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The Big Bang
How Fraudulent & Suspicious No Fault Claims Impact Your Bottom Line

Presented by
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Intent of Michigan's PIP System

- Promptly pay out benefits to injured persons while avoiding litigation.
 - PIP is required coverage in Michigan.
 - Michigan PIP's scheme, in particular, is unique:
 - Unlimited (dollar and duration) medical care for life
 - No fee schedule
 - According to Insurance Institute of Michigan, Michigan has highest auto insurance medical benefits in entire country

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Has It Worked?

- Yes
 - In 2010, approximately 79 percent of automobile injury claims in Michigan were settled through PIP payments alone, with no involvement of liability system, so yes, it worked.
 - But are there any downsides?



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Cost of Michigan PIP

- In 2003, average paid PIP claim was \$20,073.
- In 2010, average paid PIP claim was \$35,446.
- In 2013, average paid PIP claim more than doubled from 10 years prior to \$46,022.

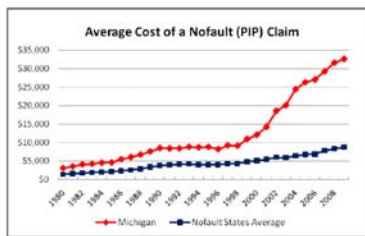


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Cost of Michigan PIP

- There have been shortcomings in Michigan



Source: Author's calculations using Fast Track Monitoring System.

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Michigan vs Other No-Fault States

- Michigan's average payout in 2010 was substantially greater than any other no-fault state



Source: Author's calculations using Fast Track Monitoring System.

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Why has the Cost Gone up?

- FRAUD!



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Fraud – Definition

- Webster – the crime of using dishonest methods to take something of value from another



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Statistics Regarding Fraud

- According to the National Insurance Crime Bureau:
 - Second most costly white-collar crime in America behind tax evasion
- According to the Coalition Against Insurance Fraud:
 - Fraud is an \$80-billion annual crime by conservative estimates.

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What About Michigan?

- Automotive fraud is the most prevalent



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Effect of Fraud

- Quantifiable:
 - Less profits for insurance companies.
 - As a result, higher premiums to consumers.
 - In turn, less money to spend on other goods, ultimately affecting Michigan's economy.



Continued

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Effect of Fraud

- Non-Quantifiable
 - Creates a loss of faith in system
 - Devalues legitimate claims
 - Example: many patients of a particular provider have legitimate claims, but many also have highly questionable claims with fraud indicators

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Types of Fraud

- Hard Fraud
- Soft Fraud
- "Other"



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Hard Fraud

- Fraud in application process:
 - What does it mean?
 - Essentially any material misrepresentation that affects premium
 - Examples:
 - Wrong address given (rate evasion)
 - Unlicensed driver
 - Occupants in household

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Hard Fraud

- Staging accident
- Creating more damage to vehicle after an accident
- Obtaining insurance after an accident
- "Hop ins"
- Priority (giving false address after an accident)

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Soft Fraud

- Exaggerating/inflating extent of injury
- Not returning to work when able to



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'Other'

- "Auto accident doctors"
- Doctor/lawyer referral schemes
 - New 2012 Anti-Ambulance Chasing Bill



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First Presentation of Potential Fraud Case to Carrier

- When claim is reported to insurance company
- Claims adjuster assigned
- Claims adjuster sends out application
- Claims adjuster looks at police report, receipts for treatment/progress notes and has "proof of claim."
 - What's wrong with this process?
 - Carriers are often required to process/pay claims within 30 days of receiving "proof" of claim or face stiff penalties.

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What Claims Adjusters can do to Detect Fraud

- Look for most common NICB fraud indicators:
 - Extensive claims history of claimants
 - No witnesses to accident
 - Multiple claimants claiming same type of injury
 - No police investigation at scene
 - Claimant has excessive medical treatment with little or no damage to his/her automobile:
 - NICB allows cross referencing on single claims and helps gather intelligence on patterns, schemes and trends.

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Ask Claimant if Photo Taken at Accident Scene

- Using photo geotagging/EXIF data
- Using Google Earth



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Are Fraud Indicators Enough to Deny a Claim?

- NO ... however ...
 - For fraud, in application process, policy may be rescinded.
 - For staged accidents and damage to vehicle done after the fact, can use data event recorder (non-deployment events; negative velocity) to deny claim.

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In Other Cases ...

- Set up an EUO.
 - Two bites at proverbial apple
- Conduct surveillance.
 - Timing of surveillance is important
- Use social media:
 - Facebook
 - YouTube
 - Twitter



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Suspected Fraud

- If fraud is suspected, but cannot be proven, does claim have to be paid?
 - PIP benefits are payable only after insurer receives "reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142



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Suspected Fraud

- Michigan case law:
 - Fraud in procurement
 - *Titan Insurance Company v Hyten*
 - *Frost v Progressive Insurance Company*
 - Fraud post procurement
 - *Bahri v IDS Property Casualty Insurance Company*

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MCL § 500.3112: Handling Provider Suits

- MCL 500.3112 states that “Personal protection insurance benefits are payable to or for the benefit of an injured person ... ”
- Historically, no-fault benefit claims were brought through injured persons.



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Nature of Service Provider’s Claim: Derivative or Independent

- Now, service providers have a direct cause of action.
- *Lakeland Neurocare Centers v State Farm & Regents of the University of Michigan v State Farm*

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Third Party Beneficiaries

- Provider “stands in the shoes of” the injured party.
- As such, rights of providers are always subject to rights of injured parties.



"She says I won't understand her until I've walked a mile in her shoes."

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Concerns of Service Providers

- Recovery from individuals is unlikely.
- Doctors may not want to sue their patients.
- Penalty interest and attorney fees can be recovered.



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Concerns of No-Fault Insurers

- Defending multiple lawsuits at different times in different courts
- Having to pay penalty interest



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TBCI, PC v State Farm

- Injured person claimed attendant care services that were found to be fraudulent at a jury trial.
- Court of Appeals held that the finding of fraud was *res judicata* on all benefit claims.



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Michigan Head and Spine v State Farm

- Injured person entered into settlement before service provider brought its claim.
- Court held that a service provider's right to bring an action on a claim that was released by injured person would also be released.

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Moody v Home Owners

- Court reaffirmed that providers may bring an independent cause of action, but nature of cause of action is derivative and dependent on injured person's cause of action.
- Provider's and plaintiff's claims, with respect to requisites of a no-fault insurer's liability, are, therefore, identical.

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Options Once Suit is Filed

- Motion for consolidation of provider suit and patient's PIP suit
- Motion for summary disposition pursuant to MCR 2.116(C)(6)



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Wyoming: Public Policy Favors Provider Suits

- Prompt reparation for economic loss:
 - Healthcare provider standing expedites the payment process to healthcare provider when payment is in dispute.
- Preventing inequitable payment structures:
 - Healthcare provider standing offers a remedy when an insured individual does not sue an insurer for unpaid PIP benefits.

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Service Provider Claims by Intervention

- Michigan Court Rules recognized intervention in MCR 2.209(A) which provides there is an "intervention of right" when a party has an interest in the subject matter of the litigation.

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Bahri et al v IDS Property Casualty Ins Co (2014)

- Injured party's fraudulent misrepresentations preclude payment of PIP benefits to not only injured parties, but also service providers who are intervening plaintiffs.
- Fraudulent misrepresentations:
 - Phantom contact with third vehicle
 - Surveillance



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Questions & Answers



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Questions?



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WRITTEN BY GUYTON S. THOMPSON
MARCH 12, 2015

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Plaintiff's Fraudulent Claims Preclude Personal Injury, Uninsured Motorist Coverage

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Thank You!



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