

Six Months and 46 Years

Michigan's No-Fault Auto Insurance law was initially enacted in 1973. For the last 46 years drivers in Michigan have had mandatory unlimited lifetime medical coverage under Michigan law. Less than six months into her first term, Governor Gretchen Whitmer signed legislation to make that coverage optional. This is a feat that former Governor John Engler – despite repeated attempts – could not accomplish in 12 years in office.

What had seemed unthinkable only a few months ago became reality on Mackinac Island where, during the Detroit Chamber of Commerce Annual Policy Conference – Governor Whitmer signed the historic legislation into law. Most readers of this column likely already know the details of the legislation (Public Act 21 of 2019). However, for those who are coming out of cryogenic stasis, here are the basic points:

PIP Choice – motorists will have the option of purchasing lifetime unlimited medical benefits, or policies with lifetime caps of \$500,000; \$250,000; or \$50,000 for Medicaid enrollees. Individuals covered by Medicare or other health insurance have an option to forego PIP coverage altogether.

Residual Bodily Injury minimums increase from \$20,000/\$40,000 to \$50,000/\$100,000 with a default level of \$250,000/\$500,000.

Medical providers would be subject to a fee schedule starting on July 21, 2021 that is 200% of the Medicaid rate in most instances. This would reduce to 195% in 2022 and 190% in 2023.

There are numerous other changes as well, but those are the major ones.

By now, over a month after the dust has settled, the questions about what the new law contain have mostly been answered. The questions that remain are: how did we get here, and what will happen when the new law takes effect?

Almost from the moment the original No-Fault Auto law was signed in 1973, there have been efforts to repeal it. Twice in the 1990s the Michigan Legislature passed and Governor Engler signed into law reforms that would basically end No-Fault Auto Insurance in Michigan. On both of those occasions, Michigan voters signed petitions for a referendum on the “reform” laws, and in both cases the original law was upheld at the ballot box.

After an 8-year reprieve on serious attempts to change No-Fault during the Granholm administration, Governor Snyder made it clear that overhauling the law was a key part of his platform. However, even with solid Republican majorities in the Michigan House and Senate during his entire 8 years as Governor, he could never get a bill to his desk. This was in large part due to the efforts of Oakland County Executive L. Brooks Patterson, whose own experience with an auto accident made him a firm supporter of the original law. Patterson helped keep Republican House members from Oakland County opposed to reforms, and thus prevented the bill from gaining House passage.

When Governor Whitmer won a solid victory to become Michigan's Governor in 2018, Democrats also picked up seats in both the House and Senate. Even though those gains were not enough to give them a majority, it seemed that the No-Fault law would be firmly protected going into 2019, since support for

the law has largely fallen along party lines over the years (with a few exceptions in each party). However, most of those partisan gains came from places like Oakland County, where Republican support for reform was already weak. Overall, changes to the House Republican caucus actually increased support for No-Fault reforms, despite the fact that their majority had shrunk. Add to that the fact that Mayor Duggan was loudly urging Detroit Democratic lawmakers to support a change, and it became clear early in 2019 that there might actually be a philosophical majority in the House favoring major No-Fault reforms.

Even so, Governor Whitmer had been a strong supporter of Michigan's No-Fault law when she was a member of the Michigan House, and later when she was the Senate Democratic leader. She had repeatedly sided with groups like the Coalition to Protect Auto No-Fault (CPAN) and the Michigan Association for Justice in protecting No-Fault benefits throughout her political career. However, as I wrote in my column last April, her policy focus on "fixing the damn roads" was potentially leading to a place where good politics became more important than good policy. While there was not any specific "quid pro quo" in Governor Whitmer's surprising reversal on No-Fault reform, there was a great deal of speculation before and after on whether the deal was connected at all to a potential road funding plan.

Whether Governor Whitmer's decision to support a No-Fault reform plan that was anathema to so many of her allies stemmed from her hope that it would help lead to a transportation funding plan, or whether she truly believed it was a fair solution for Michigan drivers is something that we may never know. One thing that is certain, however, is that her timing was dreadful. The Negligence Law Section had been working in good faith with a bi-partisan task force of House members (the House Select Committee on Reducing Car Insurance Rates), and ideas to reduce auto insurance costs while preserving No-Fault benefits were starting to gain traction. Perhaps it was a pipe dream to think that reform legislation not specifically endorsed by the insurance industry could ever pass in the current climate, but there were very smart people on both sides of the aisle willing to try and find a solution.

So that leaves us with the question of "what will happen when the new law takes effect?"

Depending on who one asks, a very different answer will be given. The bipartisan majority in the House and Senate along with Governor Whitmer say that everyone will start to see major reductions in their auto insurance rates after July 1, 2021. They also say that drivers will still have excellent options for recovering damages, especially now that they can sue the at-fault motorist for excess loss. Hospitals have said that rates for other types of health insurance may have to be adjusted to cover the reduction in auto insurance benefits. The insurance industry has been very clear to note that not everyone will receive rate relief, and what relief people get will generally be conditional on how much coverage they are willing to give up. Specialized rehab and recovery centers have indicated that many will have to close their doors.

And what do the attorneys say? They say that their clients who were severely injured in an auto accident will likely have a much tougher time getting the care and services they need under the new law. They say that their clients might have to worry about being sued by other drivers, and will suggest that they greatly increase their liability coverage. Lastly, they say that most of the attorneys who represent plaintiffs and defendants, physicians and insurers...well...they will do just fine.