The Florida Senate

Interim Project Report 2008-102 *October 2007*

Committee on Banking and Insurance

THE EFFECT OF REPEALING THE FLORIDA MOTOR VEHICLE NO-FAULT LAW

SUMMARY

The Florida Motor Vehicle No-Fault Law is repealed on October 1, 2007, by operation of a sunset provision. The no-fault law required persons to carry $10,000 of personal injury protection (PIP) coverage to cover their own injuries. The law also prohibited recovery in tort for non-economic damages from the at-fault driver, unless the injury was permanent or met certain other criteria. By switching to a tort system, as adopted in 38 states, auto injury claimants must seek payment from the at-fault driver for both economic and non-economic damages and must prove negligence on the part of that individual.

For policyholders, the most direct effects of repealing no-fault and returning to a tort system in Florida is eliminating the requirement to purchase $10,000 of PIP and that insurers offer this coverage. Removing this mandate can be viewed as a savings (by deducting the PIP premium), but it is a savings due to a loss of coverage. Property damage liability (PD) of $10,000 will still be required under tort, but a key enforcement provision that requires insurers to report cancellations and for the owner's driver's license to be suspended is repealed as part of the sunset of the no-fault law.

Florida does not mandate bodily injury liability (BI) insurance, unless triggered by the Financial Responsibility Law due to certain accidents or violations. Therefore, neither the injured party nor the negligent party will be required to have insurance that covers bodily injuries in most accidents. However, it is estimated that about 87 percent of vehicles currently have BI coverage, even though it is not mandated. In addition, insurers will typically offer consumers the option of purchasing coverage similar to PIP, medical payments (Med Pay) coverage.

Another effect of repealing no-fault is that premiums for bodily injury liability (BI) and uninsured motorist (UM) coverages will increase, due to the shifting of costs or losses from PIP to these two coverages. As of September 1, 2007, 30 auto insurers, representing a statewide combined market share of 45 percent, have made rate filings in anticipation of the state switching to a tort system and estimate an average overall premium reduction of 13.8 percent for all coverages combined. The average BI premium is increased by 21.2 percent and the average UM premium is increased by 12.5 percent. But, the elimination of PIP premiums offsets the increases in BI and UM, resulting in the average 13.8 percent savings. However, insurers were not consistent in how they accounted for premiums for Med Pay coverage. If a policyholder adds Med Pay coverage at limits comparable to PIP, the savings will be substantially reduced or possibly even eliminated.

In summary, the rate filings merely reflect each insurer's estimate of the effect of repeal of no-fault. The actual loss experience will eventually determine the lasting impact on premiums.

It is likely that litigation will increase, due to the ability to sue for non-economic damages, even for minor injuries, and for economic damages that are currently covered by PIP. But, certain costs associated with PIP and the no-fault system may be reduced when transferred to the tort system. Medical services have virtually no cost or utilization controls under PIP, and may be less costly if the injured party's health insurer acts to reduce these costs, which would then reduce the ultimate cost to the at-fault party's liability insurer. Health care fraud and abuse will likely be reduced under a tort system which does not provide incentives or rewards as generous as PIP. Also, attorney fees that must by paid by the losing PIP insurer to their own insureds and their health care providers are generally not required to be paid by the losing BI insurer, unless the insurer acts in bad faith.

Individuals without health insurance who do not purchase the new Med Pay coverage will have no insurance recovery for injuries sustained in an auto accident if they are at fault or if the at-fault party does not have bodily injury insurance. Persons with health

insurance (and without UM coverage) will rely on that coverage if the at-fault party is uninsured or underinsured. Health insurance premiums are expected to increase between 0.7 and 1.7 percent, based on current rate filings.

Hospitals and trauma centers are expected to lose revenue, due to accident victims who do not have health insurance and who will no longer have PIP. A survey of hospitals reported that about $325 million was paid under PIP in 2006. However, this includes amounts that will be transferred to other auto insurance coverages, such as BI, UM, and Med Pay, after no-fault is repealed. It also includes amounts that will be transferred to health insurers, Medicare, or Medicaid. Therefore, the actual loss is revenue to hospitals is much less, probably less than half of the $325 million.

All health care providers are likely to receive lower revenues due to the repeal of PIP, primarily affecting providers who treat a significant number or proportion of auto accident victims. Health insurers, BI insurers, and private pay patients are less likely to pay the billed charges that such providers have traditionally received from PIP insurers.

The purpose of this report is not to recommend whether the Legislature should or should not reenact no-fault, but to evaluate the impact of repeal. If no-fault is to remain repealed, the options to consider are one or more of those adopted in other tort states:

1. Mandate that vehicle owners purchase bodily injury liability coverage, as required in 36 of 38 tort states;
2. Require that insurers offer PIP coverage, as required in nine "add on" tort states (that do not restrict recovery in tort);
3. Mandate that vehicle owners purchase PIP, as required in three of the nine "add on" tort states; or
4. Do not change the current law and do not require PIP or BI coverage, as provided in two states.

The Legislature also has the option of restoring the repealed provisions that are necessary to enforce the current property damage liability requirements.

BACKGROUND

In 2003 the Florida Legislature enacted legislation[1] to repeal the state's Motor Vehicle No-Fault law,[2] a provision that had been in effect since January 1, 1972.[3] The repeal took effect on October 1, 2007, since the no-fault provisions were not reenacted by the Legislature prior to that date. As of the writing of this report, the Legislature has taken no action to reenact the no-fault law, and Florida has now reverted to a tort or fault-based automobile insurance system.

Few issues have occupied the state's public policy arena as persistently as those surrounding no-fault. Although the Legislature enacted significant reforms in 2001 and 2003, many policymakers and stakeholders believe these reforms did not go far enough in resolving the problems within the system which include fraud, abuse, inappropriate medical treatment, inflated claims, spiraling medical costs, high legal fees, increased premiums and the proliferation of law suits. Over the past several years, legislators have considered recommendations to resolve these concerns, however, after much debate, no legislative resolution has been reached and thus Florida is joining the 38 other states that utilize a tort system.

Automobile Insurance Coverages

In moving to a tort system, the costs associated with an auto accident shift to other auto insurance coverages, to the health care system, or to the consumer. Motorists will have to choose between a range of coverage options in order to protect themselves, and persons (or property) they might injure, should they be in an accident. Understanding auto insurance coverages is therefore critically important for Florida drivers. The following is a summary of Florida's mandatory and optional coverages:

- **Personal Injury Protection (PIP):** Florida drivers were required to purchase both personal injury protection (PIP) and property damage liability (PD) insurance; however, as of October 1, 2007, motorists are only obligated to purchase PD coverage. (However, for ease of understanding, this report will refer to PIP and the no-fault law in present tense.) Personal injury protection provides $10,000 of coverage for bodily injury sustained in a motor vehicle accident, without regard to fault. The no-fault law provides immunity from economic damages up to the policy limits[4] with a

[1] Senate Bill 32-A; enacted in Special Session "A"; Chapter 2003-411, L.O.F.
[2] Sections 627.730-627.7405, F.S., are cited as the "Florida Motor Vehicle No-Fault Law."
[3] In 1971, the Legislature adopted the no-fault automobile insurance provisions. Chapter 71-252, L.O.F.
[4] A party may sue for economic damage not covered by PIP, such as the 20 percent of medical bills not covered by

restriction ("verbal" threshold) which must be surpassed in order to sue for non-economic damages ("pain and suffering"). The threshold is intended to limit bodily injury claims to only those injuries which meet certain specified conditions.

- **Property Damage Liability (PD):** This third-party coverage[5] of $10,000 must be purchased by all drivers and it pays for the physical damage expenses caused by the insured to third parties in an accident.
- **Bodily Injury Liability (BI):** This is an optional third-party coverage which protects motorists involved in auto accidents who are at fault and cause bodily injury to third parties. It pays the medical bills, lost wages and non-economic damages to third-parties and provides legal representation and payment of attorney fees to the insured, if sued.
- **Uninsured Motorist (UM):** This an optional first-party coverage which pays the policyholder and passengers in his or her vehicle for bodily injury caused by the owner or operator of an uninsured or inadequately insured (underinsured) vehicle.
- **Medical Payments (Med Pay):** This is an optional first-party coverage which typically covers the twenty percent ($2,000) of medical expenses not covered by PIP, regardless of fault. Insureds may purchase more extensive Med Pay coverage which covers expenses after exhaustion of the PIP limit. Many insurers will offer a new revised Med Pay coverage under tort which will cover 100 percent of medical and other expenses up to the policy limits without regard to who is at fault in an accident.
- **Collision:** This is an optional first-party coverage which pays for repair or replacement to the insured's vehicle.
- **Comprehensive:** This is an optional first-party coverage which protects against loss resulting from damage to the insured's vehicle, e.g., fire, theft.

Financial Responsibility Law

Florida's financial responsibility law requires proof of ability to pay damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.[6] However, the owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*. The minimum amounts of liability coverages required are $10,000 in the event of injury to or death of, one person, $20,000 in the event of injury to or death of, two or more persons, and $10,000 in the event of property damage to others, or a $30,000 combined BI/PD policy.

METHODOLOGY

Committee staff interviewed representatives with various interest groups and received relevant automobile data from numerous entities including state and federal agencies, research institutions and universities, associations, insurance companies, attorney representatives, medical groups, consumer entities and fraud agencies. Staff analyzed national, Florida and Colorado specific auto data, rate and form filings, health care data and litigation statistics to determine the impact of returning to a tort liability auto system.

FINDINGS

Overview of National Auto Insurance Market

Fault-based systems are the most common form of auto insurance in the United States. Thirty-eight states operate under a tort system while twelve states (including Florida) have some form of no-fault insurance. Of the 38 tort states, nine require auto insurers to offer first-party benefits similar to PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.[7] Three of the nine states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage. Five states have repealed their no-fault laws and reverted to a tort system over the years; however, Pennsylvania reenacted its no-fault law six years after repealing it.

Forty-seven states require car owners to buy a minimum amount of bodily injury liability (BI) and property damage liability (PD) insurance coverage before they can legally drive their vehicles. The minimum coverage amounts for BI and PD vary among the states, with many states mandating BI/PD coverage of $25,000/$50,000/$10,000. Every state has a financial responsibility law which requires proof of a driver's ability to pay damages arising out of an accident, but only *after* the accident or serious traffic infraction.

PIP and amounts that exceed the $10,000 policy limit.

[5] First-party coverages indemnify insureds for their own losses. Coverages which pay for the insured's liability for injury and property damage caused to others are called third-party coverages.

[6] Chapter 324, F.S.

[7] These are known as "add-on" states because no-fault benefits are added on to the traditional tort liability system.

Overview of Florida's Auto Insurance Market (Pre-October 1, 2007)
Motor vehicle insurance is readily available for Florida drivers and the market is competitive. There were 357 companies writing private passenger automobile insurance with a total of 12 billion dollars in direct written premiums during 2006. The total direct written premium for PIP coverage during this same period was $2,523,180,556. The number of drivers in Florida's residual or involuntary market has been declining over the past several years which is another indicator that the voluntary market is viable. As of June 30, 2007, there were only 39 private passenger vehicles insured by the Florida Automobile Joint Underwriting Association as compared to 1,546 vehicles insured on June 30, 2005.

The great majority of Florida drivers carry the two mandated coverages (PIP and PD) according to estimates by the Department of Highway Safety and Motor Vehicles (DHSMV). There are an estimated 12,386,222 private passenger, non-commercial vehicles registered in Florida and 94.51 percent (11,706,218) of these vehicles have the requisite PIP and PD insurance, while 5.49 percent (680,004) are uninsured. Committee staff estimates that about 87 percent of vehicles (10,752,161) are currently covered for BI liability, even though it is not mandated.

Fraud and abuse permeate the no-fault system. Incidents of PIP fraud and abuse are increasing and constitute the majority of criminal cases referred to the Division of Insurance Fraud. Sophisticated criminal organizations exploit PIP laws in schemes that involve staging crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers and unscrupulous attorneys to fraudulently bill insurance companies for unnecessary or non-existent treatments, and patient-brokering (referring patients to medical providers for a bounty).

The PIP fraud statistics for 2006-2007 show that there were 3,606 referrals made to the Division which represents 31 percent of all Division referrals (11,812). The number of referrals has increased by 14 percent over the prior year. There were 307 criminal investigations opened, 316 arrests, 183 cases presented for prosecution and 204 convictions.[8] Personal injury protection fraud arrests constituted 39 percent of the Division's total arrests, 25 percent of total cases presented for prosecution and 35 percent of total convictions.

Auto Premiums, Expenditures and Loss Costs
Florida drivers paid the eighth highest auto insurance premiums in the country in 2004.[9] The combined average premium for the primary auto coverages[10] is $1,150.64, which is 20 percent greater than the national average of $959.76. Florida is the sixth highest among all states when calculating average expenditures ($1,062.31), which is 27 percent higher than the national average of $837.86.

Personal injury protection costs are unnecessarily high in Florida and other no-fault states because, for the most part, there are few cost controls for medical services. The state's no-fault system lacks the cost controls found in health insurance, e.g., fee schedule arrangements with providers, utilization protocols, preferred provider networks, HMO groups. A recent study by the Insurance Research Council (IRC) analyzed Florida PIP claims from 2002 to 2005 and found that the average total claimed PIP economic loss, consisting primarily of medical expenses, increased 18 percent in three years while the average total PIP claim payment increased 24 percent during this period. The proportion of PIP claimants who had an MRI (magnetic resonance imaging) increased to 33 percent in 2005 and chiropractors were the most common medical provider submitting charges for treatment of PIP claimants. More than four in ten PIP claimants hired attorneys in 2005. Half (50 percent) of PIP claimants qualified for filing a BI tort claim under Florida's tort threshold in 2005.

Committee staff analyzed actual claims payments made by insurers for the five primary auto coverages which provides greater insight into the costs and trends of Florida's auto insurance market under no-fault (Table 1).[11] The PIP loss costs fell 7.2 percent (dropping from $122.21 per insured vehicle in 2002, 1st quarter to $113.44 in 2007, 1st quarter). This reduction was due

[8] Some cases are carried over from one year to another which accounts for a greater number of convictions than cases presented for prosecution.

[9] This is based on the most recent data obtained from the National Association of Insurance Commissioners.

[10] Includes liability (BI, PD, Med Pay and PIP, in no-fault states), collision and comprehensive coverages.

[11] The five auto coverages (PIP, BI, PD, Comprehensive and Collision) were analyzed over a five year period (2002-2007). "Claims frequency" is the number of paid claims per insured car years; "claims severity" is the size of the loss (average amount paid for each claim).

to an 11.4 percent decrease in claim frequency (number of claims), which more than offset the 4.7 percent increase in claim severity (dollar amount of claims). This favorable loss experience may be due in part to the 2003 legislative reforms that targeted fraud, inappropriate medical treatment and inflated claims.

Table 1
Florida Claims Costs Over Five Year Period (2002, 1st Quarter thru 2007, 1st Quarter)

Coverage	Frequency Change	Severity Change	Loss Costs
PIP	-11.4%	4.7%	-7.2%
BI	- 5.9%	16.3%	8.2%
PD	-10.6%	16.2%	3.8%
Comp.	- 7.6%	4.9%	-3.2%
Coll.	-10.2%	15.8%	4.2%
All Coverages	**- 9.1%**	**13.1%**	**2.0%**

Florida's BI claim frequency dropped 5.9 percent which is correlated to the reduction in PIP claim frequency. Since there are fewer PIP claims, there are likely fewer BI claims that can surpass the verbal threshold to qualify for tort recovery. In addition, the 2003 reforms may have had a positive impact on BI claim patterns. On the other hand, BI claim severity has increased 16.3 percent during the five year period (from $15,574 to $18,105), resulting in an overall 8.2 percent increase in BI loss costs (from $133.12 to $143.99 per insured vehicle) over the five year period.

For all five coverages, the average loss costs increased slightly (2.0 percent) over the five year period, due to a combination of fewer claims (frequency), but with higher claim amounts (severity). Of all five coverages, PIP has had the most favorable loss experience over this period, dropping 7.2 percent.

Personal injury protection (PIP) premiums paid by Florida drivers vary greatly across the state, ranging from under $100 to over $1,000 per year. In addition to the possible cost drivers that have been discussed, differences in premiums are due to geographic territory, the insured's driving history, status as a first-time driver, gender, age, credit history, the year and type of vehicle driven, and usage of the vehicle. Insurers will have different rates, based on the particular insurer's losses, expenses, and profit level.

Overview of Florida's Auto Insurance Market After No-Fault is Repealed (Post-October 1, 2007)
Under tort, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. Such a system, as adopted in 38 states, represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent actions and is generally viewed by the public as consistent with the concept of personal responsibility.

The most direct effect of repealing no-fault and returning to a tort system is eliminating the requirement that motorists purchase $10,000 of PIP and that insurers provide this coverage. Removing this coverage can be viewed as a savings, but it is a savings due to a loss of coverage. However, some motorists believe that PIP is duplicative of their own health insurance and its elimination will lower their overall insurance premiums. Under a tort system, consumers will have the option to purchase medical payments coverage, at a level best suited for their own needs. Switching to a tort system will increase premiums for bodily injury liability (BI) and uninsured motorist (UM) coverages due to shifting of costs or losses from PIP to these two coverages. The state does not mandate bodily injury liability (BI) insurance, unless triggered by the Financial Responsibility Law due to certain accidents or violations.

The repeal of the no-fault law does not repeal the requirement for vehicle owners to obtain $10,000 of property damage liability coverage. However, its repeal does impact the enforcement of PD liability. Notably, the no-fault laws which are repealed require insurers to notify DHSMV of policy cancellations and non-renewals, which triggers a requirement for DHSMV to suspend the driver's license of persons who do not obtain replacement coverage, and require the owner to pay specified reinstatement fees. Therefore, unless otherwise addressed, the repeal of no-fault could also result in a greater number of vehicles uninsured for PD liability due to the abrogation of these enforcement provisions.

There will likely be a larger percentage of motorists who will not be covered for their own bodily injuries when PIP sunsets, because there will be no alternative requirement to carry Med Pay, BI, or UM (unless an accident or traffic violation triggers the requirement to carry BI under the Financial Responsibility Law). Currently, approximately 94.5 percent of vehicles (11,706,218) have the mandated PIP and PD coverages, while 5.49 percent (680,004) are uninsured. Based on data received from the National Association of Insurance Commissioners, committee staff estimates that about 954,057 vehicles are currently insured for only PIP and PD coverages, and not BI, while 10,752,161 vehicles (87 percent) have BI coverage as well as PIP and PD. When added to the 680,004 vehicles that are currently uninsured, this would total about 1.63 million vehicles (13 percent) which could be uninsured for bodily injury in Florida under tort.

Effect on Auto Premiums and Coverages Due to Repeal of No-Fault

In anticipation of no-fault's sunset, 30 auto insurers (representing a statewide combined market share of 45.1 percent) have currently made rate filings (as of September 1, 2007) with the Florida Office of Insurance Regulation and the overall average premium reduction is -13.8 percent (Table 2). This estimate includes the state's two largest auto insurers, State Farm (21.5 percent market share) and Allstate (14.3 percent market share). The average BI premium for the 30 carriers is increased by 21.2 percent and the average premium for UM coverage is increased by 12.5 percent. The premium impact for PIP is decreased by 100 percent since it is no longer in effect. The overall premium decrease (-13.8 percent) is attributable to the elimination of PIP coverage.

Table 2
Rate Filings - Premium Impact for Thirty Private Passenger Auto Insurers

Coverage	Percent Change in Total Premiums
Bodily Injury Liability	+ 21.2%
Uninsured Motorist	+ 12.5%
Personal Injury Protection	- 100.0%
Average Premium for All Coverages Combined	**- 13.8%**

The premium impacts depicted in Table 2 are based on each insurance company's estimate of how its rate filing will affect the total premiums collected by that insurer from its current policyholders for all coverages (including coverages for which no rate change is made, such as comprehensive and collision). On average, these 30 insurers estimated that their total premium volume would decrease 13.8 percent, which can also be expressed as an average 13.8 percent premium reduction to current policyholders. But, the premium reduction is driven by eliminating PIP coverage. If the policyholder elects optional Med Pay coverage to replace PIP, this savings would be substantially lowered or even eliminated, which will vary by insurer, territory, limits purchased, and other rate factors.

The average 13.8 percent savings also incorporates each insurer's method of estimating the impact on its Med Pay premiums, which was not consistent. For example, the State Farm rate filing, (Table 3, below) assumed a 100 percent reduction in Med Pay premiums, since the filing eliminated the old Med Pay coverage and replaced it with a new Med Pay coverage. This overstates the savings, due to the unlikely assumption that State Farm will collect no Med Pay premiums, i.e., no policyholders will purchase the new Med Pay coverage. State Farm representatives state that due to the major changes in Med Pay and not knowing what limits would be purchased, they elected not to make an estimate of the impact on Med Pay premiums.

Most of these rate filings rely, at least in part, on the 2006 actuarial study by Pinnacle Actuarial Resources.[12] The Pinnacle study estimated that BI premiums would increase approximately 31 percent and that UM premiums would increase 14 percent. In general these increases are due to the fact that injuries for a not at-fault driver, currently compensated by PIP, will be recovered under the tort system and compensated by the tortfeasor's BI coverage. The increase in BI premiums is also due to an increase in additional lawsuits that are now eligible for tort recovery and payments for non-economic damages, i.e., pain and suffering. Certain injuries now compensated by PIP will instead be compensated by UM. These are the injuries for which the at-fault driver either is uninsured (does not have BI coverage) or is underinsured (does not have sufficient BI coverage to cover damages) and also includes compensation for non-economic damages. But since BI is first in line to pay these losses, the repeal of PIP has a lesser impact on UM than on BI.

The Pinnacle study further estimated that the increase in BI and UM premiums would be more than offset by the elimination of the PIP premium, which the study estimated to be $218 on average (which includes "residual medical coverages").The net savings was estimated to be $130 per car annually, or 18.1 percent for the average liability coverage package (BI, UM, and PD) or a 12.1 percent savings for all major coverages (BI, UM, PD, Comprehensive and Collision). If, however, the policyholder replaced PIP with optional medical payments coverage with limits of $2,500, the savings would be reduced to 11.6 percent for the liability coverage package, and reduced to 7.8 percent for the total major coverages. Note that the $2,500 medical payment limit is less than the $10,000 PIP limit.

In summary, the 30 rate filings summarized in Table 2 reflect lower average increases for BI (21.2 percent)

[12] Pinnacle Actuarial Resources, Inc., *Florida Automobile No-Fault Study*, March 2006. (Hereinafter "Pinnacle 2006").

and UM (12.5 percent) than estimated in the Pinnacle study (31 percent for BI and 14 percent for UM).

Committee staff examined the individual rate filings for the two largest auto insurers in Florida, State Farm Mutual Automobile Insurance Company (“State Farm”) and Allstate Property and Casualty Insurance Company (“Allstate”), which heavily weighted the 30 insurers’ average. As shown under Table 3, State Farm has filed for an overall premium decrease of 15.3 percent. The reduction in premium is attributable to the elimination of PIP and to a lesser extent Med Pay coverage, according to the filing. As explained above, the savings from eliminating Med Pay will be reduced if a policyholder purchases the new Med Pay coverage. State Farm’s filing indicates that it is increasing its BI/PD liability premium by an average of 9.0 percent and its UM premium by 5.1 percent. The increase in its BI premium alone is 15 percent, but the net increase for BI and PD combined is 9 percent. The filing states that based on the analysis of State Farm’s own data, the impact on its BI and UM rates is less than indicated by the Pinnacle study.

Table 3
Rate Filing – State Farm Mutual Automobile Insurance Company

Coverage	**Percent Change**	**Estimate of Annual Effect**
BI/PD Liability	+ 9.0%	$83,860,400
PIP	-100.0%	-$383,637,800
Med Pay	-100.0%	-$80,013,800
UM	+ 5.1%	$12,715,100
All Coverages	**-15.3%**	**-$367,076,100**

Beginning October 1, State Farm policyholders have the option to chose the new Med Pay coverage which will have limits of $5,000, $10,000 and $25,000 and will be similar to PIP coverage and in that it will pay the insured’s medical costs without regard to fault. But, unlike PIP, the new Med Pay will cover 100 percent of an insured’s medical costs, whereas PIP covers 80 percent of medical costs. Med Pay will not cover wage loss or replacement services, which PIP currently covers; and Med Pay offers a $3,000 funeral benefit, while PIP offers $5,000. The new Med Pay coverage will contractually limit coverage to medical expenses that are reasonable, defined to include a charge not in excess of the usual and customary rate in the community.

On a statewide basis, State Farm’s new $10,000 Med Pay coverage will be less expensive than $10,000 in PIP, costing about 72 percent of what a PIP policy would cost. But, the Med Pay base rate of $5,000 will be about half or 50 percent of the current PIP base rate of $10,000. The cost differential between Med Pay and PIP will vary among individual territories across the state.

The rate filing for Allstate reflects an overall premium decrease for all coverages of 16.4 percent (Table 4). The company is increasing its BI premium by 10 percent, its UM premium by 7.5 percent and its new optional Automobile Medical Payments (MED) coverage by 54.8 percent.

Table 4
Rate Filing – Allstate Property & Casualty Insurance Company

Coverage	**Current Annualized Written Premium**	**Proposed Premium Level Change**	**Annual Dollar Change**
BI	$164,061,734	10.0%	$16,406,173
PD	$105,384,004	N/C	$0
MED*	$9,039,064	54.8%	$4,953,407
UM	$72,759,514	7.5%	$5,456,964
PIP	$142,970,426	-100.00%	-$142.970,426
EIP**	0	New	$0
Liability Subtotal	**$494,214,742**	**-23.5%**	**-$116.153,882**
Coll.	$159,663,536	N/C	$0
Comp.	$54,8178	N/C	$0
All Coverages	**$709,696,092**	**-16.4%**	**-$116,153,882**

*MED: means Automobile Medical Payments. The percent change for MED indicates the premium level impact of converting all current customers with Excess Medical Payments coverage to the new MED coverage at their current limits.
**EIP: Extended Injury Protection.

The scope of MED coverage will not be as broad as PIP, but the premium will be considerably lower for this coverage. The Allstate rate for $10,000 of MED coverage is approximately 50 percent of the cost for $10,000 of PIP coverage. If EIP coverage is included, it’s closer to 55 percent of the cost of PIP. The base limit of $1,000 per person will be available for new and renewal customers with an option to purchase limits of $2,000 and $5,000 per person. The new optional Extended Injury Protection (EIP) coverage will provide supplemental economic benefits previously covered by PIP by covering the following: 60 percent of wage loss, 100 percent of replacement services and death benefits. Since the State Farm and Allstate filings reflect premium increases for BI and UM that are lower than the 30 company average, the remaining 28 insurers have, on average, filed for rate increases for BI and

UM that are higher than the 21.2 percent (BI) and 12.5 percent (UM) average increase, and whose overall premium savings, due to deducting PIP, would be less than the 13.8 percent average savings.

In tort states, approximately 75 percent of insureds purchase Medical Payments coverage with limits of $5,000 - $10,000 most prevalent, based on the 2003/2004 NAIC Auto Database. If Florida insureds purchased similar limits of Medical Payments coverage, their projected savings would be further reduced.[13]

Health Care System

Medical costs previously paid by PIP will not only be transferred to other auto coverages as explained above, but shifted to some extent to the health care system, e.g., health insurers, health care providers, government programs (Florida's State Group Health Insurance program, Medicare, Medicaid), to employers and consumers. Currently, PIP provides primary medical coverage for persons injured in auto accidents. With no-fault's sunset, for those circumstances in which the other auto coverages are not applicable, the injured party's health insurance coverage would become primary.

Many Florida drivers will not purchase any medical payments auto coverage to replace PIP because they have health insurance plans which will pay medical bills arising from an auto accident. Costs associated with drivers who obtain no auto coverage and remain uninsured for health insurance, will shift to the health care system. Approximately 20 percent of Floridians are uninsured, totaling 3.6 million people, while 80 percent are covered by health insurance. The costs that are ultimately transferred to the health care system will likely increase health insurance premiums and may make it more costly for employers to offer health insurance to their employees.

According to the OIR, four health insurer rate filings have been approved (as of September 2007) by the agency in anticipation of PIP's repeal (Blue Cross and Blue Shield of Florida and its health maintenance organization (HMO), Health Options; Aetna Health Inc. and Aetna Life Insurance Company). The four companies represent 42 percent of the small employer group health insurance market (1 to 50 eligible employees) in the state and the individual rate increases range from 0.7 to 1.7 percent. Insurers must provide policyholders with a 30-day notice of premium change before a rate change may be implemented.

Blue Cross and Blue Shield (BC/BS) filed for an increase of 1.7 percent to its base rate due to projected increased claims resulting from PIP's sunset. The rate changes impact the entire state and represent a medical insurance product specifically marketed to PPO (preferred provider organizations) and Blue Options' policies issued to groups with 1 to 50 eligible employees for new business and renewals effective January 1, 2008. The annual BC/BS premium prior to the filing was $7,000 and will increase to $7,119. Health Options requested the same rate increase (1.7 percent) as BC/BS for its HMO product marketed to the group employer businesses which will take effect on January 1, 2008. The new premium will be $7,729 whereas the premium before the increase was $7,600.

Aetna Health Inc., an HMO, made a rate base increase of 1.1 percent to be applicable to its small group employer business with an effective date of February 1, 2008. The average annual premium prior to the rate filing was $7,582 and its new premium will be $7,665. Aetna Life Ins. Company's proposed rate increase is 0.7 percent which will take effect January 1, 2008. Its average annual premium before the rate filing was $10,706 and its increased premium will be $10,781.

The rate filings for the two BC/BS companies did not take into account any PIP costs that would be transferred to other auto coverages. Instead, BC/BS assumed that all of the prior PIP losses would be absorbed into the health insurance system. The rate filings for the two Aetna health insurers assumed that 70 percent of PIP losses would go into the health insurance system while 30 percent of such losses would go elsewhere. The rate assumptions made by BC/BS and Aetna conflict with the rate assumptions made by the auto insurers described above. Auto insurer filings estimate that PIP losses will primarily be absorbed by other auto coverages, e.g., bodily injury liability, uninsured motorist and the new medical payments coverage to the extent such coverages are purchased by Florida drivers.

A 2007 study by Pinnacle Actuarial Services supports the auto insurers' rate assumptions.[14] That study estimates that 80 percent of prior PIP losses would be transferred to other coverages within the auto insurance

[13] Pinnacle Actuarial Resources, Inc, *Florida Automobile No-Fault* Study, March 2007, p.8. (Hereinafter "Pinnacle 2007").

[14] Pinnacle 2007.

system, e.g., BI, UM and the new Med Pay coverage (Table 5). The percent of prior PIP losses shifting into the health care system would be 16.4 percent, while 4.1 percent of losses would not be covered by any type of insurance. The purpose of the Pinnacle report was to determine the cost implications of PIP's sunset on Florida's health care system.

The report found that the total annual no-fault losses were currently $1.497 billion and that the medical portion of those losses amounted to $1.361 billion. The study estimated that $1.082 billion out of the total PIP medical losses of $1.361 billion would be covered by the auto insurance system, $222.8 million could be compensated under the health care system and $55.7 million would not be covered by any type of insurance system. Pinnacle estimated that the average health care insurance premium would increase in Florida between 0.3 percent and 0.8 percent.

Table 5
Pinnacle Study – Disposition of Prior PIP Medical Losses

Auto Ins. Health Ins. Uncompensated	**Amount of PIP Medical Loss**	**Percentage of PIP Medical Loss**
BI	$666,345,600	49.0%
UM	$119,942,208	8.8%
Med Pay Coverage (Not at-fault Party)	$24,033,420	1.8%
Med Pay Coverage (At-Fault Party)	$272,087,037	20.0%
Auto Ins. System (Subtotal)	**$1,082,408,265**	**79.5%**
Health Care System	**$222,873,388**	**16.4%**
Not Covered	**$55,718,347**	**4.1%**
TOTAL	**$1,361,000,000**	**100.0%**

The impact of PIP's repeal will affect other medical services. Representatives with the Agency for Health Care Administration estimate that the maximum annual amount that could be shifted from PIP losses to Medicaid would be $26,700,000. This calculation is based on multiplying the number of Medicaid recipients (2,670) by the $10,000 PIP coverage amount and assumes that all PIP losses would be absorbed into the Medicaid system (for persons injured in accidents who are Medicaid recipients). This estimate appears to be too high given that Agency representatives admitted that they did not consider shifting any of the PIP costs to other auto coverages because they were not knowledgeable as to how to do that calculation. They assumed that each Medicaid recipient would be involved in an auto accident, be the at-fault driver, not carry any auto insurance and would utilize the full $10,000 benefit amount.

The Division of State Group Insurance administers the state group health insurance plan for the state's employees and dependents enrolled in the plan. The sunset of PIP is expected to shift some costs to the State Employee Health Insurance Program. Medical claims of participants in the preferred provider organization (PPO) portion of the State Employee Health Insurance Program are estimated to increase by $7.4 million on an annualized basis. This represents an increase of less than 0.9 percent of the total PPO medical care expenditures (roughly $811.1 million) of the program. In addition, risks will be shifted to the (health maintenance organization) HMO's participating in the State Employee Health Insurance Program, resulting in HMO costs increasing by $5.6 million (roughly a 0.9 percent increase statewide). Combined, these increased costs equate to a 1 percent premium increase for covered employees. These cost estimates did not take into consideration any shifting of PIP costs to other auto coverages.

There will be an impact of the tort system on hospitals, particularly emergency departments and trauma centers, as to payment delays, administrative costs for billing and collections, and higher patient default rates. In a study of the Colorado health care system completed after that state repealed its no-fault system, hospital respondents stated that payments were delayed and administrative costs for collections increased under their tort system. This occurred particularly with hospital emergency departments which are required under federal law to provide care regardless of ability to pay. Hospitals are also forced to seek reimbursement for uninsured patients through the court system. In contrast, claims were paid more promptly under the previous no-fault system.

Individuals sustaining an injury due to a car crash are often treated in a hospital emergency department. The great majority of auto accidents, however, are minor injuries and parties are treated on an outpatient basis and released. In a study done by the Insurance Research Council, more than half of all claimants nationally visited an emergency department, while only six percent were hospitalized for one or more nights.

There currently are 211 acute care hospitals in Florida with 23 trauma centers. In its survey of 116 acute care hospitals based on 2006 data, the Florida Hospital Association (FHA) found that 40 percent or 43,000 patients treated for motor vehicle crashes in Florida's hospital emergency rooms had no health insurance coverage, including Medicare and Medicaid, to pay for necessary medical care other than the currently mandated PIP coverage. The survey found that hospitals were reimbursed approximately $325 million under PIP by auto carriers in 2006. Hospital representatives assert that when PIP sunsets these costs will likely be shifted to hospitals, health care providers in hospitals, health insurers and HMOs, to Medicaid and Medicare. Any hospital bad debt and charity care costs may be shifted to the health insurance sector, resulting in higher premiums for insured individuals to cover uncompensated care incurred by hospitals and other providers.

The hospital survey assumes that 100 percent of PIP losses for emergency room patients would be transferred to hospitals and the entities noted above, as opposed to any of these losses transferring to other auto insurance coverages. The survey results do not consider the impact of any cost shifting to coverages like Med Pay, BI or UM. These auto coverages could reduce these costs to the extent an injured patient had Med Pay/UM coverages or that the at-fault driver had liability insurance. Therefore, the actual loss in revenue to hospitals is much less, probably less than half of the $325 million.

Health care providers are likely to receive less revenue due to the repeal of PIP, primarily affecting providers who treat a significant number or proportion of auto accident victims. Health insurers, BI insurers, and private pay patients are less likely to pay the billed charges that such providers have traditionally received from PIP insurers.

Health care provider fraud and abuse, and costs associated therewith, will likely be reduced under a tort system, as compared to no-fault. The PIP requirements for timely payment of any "reasonable" charge, regardless of fault, provides an easier opportunity for health care fraud and abuse than a liability situation where fault of a third party must be established and claims payments are not subject to statutory time frames, interest penalties, and attorney fee awards. Collecting up to $10,000 in PIP benefits acts as an incentive for unscrupulous health care providers, in collusion with dishonest attorneys and others, to commit various types of health care fraud according to representatives with the Division of Insurance Fraud. Examples of such crimes include creating bogus health care clinics where providers fabricate their credentials, bills or the office itself, provide treatments that are non-existent or not medically necessary, purposely miscode diagnosis, inflate bills, or create "doc in the box" schemes where often older medical providers are paid for the use of their license. While health care fraud and abuse can occur under any system, the rewards are much easier to obtain under PIP than under a tort system. Therefore, medical expenses related to PIP fraud and abuse will less likely be transferred to BI.

The magnitude of the PIP fraud problem is illustrated by the large number of health care clinics which are established in Florida, the majority of which are unlicensed and unregulated under the Health Care Clinic Act, according to insurance fraud officials.[15] Current figures indicate that over 6,000 health care clinics are not licensed according to officials with the Agency for Health Care Administration.

State/Local Programs

The repeal of PIP will have a fiscal impact on various state and local programs. For example, the state imposes taxes on the premiums of insurance companies (including auto insurers) which fund General Revenue, state regulatory programs, and municipal police officers and firefighters pension funds. The office of Economic and Demographic Research (EDR) preliminarily estimates the expected loss from PIP (in premium tax collections) would range from $10.6 million to $15.4 million on a recurring basis.[16] However, this estimate has not been approved by the Revenue Estimating Conference.

Both the Florida Hurricane Catastrophe Fund (Fund) and Citizens Property Insurance Corporation (Citizens) have authority to assess the direct premiums for all property and casualty lines of business (including automobile insurers) under specified circumstances. Approximately $2.5 billion, out of an assessment base of $37 billion, is attributable to PIP insurance premiums. Representatives with the Fund and Citizens assert that it is doubtful that PIP's demise will impact the assessment capacity for either entity. This is because the assessment base is growing at a faster rate than the amount of assessment premiums that will be lost with no-fault's repeal. Again, the increase in BI, UM, and Med Pay will offset this impact.

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[15] The Health Care Clinic Act is under Part XIII, Ch. 400, F.S. There are approximately 2,500 licensed clinics.

[16] EDR states that this estimate includes the deduction for PIP, the anticipated offsets associated with BI, UM and Med Pay coverage, and, an increase for Accident and Health insurance.

The Department of Highway Safety and Motor Vehicles (DHSMV) collects approximately $28 million annually in driver's license reinstatement fees from persons whose license has been suspended for failure to maintain PIP and PD. These revenues will be lost due to the repeal of the statutory authority for these fees, as part of the repeal of no-fault. The revenues from reinstatement fees are deposited into the Highway Safety Operating Trust Fund and provide for programs and positions within the agency.

Litigation Costs

Under a tort system, fault must be established in every accident that results in an injury to determine who is liable. Florida is a comparative fault state, meaning that the percentage of fault will also need to be allocated among the parties to the accident.[17] But, this is the current law under no-fault for property damage claims and in cases where economic costs exceed policy limits, so the finding of fault is required currently for two-party accidents. For bodily injury cases, however, returning to a tort system is likely to result in longer periods of time for insurers to make payments, to resolve claims and to compensate claimants for cases that are litigated.

However, there should be less litigation over claims by health care providers under a tort system. With PIP, the great majority of cases litigated involve disputes between insurers and providers since most auto insurers do not have contractual agreements or utilization protocols with providers. These cases typically involve the necessity of medical treatment and the reasonableness of the amount charged. Under a tort system, these types of disputes are less likely to occur because the injured party's health insurer may have a contractual relationship with providers with agreed upon fees or a fee schedule along with utilization and other medical protocols.

Auto insurers would be relieved from paying (or the threat of paying) attorney's fees in most auto injury liability cases if no-fault is repealed. The statutory requirement to pay attorneys' fees applies only if the insured (or his assignee) successfully sues his/her own insurer. An insurer must pay attorney's fees under s. 627.428, F.S., if it loses in court to its insured or beneficiary under an insurance policy or contract. However, if the insurer prevails, its fees are not paid by the losing side. In a third-party liability suit, the insurer is generally not required to pay attorney's fees to the plaintiff, unless it is determined that the insurer acted in bad faith in denying the claim. Therefore, even though BI costs will increase if PIP is repealed, the costs associated with payment of attorney fees in PIP cases will generally not be transferred to BI.

Attorney fees in Florida can in certain instances be high under the PIP system. After computing an attorney's fee based on an hourly rate, the court can multiply the fee by an amount ranging from 1 to 2.5 if the court makes certain findings based on whether the client would not have been able to obtain competent counsel without the possibility of a multiplier, e.g., contingency risk multiplier.

Examining the number of legal disputes which have been filed in Colorado before and after PIP's repeal may prove insightful. Officials with the Colorado State Court Administrator's Office provided Committee staff with the number of cases filed in district courts which involved personal injury in motor vehicles from fiscal year 2002 thru 2006. These statistics, however, do not include all the auto related accidents filed in Colorado's courts. There was a 29 percent increase in cases filed from 2002 (2,583) to 2003 (3,338) which was during the time period of no-fault's repeal (July 1, 2003). However, there was only a 5 percent increase in the number of cases filed for a three year period after tort was in place, e.g., from 2003 (3,338) thru 2006 (3,512).

Critics of the tort liability system assert that proving negligence is often difficult after an accident and that in some cases negligence cannot be determined or established, e.g., in accidents occurring during rush hours on busy highways. Also, recovery is often slow in areas where courts are backlogged with cases. Some critics cite that claimants are not always indemnified fairly in that small claims (called nuisance claims) are often overcompensated, while large claims are under-compensated.

Proponents of a tort system argue that it encourages good driving because drivers who cause accidents will find their insurance premiums increased. Due to the adversarial relationship existing between plaintiff and defendant, damages and all other facts have to be proved, and thus fraud is greatly reduced. In many cases, claims are settled in less than six months without litigation and a small number of claims proceed to court.

Colorado's Switch from No-Fault to Tort

When Colorado repealed its no-fault system on July 1, 2003, it eliminated one of the most generous

[17] Section 768.81, F.S.

and expensive PIP benefit packages in the country. It provided up to $130,000 in benefits: $50,000 in medical services, $50,000 for rehabilitative services, and over $20,000 for lost wages and essential services. The change to a tort system was motivated primarily by the fact that Colorado drivers were paying some of the highest auto insurance premiums in the country under no-fault. The average expenditure for automobile insurance rose from 14th nationally in 1998 to eighth in 2002. From 2001 to 2002, the combined average premium in Colorado increased from $116.27 to $1051.37, the largest such increase in the nation.

The dramatic rate increase was fueled in large part by the increase in PIP claimed economic losses. From 1997 to 2002, average claimed economic losses (medical expenses, wage loss, and other out-of-pocket expenses) rose 122 percent. By way of comparison, such losses increased by 37 percent in Florida during that period. Large increases in claimed medical losses were also apparent in Colorado and appear to be a primary cause of the increased economic losses and rising premiums, as the average claim more than doubled from $4,020 in 1997 to $9,033 in 2002. Florida's claimed medical losses for the same period rose by 40 percent ($5,585 to $7,803).

Two facets of Colorado's no-fault law appear to have encouraged the increase in premium costs: Colorado PIP benefits were extremely generous as noted above. Colorado's no-fault regulations also required insurers to offer the choice of expanded PIP coverage up to a $200,000 total limit. In 2001, Colorado's pure premium (loss costs) for PIP coverage was second only to Michigan, which offers unlimited PIP medical benefits. In addition, Colorado's tort threshold was set very low at $2,500 in medical expenses. Colorado closed claims examined for 2002 by the Insurance Research Council indicate that 45 percent of PIP claimants were eligible to pursue a liability claim which could include non-economic damages. Among those who did file a bodily injury claim, 95 percent overcame the Colorado tort threshold by exceeding the $2,500 amount.

Prior to no-fault's repeal in Colorado, vehicle owners were required to purchase bodily injury and property damage liability coverages in the amount of $25,000/$50,000/$15,000 in addition to PIP. When no-fault was repealed, owners were still mandated to carry those two liability coverages. Approximately 85 percent of Colorado vehicle owners currently carry the two coverages (BI/PD). Uninsured motorist coverage is required to be offered by insurers and drivers rejecting this coverage must do so in writing. Medical payments coverage is not required to be offered in Colorado, but the Division of Insurance indicates that most insurers offer the coverage. Approximately 32 percent of vehicle owners have Med Pay coverage. For policyholders who do have the coverage, the most common limit purchased is $5,000.

The premium effects of shifting PIP costs to BI and UM coverages described earlier in this report for Florida have been reflected in Colorado. After no-fault was repealed, drivers were no longer required to purchase expensive PIP coverage, which has been the primary source of "savings" under the tort system. These savings have caused an overall premium decrease of 27 percent from June 2003 to May 2006 since Colorado switched to a tort system. For the top five auto insurers, the premium decrease has been more than 30 percent over the past three years. More recently, a survey of insurers representing more than half of the Colorado market (50.9 percent) indicates that average annual premiums fell by 32.3 percent from May 2003 to May 2007.

According to the Colorado Division of Insurance, BI liability rates have increased approximately 50 percent while UM rates increased about 30 percent due to the shifting of PIP losses to those coverages. But, the net effect is still a much lower overall premium as noted above, due to dropping of the expensive PIP coverage.

Concerns have been raised relating to increased health care costs with Colorado's shift to a tort system. According to a survey of 63 hospitals by the Trauma Care Preservation Coalition (for the period from 2001 to 2004), the switch to tort has caused large losses for Colorado's hospitals, estimated to be approximately $81 million a year. The survey found that auto insurance coverage of medical costs decreased by over 40 percent during this period and that those costs had shifted to private health insurance. Additionally, there was a large increase (400 percent) in the number of motor vehicle accident patients who were medically indigent, meaning that there was no payment received for the care provided to those patients. As a result, hospitals expect to render more uncompensated care, which would cause increased financial pressure on said institutions. Similar cost shifting was seen by first responders such as ambulance providers in that the average number of days it took to collect in auto accident cases had more than doubled from 2001 to 2004, resulting in serious cash flow-associated losses.

Insurance companies are critical of the Trauma Coalition survey because it is based on flawed assumptions used to calculate the $81 million loss, according to representatives with the Property and Casualty Insurers group and the Rocky Mountain Insurance Information Association. Specifically, the hospital's data assumed that half of all patient's who were treated in the emergency room were also admitted into the hospital. This assumption is highly inflated and runs counter to an Insurance Research Council report which found that only six percent of accident victims were hospitalized, according to these representatives. In addition, the Trauma study references delays in payment from health insurers as a significant issue as a result of the transition to tort. In 2006, "prompt pay" legislation was passed in Colorado which requires insurers to promptly pay auto accident related claims and then subrogate the at-fault party. This legislation took effect on January 1, 2007.

According to information from the Colorado Division of Insurance, rate filings by health insurers reflect an average premium increase of about 1.5 percent directly due to the repeal of no-fault, ranging from about 0.5 to 5 percent.

Supporters of the PIP system in Colorado argue that the savings from switching to a tort system are illusory and that policyholders are simply paying less because they are receiving less coverage. The first-party medical payments coverage that drivers can purchase under tort generally has limits which are far lower than the PIP benefit of $50,000 for medical treatment. Also, persons without health insurance have been harmed under the tort system since PIP was the only form of health insurance coverage many such individuals with limited income had.

Insurers in Colorado are supportive of the switch to a tort system, primarily because of the elimination of rapidly rising PIP costs, the substantial decreases in auto premiums for policyholders and the reduction of instances of fraud and abuse. Fraud and abuse existed within the no-fault system, according to insurers, because companies had to cover any type of medical treatment, no matter how questionable. With drivers no longer required to purchase PIP coverage since the burden for medical bills is now shifted to the at-fault driver, policy costs have been reduced.

Stakeholders in Colorado are still analyzing the full ramifications of the switch from no-fault to a tort based system. But, premium costs are continuing to go down due to the fact that Colorado's PIP benefits were very generous, totaling up to $130,000 before the repeal.

RECOMMENDATIONS

The purpose of this report is not to recommend whether the Legislature should or should not reenact no-fault, but to evaluate the impact of repeal. If no-fault is to remain repealed, the options to consider are one or more of those adopted in other tort states:

1. Mandate that vehicle owners purchase bodily injury liability coverage, as required in 36 of 38 tort states;
2. Require that insurers offer PIP coverage, as required in nine "add on" tort states (that do not restrict recovery in tort);
3. Mandate that vehicle owners purchase PIP, as required in three of the nine "add on" tort states; or
4. Do not change the current law and do not require PIP or BI coverage, as provided in two states.

The Legislature also has the option of restoring the repealed no-fault provisions that are necessary to enforce the current property damage liability requirements.