The Effect of Repealing the Florida Motor Vehicle No-fault Law

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Introduction

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 law, and Florida has now reverted to a tort or fault-based automobile insurance system.[4]

Under the state's no-fault law, owners or registrants of motor vehicles must purchase $10,000 of personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault. Policyholders are indemnified by their own insurer with the intent being to provide such persons with prompt medical treatment. This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold. In contrast, under a tort liability system, the negligent party is responsible for damages caused. An accident victim can sue the at-fault driver to recover both economic or non-economic damages.

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,[5] 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. These concerns were echoed in 2006 when Governor Jeb Bush insisted legislators pass "meaningful" PIP reform by the enacting medical fee and utilization schedules, attorney fee changes including eliminating the fee multiplier and addressing bad faith issues, and continuing efforts to fight fraud.[6]

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[1] Senate Bill 32-A; enacted in Special Session "A"; Chapter 2003-411, L.O.F. The law provided that effective October 1, 2007, the Motor Vehicle No-Fault Law is repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006. The provision authorized insurers to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007. The repealed statutory provisions are: ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S

[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] However, for ease of understanding, this report will refer to PIP and the no-fault law in present tense.

[5] Chapter 2001-271, L.O.F.; Chapter 2001-163, L.O.F.; Chapter 2003-411, L.O.F.

[6] Letter to Secretary of State Cobb from Gov. Bush in vetoing CS/CS/CS/SB 2114, May

Over the past several years, legislators have considered recommendations to resolve these concerns and have received input from various interest groups representing auto and health insurers, medical providers, lawyers, fraud investigators and citizens from all over Florida. Last year the Senate Banking and Insurance Committee issued an interim report recommending reenactment and reform including adoption of a medical fee schedule to control PIP costs and limiting specified attorney fees.[7] However, after much debate, no legislative resolution has been reached and thus Florida is joining the 38 other states that utilize a tort system.

Interim Report Objectives

This interim project is intended to provide policymakers, stakeholders and consumers with an understanding of the policy implications and fiscal impacts resulting from repealing no-fault and returning to a tort liability system. It will review auto insurance systems throughout the country and assess Florida's no-fault system. Note that for ease of understanding, this report will refer to the no-fault law in present tense.

The report will examine the impact of the shift to a tort auto insurance system on the state's motor vehicle premiums, auto coverages, particularly liability coverages, health care system, state and local programs and litigation practices. Finally, we will review Colorado's experience which repealed its no-fault law on July 1, 2003. That state had a much more generous and expensive personal injury protection (PIP) benefit's package (up to $130,000) compared to Florida's ($10,000); however, Colorado's experience can provide insight and guidance for Floridians.

Background

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 or damage, should they be in an accident. Understanding auto insurance coverages is therefore critically important for Florida drivers.

Because the tort system does not pay for motorists who are injured either by their own negligence or when there is no at-fault driver, such motorists must chose whether to obtain some type of medical payments coverage.[8] This is a type of

31, 2006.

[7] See Senate Interim Report Number 2006-102, *Florida's Motor Vehicle No-Fault Law*, for background, analysis and recommendations pertaining to Florida's no-fault auto reparations system.

[8] First-party coverages indemnify insureds for their own losses. Coverages which pay for

first-party coverage, comparable to PIP but typically with reduced benefits, which pays the driver's own medical bills up to the policy limits without regard to fault. Motorists who have health insurance may decide to decline purchasing such coverage since it may duplicate their own health insurance. Drivers must consider whether to purchase a bodily injury liability (BI) policy, a third-party coverage that pays for injuries to others when the insured is legally at fault. Further, drivers must consider whether to purchase other optional coverages like uninsured motorist (UM) which pays the insured's medical expenses if the at-fault motorist is uninsured or underinsured. The following is a summary of Florida's mandatory and optional auto coverages:

- Florida drivers are required to purchase both personal injury protection (PIP) and property damage liability (PD) insurance; however, as of October 1, 2007, motorists will only be obligated to purchase PD coverage.[9] Personal injury protection provides $10,000 of coverage (for 80 percent of reasonable medical expenses, 60 percent of loss of income, 100 percent of replacement services, plus a $5,000 death benefit)[10] for bodily injury sustained in a motor vehicle accident, without regard to fault. It covers the named insured, certain relatives and other specified persons. The no-fault law provides immunity from economic damages up to the policy limits[11] with a restriction ("verbal" threshold) which must be surpassed in order to sue for non-economic damages ("pain and suffering"). The verbal tort threshold is intended to limit BI claims to only those injuries which meet certain specified conditions.[12]
- Property damage liability (PD) is a third-party coverage of $10,000 which 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) is an optional coverage which protects motorists involved in auto accidents who are at fault and cause bodily

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the insured's liability for injury and property damage caused to others are called third-party coverages.

[9] The requirement to purchase PIP coverage is repealed effective October 1, 2007. (See footnote 1.) See also Opinion of Senior Assistant General Counsel Alderman with the Department of Highway Safety and Motor Vehicles (dated Aug. 21, 2007) which finds that No-Fault's repeal does not effect the requirement for Florida drivers to obtain and maintain PD coverage.

[10] For example, a claimant who incurred $5,000 in medical bills and $500 for replacement services, and had $4,000 loss of income, and then died from the accident, would have a $3,100 death benefit available:

Medical expense: $5,000 x 80%=	$4,000
Replacement services: $500 x 100%=	500
Work loss: $4,000 x 60%=	2,400
Death benefit	3,100
	$10,000

[11] A party may sue for economic damage not covered by PIP, such as the 20 percent of medical bills not covered by PIP and amounts that exceed the $10,000 policy limit.

[12] Section 627.737, F.S.

injury to third parties. This third-party coverage 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) is 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) 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 intend to offer a new revised Med Pay coverage under tort which will cover medical and other expenses up to the policy limits without regard to who is at fault in an accident.
- Collision is an optional first-party coverage which pays for repair or replacement to the insured’s own vehicle.
- Comprehensive 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 monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.[13] 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*. At that time, a driver’s financial responsibility is proved by the furnishing of an active motor vehicle liability policy.[14] The minimum amounts of liability coverages required are $10,000 in the event of bodily 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 damage to property of others, or $30,000 combined BI/PD policy. If the owner or operator of the vehicle was not financially responsible at the time of the accident, his driver’s license is suspended as well as the registration of the owner of the vehicle. A driver’s license and registration may be reinstated by obtaining a liability policy and by paying a $15 fee to the Department of Highway Safety and Motor Vehicles.[15]

[13] Chapter 324, F.S.

[14] Section 324.031, F.S. Compliance with the financial responsibility law may be met by holding a motor vehicle liability policy (BI/PD); posting a satisfactory bond of a surety company with the Department of Highway Safety and Motor Vehicles (DHSMV), cash or securities deposited with DHSMV, or a self-insurance policy issued by DHSMV (Section 324.031, F.S.)

[15] Section 324.071, F.S.

Methodology

Committee staff interviewed representatives with various interest groups and received relevant automobile data from the following entities: Department of Financial Services, Office of Insurance Regulation, Department of Highway Safety and Motor Vehicles, Agency for Health Care Administration, Division of State Group Insurance, Department of Health, National Association of Insurance Commissioners, National Conference of State Legislators, RAND Corporation, State of Colorado (Division of Insurance), national and state research institutions and universities, associations, insurance companies, attorney representatives, consumer groups, fraud investigators, and medical groups.[16]

Academic and public policy research studies in the areas of no-fault and tort auto reparations systems were reviewed. Staff analyzed national, Florida and Colorado specific auto data, loss costs for auto coverages and reviewed form and rate filings submitted by insurers to the Florida Office of Insurance Regulation in anticipation of PIP's sunset. Actuarial opinions and other information were reviewed relating to the repeal's impact on auto insurance premiums, health care premiums and state and local programs. Hospital, Medicaid and state group health information were examined to determine the impact of repeal on such costs.

Findings

Overview of National Auto Insurance Market

Auto Insurance Laws

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in the accident.[17] Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as "add-on" states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.[18] Benefits are

[16] Committee staff would like to thank the individuals who provided information for this report.
[17] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.
[18] Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin. The term "add-on states" refers to states where no-fault benefits are "added on" to the traditional tort liability system. Add-on states are not considered to be no-fault, because they make no attempt to achieve one of the two major goals traditionally pursued by no-fault legislation: lowering premium costs through reducing litigation. The

generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.[19]

Twelve states (including Florida) have a no-fault system and mandate first party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.[20] All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims and the use of fee schedules or treatment protocols, vary widely among these entities. One primary difference is with regard to the minimum amount of PIP coverage that must be purchased. Florida requires $10,000 in PIP coverage, with five states requiring greater amounts of coverage ranging from $15,000 to unlimited benefits (Michigan), while six jurisdictions require the same or a lesser amount of coverage.

Each state has either a “verbal” or “monetary” threshold regarding the seriousness of a person’s injuries that must be met prior to the filing of a tort suit for non-economic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury.[21] The seven remaining no-fault states have monetary thresholds ranging from $1,000 to $5,000. Under a monetary threshold, once the injured party has medical expenses of a certain amount, he or she may sue for non-economic damages. Verbal thresholds are more difficult to meet than monetary thresholds. Under a monetary threshold, a tort suit may be brought for any injury that reaches the threshold amount while under a verbal threshold, the injury must meet the statutory description of a “serious” or “permanent” injury.

Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage or traditional tort liability coverage which does not include PIP benefits.[22] Whether a no-fault or tort based premium is more expensive in a choice

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other no-fault goal is prompt indemnification by one’s own insurer.

[19] Delaware, Maryland and Oregon require the purchase of PIP insurance. Arkansas, South Dakota, Texas, Virginia, Washington and Wisconsin require insurers to offer PIP insurance.

[20] Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania and Utah. The District of Columbia and Puerto Rico are also classified as no-fault jurisdictions.

[21] Michigan, New Jersey, New York and Pennsylvania.

[22] In Kentucky, for example, basic PIP coverage is $10,000 for medical expenses, loss of income or services and funeral expenses. The insured forfeits the right to sue the other driver for the cost of medical treatment, and non-economic damages unless the injury involves a broken bone, permanent disfigurement, medical expenses over $1,000, permanent injury or death. The law also allows Kentucky auto insurers to *sell back* to their insured the right to sue (even though the insured carries PIP) for an increase in premium.

state depends on factors such as the amount of PIP benefits provided, the type of no-fault threshold being used, and other factors. 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.[23]

Auto Coverage Requirements

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.[24] Further, all states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. As Table 1 indicates, the minimum coverage amounts vary among the states.[25] Florida has a requirement for liability coverage for persons subject to the Financial Responsibility Law of $10,000 per person, $20,000 per accident, and $10,000 in the event of damage to property of others, or a $30,000 combined (BI/PB) single limit. Florida's minimum requirement for this coverage is among the lowest in the nation.

Table 1

State Auto Insurance Coverage Requirements

State	Insurance required (1)	Minimum liability limits (2)	State	Insurance required (1)	Minimum liability limits (2)
AL	BI & PD Liab	20/40/10	MT	BI & PD Liab	25/50/10
AK	BI & PD Liab	50/100/25	NE	BI & PD Liab	25/50/25
AZ	BI & PD Liab	15/30/10	NV	BI & PD Liab	15/30/10
AR	BI & PD Liab, PIP	25/50/25	NH	FR only, UM	25/50/25
CA	BI & PD Liab	15/30/5 (3)	NJ	BI & PD Liab, PIP, UM	15/30/5 (7)
CO	BI & PD Liab	25/50/15	NM	BI & PD Liab	25/50/10
CT	BI & PD Liab, UM, UIM	24/40/10	NY	BI & PD Liab, PIP, UM	25/50/10 (8)
DE	BI & PD Liab, PIP	15/30/10	NC	BI & PD Liab	30/60/25
DC	BI & PD Liab, UM	25/50/10	ND	BI & PD Liab, PIP, UM	25/50/25

[23] Nevada (repealed 1980); Pennsylvania (repealed 1984; reenacted 1990); Georgia (repealed 1991); Connecticut (repealed 1993); and Colorado (repealed 2003).

[24] New Hampshire and Wisconsin do not require BI coverage if the driver complies with alternative financial responsibility requirements. Florida does not require the purchase of BI coverage except drivers must purchase BI and PD liability after a motor vehicle accident or serious traffic violation under the Financial Responsibility law.

[25] This data is from the Property Casualty Insurers Assn. of America.

FL	PD Liab, PIP	10/20/10(4)	OH	BI & PD Liab	12.5/25/7.5
GA	BI & PD Liab	25/50/25	OK	BI & PD Liab	25/50/25
HI	BI & PD Liab, PIP	2040/10	OR	BI & PD Liab, PIP, UM	25/50/10
ID	BI & PD Liab	25/50/15	PA	BI & PD Liab, PIP	15/30/5
IL	BI & PD Liab, UM	20/40/15	RI	BI & PD Liab, UM	25/50/25(4)
IN	BI & PD Liab	25/50/10	SC	BI & PD Liab, UM	25/50/25
IA	BI & PD Liab	20/40/15	SD	BI & PD Liab, UM	25/50/25
KS	BI & PD Liab, PIP, UM	25/50/10	TN	FR only BI & PD Liab	25/50/10 (4)
KY	BI & PD Liab, PIP	25/50/10	TX	BI & PD Liab	20/40/15(9)
LA	BI & PD Liab	10/20/10	UT	BI & PD Liab, PIP	25/50/15(4)
ME	BI & PD Liab, UM, UIM	50/100/25(5)	VT	BI & PD Liab, UM, UIM	25/50/10
MD	BI & PD Liab, PIP(6) UM	20/40/15	VA	BI & PD Liab, UM	25/50/20
MA	BI & PD Liab, PIP, UM	20/40/5	WA	BI & PD Liab	25/50/10
MI	BI & PD Liab, PIP	20/40/10	WV	BI & PD Liab, UM	20/40/10
MN	BI & PD Liab, PIP, UM, UIM	30/60/10	WI	FR only, UM	25/50/10
MS	BI & PD Liab	25/50/25	WY	BI & PD Liab	25/50/20
MO	BI & PD Liab, UM	25/50/10			

(1)Compulsory Coverages**:**
BI Liab=Bodily injury liability
PD Liab=Property damage liability
UM=Uninsured motorist
PD=Property (physical) damage
Med=First party (policyholder) medical expenses
UIM=Underinsured motorist
PIP=Personal Injury Protection. Mandatory in no-fault states. Includes medical, rehabilitation, loss of earnings and funeral expenses. In some states PIP includes essential services such as child care.
FR=Financial responsibility only. Insurance not compulsory.
(2) The first two numbers refer to bodily injury liability limits and the third number to property damage liability.
For example, 20/40/10 means a limit of $20,000 for one individual, up to $40,000 for all persons injured in an accident, and $10,000 coverage for property damage liability.
(3) Low-cost policy limits for low-income drivers in the California Automobile Assigned Risk Plan are 10/20/3.
(4) Instead of policy limits, policyholders can satisfy the requirement with a single combined single limit policy. Amounts vary by state.
(5) In addition, policyholders must carry at least $1,000 for medical payments.
(6) May be waived for the policyholder, but is compulsory for passengers.
(7) Basic policy (optional) limits are 10/10/5. Uninsured and underinsured motorist coverage not available under the basic policy but uninsured motorist coverage is required under the standard policy.
(8) In addition, policyholders must have 50/100 for wrongful death coverage.
(9) Coverage requirements will increase to 25/50/25 on 4/1/08, and to 30/60/30 on 1/1/11.

Overview of Florida's Auto Insurance Market (Pre-October 1, 2007)

The auto insurance market in Florida is competitive and motor vehicle insurance is readily available to Florida drivers. There were 357 companies writing private passenger automobile insurance with a total of 12 billion dollars in direct written premiums during 2006.[26] The total direct written premium for PIP coverage during this same period was $2,523,180,556.[27] The top five private passenger auto insurers (ranked by market share) in Florida are State Farm, Allstate, Progressive, Geico and Nationwide which have a cumulative market share of approximately 60 percent.

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.[28]

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) which maintains data as to the number and percentage of vehicles that have at least the minimum required coverages.[29] 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.[30] Committee staff estimate that about 87 percent of vehicles (10,752,161) are currently covered for BI liability, even though it is not mandated.

The latest statistics from the Division of Insurance Fraud indicate that fraud and abuse continue to permeate the no-fault system. Incidents of PIP fraud and abuse are increasing and constitute the majority of criminal cases referred to the Division.[31] According to Division representatives, the PIP laws are being exploited by sophisticated criminal organizations 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).

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[26] National Association of Insurance Commissioners and Florida Office of Insurance Regulation.
[27] Office of Insurance Regulation.
[28] Known as the "insurer of last resort," the FAJUA provides insurance to applicants who are unable to obtain insurance through the voluntary or competitive market due to poor driving history, status as first-time drivers, etc.
[29] Motorists must show evidence of insurance at the time of vehicle registration with the DHSMV (s. 320.02(5) (a), F.S.), when purchasing or renewing license tags (s. 320.02(5), F.S.), and such proof must be carried at all times while a driver operates a vehicle (S. 316.646, F.S.). Motorists are subject to civil and in some cases criminal sanctions should they violate these provisions (s. 316.646, F.S.).
[30] This data is based on DHSMV reports for July 2007.
[31] Workers' compensation criminal cases constitute the second largest number of referrals.

The PIP fraud statistics for 2006-2007 show that there were 3,606 referrals made to the Division which represents 31percent 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.[32] 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.

The General Appropriations Act for 2007-08 appropriated an additional $1.25 million to the Division, which funded eight additional Law Enforcement Investigator II positions to be located in Miami. The positions will be utilized primarily to investigate PIP fraud, but will also be used to investigate other types of insurance fraud cases. In addition, the appropriation enabled the Division to increase the salaries of thirty investigators based on merit. These positions are located throughout the agency and handle all types of criminal fraud investigations. The Division is in the process of creating a Law Enforcement Trainee Program which will allow the agency to supplement its current force with both sworn and non-sworn personnel to investigate and analyze insurance fraud cases. The program is in the development phase.

Auto Premiums and Expenditures

Florida drivers paid the eighth highest auto insurance premiums in the country in 2004, according to the most recent data obtained from the National Association of Insurance Commissioners (NAIC).[33] As shown in Table 2, the 2004 combined average premium for the primary coverages 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.[34] Florida's ranking has risen since

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

[33] National Association of Insurance Commissioners, *Auto Insurance Database Report, 2004.* The NAIC data for 2004 measures the relative cost of automobile insurance to consumers in each state. The combined average premium per insured vehicle is calculated by summing the average premiums for three coverages: liability, collision and comprehensive coverages. The result is the average cost of an auto insurance policy in the state that contains all three coverages. A written car year is equal to 365 days of insurance coverage for a single vehicle and is the standard measure of exposure for automobile insurance. Many factors affect the state-to-state differences in average premiums and expenditures for auto insurance. Some important factors are: underwriting and loss adjustment expense, types of coverages purchased, relative amounts of coverages purchased, driving locations, accident rates, traffic density, vehicle theft rates, auto repair costs, population density, medical and legal costs, per capita disposable income, rate and form filing laws, liability insurance requirements and auto laws (seat belt, speed limits, etc.).

[34] The average expenditure per insured vehicle is the total written premium for liability (BI, PD, Med. Pay, and in no-fault states, PIP), collision and comprehensive coverages divided by the liability written car-years (exposures) in that state. This assumes that all

2002, when the state ranked 14th ($931.15) in combined average premiums and 13th ($870.35) in average expenditures. In that year, Florida's average premiums were six percent greater than the national average ($879.99) and 12 percent higher than the national average ($773.68) for average expenditures.

Florida's no-fault system, like other no-fault jurisdictions, typically provides the most comprehensive benefits as to scope of coverage for minor and serious injuries resulting from an auto accident. Because no-fault states restrict the right of injured parties to sue for non-economic damages ("pain and suffering") for most injuries, they offer broader first-party PIP benefits than do tort states.[35] This tends to put upward pressure on costs in no-fault states.

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.[36] 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. Average premiums/expenditures therefore appear to be highest in no-fault and add-on jurisdictions as opposed to tort states.[37] In 2004, thirteen no-fault and add-on jurisdictions ranked among the top half of all states for both combined average premiums and average expenditures (Table 2).

insured vehicles carry liability coverage, but do not necessarily carry the physical damage coverages, collision and/or comprehensive. The average expenditure is an estimate of what consumers in the state spent, on average, for auto insurance.

[35] Tort state insurers offer Med Pay coverage which is similar to PIP in that it provides medical payments coverage to insureds without regard to fault. However, Med Pay usually does not offer as many benefits as PIP coverage, like lost wages or replacement coverage.

[36] Peter Kinzler, J.D., *Auto Insurance Reform Options: How to Change State Tort and No-Fault Laws to Reduce Premiums and Increase Consumer Choice,* August 2006; Policy Paper of the National Ass. of Mutual Insurance Companies, at p. 16; (hereinafter "Kinsler").

[37] See Colorado Health Institute, *The Jury's Out: Monitoring the Shift from No-Fault to a Tort Auto Insurance System in Colorado;* March 2005; (hereinafter "Colorado Health"). Insurance Research Council, *Trends in Auto Injury Claims,* 2004 Edition.

TABLE 2

2004 State Average Expenditures and Premiums for Personal Automobile Insurance

	Auto Insurance System	Combined Average Premium per Insured Vehicle	Combined Average Premium Ranking	Average Expenditure per Insured Vehicle	Average Expenditure Ranking	Population Density Ranking (2000)
New Jersey	No-fault	1386.46	1	1221.08	1	2
District of Columbi	No-Fault	1346.82	2	1184.63	2	1
New York	No-fault	1324.21	3	1171.62	3	8
Louisiana	tort	1228.10	4	1062.33	5	24
Massachusetts	No-fault	1204.76	5	1112.87	4	4
Rhode Island	Tort	1198.81	6	1033.84	7	3
Alaska	Tort	1161.81	7	973.61	11	51
Florida	**No-fault**	**1150.64**	**8**	**1062.31**	**6**	**9**
Michigan	No-fault	1128.16	9	980.32	10	16
Delaware	Add-on	1113.97	10	1022.19	8	7
Connecticut	Tort	1102.42	11	990.75	9	5
Nevada	Tort	1079.32	12	938.69	13	44
Arizona	Tort	1072.25	13	930.58	14	37
West Virginia	Tort	1046.81	14	874.96	15	30
Maryland	Add-on	1034.81	15	947.15	12	6
Colorado	Tort	1011.63	16	849.84	16	38
Countrywide		**959.76**		**837.86**		
California	Tort	957.73	17	832.69	20	13
Georgia	Tort	953.41	18	778.63	24	19
Pennsylvania	No-fault	951.14	19	842.66	18	11
Texas	Add-on	944.08	20	846.93	17	28
Washington	Add-on	943.44	21	838.61	19	26
Hawaii	No-fault	930.69	22	817.45	22	14
Minnesota	No-fault	930.06	23	829.33	21	32
New Mexico	Tort	916.19	24	727.60	30	46
Kentucky	No-fault	910.94	25	758.00	27	23
Mississippi	Tort	903.91	26	749.03	29	33
South Carolina	Tort	887.50	27	763.35	25	22
Arkansas	Add-on	874.89	28	707.74	32	35
Montana	Tort	872.50	29	683.18	37	49
Oklahoma	Tort	867.79	30	689.89	36	36
New Hampshire	Tort	856.45	31	798.34	23	20
Illinois	Tort	848.56	32	760.00	26	12
Oregon	Add-on	846.67	33	753.38	28	40
Utah	No-fault	839.94	34	722.27	31	42
Missouri	Tort	826.34	35	702.39	33	29
Alabama	Tort	816.68	36	677.36	39	27
Wyoming	Tort	816.18	37	628.77	45	50
Vermont	Tort	805.99	38	692.72	35	31
Tennessee	Tort	798.68	39	666.22	41	21
Virginia	Add-on	798.51	40	702.23	34	15
Nebraska	Tort	786.20	41	637.44	43	43
Indiana	Tort	773.37	42	670.88	40	17
Kansas	No-fault	770.05	43	603.47	46	41
Maine	Tort	763.71	44	649.63	42	39
Ohio	Tort	762.92	45	680.14	38	10
South Dakota	Add-on	748.03	46	586.96	49	47
North Dakota	No-fault	731.13	47	562.45	51	48
Idaho	Tort	718.86	48	589.82	48	45
North Carolina	Tort	717.09	49	597.02	47	18
Wisconsin	Add-on	706.72	50	635.59	44	25
Iowa	Tort	686.01	51	579.95	50	34

Another factor which contributes to higher premiums/expenditures is traffic density. Florida has the ninth highest motor vehicle density in the country which is an indicator of concentration resulting in a higher-than-average number of collisions and hence, insurance claims.[38] Insurance rates tend to be higher in more densely populated and urbanized areas than rural areas. Eight out of every ten miles (81.5 percent) are driven on urban roads in Florida.[39]

Other indicators of an urban environment believed to result in higher auto rates are more expensive health care (primarily due to a lack of cost controls), a greater level of claims consciousness and a greater tendency for auto accident victims to hire attorneys.[40] These factors were borne out in a study by the Insurance Research Council (IRC),[41] which was based on a sample of 4,162 auto injury insurance claims from Florida that closed with payment in 2005.[42] The report included the following findings pertaining to Florida PIP claims:

- The average total claimed PIP economic loss, consisting primarily of medical expenses, increased 18 percent in three years, from $8,289 in 2002 to $9,769 in 2005. The general rate of inflation based on the Consumer Price Index (CPI) increased nine percent during this same period and medical care inflation increased 13 percent during this time.

- The average total PIP claim payment also increased significantly faster than the CPI. From 2002 to 2005, the average total PIP payment increased 24 percent to $5,712, compared with $4,606.

- The proportion of PIP claimants who had an MRI (magnetic resonance imaging) rose from 26 percent of all PIP claimants in 2002, to 33 percent in 2005. Another key cost driver is the rapid growth in the cost of computerized tomography (CT) services. The average total CT charge for PIP claimants increased 31 percent, from $2,755 in 2002, to $3,601 in 2005.

- Chiropractors were the most common medical provider submitting charges for treatment of PIP claimants. The percentage of PIP claims with

[38] Density is the number of registered vehicles per square mile. See *An Analysis of the Florida Private Passenger Automobile Insurance System*, Property Casualty Insurers Association of America, November 6, 2006.
[39] *Id.*
[40] *Id.* at p. 8. Other indicators correlated with state auto insurance premiums and expenditures are miles driven per number of highway miles and higher disposable income per capita.
[41] See *Florida Auto Injury Insurance Claim Environment* 2007, by the Insurance Research Council which is a division of the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America.
[42] Earlier Florida claim data were collected as part of national IRC studies in 2002 an 1997.

chiropractor charges reached 44 percent in 2005, an increase from 33 percent in 2002.

- The average total amount charged by chiropractors increased 35 percent over three years, from $4,837 in 2002 to $6,510 in 2005.

- An increased percentage of PIP claimants hired attorneys. More than four in ten PIP claimants (45 percent) hired attorneys in 2005, compared with 34 percent in 2002.

- The percentage of PIP claimants who satisfied one or more of the statutory standards for filing a tort claim steadily increased from 1997 to 2005. In 2005, half (50 percent) of PIP claimants qualified for filing a Bodily Injury (BI) tort claim under Florida's no-fault regulation, compared with 42 percent in 2002 and 34 percent in 1997.

- Elements of suspected fraud and buildup[43] were prevalent in Florida's 2005 PIP claims. Almost one-third (31 percent) of PIP claims included the appearance of claim buildup, compared with 19 percent in 2002.

Like the PIP claims' experience cited above, the average cost of BI claims has increased in Florida from 2002 to 2005. Critics of no-fault's verbal threshold (which claimants must cross to assert a claim for non-economic damages) point out that the large number of BI claims (63 percent) which overcame the threshold illustrates its inherent weakness.[44] The IRC report made the following findings for Florida BI claims:

- In 63 percent of the cases in 2005, the BI claimant overcame the tort injury threshold by claiming a permanent injury.

- The average total claimed BI economic (medical) loss increased ten percent from 2002 ($12,053) to 2005 ($13,312).

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[43] Claim "buildup" occurs when injuries are exaggerated or reported losses are inflated by unnecessary or excessive medical treatment or other expenses.

[44] Kinsler, p. 32. The author recommends coupling "serious" or "significant" with "permanent" injury so that the threshold requirement would be: "Permanent and serious (or significant) injury within a reasonable degree of medical probability, other than scarring or disfigurement." Pinnacle Actuarial Report, *Florida Automobile No-Fault Study*, March 2006, at p. 10. (Hereinafter "Pinnacle 2006"). The Pinnacle report examined the tort threshold for Florida, New York and New Jersey. The study found that, in comparing the type of losses subject to the tort threshold, Florida's verbal threshold "has not been very effective in reducing the overall amount of lawsuits" as intended since the "permanency" standard is weak in terms of allowing many more claims into the tort system (74.5 percent) compared to the New York (13.4 percent) and New Jersey (34.2 percent) laws.

- The average total BI claim payment also increased to $13,609 in 2005, compared with $12,923 in 2002.

- Chiropractors were the most common type of medical provider visited by BI claimants, and claimed charges from chiropractors accounted for 40 percent of all claimed BI medical provider charges.

- Seven in ten BI claimants (69 percent) hired attorneys in 2005 and attorney involvement was clearly associated with chiropractic treatment and MRI use. Over half (53 percent) of BI claimants who hired attorneys submitted chiropractor charges, compared with 14 percent of those without attorneys. BI claimants with attorneys were more than five times as likely as BI claimants without attorneys to report MRI charges.

Auto Loss Costs

An analysis of the actual claims payments made by insurers for the five primary auto coverages provides greater insight into the costs and trends of Florida's automobile insurance market under no-fault. Insurance statistical data[45] reported by the Property Casualty Insurers Association of America (PCIAA) computes a "pure premium" for PIP (and other auto coverages) that is the total amount of paid PIP losses, divided by the number of insured car years. Stated differently, "pure premium" (also called "loss costs") reflects the average amount that is paid in losses annually for each insured car.[46] Because of its role in auto insurance ratemaking, pure premium is a significant determinant of auto insurance costs for consumers. Two indicators of insurance pure premium are "claims frequency" which is the number of paid claims and "claim severity" which is the amount paid per claim.[47]

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[45]The primary source for monitoring trends in auto insurance loss costs in Florida and across the country is the "Fast Track Monitoring System." Information (i.e., quarterly loss data and claims costs submitted within 45 days of the end of each quarter) from insurers representing more than half of the private passenger market is reported to three statistical agents: Property Casualty Insurers Association of America (PCI), the National Independent Statistical Service, and the Insurance Services Office (ISO). The results for all three are summarized and reported by PCI and made available to insurance departments. The most recent PCI Fast Track Data includes results through the first quarter of 2007, which is analyzed herein. Committee staff would like to especially thank Diana Lee with PCI and Vincent Cox with ISO for their valuable assistance.

[46] Pure premium does not include any expenses of the insurer (salaries, agent commissions, attorney costs, etc.) Pure premium or loss costs is the basic measure of insurers' claim expenses because it accounts for the costs of insuring all cars, not just those involved in accidents.

[47] "Claims frequency" is the number of paid claims per 100 insured car years. A car year is equal to 365 days of insured coverage for a single vehicle. "Claims severity" is the size of the loss, measured by the average amount paid for each claim.

Table 3 shows the pure premium or loss costs, claim frequency and claim severity (including percentage change) for five auto coverages (PIP, BI, PD, Comprehensive and Collision) over a five year period (2002, 1st quarter thru 2007, 1st quarter). The pure premium (loss cost) figures indicate that PIP pure premium 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 to a 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.

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 most 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 pure premium (from $133.12 to $143.99) over the five-year period.

Table 3
Florida Claims Costs Over Five Year Period
(2002, 1st Quarter thru 2007, 1st Quarter)

		Claim Frequency	Frequency Change	Claim Severity	Severity Change	Pure Premuin	Pure Premium Change
PIP	*2002*	2.02		$6,053		$122.21	
	2007	1.79	-11.4%	$6,337	4.7%	$113.44	-7.2%
BI	*2002*	0.85		$15,574		$133.12	
	2007	0.80	-5.9%	$18,105	16.3%	$143.99	8.2%
PD	*2002*	4.17		$2,505		$104.44	
	2007	3.73	-10.6%	$2,911	16.2%	$108.45	3.8%
Comp	*2002*	4.73		$1,055		$49.90	
	2007	4.37	-7.6%	$1,107	4.9%	$48.31	-3.2%
Coll	*2002*	6.27		$2,617		$163.96	
	2007	5.63	-10.2%	$3,031	15.8%	$170.79	4.2%
All 5 Cov	***2002***	**17.59**		**$3,261**		**$573.63**	
	2007	**15.86**	**-9.1%**	**$3,688**	**13.1%**	**$584.97**	**2.0%**

The pure premiums for PD and Collision have increased 3.8 percent and 4.2 percent, respectively, during the five year period. In both cases the favorable results in claims frequency helped hold down costs, while the increase in claims severity drove up costs. Frequency of claims may be decreasing due to fraud-fighting efforts as well as safer automobiles and safer roads. However, costs for auto body parts and labor costs are two factors that keep the average claim costs (severity) rising for both coverages.

Rising repair costs and more expensive automobiles are factors contributing to the increase in Comprehensive claim severities (4.9 percent). Frequencies for this coverage have declined (-7.6 percent) possibly due in part to a reduction in motor vehicle theft rates. According to FBI figures, car theft rates have declined 20 percent from 2002 to 2005.[48] Finally, comprehensive pure premium has declined (-3.2 percent).

In summary, the average pure premium for all five coverages increased slightly (2.0 percent) over the five year period, with average claim severity increasing (13.1 percent) and average claim frequency declining -9.1 percent. Of all five coverages, PIP has had the most favorable loss experience over this period, dropping 7.2 percent.

[48] Uniform Crime Report, Federal Bureau of Investigation.

Average PIP Premiums

Personal injury protection (PIP) premiums paid by Florida drivers vary across the state, ranging from under $100 to over $1,000 per year. In addition to the possible cost drivers that have been discussed, difference 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.[49] Insurers will have different rates, based on the particular insurer's losses, expenses and profit level. Table 4 illustrates examples of annual PIP premiums for three hypothetical drivers in three Florida cities for nine major auto insurers in 2006.[50] As the data indicates, PIP premiums vary greatly, ranging from $73 (Tallahassee) to $960 (Miami) for a 40 year-old married female (Driver A) with one moving violation, and from $123 (Tallahassee) to $1,647 (Miami) for a 18 year-old single male (Driver C) with no accidents or violations.

Table 4
Average Annual PIP Premiums in 2006 for Nine Major Insurers

	Tallahassee			**Orlando**			**Miami**		
Company	**Driver A**	**Driver B**	**Driver C**	**Driver A**	**Driver B**	**Driver C**	**Driver A**	**Driver B**	**Driver C**
Allstate	$125	$88	$136	$212	$143	$233	$350	$230	$387
Direct General	$268	$262	$451	$359	$351	$608	$960	$938	$1,649
Gov't. Employees	$98	$33	$123	$145	$124	$47	$269	$397	$236
Liberty Mutual	$101	$98	$179	$160	$153	$304	$227	$217	$448
Mercury Ins.	$94	$84	$274	$128	$112	$380	$186	$162	$566
Nationwide Mutual.	$108	$90	$345	$159	$128	$558	$176	$141	$628
Progressive	$73	$84	$182	$134	$155	$347	$233	$272	$618
State Farm	$105	$94	$281	$183	$162	$515	$316	$279	$882
United Auto	$303	$289	$778	$311	$298	$801	$499	$476	$1,320

Driver A is a 40 year-old married female whose care is not operated by a youthful driver. She has one moving violation for speeding less than 15 miles per hour over the speed limit within the past 18 months. She drives a 3-year old sport utility vehicle valued at $25,000. She drives 15,000 miles annually for work and pleasure. Her drive to work is less than 15 miles one-way.
Driver B is a 71 year-old married male. He has had one moving violation for failing to obey a stop sign within the past 18 months. He drives an 8-year old car valued at $10,000. He drives 10,000 miles annually for pleasure.
Driver C is a single 18 year-old male driver who lives with his family. He has had no accidents or moving violations during his two-year driving history. He drives a 5 year-old car valued at $15,000. He drives 12,000 miles annually for school, work, and pleasure to work is less than 15 miles one-way.

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[49] "Territory" factors would include where the vehicle is kept and driven, road conditions, the number of accidents in the particular area, etc. Insurers may also offer discounts for safety equipment, for drivers with records free of accidents and violations and for drivers who complete driver education courses.
[50] This data was based on rates in effect on January 1, 2006, with a PIP deductible of $250. The insurers are: Allstate Property and Casualty Ins. Co.; Direct General Ins. Co.; Government Employees Ins. Co.; Liberty Mutual Ins. Co.; Mercury Ins. Co. of Florida; Nationwide Mutual Fire Ins. Co.; Progressive American; State Farm Mutual Automobile Insurance Co.; and United Automobile Ins. Co.

Overview of Florida's Auto Insurance Market After No-Fault is Repealed (Post-October 1, 2007)

The shift from no-fault to a tort system raises certain consumer protection, health care systems' and litigation issues that policymakers may want to consider in evaluating Florida's new auto insurance system. Some state and local programs which are funded, in part, by PIP premiums from auto insurers will be impacted by its sunset. However, the effect of PIP's demise, as explained below, will be muted to a large degree should motorists purchase the optional medical payments, bodily liability and uninsured motorist coverages.

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 thirty-eight states, represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles 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 PIP and that insurers provide this coverage. Removing this coverage can be viewed as a "savings" (by deducting the PIP premium), but it is a savings due to a loss of coverage. However, many 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 typically are given the option to purchase medical payments coverage, at a level best suited for their own needs.

Another effect of switching to a tort system is that premiums for bodily injury liability (BI) and uninsured motorist (UM) coverages will increase. This is attributable to the shifting of costs or losses from PIP coverage to these two coverages. Property damage liability (PD) of $10,000 will still be required for all Florida vehicle owners under tort. Florida does not mandate bodily injury liability (BI) insurance, unless triggered by the Financial Responsibility Law due to certain accidents or violations.

It appears that most insurers will offer an optional Medical Payments coverage that consumers could purchase to replace PIP, which should generally be less expensive than PIP, but the coverage is likely to be less comprehensive, as discussed in more detail below.

Although Florida drivers will have greater opportunity to manage their premiums under a tort system, some drivers may trade off adequacy of coverage for premium savings. Therefore it's important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party's BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. However, before using the tort remedy for these expenses, the not-at-fault party could utilize his/her Med Pay coverage to cover his/her own medical expenses, if such coverage were purchased. The losses covered by Med Pay could then be subrogated into the BI claim by the not at-fault driver's insurer.[51] If the at-fault party is uninsured (or underinsured),[52] the not at-fault party would utilize his/her UM coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party's PD coverage would compensate for physical damages to the not at-fault driver's vehicle.

With respect to the at-fault party, that driver's own Med Pay coverage would pay for his/her medical expenses, if that coverage were purchased. For costs in excess of Med Pay limits (or for costs in the event the driver did not purchase Med Pay coverage), the at-fault party would have to use his/her own health insurance, if available, to cover these expenses. In the event the at-fault party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider. Also, if the at-fault party had purchased collision insurance, that policy would pay for damage to his/her vehicle, just as it did under no-fault.

For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion due to the fact that only non-family occupants can pursue a tort claim.[53] Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

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 estimate that approximately 954,057 vehicles are

[51] Subrogation is a provision in an insurance contract which refers to the process an insurer uses to seek reimbursement from the responsible party for a claim it has already paid. Most auto coverages provide for subrogation rights, however, PIP coverage does not.
[52] Underinsured motorist coverage (provided by Uninsured Motorist (UM) coverage in Florida) provides additional coverage to the not at-fault driver to the extent the at-fault party has inadequate BI insurance to pay the full amount of damages legally owed the not at-fault driver.
[53] Auto insurers limit their risk by precluding family members from recovering damages against an insured under the insured's liability coverage. The reason for this exclusion has been the insurer's fear of collusion by family members in seeking to recover liability coverage where one member was driving while others were passengers.

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 which could be uninsured for bodily injury in Florida under tort. Persons injured by the negligent operation of such vehicles would either have to look to the personal assets of such drivers or vehicle owners for recovery, or may have to rely on their own health insurance or optional medical payments coverage.

The repeal of the no-fault law does not repeal the requirement for vehicle owners to obtain $10,000 of property damage liability coverage, as recently confirmed by the Department of Highway Safety and Motor Vehicles (DHSMV).[54] 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 a $150 driver's license reinstatement fee, a $250 fee for a second reinstatement, and $500 for a third reinstatement over a three-year period.[55] 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.

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

Private passenger auto insurers are in the process of making rate and form filings with the Office of Insurance Regulation (OIR) as a result of no-fault's sunset.[56] According to officials with OIR, 30 auto insurers (representing a statewide combined market share of 45.1 percent) have currently made rate filings (as of September 1, 2007) and the overall average premium reduction is -13.8 percent (Table 5).[57] 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.[58] The overall premium decrease (-13.8 percent) is attributable to the elimination of PIP coverage.

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[54] See footnote 9.
[55] ss. 627.733(6)-(7) and 627.736(9), F.S,
[56] Section 627.0651, F.S. Private passenger motor vehicle insurers are required to file rates for approval with the Office of Insurance Regulation either 60 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file"). Under section 627.410, F.S., insurers must file their basic insurance policy forms for approval with the OIR not less than 30 days in advance of using such forms.
[57] Most of these filings have not been approved by OIR.
[58] There is no premium impact for the PD, Comp. or Coll. coverages.

Table 5
Rate Filings - Premium Impact for Thirty Private Passenger Auto Insurers

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

Source: Office of Insurance Regulation

The premium impacts depicted in Table 5, above, 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 for all coverages combined 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 among the insurers submitting rate filings. For example, the State Farm rate filing (Table 6, 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. In contrast, other insurers, such as Allstate (Table 7), for purposes of estimating premium impact, assumed that current policyholders would purchase the same limits under the new Med Pay coverage as they had under their old Med Pay coverage, even though the company was changing the benefits of the coverage.

Most of these rate filings rely, at least in part, on the 2006 actuarial study by Pinnacle Actuarial Resources.[59] This Pinnacle study estimated that BI premiums would increase approximately 31 percent or an average of $76 (from $244 to $320). The study estimated that UM premiums would increase approximately

[59] Pinnacle 2006. Pinnacle was engaged by Floridians for Lower Insurance Costs, which includes insurance companies that advocate the repeal of the no-fault law.

14 percent or an average of $12 (from $88 to $100) due to the repeal of PIP. 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 BI coverage would pay for the medical expenses for the injured party, but are dependent upon the limit purchased by the tortfeasor.[60] 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, given that the no-fault verbal threshold is repealed. The threshold currently acts to limit lawsuits for non-economic damages to claims involving primarily persons with permanent injuries.[61] 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 2006 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 average $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 and that the study did not estimate the savings (or additional cost) that would result if the consumer purchased $10,000 in medical payments coverage to effectively replace PIP at current coverage levels. In summary, the 30 rate filings summarized in Table 5 reflect lower average increases for BI (21.2 percent) 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.[62] As shown under Table 6, State Farm has filed for an overall premium decrease of 15.3 percent, which represents

[60] *Id*.
[61] In its report, *Trends in Auto Injury Claims,* the Insurance Research Council (2004) estimates that 74.5 percent of the bodily injury losses in Florida are due to permanent injury, as compared to the other types of injuries that pierce the verbal threshold.
[62] The three other large state insurers (Progressive, Geico and Nationwide) had not filed their new rates as of the writing of this report.

an estimated statewide annual premium reduction of $367,076,100.[63] 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 is increasing its BI/PD liability premium by 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 6
Rate Filing - State Farm Mutual Automobile Insurance Co.

Coverage	Percent Change	Estimate of Annual Effect
BI/PD Liability	+9.0%	$83,860,400
Personal Injury Protection	-100.0%	-$383,637,800
Medical Payments	-100.0%	-$80,013,800
Uninsured Motorist	+5.1%	$12,715,100
All Coverages Combined	**-15.3%**	**$367,076,100**

The State Farm filing proposes to remove PIP and the current Med Pay coverage from policies as they renew on or after October 1, 2007, and will stop providing these coverages in new policies at that time. Pursuant to a previous filing, the PIP coverage for existing policies changes to "non-statutory" PIP on October 1, 2007, which provides similar benefits with certain limitations. The policyholder is free to cancel the non-statutory PIP. State Farm will stop providing the non-statutory no-fault coverage as policies renew on or after October 1, 2007.

Upon renewal of their policy, 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[64] and will be similar to PIP coverage 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 with no deductibles, whereas PIP covers 80 percent of medical costs and offers deductibles of $250, $500 and $1,000; Med

[63] When combined with State Farm's corresponding rate filing for its standard company (State Farm Fire and Casualty Company) which is -21.1 percent, the overall rate decrease is 16 percent for the two companies.
[64] Limits of $50,000 and $100,000 will be available to policyholders who presently carry those limits on their current Med Pay coverage.

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.

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. For example, if the PIP premium was $100, the premium would be about $72 for $10,000 of Med Pay. 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. In the Miami area for example, a $10,000 Med Pay policy will cost about 60 percent (rather than 72 percent) of what a PIP policy would cost because of the fraud and overutilization with PIP which occurs in that area. In some territories, but probably very few, the Med Pay policy may even be higher than a PIP policy with the same limit.

The new Med Pay coverage will contractually limit coverage to medical expenses that are reasonable. In defining what constitutes "reasonable expenses," the State Farm policy provides that the term means the *lowest* of the following charges: 1) The usual and customary fees charged by a majority of healthcare providers providing similar medical services; 2) The fee specified in any fee schedule; 3) The fees agreed to by both the insured's healthcare provider and State Farm; or 4) The fees agreed upon between the insured's healthcare provider and a third party when State Farm has a contract with such third party.

The rate filing for Allstate reflects an overall premium decrease for all coverages of 16.4 percent (Table 7). The company is increasing its BI premium by 10 percent, its UM premium by 7.5 percent and its new optional Automobile Medical Payments coverage by 54.8 percent. Allstate has converted all its current policyholders who have the current Excess Medical Payments coverage to the new Automobile Medical Payments coverage (at their current limits). The proposed increase (54.8 percent) represents the premium level impact of this conversion. Like State Farm and the other insurers previously noted, Allstate's overall premium decrease is attributable to the elimination of PIP, and to a lesser extent, its Excess Med Pay coverage. The company used industry claims data from the 2002 Insurance Research Council (IRC) database as well as its own internal information in its estimates.

Table 7
Rate Filing – Allstate Property & Casualty Insurance Company

Coverage	**Current Annualized Written Premium**	**Proposed Premium Level Change**	**Annual Dollar Change****
Bodily Injury	$164,061,734	10.0%	$16,406,173
Property Damage	105,384,004	N/C	0
Automobile Medical Payments* (MED)	9,039,064	54.8%	4,953,407
Uninsured/Underinsured Motorist	72,759,514	7.5%	5,456,964
Personal Injury Protection	142,970,426	-100.0%	-142,970,426
Extended Injury Protection (EIP)	0	New	0
Liability Subtotal	**$494,214,742**	**-23.5%**	**-$116,153,882**
Collision	$159,663,536	N/C	0
Comprehensive	54,817,814	N/C	0
All Coverages	**$708,696,092**	**-16.4%**	**-$116,153,882**

*Percent change indicates premium level impact of converting all current customers with Excess Medical Payments coverage to the new Automobile Medical Payments coverage at their current limits.
**Annual Dollar Change represents the amount by which the annual premiums are expected to change under the new tort system.

Allstate will withdraw its PIP and Excess Med Pay coverages and introduce two new auto coverages: Automobile Medical Payments (MED) and Extended Injury Protection (EIP). The scope of MED coverage will not be as broad as PIP,[65] but the premium will be considerably lower for this coverage according to statements contained in its filing. 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. Renewal customers currently purchasing Excess Med Pay with limits of $10,000 or $25,000 will be able to purchase MED coverage up to these limits. As previously noted, a policyholder with Excess Med Pay coverage will automatically be renewed with the optional MED coverage equal to their existing Excess Med Pay limits.

[65] It will cover the insured's medical costs, but not include loss of income, essential services or death benefits.

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.[66] If Florida insureds purchased similar limits of Medical Payments coverage, their projected savings would be further reduced.

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.[67]

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.[68] 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

[66] Pinnacle Actuarial Resources, Inc. *Florida Automobile No-Fault Study,* March 2007. (Hereinafter "Pinnacle 2007"); p. 8.
[67] If the injured party is *not* the at-fault driver, his/her health insurance costs may be subrogated into the BI claim by his/her insurer.
[68] U.S. Census Bureau, Current Population Survey, 2005 to 2007 Annual Social and Economic Supplements. The uninsured rate varies among certain groups: thirty five percent of young adults (ages 16 to 24), 34.1 percent of individuals living below the poverty line and 38.7 percent of those earning under $20,000, are uninsured.

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.

The 2007 study by Pinnacle Actuarial Services (Pinnacle) supports the auto insurers' rate assumptions.[69] That study estimates that 80 percent of prior PIP losses would be transferred to other coverages within the auto insurance system, e.g., BI, UM and the new Med Pay coverage (Table 8).[70] The percent of prior PIP

[69] Pinnacle 2007.

[70] Pinnacle 2007. The study relied on 1999 and 2004 Insurance Research Council's report of *Injuries in Auto Accidents;* the 2006 IRC study, *Uninsured Motorists;* 2003-2004 NAIC data; Fast Track Monitoring System data; data from the Henry Kaiser Family Foundation and the Health Research & Educational Trust; and the U.S. Census

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.[71] 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 between 0.3 percent and 0.8 percent.

Table 8

Pinnacle Study - Disposition of Prior PIP Medical Losses

Auto Insurance System/ Health Care System/ Uncompensated	Amount of PIP Medical Loss	Percentage of PIP Medical Loss
Bodily Injury Liability	$666,345,600	49.0%
Uninsured Motorist	$119,942,208	8.8%
Medical Payments Coverage---Not-At-Fault Party	$24,033,420	1.8%
Medical Payments Coverage---At-Fault Party	$272,087,037	20.0%
Auto Insurance 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.[72] 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.

Bureau.

[71] The study deducted payments for loss of income, replacement services and other non-medical costs.

[72] State share (43.09 percent) $11,505,030; Federal share (56.91 percent) $15,194,970.

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.[73] 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.[74] 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.[75]

There currently are 211 acute care hospitals in Florida with 23 trauma centers.[76] 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

[73] Colorado Health, p. 11.
[74] *Id.*
[75] Insurance Research Council, *Auto Injury Insurance Claims: Countrywide Patterns in Treatment, Cost, and Compensation* (2003). Hereinafter referred to as "Auto Injury."
[76] Florida Hospital Association; Safety Net Hospital Alliance. This figure does not include rehabilitation, psychiatric, long term care and other specialty hospitals.

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.[77]

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 will also be affected by the switch to a tort system. Personal injury protection insurance is one of the few remaining insurance systems that has few cost controls and insurers pay billed charges, as long as they are “reasonable.” Under tort, the health care provider would initially look to the patient’s health insurer, if any, for payment, which is likely to be at a discounted rate or subject to a “usual and customary” fee schedule. A usual and customary fee schedule is also likely to apply if the patient had only automobile insurance coverage, i.e., a Med Pay policy. Other accident victims may have no health insurance, resulting in uncompensated care, in cases where the patient was at-fault or the at-fault driver does not have liability insurance. Even if an at-fault driver has liability coverage, health care providers are likely to wait longer for payment, as compared to PIP.

Health care provider fraud and abuse, and costs associated therewith, will likely be reduced under a tort system, as compared to a 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.

[77] Colorado Health, p. 14.

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.[78] 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.[79] 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.[80] 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.

The Department of Highway Safety and Motor Vehicles (DHSMV or Department) collects approximately $28 million annually in driver's license reinstatement fees from persons whose licenses have 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 sunset of no-fault. The revenues from reinstatement fees are deposited into the Highway Safety Operating Trust Fund. These dollars are allocated to support approximately 36 driver license field offices with 387 positions; 56 positions in the Bureau of Financial Responsibility; 17 positions in the Bureau of Driver Education and DUI Programs; 38 positions in

[78] The Agency for Health Care Administration licenses approximately 2,500 health care clinics under the Health Care Clinic Act, Part XIII, Chapter 400, F. S.
[79] 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.
[80] The Fund is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health insurance). S. 215.555, F.S. Citizens' assessment base is the same as the Fund for the types of policies and premiums that are subject to assessment to fund a deficit. s. 627.361, F.S.

the mobile home program and $4 million is allocated to fund the Florida Highway Patrol overtime program.[81]

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.[82] 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 injuries 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.[83] 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 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.[84] 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

[81] Memo from DHSMV Director, April 29, 2007.

[82] Section 768.81, F.S. Comparative negligence is a partial defense that reduces the amount of damages that a plaintiff can recover in a negligence-based claim based upon the degree to which the plaintiff's own negligence contributed to cause the damages. For example, if (P) plaintiff and defendant (D) are in an accident and go to trial, the jury makes the decision as to the degree of damages. If the jury finds that P is 40 percent responsible for the accident and D is 60 percent responsible, P is awarded 60 percent of the damages and must pay for his own 40 percent of damages.

[83] Lawsuits between insurers and health care providers (as opposed to insureds) occur since insureds execute an assignment of benefits with their providers. Such agreements involve assigning all rights, benefits and duties to providers so that they may recover PIP benefits from insurers.

[84] This is often referred to as the "one-way" attorney's fee provision. This provision may also apply in cases involving Med Pay coverage disputes.

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.[85]

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[86] from fiscal year 2002 thru 2006 (Table 10).[87] However, these statistics do not include all the auto related accidents filed in Colorado's courts.[88] As Table 10 indicates, 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).

Table 9
Bodily Injury Motor Vehicle Cases Filed in Colorado
(No-Fault Repealed on July 1, 2003)

Fiscal Year[89]	Number of Cases
2002	2,583
2003	3,338
2004	3,410
2005	3,555
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.

[85] Under a contingency risk multiplier, the court determines the amount of the multiplier by analyzing *after the fact* what the attorney's likelihood of success was at the start of the trial.
[86] These statistics do not include all the auto related accidents filed in Colorado's districts courts. There are other categories of cases, including negligence cases, which were not included.
[87] These cases were filed in District Courts where the amount in dispute is $15,000 or greater.
[88] There could also be auto cases filed in County courts (amounts in dispute below $15,000).
[89] The fiscal year is from July 1 thru June 30.

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 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.[90] 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.[91] From 2001 to 2002, the combined average premium in Colorado increased from $116.27 to $1051.37, the largest such increase in the nation.[92]

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.[93] 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.[94] Florida's claimed medical losses for the same period rose by 40 percent ($5,585 to $7,803). Colorado's no-fault laws required insurers to cover virtually any type of medical treatment, creating an opportunity for fraud and abuse of the system and contributing to the jump in medical losses.[95]

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.[96] 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

[90] Colorado Health, p. 6; Benefits were available within 5 years of the accident. Colorado established its no-fault system in 1974.
[91] National Association of Insurance Commissioners 2001/2002 Auto Insurance Database: Average Premiums and Expenditures 1998-2002: Table 4 Average Expenditure.
[92] *Id.*, Table 5 Combined Average Premium.
[93] See Insurance Research Council, *Analysis of Auto Injury Insurance Claims From Four No-Fault States*, (2004); p. 2.
[94] *Id*, p. 20.
[95] *Id*, p. 19.
[96] *Id*, p. 12.

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.[97] In comparison, 42 percent of PIP claimants in Florida were eligible to pursue a liability claim and 74 percent overcame Florida's tort threshold during this time period.[98]

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).[99] 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.[100] Approximately 32 percent of vehicle owners have Med Pay coverage.[101] For policyholders who do have the coverage, the most common limit purchased is $5,000. Legislation to mandate Med Pay has been introduced over the past years in the Colorado General Assembly, but these attempts have not been successful.[102]

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.[103] 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.[104]

According to the Colorado Division of Insurance, BI liability rates have increased about 50 percent and UM rates have increased about 30 percent due to the shifting

[97] *Id*, p. 12, 13.
[98] As explained earlier, injured parties in Florida can surpass the verbal threshold by meeting one of four criteria.
[99] Colorado Division of Insurance.
[100] See the Colorado Division of Insurance "Answers to Frequently Asked Question About Auto Insurance at http://www.dora.state.co.us/insurance/consumer/autoaqcon.pdf.
[101] Colorado Division of Insurance; Property Casualty Insurers Assn. of America.
[102] Letter from staff with the Colorado Division of Insurance, August 13, 2007, on file with the Committee.
[103] Rocky Mountain Insurance Information Association.
[104] Property Casualty Insurers Assn. of America, August 28, 2007. Average premiums included BI, PD, UM, Med Pay, Comp., Coll., and PIP (PIP was included for May 2003 only).

of PIP losses to those coverages. But, the net effect is still a lower overall premium 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. The Trauma Care Preservation Coalition (made up of hospitals and trauma centers) was formed in January 2005 for the purpose of finding solutions to the funding crisis facing emergency trauma care providers due to the demise of no-fault.[105] In a survey of 63 hospitals (for the period from 2001 to 2004) the results indicated that 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. For first-responder groups, the average number of days it takes to collect in auto accident cases had more than doubled, 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.[106] 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

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[105] Trauma Care Preservation Coalition, *A Survey of the Financial Impact of the Transition from No-Fault to Tort Automobile Insurance on Colorado's Trauma Care System*, June 2005. The survey was conducted in March 2005.
[106] See *Auto Injury* at fn.80.

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.

Conclusions and Recommendations

The most direct effects of repealing no-fault and returning to a tort system in Florida is eliminating the requirement that motorists 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 for all Florida vehicle owners 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, about 87 percent of vehicles are currently covered for BI liability coverage, even though it is not mandated. In addition, most insurers will typically offer consumers the option of purchasing coverage similar to PIP, medical payments (Med Pay) coverage.

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. Based on the rate filings by 30 insurers representing a combined market share of 45 percent, including the state's two largest auto carriers, State Farm and Allstate, there will be 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 UM average premium is increased by 12.5 percent. But, the elimination of PIP premiums offsets these increases, resulting in the average 13.8 percent savings for all coverages combined for Florida drivers. However, the 30 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 no longer have PIP. A survey of hospitals reported that approximately $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, since 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.