation by the same PIP examiner who previously performed the PIP examination, the party requesting the reevaluation shall notify the other parties including the IME Administrator that a reevaluation is being requested with the date of the reevaluation and an index of additional records shall be provided pursuant to Section 3. D. The notification to the IME Administrator shall be made by submitting a fully completed PIP IME Request form. The provision of reevaluations by the same PIP examiner who previously performed the PIP examination shall apply to all reevaluations requested on or after the effective date of this regulation.

2. Once the PIP examination is scheduled, no later than ten (10) days prior to the date of the PIP examination, the requester or the party preparing the records (if not the requester) shall:

- a. prepare an index of the records to be affixed to the front of the records file, identifying the name of the PIP claimant, as well as the date and general nature of each record in reverse chronological order; and
- b. transmit the index of records, and the complete records file to the selected panel member; and
- c. transmit copies of the index of records to the opposing party and to the treating provider under review.

3. A PIP examination, once requested, shall not be withdrawn unless the parties agree or the disputed claim is resolved.

4. Except in cases of unforeseen or emergency events, if a claimant fails to appear for a PIP examination or does not cancel the appointment at least twenty-four (24) hours prior to the scheduled date and time of the PIP examination, the claimant shall pay a reasonable "no-show" fee, if applicable, and reschedule the PIP examination to be completed within fifteen 15 days after the initial scheduled date of the PIP examination. The selected panel member shall notify the requester that the claimant did not appear for the PIP examination and if the claimant rescheduled the examination the date of the PIP examination. If the claimant fails to reschedule the PIP examination, fails to cancel the rescheduled PIP examination at least twenty-four (24) hours in advance, or fails to

appear at such examination, then (1) the PIP examiner may, at the option of the insurer, conduct the examination based on the records submitted by the parties and render an opinion based solely on the records, or (2) the insurer may deny coverage on all or part of the claim for benefits. This section is not intended to alter any terms of the contract between the insurer and insured regarding their respective rights, duties, and obligations and the law involving such matters.

#### F. REPORT BY PIP EXAMINER

1. No later than fifteen (15) days following the date of the PIP examination appointment, the selected panel member shall complete his/her written report and the "IME Report Summary Sheet" as prescribed by the Commissioner. The selected panel member shall transmit a copy of the completed IME Report Summary Sheet to the IME Program Administrator, and shall transmit copies of both the full report and the completed IME Report Summary Sheet to the persons identified on the Notice of PIP IME as authorized to receive the report on behalf of each party. The selected panel member is not required to send the full report to more than two such individuals, one for the requester and one for the other party. The requester shall promptly transmit a copy of the full report and the "IME Report Summary Sheet" to the treating provider whose care was reviewed by the PIP examiner.
2. The report shall address all issues relevant to the examiner's findings with respect to the disputed claim, including, if applicable, but not limited to: reasonableness, necessity, causation, apportionment, diagnosis, prognosis, plan of treatment, need for essential services, ability to work, opinions and recommendations.
3. Questions regarding the content or completeness of the PIP examination, report and IME Report Summary Sheet shall be directed to the panel member.

#### G. FEES

In accordance with §10-3-207(1)(d), C.R.S., every insurance entity authorized to write private passenger automobile insurance coverage shall pay a fee of \$300 to the Division of Insurance for the purpose of administering the PIP Examination Program. The fee is due upon receipt of the "PIP Examination Program Fee" notice from the Division of Insurance and payable no later than February 1 of the year the fee is due.

#### Section 4 Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines and/or suspension or revocation of license.

#### Section 5 Severability

In the event any part of this regulation is determined to be invalid for any reason, the remainder of the regulation shall not be affected thereby.

#### Section 6 Effective Date

This regulation is effective. September 1, 2000.

Section 7 History

Originally issued as Emergency Regulation 96-E-5, effective January 1, 1997

Emergency Regulation 97-E-2, effective April 1, 1997

Emergency Regulation 97-E-3, effective June 30, 1997

Regulation 5-2-9, effective September 1, 1997

Amended Regulation 5-2-9, effective January 1, 1999

Amended Regulation 5-2-9, effective September 1, 2000

**ZUGER KIRMIS & SMITH**

**COUNSELORS AND ATTORNEYS AT LAW**

Lyle W. Kirmis  
Thomas O. Smith, P.C.  
Lance D. Schreiner, P.C.  
James S. Hill, P.C.\*<sup>A</sup>  
Patrick J. Ward\*\*<sup>A</sup>  
Rebecca S. Thiem, P.C.\*  
Daniel S. Kuntz, P.C.  
Brenda L. Blazer, P.C.  
Jerry W. Evenson, P.C.\*  
Lawrence A. Dopson

316 North Fifth Street  
Provident Building  
P.O. Box 1695  
Bismarck, ND 58502-1695  
(701) 223-2711  
fax (701) 223-7387  
zkslaw@zkslaw.com  
www.zkslaw.com

Lawrence E. King, P.C.\*  
Tracy Vigness Kolb  
Shawnda R. Reid

Of Counsel  
John A. Zuger

Also licensed in  
Minnesota \*  
Montana/Illinois \*\*

<sup>A</sup>Certified Civil Trial Specialist  
National Board of Trial Advocacy

February 7, 2001

**Testimony of Patrick J. Ward In Opposition to SB 2288**

Dear Chairman Stenehjem and members of the Senate Transportation Committee:

I represent the North Dakota domestic insurance companies. We oppose Senate Bill 2288 and urge a Do Not Pass.

The bill relates to motor vehicle insurance independent medical examinations for disputed personal injury protection claims, commonly known as no-fault claims, submitted to an insurance company under Chapter 26.1-40 and 26.1-41. The bill is flawed in many ways. It is apparently based on a Colorado model which is not working. It will be expensive and it is not necessary. It should get a resounding Do Not Pass from this Committee.

Section 1, paragraph 1 of the bill provides that the Insurance Commissioner shall adopt rules establishing a personal injury protection examination program for the purpose of investigation and resolution of personal injury claims. The Insurance Commissioner has attached a fiscal note to this bill. I believe the fiscal note

**Testimony of Patrick J. Ward In Opposition to SB 2288**

**February 7, 2001**

**Page 2**

understates the cost of such a program.

Based on my twenty years of experience in defending claims of this nature and in hiring independent physicians to do independent medical examinations, it is very difficult to find qualified independent medical examiners. The examiner needs to have the same speciality as the treating physician. I like to find examiners with better background and qualifications than the treating physician. I often have to go out of state to the University of Minnesota or sometimes the Mayo Clinic to do so. The examiner needs to be able to testify articulately. This panel would take away the freedom to have top doctors examine patients. Rather, it is very likely that similar to Colorado, the same doctors that are the problem with overutilization of medical services will be on the examining panel. The bill would create a bureaucracy and insurers would be limited to choosing from those less busy and in my opinion more inept physicians, chiropractors, and therapists, willing to serve on such a panel. The claimants, on the other hand, remain free to select treating physicians any way they choose including those recommended by their lawyer. Lawyers know which physicians will go on treating indefinitely.

The North Dakota Department of Insurance recently did a closed study to determine the utilization of no-fault benefits and no-fault IMEs in North Dakota. That

**Testimony of Patrick J. Ward in Opposition to SB 2288**

**February 7, 2001**

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study clearly shows that there is not a problem in North Dakota. The bottom line of our opposition to this bill is the old adage "if it ain't broke, don't fix it."

The North Dakota Insurance Department (NDID) study (copy attached) shows that in the period of June through November 2000, over 1700 no-fault files were closed by insurance companies in this state. Out of those files, over 2000 no-fault claims for benefits were made. Only seventy-four people (3.5%) out of that large group of people were asked to undergo an independent medical examination. Of those, the independent medical examiners determined that sixty-seven should not receive continuing benefits. Although that may seem like a fairly high percentage, it has to be balanced against the extremely low percentage of individuals who were sent for independent medical examinations.

The data collected by the NDID proves that the current system is working and working very well. The minimum benefits of \$30,000/claimant are high enough as only a small percentage of people ever max out on benefits, 38 out of 2061 or 1.8%. The number of independent medical examinations is extremely small in relation to the thousands of individuals receiving benefits. Insurance fraud is a huge problem in this country. Any system which provides benefits through a third party payer has a significant percentage of malingerers, exaggerators, frauds and abusers. The

**Testimony of Patrick J. Ward In Opposition to SB 2288**

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current system is working well to weed out those individuals. While it may occasionally happen that a person with legitimate injuries reasonably related to a motor vehicle accident is cut off from benefits due to an IME, it is highly unusual and very unlikely that such is the case in the majority of cases. Even in those few cases, a terminated individual most likely has health insurance and once cut off from automobile no-fault benefits, can turn to their health insurer for most benefits they may need.

Paragraph 2 of Section 1 provides how the panel shall be constituted. Its limitation on 49% of the practitioner's practice and income coming from independent medical examinations seems to be designed to cut out retired, semi-retired or disabled physicians who are occasionally available to perform these types of examinations. This will slim down even further the pool of available qualified physicians who can do independent medical examinations.

Paragraph 3 of Section 1 discusses the specialization of the selected reviewers. Read together with paragraph 4 which is the method for selecting a reviewer from the panel, the net effect is that the Insurance Commissioner's office would have to maintain a list of at least five doctors in every subspecialty of medicine. There are many subspecialties of medicine in North Dakota which do not



**Testimony of Patrick J. Ward in Opposition to SB 2288**

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have a total of five qualified physicians, let alone five who would be interested in participating on such a panel. What is most likely to happen is that the specialities that have the greatest abuse of overtreatment, namely chiropractic, physiatry and massage therapy, would be likely to have the same persons willing to staff those panels who are the principal abusers. The system outlined in paragraph 4 allows the plaintiff to choose from the final three out of a group of five providers submitted by the Insurance Commissioner. It would take away all of the independence presently involved in selecting independent medical examiners. I rarely use IME doctors. When I do, I want someone who is honest, thorough, articulate, objective and well qualified. I do not want a bureaucrat with another file to get through.

Paragraph 5 of Section 1 is essentially the same standard we currently have under existing law which is determining whether the treatment rendered to the individual is reasonable, necessary and arises out of the motor vehicle accident. However, under the present system that decision is ultimately a coverage decision made by the no-fault insurer with the consultation and advice of the independent medical examiner. The independent medical examiner is not the final arbiter of that question of insurance coverage.

Paragraph 6 of Section 1 does not really change existing law. I have never

**Testimony of Patrick J. Ward in Opposition to SB 2288**

**February 7, 2001**

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seen a lawsuit brought against an independent medical examiner. I doubt if one could be brought in the absence of malice or bad faith on the part of the practitioner.

Paragraph 7 of Section 1 takes things to an even more ludicrous level. It allows for a second opinion to the second opinion. In other words, it gives a person dissatisfied with the IME a second bite at the apple if they are willing to pay for a subsequent examination.

Paragraph 8 of Section 1 provides in the first sentence that the findings of the panel IME examiner are not final, are only presumed to be correct and are subject to rebuttal by a preponderance of the evidence. This changes nothing from the current system and really provides no additional benefit or protection from lawsuits for the person or company requesting the examination. The second sentence of paragraph 8 provides that even an opinion by two independent examiners from the panel that the original treating physician is wrong can still be rebutted by clear and convincing evidence which means that there is no relief from the litigation potential of this type of situation.

The third sentence of paragraph 8 provides that if an opinion delivered by two of three healthcare practitioners that treatment is not necessary is challenged, the plaintiff may not sue for the tort of bad faith. If the claimant wins the lawsuit by clear

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**February 7, 2001**

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and convincing evidence over the opinions of two of three healthcare practitioners from the review panel, the no-fault insurer is obligated to pay only the no-fault benefits that were denied previously. Under current law, if the no-fault insurer is determined to be wrong, they are required to pay the remaining benefits plus 18% interest on benefits withheld from the time of termination of benefits. Claimants are free to hire other doctors to disagree with the IME doctor.

Paragraph 9 of Section 1 provides for an advisory committee to select the panel. It does not clearly spell out how the panel should be selected and leaves the Commissioner with discretion. However, it seems to be stacked against the insurers.

Section 2 of the bill provides that the person shall submit to a mental or physical examination by a physician designated at a reasonably convenient location subject to Section 1 of the Act. It does not define "reasonably convenient location". We currently pay for people to go out of state when necessary. It provides that basic no-fault insurance policies must contain provisions consistent with Section 1.

In conclusion, the NDID study attached proves that there is not a problem with the current system of no-fault independent medical examinations.

Personal Injury Protection (PIP)  
Closed Claim Study Report

Study Period :  
June – November 2000

North Dakota Insurance Department  
February 2001

**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

## **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 than 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 Muslowski  
Director/Senior Analyst, Consumer Protection Division  
(701) 328-4976





DEPARTMENT OF INSURANCE  
STATE OF NORTH DAKOTA

APPENDIX A

COPY

Glenn Pomeroy  
Commissioner of Insurance

April 12, 2000

Automobile Claims Department  
Allstate Indemnity  
3075 Sanders Road, Suite H1A  
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

[illegible]

APPENDIX B

# Memo

**DATE:** February 7, 2001  
**TO:** Laura Kotelman  
**FROM:** Diana Lee  
**RE:** North Dakota and Colorado

Laura, in terms of a comparison between Colorado and North Dakota experience, Table 1 presents the latest available liability average premium and no-fault (personal injury protection) loss cost (i.e., average paid loss per insured car). Note that the no-fault average premium is included as part of the average liability premium.

| Table 1<br>NORTH DAKOTA VS. COLORADO  |                                   |      |  |
|---|-----------------------------------|------|--|
|   | 1998 Average<br>Liability Premium |      | No-Fault<br>Loss Cost<br>(as of yr. end 3 <sup>rd</sup> Qtr. 2000) |
|   | Premium                           | Rank |  |
| North Dakota  | \$230.74                          | #51  | \$27.58  |
| Colorado  | \$456.37                          | #17  | \$118.80   |
| Note: Year-end 3 <sup>rd</sup> Qtr. 2000 represents the first three quarters of 2000 plus the fourth quarter of 1999. |                                   |      |  |
| Sources: NAIC Average Expenditure and Premium Report, 2000 and Fast Track Monitoring System                           |                                   |      |  |

North Dakota has the lowest liability premium in the nation, while Colorado's average premium is 17<sup>th</sup> highest. Colorado's no-fault loss cost of \$119 is almost 4-1/2 times greater than that of North Dakota. Moreover, Colorado's average claim cost is about 2.4 times higher than North Dakota; the year-end 3<sup>rd</sup> Qtr. 2000 claim cost in Colorado is \$6,282, while North Dakota's is \$2,667. It must be recognized, however, that many factors affect auto insurance loss costs and premiums; for example, individuals in Colorado may be more claims-conscious than North Dakotans; in addition, traffic density and health care costs are most likely higher in Colorado than in North Dakota.

The following table, Table 2, shows the trend in Colorado personal injury protection (no-fault) average loss (i.e., average cost per claim) over time. This state's PIP Examination Program, which is the exclusive method for obtaining an independent medical examination from a health care practitioner other than a treating provider related to a disputed PIP claim, became effective January 1, 1997.

| Table 2<br>Colorado<br>Personal Injury Protection Average Loss   |         |         |         |         |         |         |
|--|---------|---------|---------|---------|---------|---------|
|  | 1995    | 1996    | 1997    | 1998    | 1999    | 2000    |
| Average Loss   | \$4,450 | \$4,635 | \$4,873 | \$5,122 | \$5,730 | \$5,282 |
| Annual % Change  | ---     | 4.2%    | 5.1%    | 5.1%    | 11.9%   | 14.3%*  |
| * The percent change is from year-end 3 <sup>rd</sup> Qtr. 1999 to year-end 3 <sup>rd</sup> Qtr. 2000. |         |         |         |         |         |         |
| Source: Fast Track Monitoring System, @ 3 <sup>rd</sup> Qtr. 2000                                      |         |         |         |         |         |         |

As seen in Table 2, average PIP claim costs in Colorado had been rising steadily until 1998, the year after the PIP Examination Program went into effect. The last two years have seen more dramatic increases, however, with growth rates of 12 percent and higher.

Laura, I hope this information is of some assistance to you in your North Dakota efforts. If I can answer any questions regarding the above tables or provide additional information, please don't hesitate to ask.

## Newsbriefs

February 1, 2001

**MALVERN, Pa. (PRNewswire)--**The chances are about 14 in 100 that, if an insured car occupant is injured in an auto accident in the United States, an uninsured motorist caused the accident, according to a recent Insurance Research Council (IRC) study. However, the problem varies widely from state to state. Uninsured Motorists 2000 Edition, an update to a previous IRC study examining the uninsured motorist problem, contains two additional years of the latest available data.

According to data just released (for the period of 1995 to 1997), the five states with the highest uninsured driver estimates were Colorado (32), New Mexico (30), South Carolina (28), Alabama (25), and Mississippi (25). (Colorado's estimate is high relative to other states, however, because bodily injury claims are subject to a \$2,500 monetary threshold and uninsured motorist claims are not. In other states, the thresholds are the same.) The five states with the lowest uninsured driver estimates were Maine (4), North Carolina (6), South Dakota (6), Massachusetts (7), and Wyoming (7). Sixteen states and the District of Columbia had a ratio of uninsured motorists to bodily injury claim frequencies above the national average, while thirty-four states had a ratio below the national average. A complete listing of the estimated percentage of uninsured motorists in each state is provided at the end of this press release.

"Despite laws in many states requiring drivers to maintain insurance, about one in seven motorists remain uninsured," according to Elizabeth Sprinkel, senior vice president, who heads the IRC. "This means that responsible drivers who carry insurance must bear the burden of paying for injuries caused by drivers who carry no insurance at all."

The study contains the most recent state statistics on uninsured motorist claim frequency, bodily injury claim frequency, and the ratio of uninsured motorist to bodily injury claim frequencies. IRC calculates the uninsured driver proportion using a ratio of claims made by individuals injured by uninsured drivers (uninsured motorists coverage) to claims made by individuals injured by insured drivers (bodily injury liability coverage).

IRC used claims data compiled by the National Association of Independent Insurers; Insurance Services Office, Inc.; National Independent Statistical Service; Maryland Automobile Insurance Fund; Automobile Insurers Bureau of Massachusetts; Texas Department of Insurance; and South Carolina Department of Insurance to derive its findings.

For more information about the study's methodology and findings, contact Elizabeth Sprinkel by phone at 610-644-2212, by fax at 610-640-5388, or by e-mail at [irc@cpcuia.org](mailto:irc@cpcuia.org). Or visit IRC's Web site at <http://www.ircweb.org>. Copies of the study are available at \$25 each in the U.S. (\$35 elsewhere) postpaid from the Insurance Research Council, 718 Providence Rd., Malvern, Pa. 19355-0725. Phone 610-644-2212, ext. 7569. Fax: 610-640-5388.

**NOTE:** The Insurance Research Council is a division of the American Institute for CPCU and the Insurance Institute of America. The Institutes are independent, not-for-profit organizations dedicated to providing educational programs, professional certification, and research to the property and liability insurance business. The IRC provides timely and reliable research to all parties involved in public policy issues affecting insurance companies and their customers. The IRC does not lobby or advocate legislative positions. It is supported by leading property and liability

### Percentage of Uninsured Motorists 1995 - 1997 Average

| State          | Percent Uninsured |
|----------------|-------------------|
| Colorado       | 32%               |
| New Mexico     | 30%               |
| Indiana        | 12%               |
| Minnesota      | 12%               |
| Rhode Island   | 11%               |
| North Carolina | 6%                |
| Maine          | 4%                |
| Nationwide     | 14%               |

Note: IRC calculates the uninsured driver proportion using the ratio of claims made by individuals who were injured by uninsured drivers (uninsured motorists coverage) to claims made by individuals injured by insured drivers (bodily injury liability coverage). Colorado's estimate is inflated because bodily injury claims are subject to a \$2,500 threshold and uninsured motorists claims are not. In other states, the thresholds are the same.

Source: National Association of Independent Insurers; Insurance Services Office, Inc.; National Independent Statistical Service; Maryland Automobile Insurance Fund; Automobile Insurers Bureau of Massachusetts; South Carolina Department of Insurance; and Texas Department of Insurance. Michigan and North Carolina 1996 and 1997 data from NAI are preliminary.

CONTACT: Karen Burger, of CPCU and CPIW for Insurance Research Council, 610-644-2100, ext. 7805, or fax 610-644-7629, or [burgerk@cpcuiia.org](mailto:burgerk@cpcuiia.org) / Web site: <http://www.ircweb.org/>

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Mr Chairman members of the Senate Transportation Committee

For the record My name is Tom Fischer, Senator, District 46, south Fargo I stand before you today to introduce SB 2288 that I feel is one of the most important issues of this session. As I and others who testify on this bill please keep in mind the people that have been adversely affected by present way that independent medical exams have been performed.

Senate bill 2288 will amend the automobile no-fault. Specifically it would change the procedure for obtaining independent medical exams and make the system more fair and evenhanded.

The no fault law has been in place since 1972 in North Dakota. It has a very worthwhile purpose and, for the most part , has worked well.

The main premise is that if you are injured in an accident in North Dakota, you have available under your own no-fault personal injury Protection policy \$30,000 worth of insurance to pay medical bills and pay a portion of your lost wages. These insurance benefits are to be provided whether the person injured caused the accident or if someone else was the cause. That's how it got the name "no-fault". You don't

look to see who is at fault with respect to this insurance coverage because the prime purpose is to make sure that the injured person's medical bills are paid and some of the persons lost wages are also paid. In exchange, injured parties don't have the right to make a claim against whoever was at fault for causing the accident unless they meet the statutory definition of having a "serious injury".

I became familiar with this system because of my involvement in an accident some time ago. The other driver was at fault. I injured my lower back. I sought medical care and the doctor's prescribed medication (which I still take) along with some therapy. My treating doctors said that my low back problem was caused by the accident.

In 1995, I discovered what an independent medical examination is. Under the no-fault, the insurance company that is paying medical benefits has the right to have the injured person seen by a doctor of the insurance company's choosing. That sounds fair until you find out how it works. I have learned that the bulk of the independent medical exams are conducted by physicians who are part of groups formed to conduct these examinations, fly in from places like Minneapolis, and



have no license, roots, or office in North Dakota. In fact some people are flown to Minneapolis and are given exams at the airport. The Doctor who conducted my IME flew to Fargo and conducted the examination in a room in the FM Center in Moorhead (careful no to cross into North Dakota). He put a paper sign on the door for the day. He conducted a very brief exam of me. I clocked it at about 12 minutes. I left wondering how he could know so much about me after such a short, incomplete examination.

A few weeks later, the insurance company (their adjuster) sent me as copy of the doctor's two page report setting forth in great detail the results of a thorough examination and coming to the conclusion that my back injury was unrelated to the accident and that I needed no further treatment. This doctor eventually testified in a deposition. Here are some of the things that he said:

1. He spent 45 minutes visiting with me and conducted a thorough examination.
2. He is not licensed to practice in North Dakota and maintains no office in Moorhead, MN or anywhere in North Dakota

3. He was conducting the independent medical examination at the request of Medical Evaluations, Inc., a company that provides IME services.
4. When he flies into a town like Moorhead to conduct IME's he generally does three to six of them at a time.
5. His fee per IME is approximately \$1200.
6. He does 40-45 IME's/month. 10 Months of the year. Approx. 1/3 of his time in practice.
7. By calculation the charges from these IME's would total from \$400,000 to \$550,000/year.
8. The examination room was approx. 12x18

I was denied medical benefits by my no-fault insurer after the doctor that **THEY** chose came to the conclusion that I was not entitled to benefits without regard to my doctor saying that I was entitled to them. To dispute that finding, I would have to file a lawsuit against my own insurance carrier to collect whatever the insurance carrier failed to pay the next I went to the doctor.

Rather than file a lawsuit at that time I started submitting the bills to Blue Cross/Blue Shield which paid it's appropriate share my health insurance contract. My health insurance carrier ended picking up the expenses that the car insurance carrier should have picked up. For

people who don't have health insurance, they can be left out in the cold when their no-fault benefits are cut off with their only option being to start a lawsuit against their no-fault carrier to have benefits reinstated.

After living through this experience I have talked to several people who have been in accidents, have received some medical treatment, have attended an IME setup by the insurance carrier, and then had their benefits cut off. This simply isn't right. We need to level the playing field. The no-fault insurance companies are certainly entitled to have another doctor conduct an examination. That examination should be truly "independent". It is not independent now because the insurance companies are hiring doctors who will conclude that the person isn't injured so the insurance company can cut off no-fault medical benefits.

The legislation that I am proposing, stripped to its simplest form, sets forth a procedure whereby the names of five doctors, who belong to an approved panel of doctors, are considered for the job of conducting the IME. The insurance company strikes two names of the list and the injured strikes two names of the list, leaving the name of a single doctor

who will conduct the IME without the pressure of wanting to get repeat business based on the outcome.

This system would truly allow an "independent" medical examination to be performed. It would make it fair for the injured person and the insurance company. It will, as they say, level the playing field.

Others from the insurance industry will testify against this bill saying it will raise premiums and it is unfair. Unfair to who. They calculate their premiums now in the worst case scenario and therefore premiums should not rise.

**I ask that you to remember your constituents when considering this bill and ask for a Do Pass recommend on SB 2288 Thank you**

**ANDERSON & ANDERSON, P.C.**

Sonna M. Anderson

ATTORNEYS AT LAW

P.O. BOX 2574

BISMARCK, ND 58502-2574

Phone (701) 667-1200

Fax (701) 667-1970

of counsel:  
Harold L. Anderson

**Memorandum**

Date: February 14, 2001

To: The Members of the Senate Judiciary Committee

From: Sonna Anderson, Lobbyist (#332) for the North Dakota Trial Lawyers Association

RE: Senate Bill 2288

Dear Chairman Stenehjem and member of the Committee:

At the hearing on Senate Bill 2288 last Friday, reference was made to the Personal Injury Protection (PIP) Closed Claim Study Report prepared by the North Dakota Insurance Department. Pat Ward, who testified against SB 2288, cited the Study as providing evidence that the system is "not broke" and "doesn't need fixing". If you review Section IV of the Study (on page 2) the author of the Study states that the numbers are not sufficiently large in the data regarding Independent Medical Exams and that any findings regarding IME's or the effect they have in North Dakota are either marginally credible or not credible. The only conclusion which is legitimately reached in the study is that the \$30,000 limit on PIP payments is sufficient.

It would be inappropriate to use this data to make ANY other conclusions about how the present IME system is working.

While I have no statistics to cite, I believe it is probably self evident that the vast majority of injuries in car accidents might require a trip to the Emergency Room, a broken leg, treatment of minor bruises or lacerations, a few days off of work, and then the injured person would be "good as new". The cost of these minor injuries and days off work would be paid by PIP benefits, the person would be healed, no IME would be requested and the case would be closed.

However, in whiplash and other soft tissue injuries, the injured person may have stiffness and loss of range of movement for months. It is usually this type of injury which is hardest to diagnose and treat and which is most likely the basis for an IME and disputes over the PIP payment and these injuries that are most likely ripe for abuse of the system. No one is interested in promoting or perpetuating a fraudulent claim. However, it certainly cannot be said that everyone suffering from a soft tissue injury is a malingerer or is out to abuse the system.

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One of the questions that was not asked or answered in the Closed Case Study referred to above is how many of the claims that involve soft tissue injuries are set for an IME and how many are paid. Do the insurance companies flag a majority of soft tissue injury cases for IME's and then deny 90% of them? That is an unanswered question.

There were allegations in the testimony presented before the committee at Friday's hearing that the insurance companies are trying to find IME doctors who will automatically terminate benefits and that attorneys are purposefully sending patients to doctors who will "treat indefinitely" as Pat Ward suggested. Those allegations are partisan and probably add little value to this discussion.

You heard testimony from three North Dakotans whose treating physicians told them that they needed further treatment and whose PIP benefits were terminated as a result of a few minutes spent with a doctor who didn't even seem interested in them. If you have ever talked to a person suffering from a back or neck injury, you will probably find that they just want to be better. I have not met anyone who enjoys going for doctor appointments and visits simply so that the doctor can get paid.

I am the first to admit that there may be problems with how SB 2288 is presently structured. There may be some valid concerns about finding a sufficient number of qualified professionals to fill the panel SB 2288 contemplates. I believe it is premature to make the assumptions that it is impossible. The idea of an objective panel of qualified physicians is a good one. The language could be tweaked to allow retired, semi-retired or disabled physicians on the panel, as suggested by Pat Ward. The language could be tweaked to allow out of state specialists when necessary.

Nothing in this bill would prohibit the insurance company from finding that "articulate witness" that Mr. Ward is searching for if he believes the case will go to trial. PIP coverage is not about preparing for trial, it is designed to provide the care necessary to treat the injured person WITHOUT the necessity of trial. If the injured person can get the care he or she requires, there would be no need for trial.

SB 2288 is not just a grudge match between the Trial Lawyers and the Insurance Companies. It is about North Dakotans who have been to their personal physicians (who are probably also North Dakotans) and who have been told that they need treatment and who are then denied treatment based upon a cursory exam performed mostly by out-of-state hired guns who earn an incredible amount of money for performing IME's.

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Let's look out for North Dakotans. Let's try to keep that IME money in state. Let's explore this idea of an independent panel and not reject it out of hand. If there are some problems that need fixing with SB 2288, let's try to fix them, either here in the Senate or in the House. Let's not just throw the idea away.

There is a fiscal note attached to this bill. Let's explore funding options. Colorado can administer this program by a \$300 assessment against each company doing automobile business in the state. North Dakota could explore funding this program by a minimum surcharge of less than 75 cents per policy issued.

Please vote a DO PASS on SB 2288.

If I can answer any further questions or concerns that you have, please feel free to call me either at home (224-0963) in the evening or at the office (667-1200) during the day. Thank you.

Sincerely,

Sonna M. Anderson  
Lobbyist #332

Please

**ZUGER KIRMIS & SMITH**

**COUNSELORS AND ATTORNEYS AT LAW**

Lyle W. Kirmis  
Thomas O. Smith, P.C.  
Lance D. Schreiner, P.C.  
James S. Hill, P.C.\*<sup>A</sup>  
Patrick J. Ward\*\*<sup>A</sup>  
Rebecca S. Thiem, P.C.\*  
Daniel S. Kuntz, P.C.  
Brenda L. Blazer, P.C.  
Jerry W. Evenson, P.C.\*  
Lawrence A. Dopson

316 North Fifth Street  
Provident Building  
P.O. Box 1695  
Bismarck, ND 58502-1695  
(701) 223-2711  
fax (701) 223-7387  
zkslaw@zkslaw.com  
www.zkslaw.com

Lawrence E. King, P.C.\*  
Tracy Vigness Kolb  
Shawnda R. Reid

Of Counsel  
John A. Zuger

Also licensed in  
Minnesota \*  
Montana/Illinois \*\*

<sup>A</sup>Certified Civil Trial Specialist  
National Board of Trial Advocacy

March 8, 2001

**Testimony of Patrick J. Ward in Support of Engrossed SB 2288**

Chairman Weisz and members of the House Transportation Committee:

I represent the North Dakota domestic insurance companies. We support Engrossed Senate Bill 2288 and urge a Do Pass.

The bill relates to motor vehicle insurance independent medical examinations for disputed personal injury protection claims, commonly known as no-fault claims, submitted to an insurance company under N.D. Cent. Code Chapter 26.1-40 and 26.1-41. Some people suggest there is a problem with the way in which no fault IMEs are currently arranged and conducted. We disagree. We think a study will prove us correct.

The Engrossed bill provides that the Insurance Commissioner shall study the personal injury protection independent medical examination system in place today and how it compares to other states. The Commissioner has placed a fiscal note on this bill.



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Based on my twenty years of experience in defending claims of this nature and in hiring physicians to do independent medical examinations, it is often difficult to find qualified independent medical examiners here in North Dakota. The examiner should have the same speciality as the treating physician. I like to find examiners with better background and qualifications than the treating physician. I often have to go out of state to the University of Minnesota or sometimes the Mayo Clinic. The examiner also needs to be able to testify articulately because the claimant has the right to sue for benefits. Claimants remain free to select treating physicians any way they choose including those recommended by their lawyer. Lawyers know which physicians will go on treating indefinitely.

The North Dakota Department of Insurance recently did a six month closed study to determine the utilization of no-fault benefits and no-fault IMEs in North Dakota. That study clearly shows that there is not a problem with IMEs in North Dakota. A copy is attached for your reference.

The North Dakota Insurance Department (NDID) study shows that in the period of June through November 2000, over 1700 no-fault files were closed by insurance companies in this state. Out of those files, over 2000 no-fault claims for benefits were made. Only seventy-four people (3.5%) out of that large group of

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people were asked to undergo an independent medical examination. Of those, the independent medical examiners determined that sixty-seven should not receive continuing benefits. Although 67 of 74 may seem like a fairly high percentage, it has to be balanced against the extremely low percentage (74 of 2076) of individuals who were asked to submit to an independent medical examinations.

The data collected by the NDID proves that the current system is working and working very well. The minimum benefits of \$30,000/claimant are high enough as only a small percentage of people ever max out on benefits, 38 out of 2061 or 1.8%. The number of independent medical examinations is extremely small in relation to the thousands of individuals receiving benefits.

Insurance fraud is a huge problem in this country and in this state. Any system which provides benefits through a third party payer has a significant percentage of malingerers, exaggerators, frauds and abusers. The current system is working well to weed out those individuals. While it may occasionally happen that a person with legitimate injuries reasonably related to a motor vehicle accident is cut off from benefits after an IME, it is highly unusual and very unlikely that a person with no prior history is cut off from benefits in the majority of cases. Even in those few cases, a terminated individual most likely has health insurance and once cut off from

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automobile no-fault benefits, can turn to their health insurer for most treatments they may need.

In conclusion, the NDID study attached proves that there is not a problem with the current system of no-fault independent medical examinations. However, although we opposed the original bill in the Senate and would oppose amendments to the Engrossment, we support the Engrossed SB 2288 as it is today.

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