



SUMMARY ANALYSIS OF HB 4397: A BILL THAT CREATES MORE PROBLEMS THAN IT SOLVES

At 2am on Thursday, May 9, 2019, without any public hearings or debates and by a 61-49 vote, the House of Representatives passed HB 4397. This bill strips consumers of critically important rights and benefits currently available under existing law. The bill does not guarantee a reduction on the total cost of a person's auto insurance premium. Furthermore, the bill allows for the government to become responsible to pay for auto-related medical care, which will cause massive financial burdens for Michigan taxpayers. Undoubtedly, the bill creates more problems than it solves and should be vetoed by Governor Whitmer without hesitation. Many of the serious problems created by this bill are summarized below:

PROBLEM #1: THERE IS NO GUARANTEE THE TOTAL COST OF AUTO INSURANCE WILL GO DOWN FOR MICHIGAN CONSUMERS

- HB 4397 does NOT guarantee that the total cost of auto insurance will go down. It only provides a 5-year guarantee that the no-fault portion of consumers' insurance premiums will decrease. If HB 4397 becomes law, there will be many ways in which other portions of auto insurance premiums will become more expensive. Michigan consumers should expect the total cost of their auto insurance will not decrease much, if at all. If our legislators intend to provide Michigan consumers a true guaranteed rate reduction, it must be a guaranteed reduction on the total cost of auto insurance.

PROBLEM #2: THERE IS NO CONSUMER PROTECTION AGAINST TERRITORIAL/RED-LINING DISCRIMINATORY INSURANCE PRICING PRACTICES THAT HAVE BEEN SO HARMFUL TO RESIDENTS OF AREAS OF MICHIGAN, SUCH AS DETROIT

- HB 4397 does nothing to change or limit what is known as "red-lining", i.e., the insurance practice of charging consumers in certain areas of Michigan, such as Detroit, much more for auto insurance than those who live across the street in a neighboring municipality. The bill allows these practices to continue in the same way they have for the past several decades.

Board of Directors

Brain Injury Association of Michigan • Eisenhower Center • Siporin & Associates • Michigan Association of Chiropractors • Michigan Brain Injury Provider Council • Michigan Citizen Action • Feinberg Consulting • Michigan Nurses Association • Michigan Orthopaedic Society • Michigan Orthotics and Prosthetics Association • Michigan Osteopathic Association • Origami Brain Injury Rehabilitation • Michigan Dental Association • Special Tree Michigan State Medical Society • Health Partners • The Recovery Project • Michigan Association for Justice • Independent Case Management Council

Martha E. Levandowski, Administrative Director • Kevin A. McKinney, Legislative Coordinator • George T. Sinas, General Counsel

Furthermore, the bill describes the calculation of the guaranteed reduction on the no-fault portion of a consumer's auto insurance in such a way that will likely lead to consumers in areas like Detroit receiving less of a discount than consumers in neighboring communities.

PROBLEM #3: THERE ARE NO SPECIFIC CONSUMER PROTECTIONS AGAINST BEING CHARGED MORE FOR INSURANCE BECAUSE OF SOCIOECONOMIC FACTORS, SUCH AS CREDIT SCORE, OCCUPATION, EDUCATION LEVEL, ETC.

- HB 4397 does not specifically prohibit insurers from unfairly charging different rates based on socioeconomic factors such as credit score, occupation, educational level, etc. The bill only specifically limits the use of gender and marital status. Therefore, it should be assumed that it will remain lawful for insurance companies to use these factors to justify charging people substantially higher rates based more on their socioeconomic status than on how well they drive. To whatever extent the bill alleges to prohibit "non-driving rating factors", it does so with an unclear definition that insurance companies and their actuaries can easily work around.

PROBLEM #4: MICHIGAN TAXPAYERS WILL BE RESPONSIBLE TO PAY THE ENTIRE COSTS OF MEDICAL TREATMENT FOR THOUSANDS OF PEOPLE INJURED IN FUTURE AUTO CRASHES

- Under Michigan's current no-fault law, the government does not pay for the auto-related medical treatment for people insured through Medicaid or Medicare. HB 4397, however, completely changes that reality. The bill allows individuals and families on Medicaid or Medicare to entirely opt-out of any form of no-fault medical expense coverage. This means that the government will be required to pay for the entire costs auto-related medical care for these people.
- There are approximately 2.5 million people in Michigan on Medicaid. Accordingly, given the large number of people seriously injured in auto crashes each year, HB 4397 will shift an unprecedented financial burden onto Michigan taxpayers.

PROBLEM #5: CHILDREN LOSE THEIR EXISTING RIGHTS TO LIFETIME COVERAGE FOR THEIR AUTO CRASH INJURIES, WHICH WILL FURTHER BURDEN MICHIGAN TAXPAYERS

- Under Michigan's current no-fault law, virtually all Michigan children involved in motor vehicle crashes have the right to lifetime medical care, regardless

of whether their parents are insured with Michigan no-fault insurance. HB 4397 strips these children of these critically important health care rights. Under HB 4397, children injured in motor vehicle crashes will be subject to the caps on medical benefits that apply to the policy their parents purchased. Furthermore, regarding children who are insured through Medicaid and their parents opt-out of no-fault insurance coverage, these children will be left without any no-fault medical expense coverage at all. Stripping children of these critical important health care rights will result in further financial burdens for Michigan taxpayers.

PROBLEM #6: CAPPED NO-FAULT POLICIES WILL NOT COVER THE CARE NEEDS OF THE SERIOUSLY INJURED PEOPLE, WHICH WILL FURTHER BURDEN MICHIGAN TAXPAYERS

- HB 4397 authorizes the sale of four different capped no-fault PIP benefit policies. The first capped option is a lifetime benefit cap of \$50,000. The second capped option limits benefits to \$50,000, with an additional \$200,000 for emergency medical care. The third option is a total cap of \$250,000. The fourth option is a total cap of \$500,000. These limited benefit caps all fall short of that which is needed to properly care for people seriously injured in auto crashes. Seriously injured auto-crash survivors whose treatments needs exceed the cap will very likely end up on Medicaid or Medicare. This will cause further financial burdens for Michigan taxpayers.

PROBLEM #7: FINANCIAL RUIN FOR THE THOUSANDS OF FAMILIES WITH HEALTH INSURANCE THAT EXCLUDES AUTO-RELATED MEDICAL CARE

- Thousands of Michigan families have health insurance policies that exclude coverage for auto-related medical care. In other words, these health insurance plans do not cover medical care for auto-related injuries. If people in these families are seriously injured in a crash and they exceed the coverage under their capped no-fault policy, they will have no coverage under their health insurance for their additional care needs. Moreover, because these people have some form of health insurance, Medicaid and Medicare will not be available to them. These people will be either deprived the care they need or face medical bankruptcy.

PROBLEM #8: SERIOUSLY INJURED PEOPLE INSURED UNDER CAPPED NO-FAULT POLICIES WILL NOT HAVE ANY NO-FAULT INSURANCE COVERAGE FOR THEIR INCOME LOSS

- Under Michigan's current no-fault law, consumers can claim benefits to cover their income loss due to their injuries. Under HB 4397, however, the benefit caps apply not only to medical expenses, but to all PIP benefits, including benefits for an injured person's loss of income. Therefore, there will be no income loss coverage for people who become disabled in an auto crash and incur medical expenses that exceed their selected PIP benefit cap. This is another financial burden HB 4397 will impose on Michigan consumers.

PROBLEM #9: CONSUMERS WILL HAVE TO PURCHASE MORE LIABILITY INSURANCE TO PROTECT THEMSELVES FROM LAWSUITS FILED AGAINST THEM, AND LIABILITY INSURANCE WILL BE MORE EXPENSIVE

- Under the current no-fault law, we cannot sue each other for medical expenses because we have lifetime medical coverage under our no-fault policies. HB 4397, however, destroys that financial protection for the Michigan consumers. The bill allows people to sue any driver that contributed to the crash and seek damages for costs of the injured person's lifetime medical care and treatment. To protect ourselves from this potential financial ruin, we all will have to purchase more liability insurance coverage. Furthermore, because liability insurance will have to cover the injured person's medical costs, that form of insurance will be more expensive for everyone. Ultimately, the increased costs of our liability insurance will likely offset any reduction we will receive on our no-fault policies under HB 4397. It is even also possible that the total cost of our auto insurance could be even more expensive than it is right now.

PROBLEM #10: MOST AT-FAULT DRIVERS WILL NOT HAVE ENOUGH INSURANCE TO COVER THE COSTS OF AN INJURED PERSON'S MEDICAL CARE

- HB 4397 allows us to pursue our medical costs not covered through our no-fault coverage from an at-fault driver through a liability lawsuit. However, the bill does nothing to change the laws regarding minimum amount of liability insurance people must have on their vehicles. This minimum amount totals \$20,000 per individual injured and has not been adjusted by our legislature for over 40 years! Therefore, when people need to pursue their medical costs from an at-fault driver, they will likely face the rude awakening that the at-fault driver's liability insurance coverage is nowhere near enough to cover those medical costs.

PROBLEM #11: UNINSURED AND UNDERINSURED MOTORIST COVERAGES WILL BE MORE EXPENSIVE FOR CONSUMERS

- Michigan consumers can buy uninsured and underinsured motorist coverage to protect themselves from the crashes caused by at-fault drivers who do not have insurance or do not have enough insurance to cover damages caused by the at-fault driver's negligence. Under HB 4397, however, uninsured and underinsured motorist coverage will become more expensive. This is because the bill allows for uncovered medical expenses to be recovered from at-fault drivers. Therefore, it will cost consumers more money to protect themselves with uninsured and underinsured motorist coverage.

PROBLEM #12: LIFETIME NO-FAULT COVERAGE WILL BECOME INCREASINGLY EXPENSIVE AND UNAFFORDABLE TO A GREATER NUMBER OF CONSUMERS

- Over time, this bill will cause the lifetime benefit option to become unaffordable to a greater number of people. This is expected to happen because there will be far fewer individuals in the uncapped benefit pool, which will likely cause the cost of uncapped benefit policies to increase substantially over the years. Therefore, the bill will result in fewer consumers from being able to have the benefit of lifetime coverage and will be forced to rely on other sources of insurance, including Medicaid and Medicare, to fund their auto-related care.

PROBLEM #13: CONSUMERS WILL BE CONFUSED ABOUT HOW TO PURCHASE AND MAINTAIN THEIR AUTO INSURANCE, WHICH WILL LIKELY RESULT IN DEVASTATING FINANCIAL CONSEQUENCES

- In creating several different forms of coverage, along with other decisions and requirements to consider when purchasing insurance, consumers will likely be confused about which coverages they should be buying to best protect themselves and their families. They will also be confused about how to properly maintain their insurance coverage. The mistakes consumers may inadvertently make dealing with their insurance coverages could lead to devastating financial consequences if they or their family members are seriously injured in an auto crash.

PROBLEM #14: CONSUMERS WILL BE LIMITED IN THEIR RIGHT TO HIRE AN ATTORNEY TO REPRESENT THEIR INTERESTS AGAINST AN INSURANCE COMPANY THAT WRONGFULLY DENIES PAYMENT OF THEIR BENEFITS

- HB 4397 attempts to solve the problem of unnecessary litigation in the no-fault system by doing one thing – limit the ability of consumers to hire an attorney to represent their interests against an insurance company that has denied a no-fault medical expense claim. For example, the bill creates a ridiculous situation wherein it becomes illegal for an attorney to be hired, if, for whatever reason, the consumer did not submit the claim to the insurer within 90 days from when the medical care was provided to the consumer. Furthermore, while the bill restricts consumer access to legal representation, the bill does nothing to restrict the legal representation of insurance companies.

PROBLEM #15: THE POOR DRAFTING OF THE BILL CREATES MANY AMBIGUITIES AND UNCERTAINTIES REGARDING CONSUMER’S LEGAL RIGHTS, WHICH IS UNFAIR TO CONSUMER AND WILL CAUSE MORE COSTLY AND UNNECESSARY LITIGATION IN THE SYSTEM.

- HB 4397 was released to legislators around dinner time and then passed a few hours later around 2am, without any public hearings or meaningful debates. There are several head-scratching parts of the bill that will create many ambiguities and uncertainties regarding consumer’s legal rights going forward. These ambiguities and uncertainties will adversely impact Michigan consumers, as their rights against insurance companies will not be clear and will need to be litigated. This costly and unnecessary litigation will add to the cost of auto insurance, rather than bring it down.

PROBLEM #16: MICHIGAN’S MEDICAL ECONOMY WILL BE DEVASTATED AND JOBS WILL BE LOST

- Auto crashes result in an enormous amount of medical care and treatment each year in Michigan. Our current no-fault system provides a way to cover the costs of that care and treatment so that medical providers can stay in business and provide high-quality care. HB 4397 will have a devastating effect on Michigan’s medical economy. Millions of people will not have coverage for the actual costs of their care and treatment. Furthermore, the reduced payments under the workers compensation fee schedule will also cause financial burdens to medical providers. Ultimately, as medical providers lose money treating auto patients, jobs in Michigan’s healthcare economy will be lost.

PROBLEM #17: THERE WILL BE MORE UNNECESSARY LITIGATION ABOUT THE RATES OF REIMBURSEMENT FOR MEDICAL PROVIDERS

- Under current law, there are too many disputes about the amounts medical providers should be paid for rendering services to auto crash survivors. These disputes result in costly and unnecessary litigation that is driving up the costs of insurance in Michigan. Unfortunately, HB 4397 does not solve this problem. While HB 4397 implements a worker's compensation fee schedule, the bill also adopts an unclear standard for reimbursement rates for the various types of care and treatment not listed the worker's compensation fee schedule. This will lead to disputes with insurers about the appropriate rate of reimbursement and will lead to a continuation of the unnecessary litigation that exists in the system about medical reimbursement rates.

PROBLEM #18: PROVIDERS WILL BE DISCOURAGED FROM PROVIDING CARE TO AUTO CRASH VICTIMS

- HB 4397 grants great powers to insurance companies and the Michigan Catastrophic Claims Association (MCCA) to investigate the operations of medical providers. In this regard, the bill allows insurance companies and the MCCA to demand that the provider comply with requests for a wide-range of financial documentation and information about how the provider treats patients. These onerous and invasive investigative powers will result in medical providers being discouraged from servicing auto-crash patients.

PROBLEM #19: AN INSURANCE POLICE-STATE WILL BE CREATED THAT WILL INTIMIDATE MICHIGAN CONSUMERS AND ENCROACH UPON THE POWER OF THE ATTORNEY GENERAL TO REGULATE INSURANCE MATTERS

- HB 4397 attempts to solve the problem of insurance fraud by enacting a fraud authority that essentially will create a police-state regarding insurance matters. This police-state will make insurance even more intimidating for consumers than it is now. Police are not trained in the important details and nuance of insurance policies and applicable law. There are much better ways to regulate bad behavior in auto insurance. Furthermore, the fraud authority encroaches upon the power Michigan's elected attorney general has to address bad behavior in auto insurance.

PROBLEM #20: INSURANCE COMPANIES INVOLVED WITH THE MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION (MCCA) WILL LIKELY RECEIVE THE VAST MAJORITY OF EXCESS MONEY THAT IS LEFT OVER IN THE 20+ BILLION DOLLAR FUND

- HB 4397 specifically amends the provisions of the no-fault act regarding whether any extra money remaining in the MCCA in the future should be given back to Michigan consumers. The bill amends these provisions in such a way that indicates that only a small portion of Michigan consumers (i.e., those who continue to buy lifetime no-fault coverage) will receive a rebate for money that may remain in the MCCA in the future, and that such rebate be limited only to the amounts these consumers paid for their MCCA assessment fee on their vehicle. Based on the language of the bill, it appears that after paying back this limited amount of money to this small portion of people, the insurers will be able to pocket the extra money that remains in the fund.