

No-Fault Auto Insurance Reform in Michigan: An Initial Assessment Revised

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Abstract

Every state except one requires vehicle owners to carry some form of auto insurance whether it is for a “tort liability” system or a “no-fault” system. Under no-fault, there are statutory limits on the damages for which at-fault parties can be sued in return for *promised* lower claim costs and premiums and more certain, timely, and equitable benefits for injured persons. When Michigan instituted no-fault auto insurance in 1973, its proponents argued that it would be a much more efficient and less costly system for administering auto insurance claims than tort liability. Unfortunately, the opposite eventually proved to be true. Michigan’s system was unique among states in that it provided unlimited no-fault medical benefits and insurers were severely constrained in their ability to control medical costs. By 2019, Michigan’s auto insurance claim costs and premiums were the highest in the nation. This motivated the state’s Legislature and Governor to significantly amend its no-fault law and tighten its regulation of auto insurance.

While these reforms and regulatory changes are relatively nascent, there is considerable interest in knowing their effects, including the consequences of allowing consumers to choose their level of no-fault coverage, instituting medical cost controls for no-fault coverage, and tightening the regulation of insurance companies. In this paper, we evaluate the reforms and regulatory changes and their impacts. We find some initial evidence that claim costs and premiums for some and perhaps many drivers have decreased substantially but there are stakeholders who question whether the reforms have created a better system and are seeking to reverse or temper some of them. Fundamentally, there is the issue of whether it is possible to design a no-fault system that is superior to tort liability and fair to all of a state’s residents. Michigan could be viewed as an experiment on both the promises and pitfalls of a grand vision for no-fault auto insurance. Our paper contributes to an important debate on whether no-fault auto insurance can be saved and is worth saving.

Executive Summary

1. Before the enactment of no-fault reform legislation in 2019, auto insurance in Michigan had become a bane of existence for many of its car owners and drivers. Michigan had the highest auto insurance rates in the country. The state also had a high number of uninsured motorists due to its high rates that many drivers could not afford or were unwilling to pay. These problems were largely due to Michigan's system of no-fault auto insurance that had spiraled out of control. Michiganders could receive unlimited medical benefits for their injuries from auto accidents, but this came at a great cost.
2. Under a no-fault system, injured persons can seek reimbursement for their medical expenses and lost wages from their own insurance under their Personal Injury Protection (PIP) coverage regardless of who is at fault in an accident. High PIP costs appear to be the main culprit behind steep auto insurance premiums in Michigan due to the high medical costs associated with this coverage. Medical costs soared because PIP coverage provided unlimited medical benefits and insurers were severely constrained in controlling medical costs. These unique features of Michigan's no-fault system also encouraged considerable fraud and abuse.
3. Some medical providers generated substantial revenues by being reimbursed for their posted "reasonable and necessary" charges for services provided to auto accident victims; charges considerably greater than what insurers would normally pay for medical services. This created a significant moral hazard problem. Some providers were motivated to order unnecessary services to reap greater profits. Some trial attorneys also brought their clients to unscrupulous providers who inflated the services they provided, e.g., ordering unnecessary tests and procedures. Additionally, there were lawyers who encouraged their clients to sue their own insurance companies regarding their no-fault benefits to obtain a contingency fee. The lack of clear rules specifying what constituted "reasonable and necessary" charges contributed to substantial litigation over no-fault claims.
4. Michigan also has had a high number of uninsured motorists which is likely due, at least in part, to its high auto insurance premiums which made coverage unaffordable for many drivers. Prior to the reforms, it is estimated that 25% of Michigan drivers were uninsured statewide and 60% of Detroit drivers were uninsured. The costs of the damages caused by uninsured motorists are borne by various parties including vehicle owners who buy auto insurance.
5. After many years of political dithering on how to fix this greatly flawed system – the reforms proposed were contentious – Governor Gretchen Whitmer fulfilled her 2018 election pledge and signed a sweeping no-fault reform bill with strong bipartisan support in the Legislature that first took effect on July 11, 2019. The changes to Michigan's no-fault law were phased in over the years 2019-2021.
6. Importantly, the amendments allow car owners to opt for something less than unlimited PIP coverage for medical expenses. They can choose among four different PIP levels

ranging from \$50,000 to unlimited coverage. They can also opt out of PIP coverage entirely if they have qualifying health insurance coverage.

7. Reimbursement rates for medical expenses for which there is a Medicare fee are now scheduled for auto no-fault insurance. In 2021, the scheduled fee was 200%-250% of the applicable Medicare rate depending on the type of facility; this percentage decreased in 2022 and fell to 190%-230% after July 1, 2023. For a service for which there is no Medicare fee, after July 1, 2021, providers were paid 55%-78% of what they charged in 2019 for the service, subject to inflation adjustments. These caps further tightened in 2022 and fell to 52.5%-71% after July 1, 2023.
8. Additionally, under the no-fault amendments, payments to family members for providing home attendant care can be limited to 56 hours per week; an insurer can choose to pay for more than 56 hours. Insurers also have been given the ability to exercise some control over the utilization of medical services subject to review by the Department of Insurance and Financial Services (DIFS). Further, a new fraud unit was established in the DIFS to help combat the kinds of abuses that occurred under the prior system.
9. There also were regulatory changes. Michigan returned to a prior approval system for regulating auto insurance rates. Previously, it had a file-and-use system. Additionally, insurers are now prohibited from using a number of so-called “non-driving” rating factors (e.g., home ownership, credit scores, etc.) in pricing. Michigan now prohibits more rating factors than any other state.
10. While the new law has only been in full effect for a couple of years, there are indications that it is substantially lowering auto insurance claim costs and premiums for some and perhaps many Michigan drivers. According to Insure.com, Michigan’s average auto insurance premium for a hypothetical driver dropped from \$2,611 in 2019 to \$2,133 in 2022 – an 18.3% decrease. Over this same period, the weighted average premium for liability coverages declined from \$825 to \$635 – a 23% decrease – and the average loss cost (total claim costs divided by the number of insured vehicles) for PIP coverage fell from \$465 to \$263 – a 41.9% decrease. More recently, premiums have begun to rise due to more auto accidents and higher vehicle repair costs. Of course, these are averages and the savings for any particular driver can vary significantly. As time passes and drivers become more familiar with the reforms and their coverage options, more drivers may obtain premium savings if they opt for lower PIP limits. There also are indications that the number of uninsured drivers has fallen as auto insurance has become more affordable for some.
11. Based on commonly used measures, Michigan's auto insurance market is competitive. Hence, the evidence does not indicate that a lack of competition has been the cause of the state’s high insurance rates. Consequently, we question whether it was necessary or beneficial to tighten rate regulation and prohibit certain rating factors for auto insurance.

12. While many Michiganders may be benefiting from the no-fault changes in terms of lower premiums, there also are some stakeholders who are unhappy with the new law. It appears that some were expecting greater premium savings than what they have received. For example, some Detroit drivers are disappointed that their premiums have not dropped further. Those who benefited from the old system – e.g., some medical providers, trial attorneys, etc. – are seeking to reverse or temper at least some of the medical cost controls that were enabled by the reforms.
13. One issue that is receiving considerable attention is the effects of limits on medical reimbursement rates for medical providers and injured persons. Some providers contend that these limits are preventing them from providing post-acute care and rehabilitation services for persons with severe injuries from auto accidents, e.g., brain trauma, and forcing them to lay off staff and eliminate facilities. Critics of the amendments also contend that the limits on the reimbursement of services provided by the family members of an injured person are too tight. How the reforms are affecting the cost and quality of medical care for injured persons is a matter of considerable debate that warrants further study.
14. Certain medical cost controls enabled by the new law have been litigated in the courts in line with the issues summarized above. Specifically, these are the controls that haircut the charges for services for which there is not a Medicare fee and limits on the reimbursement of home attendant care provided by family members. These controls have been challenged in regard to services provided to persons injured before the law changed and persons injured after the law changed. In a 5-2 decision issued on July 31, 2023, the Michigan Supreme Court ruled the contested controls do not apply to persons injured before the law changed. This ruling will cause insurers to absorb a large financial hit. The data indicate that insurers had already increased their loss reserves on claims incurred before 2019 and had an incurred loss ratio of 109.7% for no-fault auto insurance in 2022.
15. Organizations that challenged the 45% fee cut and the limits on home attendant care provided by family members for legacy insureds also will likely seek legislation to modify these limits for people injured after the law changed. Depending upon whether and how much these limits are relaxed, consumers could see large rate increases for PIP coverage. Large rate hikes for PIP coverage could prompt more drivers to lower or drop this coverage. Legislators will need to carefully consider the tradeoffs involved with any proposal to eliminate or temper the medical cost controls under the new law.
16. Additionally, consumer advocates are calling for further restrictions on insurers' pricing as they have indicated that they believe that the regulatory changes in the 2019 legislation were sufficient to ensure fair pricing for all auto insurance buyers. Additionally, insurance premiums are increasing in Michigan and other states due to increases in the frequency of auto accidents and higher auto repair costs and this has increased political pressure on regulators to limit rate increases.

17. No legislation is perfect and it may be possible to tweak the new law to improve it without losing its principal benefits. Legislation like this requires tradeoffs which affect various drivers differently and which they will value differently. The challenges to the new rules governing how medical providers are reimbursed raise questions regarding what constitutes reasonable and adequate fees for medical services provided to auto accident victims. Easing the medical cost controls could result in large rate increases that would have the unintended consequence of inducing more drivers to opt of PIP coverage entirely.
18. Additionally, there may be things that can be done to further lower auto insurance costs and improve its quality without undermining the reforms, e.g., enhancing traffic enforcement and safety, improving consumers' knowledge of and their ability to shop for insurance, etc.
19. To better guide policymakers and other stakeholders, it is important that they be provided with the best possible information and analysis so that they can evaluate how the no-fault amendments are working and properly consider any proposed changes to these amendments and how they would affect Michigan drivers. This paper takes an important step in this regard and will be expanded and updated if new data and information become available.

I. Introduction

This paper presents an initial assessment of amendments to Michigan's no-fault law that were enacted in 2019 and phased in from the date of their enactment through 2021. There was strong political pressure in Michigan to reform its no-fault system and tighten its regulation of auto insurance because of long-standing issues and problems with auto insurance generally and no-fault insurance specifically. These issues and problems included the high cost of coverage and a large number of uninsured drivers, among others. Very high rates in Detroit also led to allegations that insurers were engaging in unfair discrimination against low-income and minority consumers. To understand the changes that were adopted and evaluate their likely effects, it is helpful to consider the conditions in Michigan's auto insurance market that preceded the enactment of the reform legislation.

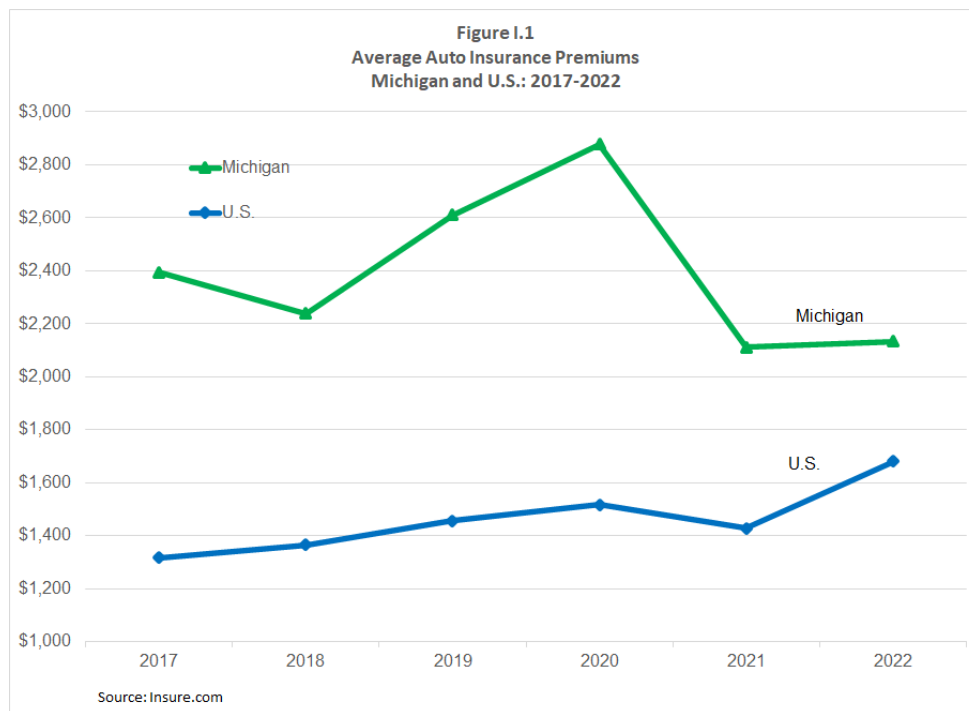
1. High Premiums

According to Insure.com, prior to 2021, Michigan had the highest auto insurance rates in the country.^{1,2} Figure I.1 shows the average auto premium in Michigan and the U.S. for the years 2017-2022. The average auto insurance premium for a hypothetical driver in Michigan in 2020 was \$2,878 – a figure that was almost 90% higher than the

¹ Available at <https://www.insure.com/car-insurance/car-insurance-rates.html>. Insure.com commissioned Quadrant Information Services to calculate auto insurance rates for seven large carriers in 29,162 U.S. cities and 34,523 Zip codes. The rates are based on full coverage for a single, 40-year-old male who commutes 12 miles to work each day, with policy liability limits of \$100,000/\$300,000/\$50,000 and \$500 deductibles on collision and comprehensive coverage. The estimated premium does not include PIP coverage. The hypothetical driver has a clean record and good credit. Rates were averaged in each state for the cheapest-to-insure 20 best-selling vehicles.

² The approach used by Insure.com differs from that used by the NAIC to calculate its average premiums by state. The NAIC aggregates actuarial data obtained from statistical agents and divides total premiums by the number of vehicles insured.

national average of \$1,517. In 2021, the average premium in Michigan fell to \$2,112. In 2022, Michigan's average premium rose to \$2,133.



In the average premium comparisons published by Insure.com, Florida has replaced Michigan as the state with the highest auto insurance rates; Michigan's ranking has fallen to fourth. It is reasonable to surmise that the legislative changes enacted in 2019 were at least partially responsible for the decrease in Michigan's average auto insurance premium in 2021 and 2022. We believe that at least some of this decrease is due to lower costs stemming from the no-fault amendments pertaining to medical cost controls as well as allowing car owners to opt for something less than unlimited Personal Injury Protection (PIP) coverage.³ The modest increase in Michigan's average premium in 2022 is likely due to an increase in auto accidents and claim costs that is occurring nationwide – people are driving more and driving more aggressively as the cost of auto repairs are increasing.

³ Because the methodology used by Insure.com holds the coverages for a hypothetical policy constant, their average premium calculations control for drivers' choices on their liability and physical damage coverages.

2. No-Fault Auto Insurance in Michigan

Michigan is one of nine states, along with Puerto Rico, with a "mandatory" no-fault system; three additional states have "choice" no-fault systems (Insurance Information Institute, 2018).⁴ There are 39 states with a tort liability system and 11 states that are termed "Add On" states.⁵ PIP coverage is compulsory in 18 states and optional in six states. Table I.1 shows the type of system in each state.

Table I.1
State Systems for Auto Accident Liability

State	Restrictions on Lawsuits		Thresholds for Lawsuits		PIP Benefits		State	Restrictions on Lawsuits		Thresholds for Lawsuits		PIP Benefits	
	Yes	No	Monetary	Verbal	Compulsory	Optional		Yes	No	Monetary	Verbal	Compulsory	Optional
Alabama		X					Montana		X				
Alaska		X					Nebraska		X				
Arizona		X					Nevada		X				X
Arkansas		X			X		New Hampshire		X				
California		X					New Jersey*	X	X	X		X	
Colorado		X					New Mexico		X				
Connecticut		X					New York	X		X		X	
DC		X				X	North Carolina		X				
Delaware		X			X		North Dakota	X		X		X	
Florida	X			X	X		Ohio		X				
Georgia		X					Oklahoma		X				
Hawaii	X		X		X		Oregon		X			X	
Idaho		X					Pennsylvania*	X	X	X		X	
Illinois		X					Puerto Rico	X		X		X	
Indiana		X					Rhode Island		X				
Iowa		X					South Carolina		X				
Kansas	X		X		X		South Dakota		X				X
Kentucky*	X	X	X		X		Tennessee		X				
Louisiana		X					Texas		X		X		
Maine		X			X		Utah	X		X		X	
Maryland		X			X		Vermont		X				
Massachusetts	X		X		X		Virginia		X				X
Michigan	X			X	X		Washington		X				X
Minnesota	X				X		West Virginia		X				
Mississippi		X					Wisconsin		X				X
Missouri		X					Wyoming		X				

* Choice no-fault system

Source: Insurance Information Institute

In states with tort liability systems, drivers who cause accidents are directly liable for the bodily injuries (BI) and property damage (PD) they cause. In a "traditional" no-fault system (no add on PIP coverage), if someone suffers bodily injuries due to the negligence

⁴ In states with choice systems, car owners can either opt in or opt out of no-fault insurance.

⁵ An "Add On" state is a state that has a tort liability system but also requires or allows car owners to purchase PIP coverage.

of another, the injured party must meet a damage threshold to sue the negligent party in tort. These thresholds can be monetary – a certain amount of medical expenses must be incurred (e.g., \$2,000) – or verbal – e.g., there must be an injury that results in the total or partial loss of a body member or function. Five of the 12 no-fault states including Michigan have verbal thresholds and the other seven have monetary thresholds. In Michigan, if a person’s injuries do not meet the verbal threshold, they are allowed to recover up to \$3,000 in damages from the at-fault driver – this is known as “mini-tort.”

In a mandatory no-fault state, PIP is the primary source of recovery for persons injured or killed in auto accidents. PIP provides coverage for the medical expenses and lost wages of an insured person regardless of who is at fault in an accident. The medical expenses covered under PIP include medical services and medication, surgical services and hospital costs, rehabilitation costs, diagnostic services, and ambulatory services. In Michigan, the economic benefits under PIP also cover up to three years of lost wages subject to a limit as well as burial expenses.

When Michigan instituted no-fault in 1973, many believed that it would be a much better system for compensating people injured in auto accidents.⁶ The belief then was that no-fault would be a less costly and more equitable system for compensating persons injured in auto accidents than tort liability. Its proponents also argued that it would significantly reduce litigation and other costs and hence result in lower auto insurance premiums.⁷ In

⁶ See, for example, Anderson et al. (2010) for a historical review of no-fault insurance in the U.S. which includes Michigan. Keaton and O’Connell (1964) first presented a proposal for no-fault auto insurance. Mellon and Kowalski (2010) review the history of no-fault auto insurance in Michigan.

⁷ No-fault proponents also argued that it would result in more certain, timely, and equitable compensation for those injured in auto accidents; people injured would not be subject to the vagaries and uncertainties associated with tort liability. Additionally, no-fault proponents contended that it would be a less expensive system because of the anticipated reduction in litigation and associated transaction costs. A similar argument was made for workers compensation in the early 1900s, which could be viewed as a no-fault system for work-related deaths, injuries, and illnesses.

theory, no-fault imposes a tradeoff between restrictions on lawsuits and lower premium costs with more certain, timely, and equitable benefits for injured persons.

Early empirical studies of no-fault found that strict tort thresholds – high monetary or verbal – could reduce litigation costs (Carroll and Kakalik, 1993).⁸ However, no-fault generally has not lived up to its promise. Initially, states that did adopt no-fault appear to have obtained cost savings, but over the years these savings dissipated and auto insurance has come to be more costly in no-fault states than in tort liability states (Anderson et al., 2009). One could also question whether any gains in greater benefit certainty, timing, and equity that have been achieved under no-fault have justified its overall higher costs.

One problem is that the expected reduction in tort claims under no-fault either did not materialize or was not sustained. Further, expensive PIP coverage due to high medical costs in some no-fault states such as Michigan has likely more than offset any savings from reduced litigation. Consequently, no state has enacted a no-fault system since 1990 and it is no longer proposed as a solution for high auto insurance rates. Indeed, five states have repealed their no-fault systems since they were enacted in the 1970s, although one of these states – Pennsylvania – subsequently reinstated its choice no-fault system (Insurance Information Institute, 2018).

O’Connell et al. (2011) argue that no-fault is a superior system in concept that failed in practice because of flaws in the no-fault laws that the states have enacted. They cite a study by the Rand Institute for Civil Justice (Carroll et al., 1991) that concluded that “no-

⁸ Cummins and Weiss (1991) examined the effects of no-fault auto insurance systems on pure premiums (the average loss cost per insured vehicle) and found that verbal thresholds reduced costs, but monetary thresholds increased them. They did not distinguish between states with low monetary thresholds and high monetary thresholds. They did note that, if monetary thresholds do not rise in pace with inflation, their ability to reduce costs will decline over time.

fault plans reduce transaction costs (primarily attorneys' fees for the plaintiffs and defendants); no-fault plans pay compensation more in line with one's economic losses than does the traditional tort system; and compensation is more prompt under no-fault coverage."

The problem is that state thresholds for filing lawsuits were not drawn tight enough to offset the high medical costs of the no-fault systems that were created. Indeed, as we show in this paper, Michigan's verbal threshold appears to have substantially checked its bodily injury liability (BIL) costs relative to other states. However, Michigan's high PIP costs swamped any savings achieved due to its tort threshold for reasons we discuss below. Nonetheless, O'Connell et al. (2011) contend that no-fault is a better system if properly constructed and is a valid policy option to address high auto insurance costs. Whether Michigan's no-fault changes have, in fact, produced a better system is a fundamental question that we address in this paper.

Under Michigan's no-fault law, every car owner is required to purchase certain auto insurance coverages to register a motor vehicle in Michigan. It is illegal for a vehicle owner to drive or let another person drive their vehicle without auto insurance. Mandatory auto insurance in Michigan has several parts.

For persons injured in an auto accident, PIP coverage will pay for all reasonably necessary medical services up to the maximum limit chosen by the insured. It will also pay up to three years of wages up to a maximum amount. For someone killed in an accident, their policy will pay their spouse and dependents three years of wages and fringe benefits based on what he or she would have been paid had they remained alive as well as burial and funeral expenses up to a limit. Car owners also may coordinate their PIP coverage with

their health or disability insurance (except if it is a Medicaid, Medicare, or Medicare Supplement policy) to reduce their PIP premium. Under the new law, drivers may opt out of carrying PIP medical coverage if they meet certain requirements.

Car owners are also required to purchase Property Protection Insurance (PPI) that will pay up to \$1 million for damage their car does to others' property, such as buildings and fences. There also is coverage for damage to others' properly parked vehicles.

Finally, drivers must buy Residual Bodily Injury and Property Damage Liability (BI/PD) Insurance. This coverage will pay, up to the limits of the policy, a driver's defense costs and any damages for which they are found liable as the result of an auto accident in which someone was killed or seriously injured. The minimum limits of coverage that everyone must purchase are: \$50,000 per person who is hurt or killed in an accident; \$100,000 for all persons who are injured or killed; and up to \$10,000 for damage to property in another state.⁹ Vehicle owners can purchase higher liability limits if they wish. Policies further provide residual liability insurance to cover other situations under which a Michigan driver could be sued, e.g., an accident in a state other than Michigan.

Michigan's historically high auto insurance costs and rates were due to several factors with its PIP coverage as the primary source of its problems.¹⁰ Prior to the reforms, Michigan's PIP benefits were unlimited with respect to medical benefits. In other states with PIP coverage that is either mandatory or optional, benefits are subject to a limit (e.g., \$15,000 in New Jersey). Table I.2 summarizes the minimum PIP limit in each state where

⁹ These limits are commonly summarized as 50/100/10.

¹⁰ Some of these factors are beyond the control of policymakers per se such as traffic density, the costs of auto repairs and medical care, and adverse weather, among others.

PIP coverage is required.¹¹ There was no limit on PIP benefits in Michigan before the law was changed.

Further, under the old law, there was no medical fee schedule in Michigan; medical providers could be reimbursed according to their “reasonable and customary” charges. Also, family members could be paid for services they provided to an injured person. Family members can still be paid under the new law, but this is subject to limits. Additionally, insurers were severely constrained in their ability to control the utilization of medical services. Insurers could attempt to limit the fees they paid and their reimbursement of the care provided by family members but there were no clear rules which they could cite in such efforts. Hence, disputes over PIP claims often resulted in costly litigation. These aspects of no-fault benefits encouraged considerable fraud and abuse by medical providers, trial attorneys, and others who found ways to milk the system.

State Minimum PIP Requirements

State	Minimum PIP Required	State	Minimum PIP Required
Delaware	\$15,000 per person, \$30,000 per accident	Minnesota	\$40,000 per person, per accident
Florida	\$10,000 per person	New Jersey	\$15,000 per person, per accident
Hawaii	\$10,000 per person	New York	\$50,000 per person
Kansas	\$4,500 per person	North Dakota	\$30,000 per person
Maine	\$2,000 per person	Oregon	\$15,000 per person
Massachusetts	\$8,000 per person, per accident	Pennsylvania	\$5,000 per person, per accident
Michigan*	\$50,000 per person	Utah	\$3,000 per person

* Some drivers allowed to opt out.

Source: WalletHub

¹¹ See MarketWatch.com for a more detailed breakdown of PIP requirements for each state; available at <https://www.marketwatch.com/picks/guides/insurance-services/pip-insurance/>.

A 2013 study by the Citizens Research Council (CRC) found that medical claims cost auto insurers 57% more in Michigan than claims for similar accidents in other states (Citizens Research Council, 2013). The CRC further concluded that auto insurance premiums in Michigan were 17% higher due to higher medical costs. Michigan's higher medical costs were attributed to both higher reimbursement rates and greater utilization of services. The CRC found that providers' claims for medical care related to auto accidents were 24% higher in Michigan than in other states, holding the amount of care (utilization) constant.

The operations and financing of the Michigan Catastrophic Claims Association (MCCA) reflect the high medical costs under the state's no-fault system. The MCCA was established in 1978 to assume and distribute the cost of high PIP claims among all Michigan drivers.¹² When a claim reaches a certain monetary threshold, the MCCA pays for any costs that exceed the threshold; the MCCA functions as an excess reinsurer for PIP claims. To cover its costs, the MCCA imposes an annual assessment per vehicle that insurers pass on to their policyholders.¹³ The assessment is based on the MCCA's estimate of its projected costs in the coming fiscal year. In 2019, the MCCA covered PIP claim costs exceeding \$580,000 with an annual per vehicle assessment of \$220. As claim costs are coming down due to the reforms, the assessments are also declining. In 2022, the MCCA provided a \$400 per vehicle refund for car owners who had insurance as of October 31, 2021.¹⁴ According to the MCCA's press release regarding the refund, its "decision to return

¹² The MCCA was created when insurers found it difficult to purchase excess reinsurance coverage for auto insurance claims from private reinsurers.

¹³ This assessment is based on what the MCCA expects to pay out on claims in the coming fiscal year.

¹⁴ The MCCA provided the funds for the refunds to insurers who, in turn, sent checks for the refunds to their eligible insureds.

surplus assessment dollars to consumers is a direct result of the fee schedule, fraud-fighting measures, and other changes made to Michigan's no-fault insurance law through bipartisan reforms passed in 2019.”¹⁵

Currently, the MCCA covers PIP claim costs exceeding \$600,000. In other words, member insurers retain losses on claims up to \$600,000. For FY 2023, there will be two MCCA assessments. One assessment will be \$74 per vehicle for drivers who elect unlimited PIP coverage. The second assessment will be \$48 per vehicle for every driver regardless of their PIP coverage for debt recoupment.

Unlimited medical coverage, the lack of a medical fee schedule, and uncontrolled utilization had enabled and encouraged considerable fraud and abuse under the prior system (see, for example, Insurance Research Council, 2019b). There were strong incentives for medical providers to prescribe or offer more services than necessary for injured people. With no out-of-pocket payments required of injured persons, they had no financial incentive to decline unnecessary services. Additionally, a person's family members could be paid substantial amounts for providing home attendant care. Further, some attorneys encouraged their clients to bring suits against their own insurers regarding their PIP benefits in order to obtain a contingency fee.

Hence, all these aspects of Michigan's system for PIP benefits created significant moral hazard resulting in significant “hard fraud” and “soft fraud” and abuse where injuries were either exaggerated or excessive services provided. Moral hazard arises when having

¹⁵ Press release available at <https://michigancatastrophic.com/Portals/71/LiveArticles/503/MCCA%20Press%20Release%20Surplus%20Refund%2012132021.pdf?ver=s1NxyyBvcNP3iiw0dBGf7Q%3d%3d>.

insurance either motivates an insured to intentionally cause a loss or be more indifferent to the occurrence of a loss or its severity.

Another factor that has contributed to Michigan's high auto insurance premiums is its high number of uninsured drivers. Auto owners who purchase insurance help pay for the costs of accidents caused by uninsured drivers. It is believed that high premiums had forced or prompted many car owners to go without insurance in Michigan (Cooney et al., 2019).

Rates were particularly high in Detroit. According to The Zebra, the average auto insurance premium in Detroit in 2019 was \$5,464 compared to \$2,693 statewide (The Zebra, 2019). There have been long-standing concerns about high auto rates in Detroit and allegations that insurers engaged in “redlining” – unfair discrimination against low income and minority drivers.¹⁶ Cooney et al. (2019) argue that Michigan’s high auto insurance premiums – driven by high medical costs – created a barrier to economic mobility for low-income residents, especially in urban areas such as Detroit.

3. Reform Legislation

The concerns about high PIP costs and other problems with auto insurance in Michigan motivated the no-fault amendments that were enacted. On May 30, 2019, Michigan's Governor Gretchen Whitmer signed a compromise bill – S.B. 1 which became P.A. 21 – to reform Michigan's system for auto insurance.¹⁷¹⁸ The new law’s provisions

¹⁶ Powell (2020) and Klein (2021) discuss the issues associated with regulatory prohibitions on the rating factors that insurers are allowed to use and regulatory caps on rate differentials between different groups of insured. These issues are examined in Section VI.

¹⁷ The text of S.B. 1 can be accessed at <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0021.pdf>.

¹⁸ A cleanup bill, H.B. 4937, was subsequently passed and signed by Governor Whitmer on July 11, 2019 which became P.A. 22. This bill clarified timing issues related to the implementation of the new law’s

were phased in from the day it was enacted through 2021. This legislative accomplishment occurred after many years of previous failed attempts at fixing Michigan's system for auto insurance.¹⁹ Certain stakeholders such as medical providers and trial attorneys as well as some consumer advocates had strongly opposed significant reforms, making it more difficult for legislators to change the system.

The new law made substantial changes to PIP coverage. Michigan drivers now have six options with respect to the amount of their PIP coverage ranging from opting out of it entirely to maintaining unlimited medical coverage. The law also instituted a fee schedule for medical provider reimbursement that initially allowed insurers to limit these fees to 200%-250% of Medicare reimbursement rates starting July 1, 2021. After July 1, 2023, these schedule fees will range from 190%-230% of the applicable Medicare rate. For a service for which there is not a Medicare rate, providers initially were allowed to charge 55%-78% of what they charged for the service in 2019. After July 1, 2023, these reductions range from 52.5%-71%. Additionally, insurers were given greater ability to control the utilization of medical services.

New limits were imposed on home attendant care provided by family members. Insurers are not required to pay family members for more than 56 hours per week although they can choose to pay for more hours. There are also limits on the hourly rates that family members can be paid.

Additionally, the legislation returned Michigan to a prior approval (PA) rate regulatory system for auto insurance and prohibits insurers from using several "non-

changes to required minimum insurance coverage and the rate reductions that those changes were intended to allow.

¹⁹ Heaton (2010) discusses how Michigan's no-fault system might be reformed.

driving" rating factors. These regulatory changes were motivated by the high rates in Detroit and the allegations that insurers were engaging in unfair discrimination against low-income and minority drivers.²⁰ Some stakeholders also insisted on increased regulation as a means to ensure that the no-fault changes would produce premium savings for consumers. The new law mandates specific rate reductions according to the amount of PIP coverage that a vehicle owner chooses.

Further, Michigan's minimum BIL limits increased from \$20,000 per person and \$40,000 for all persons to \$50,000 per person and \$100,000 for all persons. The minimum required limit for property damage is \$10,000 and did not change. A driver's liability limits default to \$250,000/\$500,000/\$10,000 unless they elect lower limits. One rationale for the higher liability limits is that drivers opting for reduced PIP coverage could increase the liability risk exposure of at-fault drivers for damages from accidents they cause.

Although the new law has only been in effect for a couple of years, there is evidence that it already has reduced claim costs and produced significant premium savings for some drivers. However, some stakeholders want to roll back or at least temper some of the medical cost controls and consumer advocates want to further tighten the regulation of auto insurers.²¹ In a recent decision, the Michigan Supreme Court (MSC) nullified certain medical cost controls for persons injured before the law changed. Groups that have challenged these controls will likely push for legislation that will remove or temper these controls for all insureds, including people injured after the law changed. Even some reform

²⁰ Powell (2020) and Klein (2021) review the issues associated with regulatory prohibitions on the rating factors that insurers are allowed to use and regulatory caps on the rate differentials between different groups of insureds. These issues are discussed in Section VI.

²¹ The website for the Coalition to Protect Auto No-Fault (CPAN) outlines the policy positions of the critics of the no-fault amendments. Available at <https://protectnofault.org/>.

proponents are expressing dissatisfaction that the new law has not produced greater premium reductions and that the rates in Detroit still remain substantially higher than rates in other areas of the state. Consequently, legislation could be introduced that would further tighten the regulation of auto insurance. In other words, what no-fault insurance in Michigan will ultimately be is far from settled.

4. Scope and Organization of Paper

How the recent legislation has affected and might further affect the cost of auto insurance, the number of uninsured drivers, and other aspects of Michigan's auto insurance system and market are topics of considerable interest that we explore in this paper. We examine the costs of auto insurance in Michigan relative to other states and the factors that have affected these costs. We review various elements of the reform legislation and evaluate its likely effects. We discuss the changes to PIP coverage and examine the issues these changes have raised. Additionally, we analyze the competitiveness of Michigan's auto insurance market and the implications of its return to prior approval rate regulation and the prohibition of certain rating factors.

Note, because the new law has only been in effect for a short time, little data are available yet to conduct a thorough empirical analysis of its effects.²² As time passes and more data become available, we hope to update and extend our analysis of the reform legislation and changes to the regulation of auto insurance.

²² Essentially, these are data on premiums, exposures, and claims that enable us to construct metrics to measure premium rates and claim costs for specific coverages. It also would be helpful to have data that would indicate consumers' choices of their PIP coverage.

Our paper is organized as follows. In the next section, we review the data on average premiums for auto insurance in Michigan relative to other states. Section III examines the costs of PIP coverage and bodily injury liability coverage as these two coverages are affected by Michigan's no-fault system and affect premium rates. In Section IV, we review estimates of the number of uninsured motorists in Michigan and discuss the costs they impose on others. In Section V, we examine some of the most important factors that affect the costs of auto insurance in Michigan beyond its no-fault system and how these factors have contributed to the premiums that drivers pay. In Section VI, we examine the competitiveness of Michigan's auto insurance market and discuss rate regulation. In Section VII, we evaluate key provisions of the reform legislation and consider how it may be affecting the cost of auto insurance and other aspects of the market. Our discussion considers criticisms of the changes that were enacted and complaints regarding the performance of the new law. We conclude with a summary of our findings and discuss further research that could be conducted.

II. Average Premiums

According to Insure.com, in 2021, Michigan had the highest auto insurance premiums in the country. In Table II.1, we show estimated average auto insurance premiums by state in 2019, 2021, and 2022 and each state's ranking based on the information provided by Insure.com. There are different ways to estimate or calculate average auto insurance premiums.²³ Other sources of these estimates may yield results that

²³ Insure.com calculated the average premium in each state using rate filing information from six large insurers for 10 zip codes for a 40-year-old male driver with a clean driving record and a good credit rating.

differ somewhat from those provided by Insure.com.²⁴ Regardless of the source and the methodology, prior to the enactment of the reform legislation, Michigan would have had the highest or near the highest auto insurance premiums in the country.

Table II.1 indicates that the average auto premium in Michigan fell 19.1% from \$2,611 in 2019 to \$2,112 in 2021 and then rose again to \$2,133 in 2022. We should note that this measure of the cost of auto insurance to consumers is for a hypothetical driver and controls for the amount of insurance coverage purchased and the risk characteristics of the insured. Using this metric, Michigan's rank among the states moved from first to fourth over this same period.

Different sources publish different estimates on the average premium in Michigan relative to other states. According to Value Penguin, Michigan average premium in 2023 is \$4,788 annually and ranks first in the country. Note that Value Penguin assumes that drivers in Michigan opt for \$250,000 in PIP coverage, which has not always been the case. Bankrate.com estimated that the average premium in Michigan was \$2,691 – no PIP coverage is included – which placed Michigan fifth highest among the states. Hence, what one estimates the average premium in Michigan to be and where the state ranks is sensitive to the methodology and assumptions one uses.

It is likely that several forces are working in different directions in influencing the state's average premium and ranking among other states. Hence, the fact that Michigan's average premium rose slightly in 2022 and further in 2023 does not mean that the no-fault

These rates were averaged for the same hypothetical policy for the 20 best-selling new vehicles. The hypothetical policy has liability limits of \$100,000/\$300,000/\$50,000. A car owner who opted for lower limits would pay a lower premium and vice versa, all other things equal.

²⁴ An alternative approach would be to divide the amount of auto insurance premiums written by the number of insured vehicles.

amendments have been unsuccessful in reducing claim costs and premiums. Auto insurance rates have been rising in many states as the frequency and severity of auto accidents are increasing. Indeed, according to the Bureau of Labor Statistics (BLS), the Consumer Price Index (CPI) for motor vehicle insurance increased nationally by 71.1% from 2013 to July 2023; it increased by 31.8% from 2020 to 2023.

Table II.1
Average Auto Insurance Premiums by State: 2019, 2021, and 2022

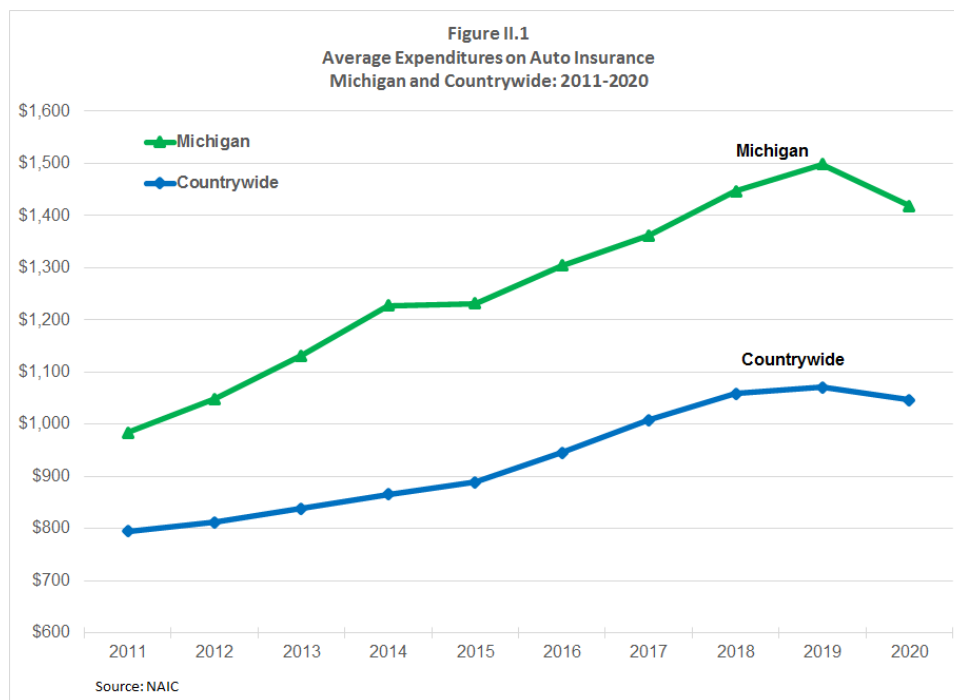
State	2019		2021		2022		State	2019		2021		2022	
	Premium	Rank	Premium	Rank	Premium	Rank		Premium	Rank	Premium	Rank	Premium	Rank
Alabama	\$1,287	32	\$1,358	27	\$1,542	30	Montana	\$1,600	15	\$1,627	11	\$1,692	20
Alaska	\$1,183	40	\$1,175	41	\$1,359	41	Nebraska	\$1,291	31	\$1,383	24	\$2,018	10
Arizona	\$1,449	22	\$1,417	18	\$1,617	23	Nevada	\$1,525	19	\$1,380	25	\$2,023	8
Arkansas	\$1,566	17	\$1,462	15	\$1,597	26	New Hampshire	\$1,087	46	\$885	50	\$1,307	44
California	\$1,846	6	\$1,966	4	\$2,115	5	New Jersey	\$1,520	20	\$1,319	30	\$1,901	12
Colorado	\$1,761	12	\$1,574	14	\$1,940	11	New Mexico	\$1,382	27	\$1,391	23	\$1,505	32
Connecticut	\$1,640	13	\$1,580	12	\$1,750	18	New York	\$1,789	9	\$1,163	42	\$2,020	9
DC	\$1,876	5	\$1,881	6	\$1,858	15	North Carolina	\$1,095	45	\$1,326	28	\$1,368	40
Delaware	\$1,828	8	\$1,443	17	\$2,137	3	North Dakota	\$1,164	43	\$1,234	36	\$1,419	37
Florida	\$2,219	3	\$2,082	3	\$2,560	1	Ohio	\$1,175	42	\$992	47	\$1,023	51
Georgia	\$1,777	11	\$1,705	10	\$1,647	21	Oklahoma	\$1,966	4	\$1,393	22	\$1,797	17
Hawaii	\$1,275	34	\$1,254	34	\$1,306	45	Oregon	\$1,286	33	\$1,229	37	\$1,244	47
Idaho	\$1,040	49	\$985	48	\$1,121	49	Pennsylvania	\$1,187	39	\$1,028	46	\$1,445	36
Illinois	\$1,296	30	\$1,205	39	\$1,578	29	Rhode Island	\$1,834	7	\$1,801	7	\$1,845	16
Indiana	\$1,181	41	\$1,189	40	\$1,256	46	South Carolina	\$1,433	23	\$1,409	20	\$1,894	13
Iowa	\$1,047	48	\$1,032	45	\$1,321	42	South Dakota	\$1,262	36	\$1,575	13	\$1,581	28
Kansas	\$1,398	26	\$1,454	16	\$1,594	27	Tennessee	\$1,297	29	\$1,206	38	\$1,373	38
Kentucky	\$1,594	16	\$1,321	29	\$2,105	6	Texas	\$1,779	10	\$1,710	9	\$1,875	14
Louisiana	\$2,298	2	\$2,839	1	\$2,546	2	Utah	\$1,206	38	\$1,250	35	\$1,469	35
Maine	\$845	51	\$858	51	\$1,116	50	Vermont	\$1,100	44	\$1,151	43	\$1,158	48
Maryland	\$1,546	18	\$1,410	19	\$1,640	22	Virginia	\$1,063	47	\$1,033	44	\$1,321	43
Massachusetts	\$1,245	37	\$1,314	31	\$1,538	31	Washington	\$1,401	25	\$1,298	33	\$1,371	39
Michigan	\$2,611	1	\$2,112	2	\$2,133	4	West Virginia	\$1,472	21	\$1,299	32	\$1,610	24
Minnesota	\$1,362	28	\$1,407	21	\$1,493	34	Wisconsin	\$951	50	\$938	49	\$1,499	33
Mississippi	\$1,409	24	\$1,378	26	\$1,606	25	Wyoming	\$1,602	14	\$1,768	8	\$1,736	19
Missouri	\$1,272	35	\$1,895	5	\$2,104	7	U.S. Average	\$1,457		\$1,428		\$1,682	

Source: Insure.com

A different metric that can be used to measure the cost of auto insurance to consumers is the average expenditure on auto insurance. This metric is a weighted average of total consumer expenditures on auto insurance divided by the number of insured vehicles. Hence, it reflects changes in the amount of insurance coverage purchased as well as changes in the risk characteristics of insureds. Figure II.1 shows the average expenditure on auto insurance in Michigan and countrywide for the years 2011-2020; these data are not yet available for years after 2020. The data used to construct this statistic come from the

NAIC's Auto Insurance Database report and combine expenditures on all insurance coverages.

Here we see a pattern similar to the trends we see with the average premium estimated by Insure.com. The average expenditure increased from \$984 in 2011 to \$1,489 in 2019 and then fell to \$1,419 in 2020. This decrease in the average expenditure could reflect the reforms that were beginning to take effect. However, we should note that many insurers were providing premium refunds in 2020 due to decreased driving and fewer accidents resulting from the Covid19 pandemic. By comparison, the countrywide average expenditure was \$1,071 in 2019 and \$1,047 in 2020.



In general, there are several factors causing rates to increase that are largely unaffected by Michigan's reform measures such as increases in auto repair costs and post-pandemic driving. More specific to Michigan, some drivers may have responded to lower rates due to the law change by purchasing more coverage in terms of higher liability limits and lower deductibles. The increase in the required BIL limits also could have compelled

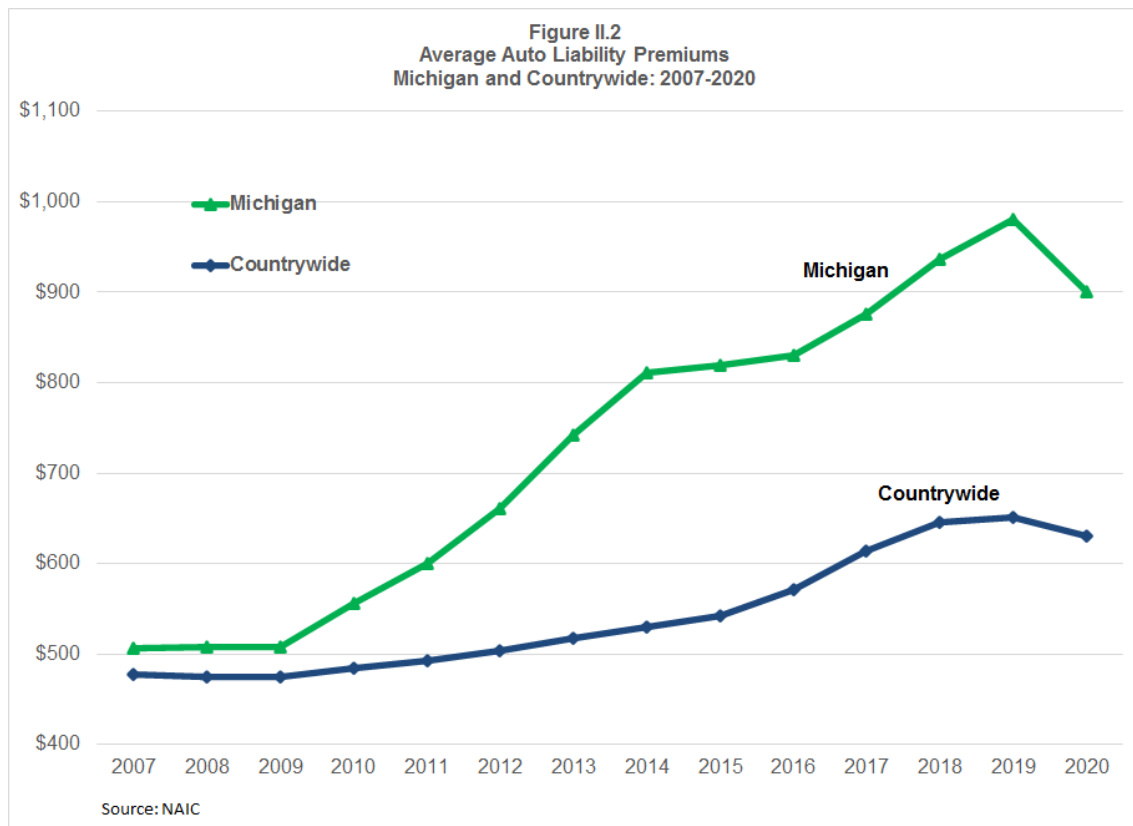
some drivers to increase their limits, which would have raised their premiums. On the other hand, as Michigan drivers become more familiar with their PIP options over time, more of them may opt for lower PIP coverage which will lower their premiums, all other things equal. Further analysis will be required to disentangle the effects of the various factors affecting auto insurance premiums and determine how the reform legislation is affecting consumers' choices and auto insurance costs over the long term.

In this vein, Figure II.2 shows the weighted average liability premium in Michigan compared to the national average over the period 2007-2020.²⁵ Here we use the weighted average premium as we can link it more closely to data on claim costs. The data used to construct this figure also come from the NAIC's Auto Insurance Database report and combine all liability coverages including PIP together. The other major coverage categories are collision and other than collision (comprehensive).

It is informative to focus on the average liability premium as not all car owners purchase physical damage coverage. Additionally, the cost of PIP coverage has been identified as a primary contributor to Michigan's high premiums. In 2020, the weighted average liability premium in Michigan was \$901, which considerably exceeded the countrywide average of \$631.²⁶ The weighted average liability premium in Michigan also has risen at a far faster pace than the countrywide average. From 2007-2020, it increased by 93.4% in Michigan compared to 36.5% countrywide.

²⁵ We calculate the weighted average liability premium here by dividing earned premiums for liability coverage by the number of insured vehicles. Hence, these average premiums aggregate all buyer choices on coverages.

²⁶ The average liability premium in a state is affected by many factors including whether it has a no-fault system and the threshold for lawsuits if it has a no-fault system, the rules governing PIP coverage, and the limits drivers chose for their liability coverage.



We do see a decline in the average liability premium from 2019 to 2020 in Michigan and countrywide. This is likely due to a decrease in driving in the first year of the Covid19 pandemic. Many insurers provided premium refunds to their policyholders which would cause the weighted average premium to fall. Additionally, in Michigan, insurers may have reduced rates for policies issued in 2020 but that extended into 2021 when the medical cost controls for PIP coverage first took effect.

We calculated more recent average premium trends using data from the Fast Track Monitoring System (FTMS). In constructing this system, industry statistical agents (Verisk and the Independent Statistical Service) obtain data from a large portion of the industry to determine how auto insurance claim costs and premiums are trending. The data for this system are not “developed,” e.g., claim costs are on a paid basis, not on an incurred basis. Hence, these data do not reflect insurers’ estimates of what they will ultimately pay out on

claims. Still, these data enable us to get an initial look at claim costs and premiums in 2021 and 2022 when the new law first took effect.

Figure II.3 shows average premiums for the liability coverages for the years 2012-2022 calculated using the FTMS data.²⁷ The FTMS data are provided on a quarterly basis; we use the data for all four quarters of each year to calculate our figures for that year. Figure II.3 shows that the average liability premium in Michigan tracked the national average fairly closely from 2013-2019. This changed when the average liability premium in Michigan dropped from \$825 in 2019 to \$629 in 2023.²⁸ In contrast, the average liability premium nationwide has increased from \$808 in 2020 to \$870 in 2023.

The possible reasons for this marked fall in the average liability premium in Michigan warrant some discussion. Note that the minimum liability limits increased in 2020 and we have no reason to believe that Michigan drivers chose to lower their limits if they exceeded the new minimums. Indeed, lower PIP premiums would give drivers more money to increase their liability limits and the reform legislation increased minimum liability limits. On the other hand, the evidence indicates that the rates for PIP coverage fell and some drivers opted for something less than unlimited PIP coverage. Hence, it is likely that these factors were largely responsible for this decrease in the average liability premium. Additionally, some insurers may have lowered their rates for the other liability coverages to remain competitive in the new market environment post reform. This is a development that requires further study.

²⁷ We calculate a weighted average liability premium using two different tables in the FTMS data set. We obtained premium data from one table and data on earned exposures from another table. The organizations that compile these data generally do not recommend combining data from the two tables as the insurers providing data are not exactly the same for the two tables. For our purposes, we are less concerned about the point estimates of average premiums and more focused on how average premium have trended.

²⁸ Note that this figure for 2023 is the year ending 2023. Its only difference from the 2022 figure is that it reflects the experience for the first quarter of 2023.

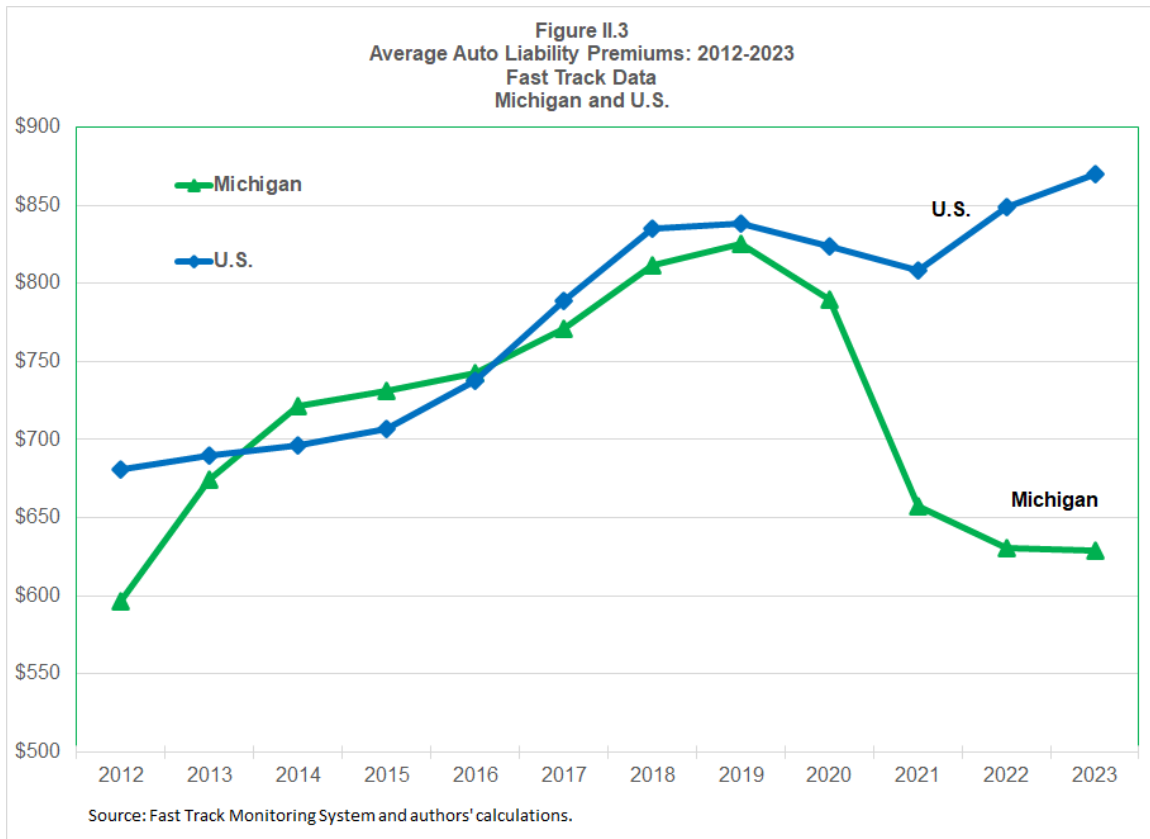


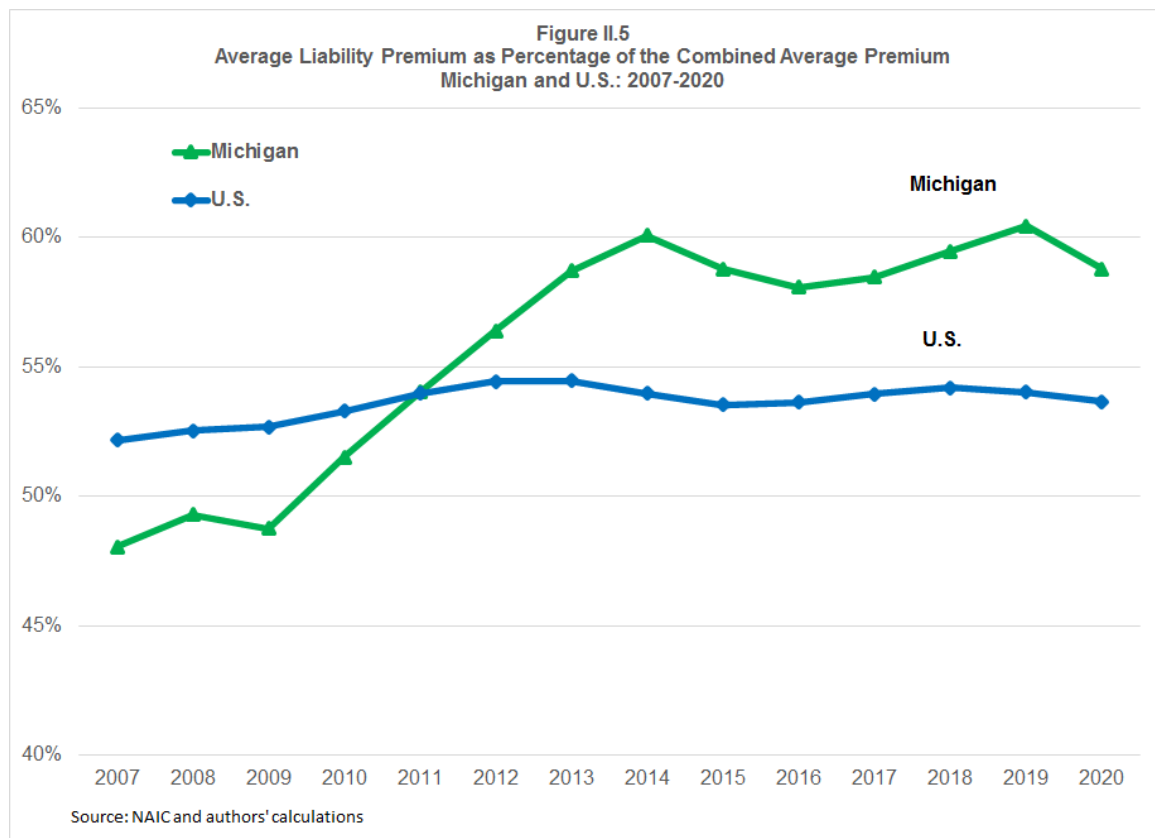
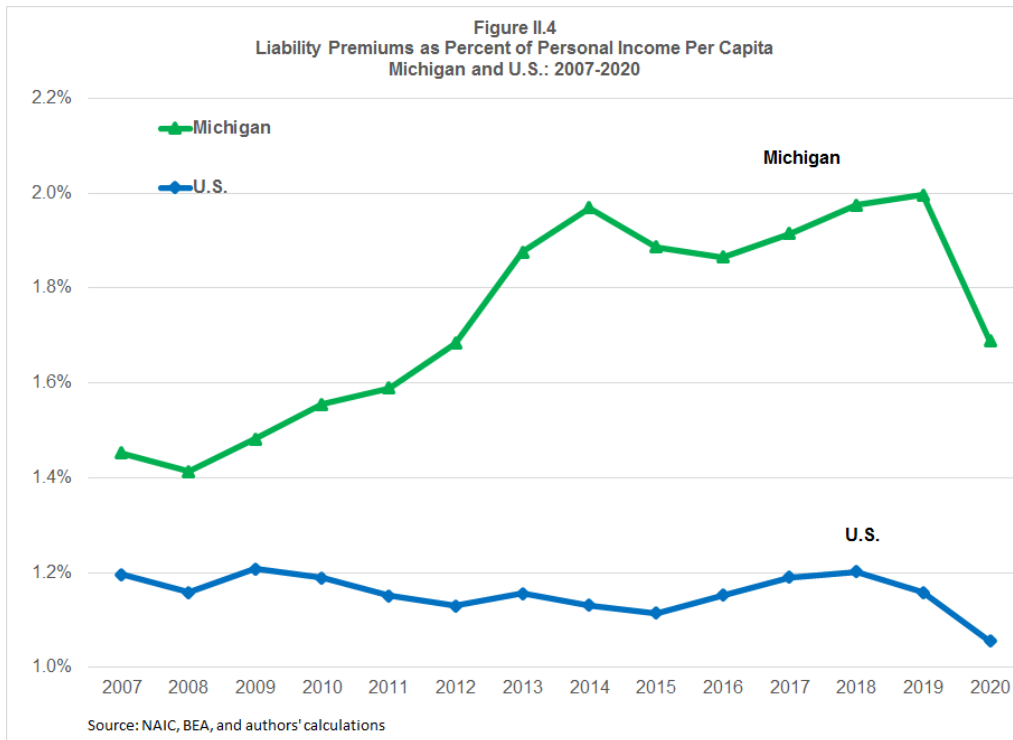
Figure II.4 shows the weighted average liability premium as a percentage of personal income per capita in Michigan compared to the national average over the period 2007-2019. This is one imperfect measure of the "affordability" of this coverage that provides context for the average premium. All other things equal, we would expect states with higher personal income per capita to have higher auto insurance premiums.²⁹ As this figure shows, the average liability premium as a percentage of personal income per capita in Michigan increased from 2007 to 2014, and then rose and fell in subsequent years; it was 1.99% in 2019. A 2022 study by the Insurance Research Council (IRC) found that Michigan was the third least affordable state for auto insurance in 2019 with expenditures

²⁹ In states with higher personal income, we would expect wage losses associated with auto accidents to be higher. The cost of living also may be higher in states with higher personal income.

representing 2.33% of median household income (IRC, 2022).³⁰ We can also see that the average liability premium as a percentage of income per capita is considerably higher in Michigan than the national average – 1.16% in 2019. This metric underscores the concerns about the cost and affordability of auto insurance coverage in Michigan and helps to explain the motivation behind the reform legislation.

Figure II.5 shows the average liability premium as a percentage of the combined average premium, which includes the physical damage coverages. This provides some perspective on how much liability coverage contributes to overall auto insurance premiums in Michigan. In 2020, the average liability premium in Michigan was 58.8% of the combined average premium compared to 53.7% countrywide. Since 2011, the average liability premium in Michigan has represented a higher portion of the cost of all coverages combined than has been the case in other states. Additionally, this percentage reached its highest level in 2019. It declined in 2020 primarily due to the decrease in liability premiums. Nonetheless, it is apparent that the cost of liability coverage is a significant contributor to total auto insurance premiums in Michigan.

³⁰ Only Louisiana – 3.01% - and Florida – 2.42% – were deemed less affordable than Michigan.



These statistics on average premiums reflect statewide averages; the rates insurers charge vary significantly across various locations and different drivers within a state. All other things equal, rates in certain urban areas can be much higher than rates in suburban and rural areas. For example, auto insurance rates in Detroit have been especially high for several reasons. Some of the factors leading to high rates in Detroit include high traffic density, high vehicle theft rates, and high levels of attorney involvement in auto insurance claims, among others. Also, one study determined that the severity of PIP claims in Detroit – \$59,000 – was almost twice the severity of PIP claims in surrounding communities – \$30,000 (Mosely, 2015). Despite this evidence, some still contend that insurers overcharged Detroit drivers for auto insurance before the law was changed (Heller, 2019) and are still overcharging Detroit drivers.³¹ The high cost of auto insurance in Detroit not only increased the political pressure for reform, but it also led to other regulatory changes that were intended to reduce the disparity in rates between Detroit and other areas in the state.³²

According to The Zebra, Detroit has been one of the most expensive cities in the nation for auto insurance. In 2019, the representative premium in Detroit was \$5,464

³¹ On February 13, 2023, Tracy Samilton with Michigan Radio interviewed Doug Heller on issues involving the no-fault auto reforms in Michigan (available at <https://www.michiganradio.org/public-safety/2023-02-13/insurance-expert-auto-insurance-industry-misleads-consumers-to-hide-failure-of-no-fault-law>). In the interview, Heller contended that Michigan is still among the most expensive states in the nation for car insurance, and average rates are higher than they were in 2019 when the law passed. In a second interview with Ms. Hamilton on April 10, 2023 (available at <https://www.michiganradio.org/health/2023-04-10/what-you-should-know-about-car-insurance-after-no-fault-overhaul>), Heller stated that if Michigan legislators want to lower car insurance costs, as well as make them more fair, they would need to give the DIFS the authority to control insurance company profits, in the same way the Michigan Public Service Commission controls utility company profits. He added that the state would have to limit insurance companies' ability to charge people more based on non-driving factors, such as where they live, or if they do not have an excellent credit score. In expressing this view, Mr. Heller indicated that he believes that Michigan should prohibit additional rating factors beyond those prohibited in the 2019 legislation.

³² Some have expressed disappointment that rates have not fallen enough for Detroit drivers under the new law. See, for example, “Many Michigan Drivers Drop Unlimited No-Fault insurance — Yet Rates Slow to Fall,” *Detroit Free Press*, April 12, 2022.

compared to a statewide premium of \$2,693.³³ In 2023, the representative premium in Detroit is \$4,726 – the statewide average is \$2,532; New York City has the second highest premium of \$4,545 in 2023.³⁴ Consequently, if this survey is reliable, it would indicate that there has been a significant decline in Detroit auto insurance rates even if they remain much higher than rates in the rest of Michigan. As more data become available, we will be able to examine how auto insurance rates in Detroit have changed in relation to rates statewide and the reasons for the intrastate differences.

Taken together, these statistics help to explain the concerns that led Michigan to reform its no-fault system and adopt other regulatory changes. Below, we take a deeper dive into the factors driving Michigan’s high auto insurance claim costs and premium rates that the reform legislation sought to address.

III. No-Fault, Auto Liability, and Physical Damage Claim Costs

To gain a better understanding of what was causing Michigan to have such high auto insurance premiums, it is helpful to review the underlying costs of providing this coverage. Here we consider the average loss costs (total claims costs divided by earned exposures) – also known as the “pure premiums” – for the liability coverages and the frequency and severity of liability claims. The coverages most relevant to this review are PIP and bodily injury liability (BIL) as they were the focus of the 2019 legislation. We also review claims costs for the physical damage coverages – collision and comprehensive – to complete the picture on the drivers of auto insurance premiums.

³³ As with the average premium estimates published by Insure.com, the estimates published by The Zebra are also based on a hypothetical driver and set of coverages.

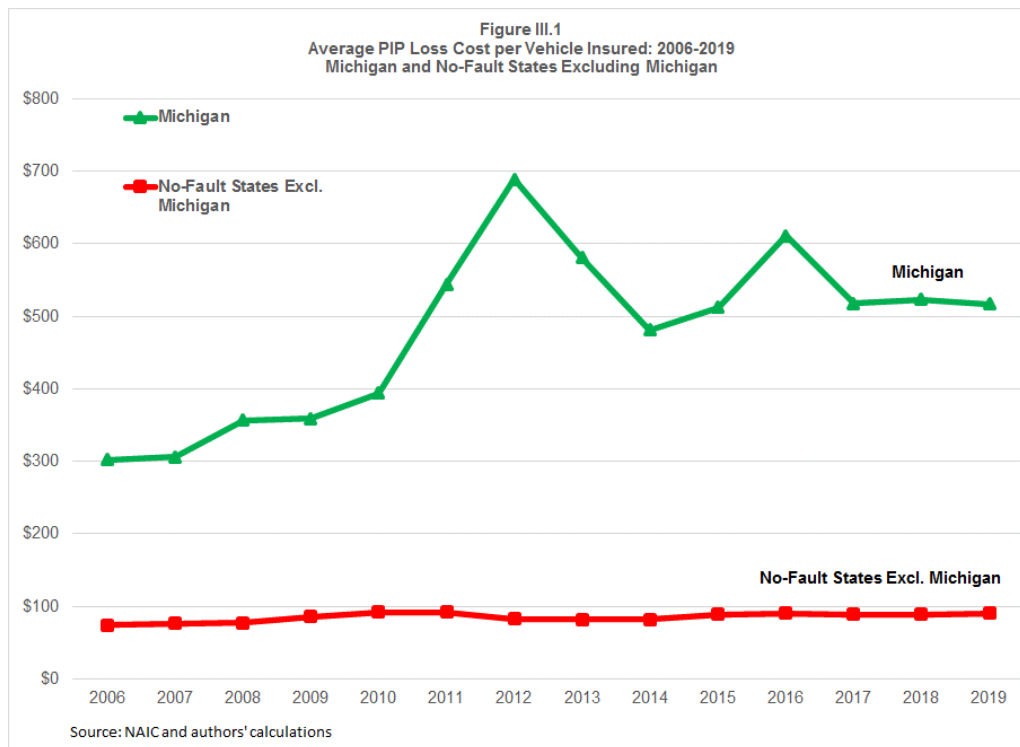
³⁴ Available at <https://www.thezebra.com/auto-insurance/how-to-shop/car-insurance-rates-city/>.

A. Personal Injury Protection (PIP) Costs

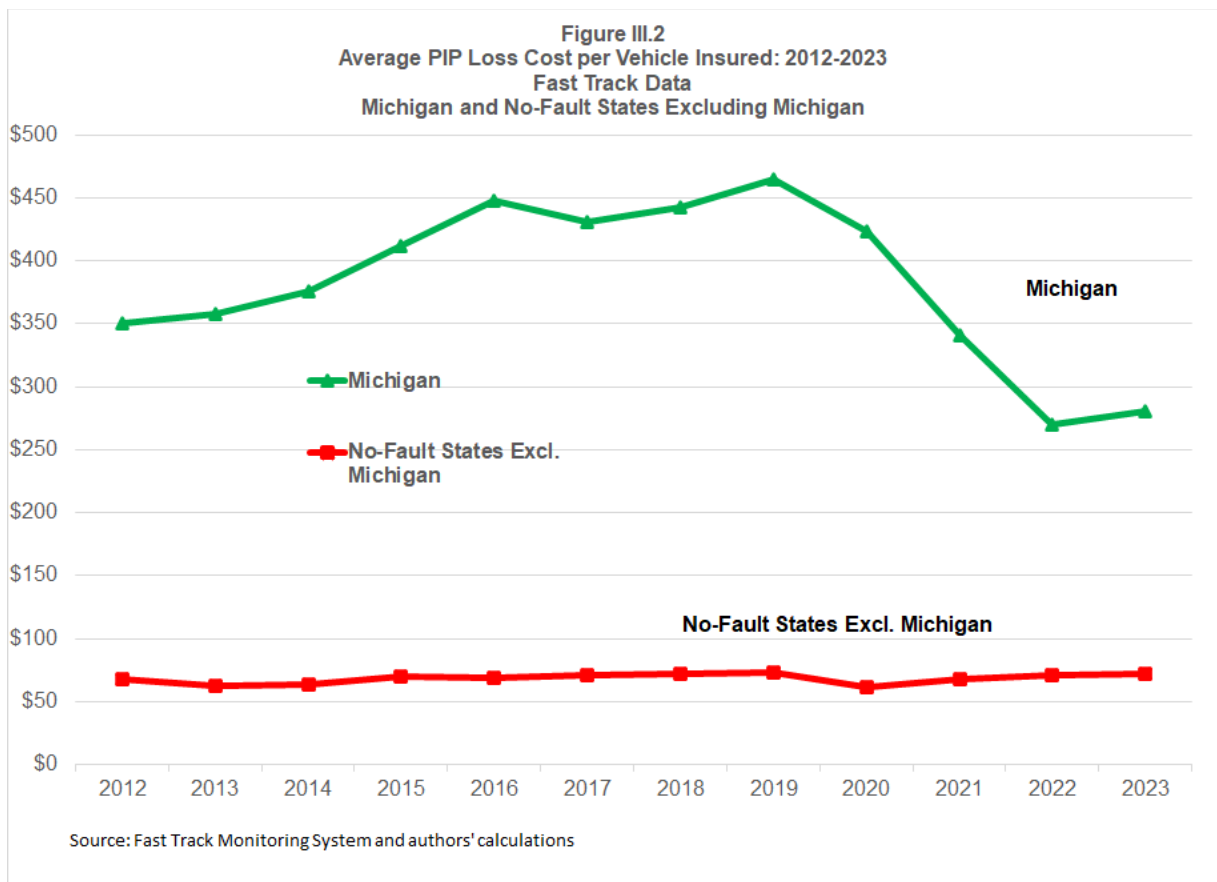
Figure III.1 shows the weighted average loss cost per insured vehicle for PIP in Michigan and mandatory no-fault states generally (choice no-fault states excluded) for the years 2006-2019.³⁵³⁶ Michigan is excluded from the calculation for no-fault states as its inclusion would skew the average for all no-fault states. The average loss cost is total incurred losses for this coverage divided by the number of insured vehicles (insured car-years). The average loss cost reflects both the frequency and the severity of claims. This figure indicates that the average loss cost for PIP was increasing and much higher in Michigan in 2019 – \$517.10 – than in other no-fault states – \$90.89. The data suggest that the very high cost of PIP claims in Michigan has been largely responsible for its high PIP premium rates that created significant pressure to change its no-fault system.

³⁵ The data used to create this figure reflects three years of loss development making it more accurate from a pricing perspective than more current data. These data are drawn from various editions of the NAIC's Auto Insurance Database report.

³⁶ Because no-fault is optional in states where drivers can choose the type of system in which they participate, these states are not comparable to states where no-fault is mandatory.



We can also examine PIP pure premium trends developed from the Fast Track data to see how the new law may be affecting PIP costs. Figure III.2 shows the PIP pure premium for Michigan and the U.S. for the years 2012-2023; the figures for 2023 only reflect the year ending the first quarter of 2023. As in Figure III.1, we compare Michigan to other mandatory no-fault states. What is interesting about this chart is the significant decline in Michigan's PIP pure premium from 2019 to 2022. The Michigan PIP pure premium declined from \$465 in 2019 to \$270 in 2022 – a 41.9% decrease. We see a small uptick in the pure premium to \$280 in 2023 stemming from the first quarter 2023 results. This could be due to insurers increasing their payments on claims incurred before and after the law changed in 2019.

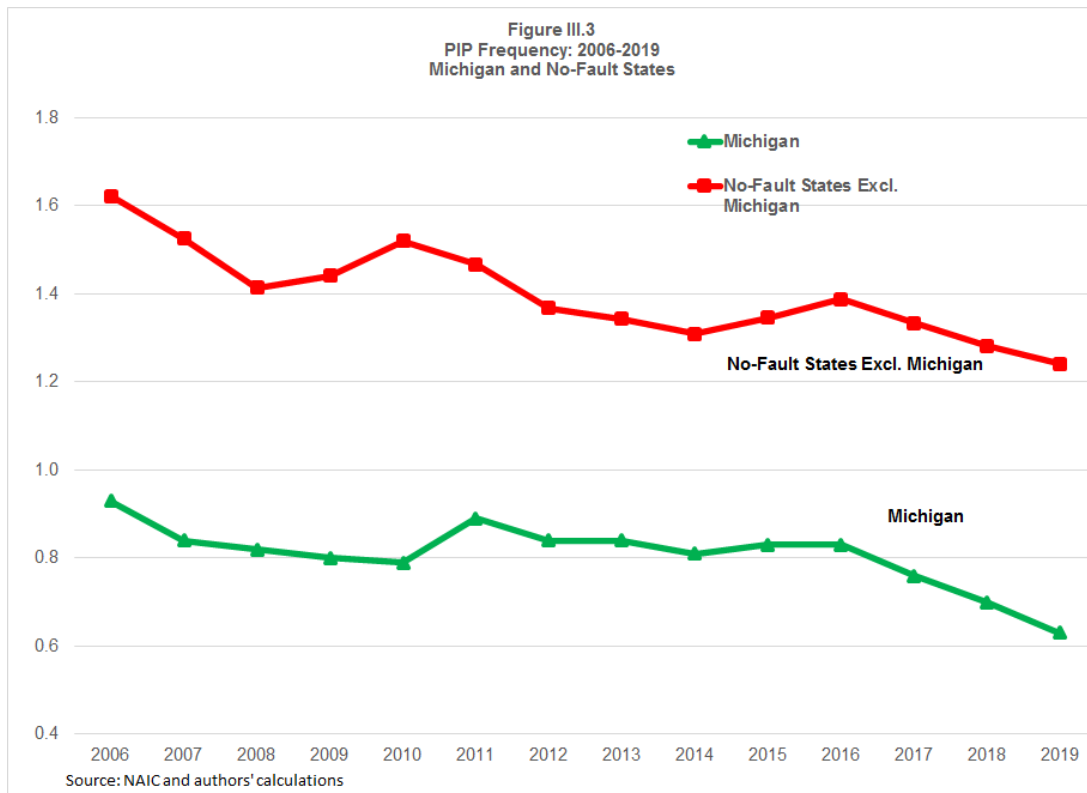


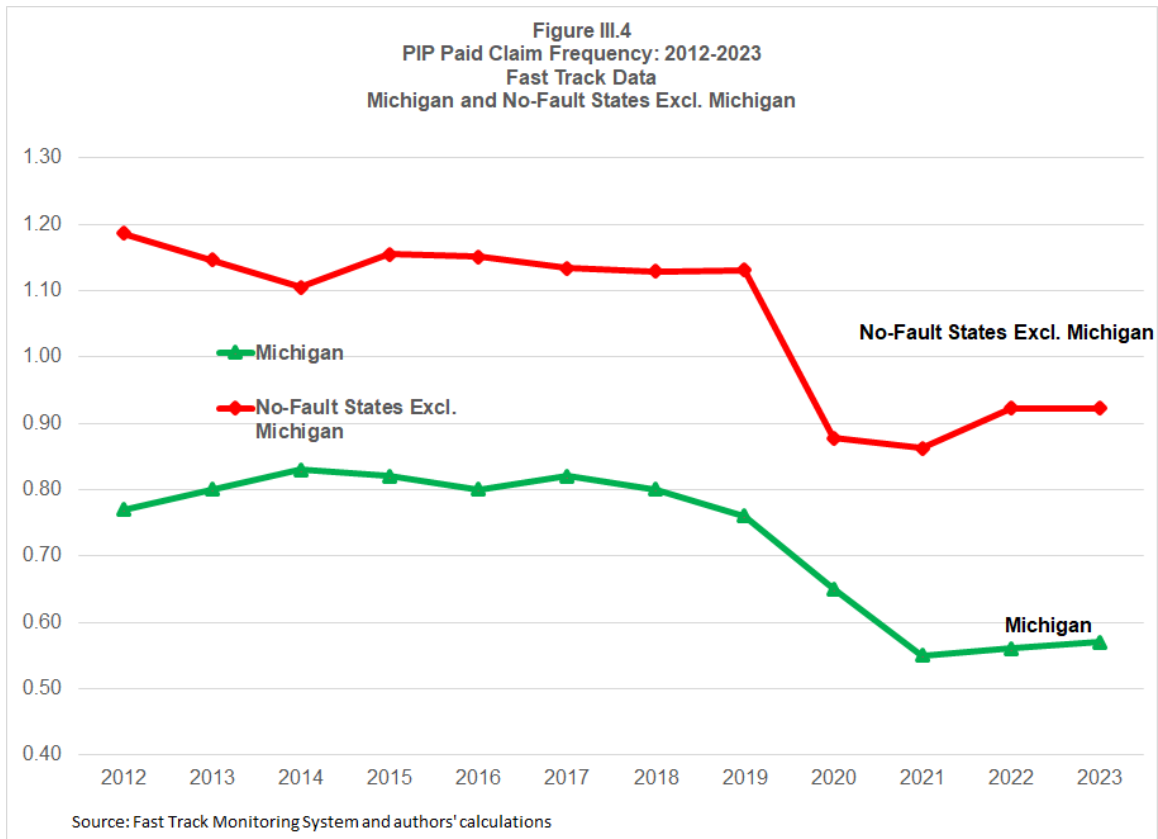
The two factors likely contributing to this decline in insurers' PIP costs are the medical cost controls and consumers' choices regarding their PIP coverage enabled by the new law. If many drivers have opted for lower levels of PIP coverage, this would reduce PIP claim costs. Also, other provisions of the new law such as limits on the fees of medical providers and home attendant care provided by family members could be further contributing to lower PIP costs, although insurers are compelled to apply the old rules to legacy insureds and it is possible that the Legislature will change the rules for all insureds.. The changes in Michigan's PIP costs post-reform warrant further evaluation.

It is helpful to further decompose the elements of PIP average loss costs to better understand the drivers of these costs. Figure III.3 compares the frequency of PIP claims in Michigan with the frequency of PIP claims in other mandatory no-fault states. Frequency is the number of claims multiplied times 100, divided by the number of insured car-years.

What is apparent from this figure is that the frequency of PIP claims in Michigan has been relatively low compared to the frequency in other no-fault states. For example, in 2019, the frequency of PIP claims in Michigan was 0.63 compared to 1.24 in other no-fault states. Hence, claim frequency does not appear to have been the primary cause of high PIP costs in Michigan.

Using the Fast Track data, we can get some idea as to how the new law may be affecting the frequency of PIP claims. Figure III.4 shows paid claim frequency trends for the years 2012-2023 derived from the Fast Track data. What we can see from this figure is that paid claim frequency remained relatively stable in both Michigan and the U.S. until 2020 when we see declines in both. It could be that the decrease in driving due to the pandemic caused the frequency of accidents and claims to fall. Claim frequency



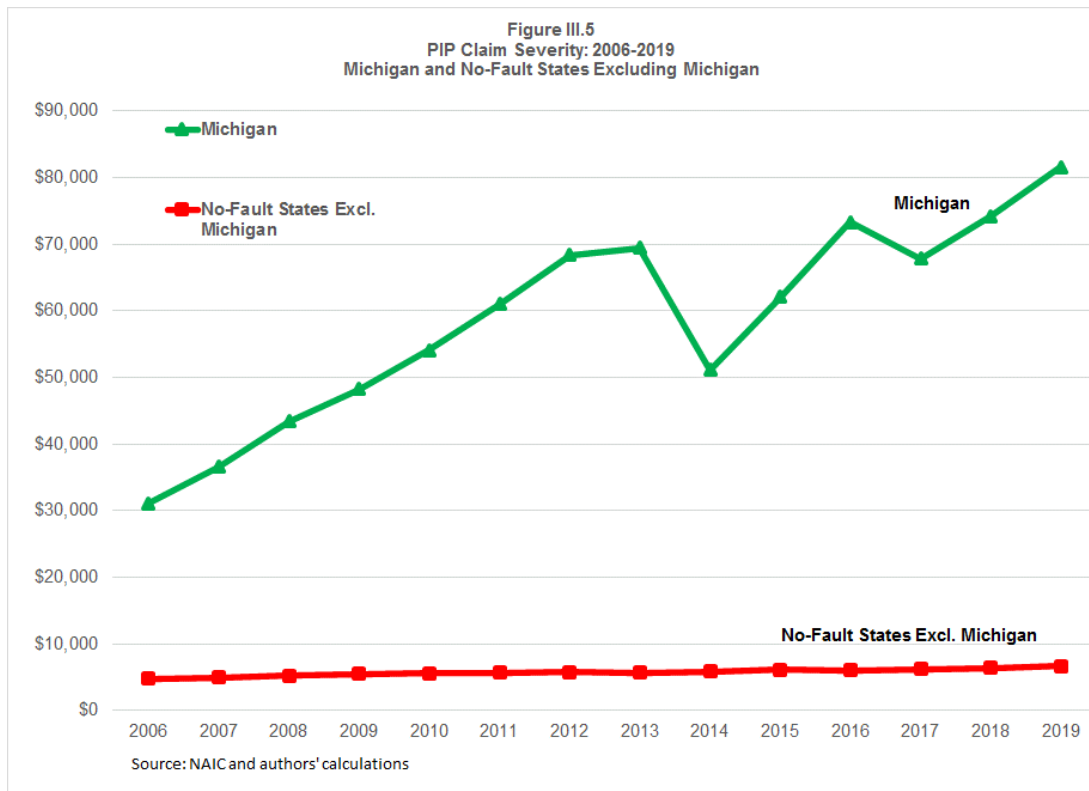


stabilized nationally from 2020 to 2022, while in Michigan we see a further decline from 0.76 in 2020 to 0.57 in 2022. It also is possible that the law changes in Michigan contributed to this decline. If the medical cost controls reduced reimbursement rates for medical services covered under PIP, this could cause fewer PIP claims to be filed. For example, medical providers could have less of an incentive to encourage auto accident victims with minor injuries to file for PIP benefits.

Figure III.5 compares the severity of PIP claims based on incurred losses in Michigan with the average severity of PIP claims in other mandatory no-fault states for the years 2006-2019. "Severity" is the total dollar amount of claims divided by the number of claims. This figure indicates that the severity of PIP claims had been a major driver of PIP claim costs in Michigan and a principal contributor to total auto insurance costs in the state; it was \$81,537 in 2019. The sharp rise in the severity of PIP claims in Michigan as well as

the fact that it was much higher in Michigan than in other mandatory no-fault states – more than 12 times higher in 2019 – was a matter of considerable concern that motivated the no-fault changes that were enacted.

These comparisons of PIP frequency and severity in Michigan with PIP frequency and severity in mandatory no-fault states indicate that the severity of these claims in Michigan was the principal reason why Michigan's PIP costs have been considerably higher than PIP costs in other mandatory no-fault states. Hence, the data lend support to the contention that Michigan's unlimited PIP medical benefits and its lack of a medical fee schedule, uncontrolled utilization, and substantial fraud and abuse were the principal factors causing Michigan's high PIP costs.



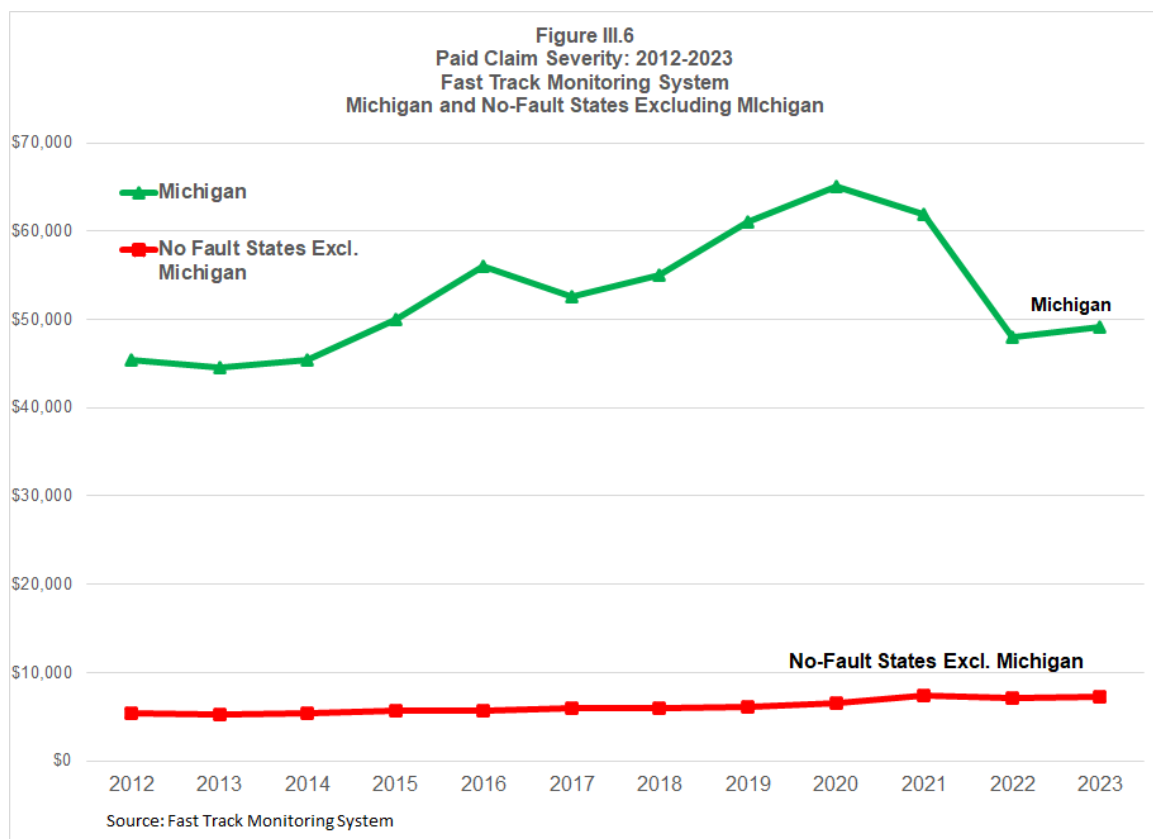
It is helpful here to offer additional observations on how Michigan's PIP benefits likely contributed to the high severity of its PIP claims. With no effective limit on the amount of the medical benefits that could be claimed and the lack of cost controls, there were strong incentives for medical providers to prescribe or offer more services than necessary for injured people. With no out-of-pocket payments required of injured persons, they had no financial incentive to decline unnecessary services. Additionally, a person's family members could be paid substantial amounts for providing home attendant care.³⁷ Hence, all these aspects of Michigan's system for PIP benefits created significant moral hazard. This most likely resulted in significant “hard fraud” and “soft fraud” and abuse where injuries are either exaggerated or excessive services provided.³⁸ In Section V, we take a closer look at why and how the structure of PIP benefits in Michigan caused the costs of this coverage to become so high.

The more current Fast Track data allow us to see whether there are indications that the reform legislation has had any initial effects on the severity of PIP claims. Figure III.6 compares PIP severity in Michigan to that in other no-fault states for the years 2012-2023. For Michigan, we see a decline in *paid* claim severity from \$65,061 in 2020 to \$47,953 in 2022 – a 26.9% decrease. We see that the decline in PIP severity in Michigan was particularly significant from 2021 to 2022. This suggests that, as the reforms took full effect, insurers’ payments on PIP claims dropped considerably. However, we also see that

³⁷ As explained in Section VI, family home attendant care refers to care that might otherwise be provided by a nurse or home health aide, including assistance with daily living activities. Under the old law, there was no limit on the number of hours that insurers would be required to reimburse. Under the new law, an insurer is required to pay for no more than 56 hours per week. Further, under the old law, family members could demand high hourly rates for the services they provided.

³⁸ An article by Detroit Free Press reporter JC Reindl highlighted the kinds of problems that caused very high auto insurance premiums in Detroit: “How aggressive lawyers, costly lawsuits and runaway medical bills make Detroit car insurance unaffordable, *Detroit Free Press*, May 6, 2017.

paid claim severity increased to \$49,210 for 2023 based on one quarter of experience in 2023. We should note that because these data are for paid claim severity, they reflect payments on claims incurred in 2022 as well as claims incurred in previous years. It may be the case that, as insurers began increasing their payments on the claims of legacy insureds due to instructions from the DIFS related to the Andary lawsuit, paid claim severity increased as any savings on claims for non-legacy insureds (i.e., people hurt after the law changed) were more than fully offset by payments on claims of legacy insureds.



B. Bodily Injury Liability (BIL)

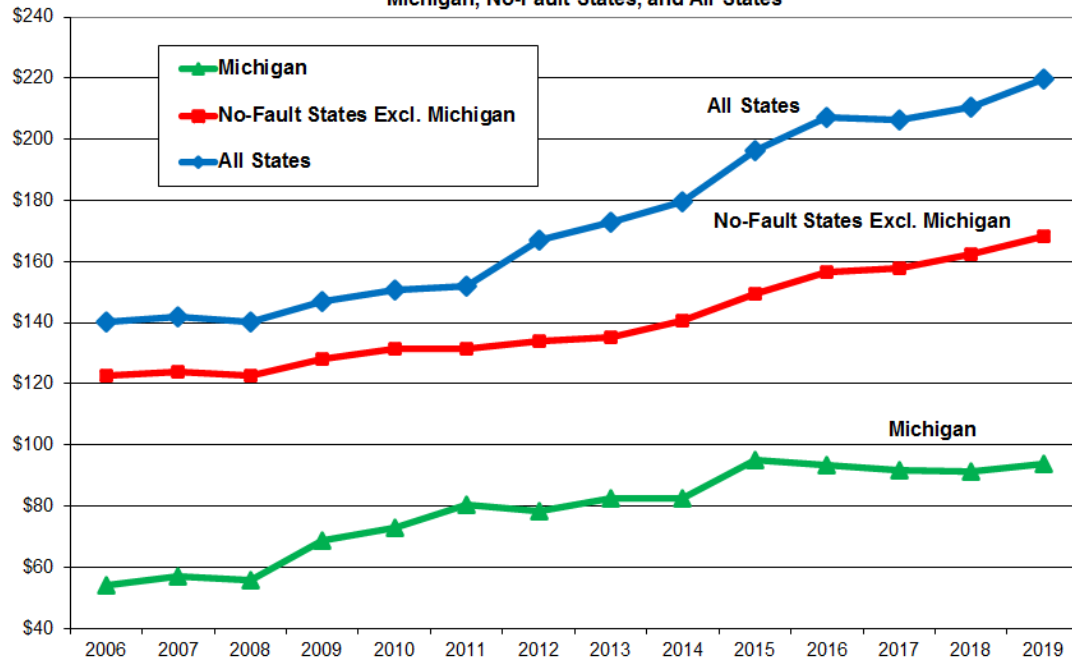
Because Michigan's law regarding PIP coverage is an element of its broader system for no-fault insurance, it is helpful to look at data that indicate how this system may have affected the cost of BIL claims in Michigan relative to other states. To the extent that

Michigan's no-fault law may have reduced the cost of BIL claims, this could have offset Michigan's high PIP costs at least to a degree, understanding that the net result still may have been much higher overall insurance costs in Michigan. Additionally, if changes to the reform legislation are contemplated, the benefits of Michigan's tight threshold for liability claims should still be achievable with the changes to its rules for PIP benefits.

We begin by examining the average loss costs for BIL claims. This gives us a general picture of how Michigan's no-fault system and verbal threshold had been affecting liability claim costs in total. Figure III.7 compares the average loss cost for BIL claims for split limits policies in Michigan with average loss costs in other mandatory no-fault states and all states. In such policies, there are separate limits for bodily injury damages per person, bodily injury damages for all persons, and property damages. Having separate limits can reduce the amount of liability damages covered due to an accident relative to what would be covered if there was one combined limit for all damages.³⁹

³⁹ This can be illustrated through an example. Assume that Bob has a policy with BIL limits of \$50,000 per person and \$100,000 for all persons, and a \$25,000 liability limit for property damage. Bob causes an accident in which one of the persons in the car he struck suffers BI damages of \$75,000 and a second person in the car suffers BI damages of \$25,000. In this case, Bob's policy would only cover \$75,000 of the BI injuries he caused. If Bob had a combined limits policy of \$100,000, then his policy would cover the full \$100,000 of the bodily injuries he caused.

Figure III.7
BI Liability Split Limits Pure Premiums: 2006-2019
Michigan, No-Fault States, and All States



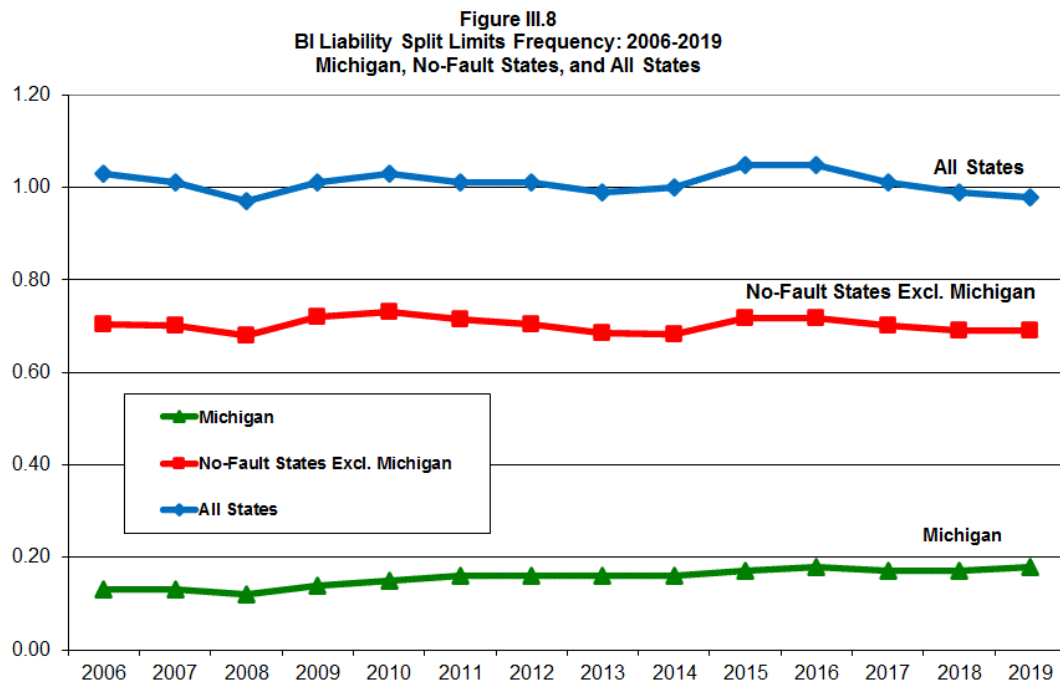
Source: NAIC and authors' calculations

This figure reveals that BIL claim costs in Michigan were significantly below what they were in other no-fault states and all states. In 2019, the average loss cost for BIL for split limits policies was \$93.83 in Michigan compared to \$168.23 in other no-fault states and \$219.82 in all states. This suggests that Michigan's verbal threshold is helping to reduce its BIL costs. It also could be the case that Michigan's high PIP benefits had reduced the incentives of injured persons to sue parties at fault even when their injuries met the verbal threshold.

We now turn to the components of the average loss cost for BIL claims for split limits policies – claim frequency and claim severity. By examining these components, we can gain a sense of whether either or both contributed to Michigan's relatively low BIL costs. Figure III.8 compares the frequency of BIL claims in Michigan with other mandatory no-fault states and all states arising from split limits policies. It reveals that the frequency

of BIL claims in Michigan was considerably lower for these policies than it was in other no-fault states and all states. In 2019, the frequency of BIL claims in Michigan was 0.18 compared to 0.69 in other mandatory no-fault states and 0.98 in all states.

This is not surprising as Michigan's verbal threshold for liability claims could be substantially reducing the number of these claims relative to what would be the case if Michigan had a less stringent threshold or did not have a no-fault system. It also might be the case that Michigan's generous PIP benefits made it less likely that injured parties would file a liability claim but this is a matter of speculation. Regardless, it is apparent that the relatively low frequency of BIL claims in Michigan has been a substantial contributor to its relatively low average loss costs for this coverage.



Source: NAIC and authors' calculations

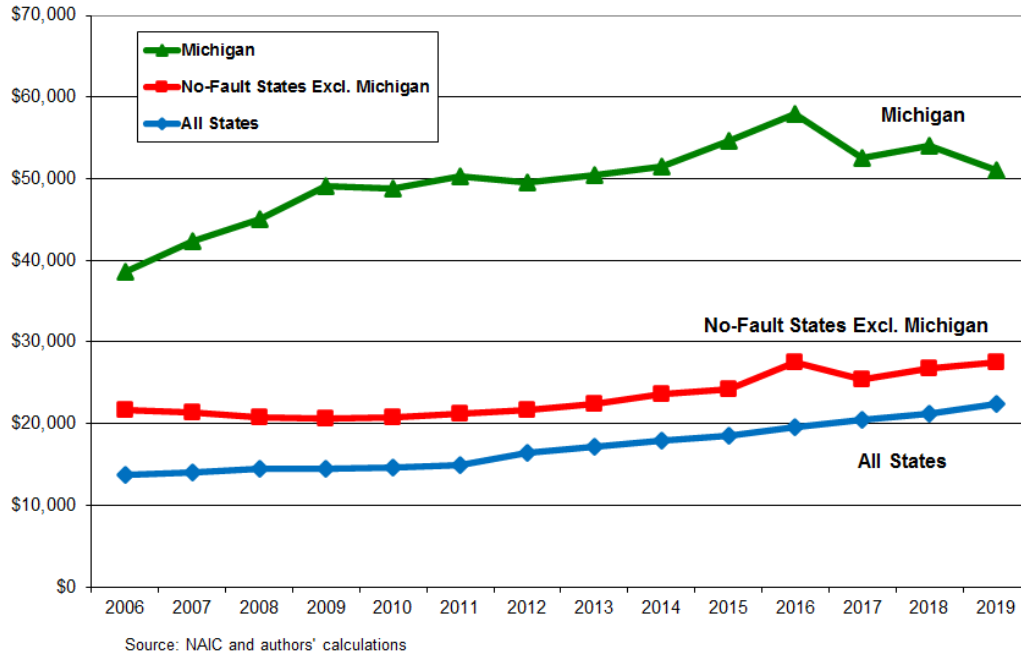
Additionally, some believe that the Michigan Supreme Court's decision in *McCormick versus Carrier* in 2010 weakened Michigan verbal threshold and this weakening has led to an increase in the frequency of BIL claims. If this is true, the result

would be higher BIL costs, all other things equal (see Insurance Research Council, 2019a).⁴⁰

We now turn to the severity of BIL claims for split limits policies as shown in Figure III.9. It is apparent that the severity of BIL claims in Michigan has been much higher than in other mandatory no-fault states and all states. In 2019, the average BI claim in Michigan for split limits policies was \$51,040 compared to \$27,509 in other mandatory no-fault states and \$22,353 in all states. The higher severity of BIL claims in Michigan is not necessarily surprising if Michigan's verbal threshold is causing the liability claims that are filed to be more severe, i.e., the threshold discourages small claims from being filed. However, this may not be the only explanation for what we see in the data. Other factors could be causing liability claims for larger amounts to be filed and paid in Michigan, such as higher levels of attorney involvement and greater levels of soft fraud or hard fraud.

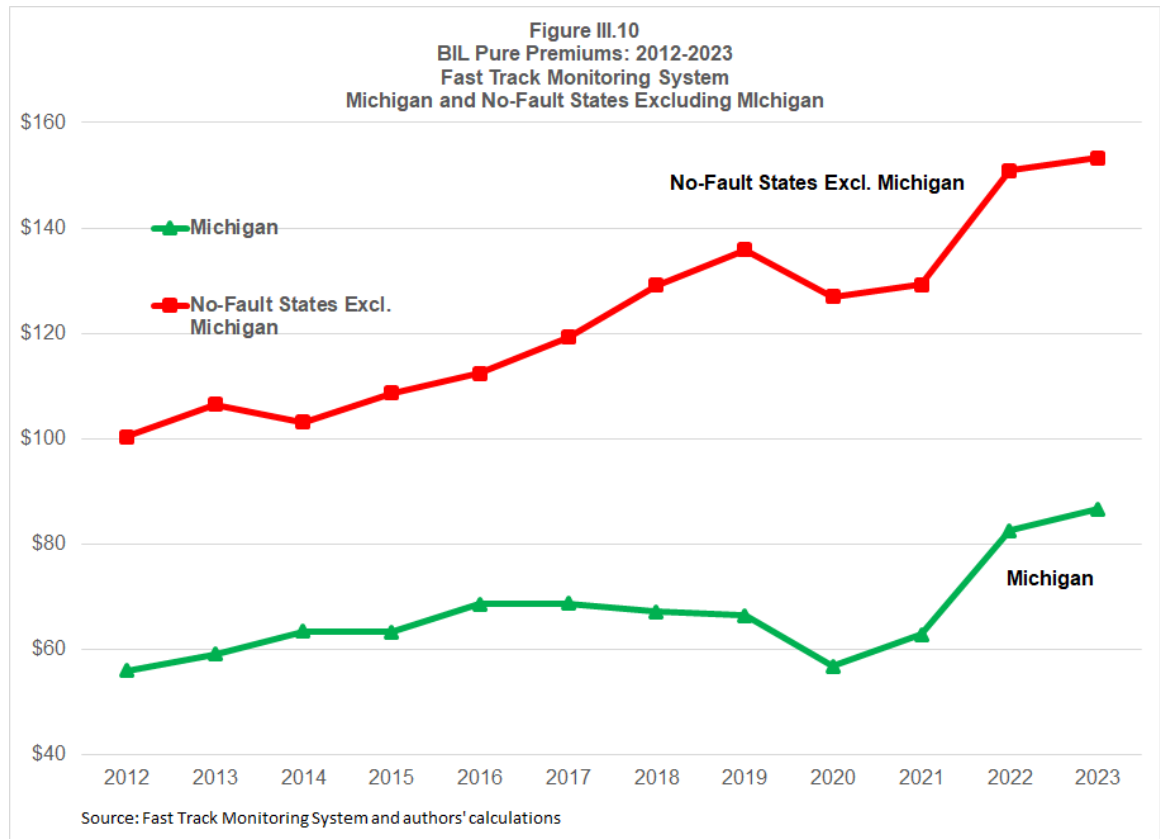
⁴⁰ In this decision, the Michigan Supreme Court reversed a previous Supreme Court decision that held that the duration of a claimant's injury should be considered in determining whether he/she met the verbal threshold (Harvey Kruse, P.C., 2010).

Figure III.9
BI Liability Split Limits Severity: 2006-2018
Michigan, No-Fault States, and All States

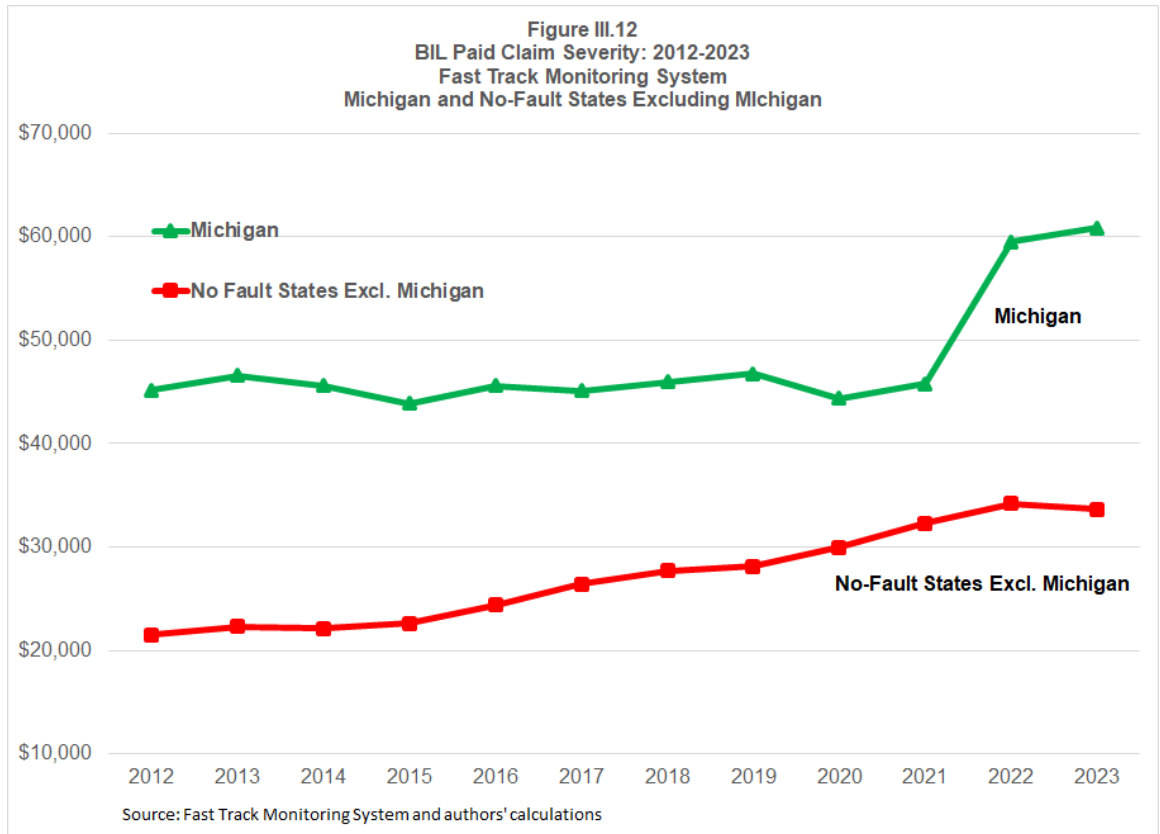
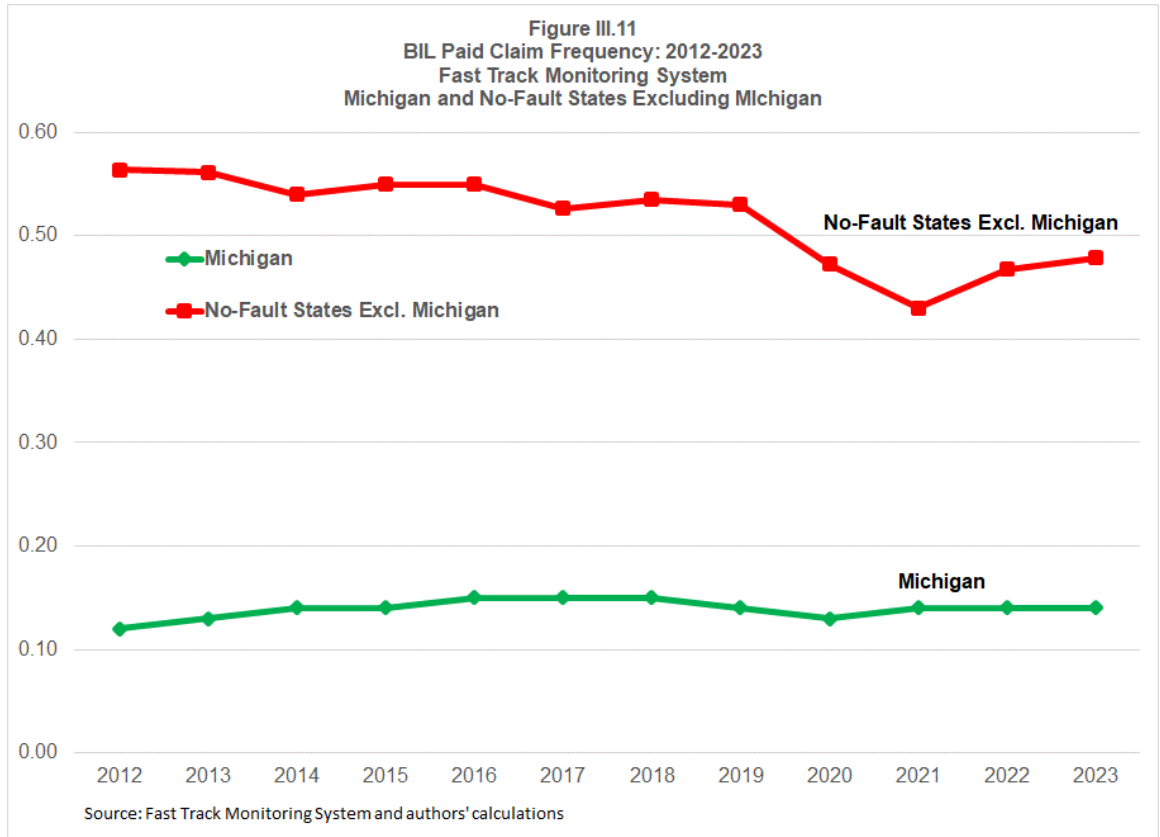


We performed the same calculations for pure premiums, claim frequency, and claim severity for combined limits policies. The results for combined limits policies were very similar to the results for splits limits policies so we do not report the combined limits results here. The only difference is that the pure premium and claim severity for combined limits policies are a bit higher than that for splits limits policies for the reasons we discuss above.

We can gain some perspective on how the no-fault amendments may be affecting BIL costs by examining more recent data on BIL pure premiums, claim frequency and severity from the Fast Track Monitoring System. If the amendments have caused PIP claims to fall, it is possible that there has been an associated uptick in BIL claim costs as accident victims may be more likely to recoup their costs from at-fault parties. Figure III.10 shows BIL pure premium trends for the years 2012-2023 and Figures III.11 and III.12 show BIL frequency and severity trends for the same period.



What we see in Figure III.10 is that the BIL pure premium increased in Michigan and other mandatory no-fault states from 2020 to 2023. However, the BIL pure premium increased at a greater pace in Michigan – 52.6% – than in other mandatory no-fault states – 20.5%. This suggests that Michigan’s no-fault amendments may be having an effect on its BIL claim costs. We can also see that while the frequency of BIL claims has been relatively stable even after the changes to the no-fault law, there was a sharp increase in the severity of BIL claims in Michigan in 2022 followed by a smaller increase in 2023. In other mandatory no-fault states., the increase in BIL severity has been more gradual. Hence, the increase in the BIL pure premium appears to be due to an increase in claim severity and not claim frequency.



Several factors could be contributing to the sharp increase in the BIL pure premium and claim severity in Michigan. One of these factors could be the greater use of tort liability by accident victims who are seeking to recoup their damages from at-fault drivers. We note the new law allows accident victims to sue at-fault parties in tort for damages not paid by their PIP coverage without having to meet the verbal threshold. The new law also increased the minimum required BIL limits that drivers are required to carry. Together, these two provisions of the no-fault amendments could be at least partially responsible for the increase in BIL costs.

Overall, the data indicate that despite the much higher severity of BIL claims in Michigan, the low frequency of such claims caused the average loss cost for these claims to still fall far below that of other states. Nonetheless, if Michigan's verbal threshold was working to reduce the costs of auto insurance generally, it was not enough to fully offset the high costs of its PIP coverage. The data also suggest that the no-fault changes for PIP coverage may have shifted some of bodily injury costs that were previously paid through PIP to other coverages and payors.

C. Collision and Comprehensive Costs

Although drivers are not required to purchase physical damage coverage – collision and comprehensive – and some drivers choose not to purchase it, these coverages do contribute to auto insurance costs in the state and the premiums that many drivers pay.⁴¹⁴²

⁴¹ It does not make economic sense to carry physical damage coverage on older vehicles with low market values.

⁴² Owners are typically required to carry physical damage insurance on leased and financed vehicles.

Here we examine data on claim costs for these coverages and how they have trended over time.

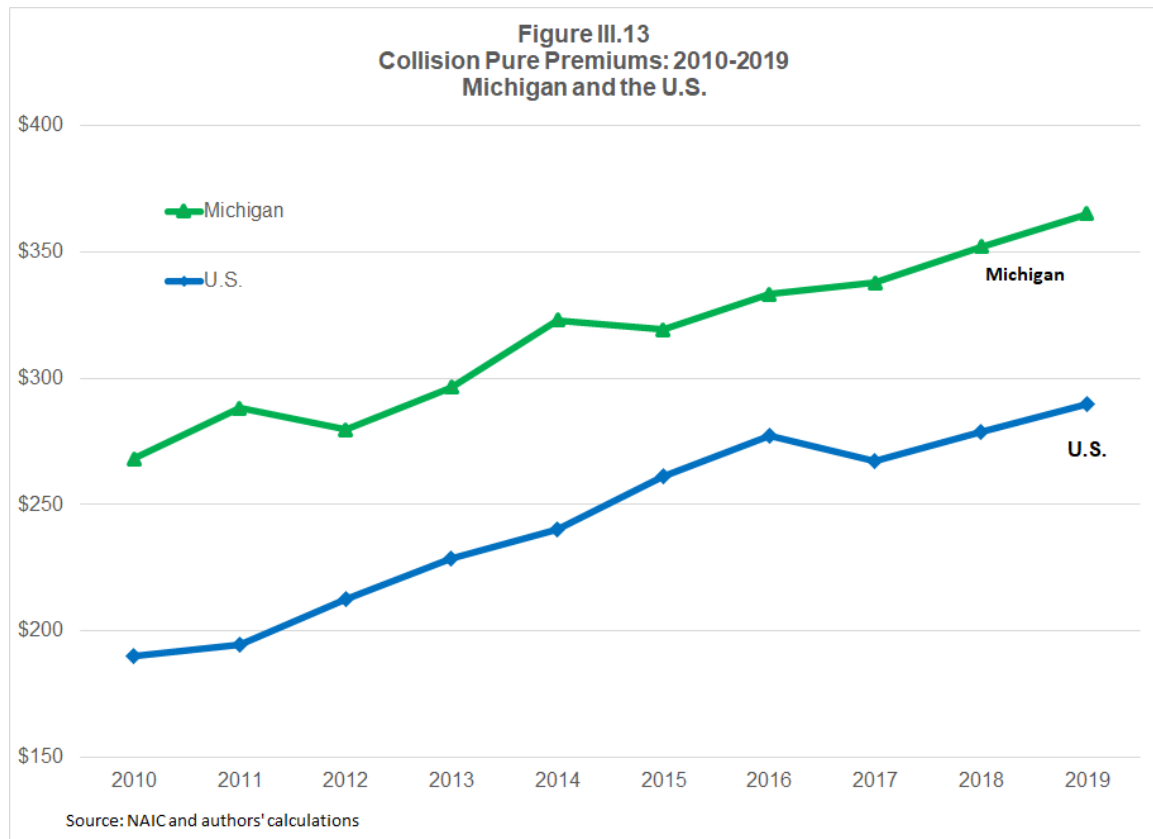
1. Collisions Claim Costs

Collision coverage is a first-party coverage under which damages to the insured's vehicle due to a collision are reimbursed under the driver's own policy. As explained by the NAIC: "Collision insurance pays for damage to the policyholder's own car regardless of fault. ... Coverage is limited in two ways. First, the amount the policyholder can collect is no more than the current market value of the vehicle immediately before the accident. Second, the policyholder selects a deductible, which is the amount he or she must pay before the insurance company makes any payment. Generally, the higher the deductible, the lower the collision coverage premium."

All other things equal, we expect the type of liability system a state has will affect collision claim costs. In a tort liability state, Susan may recover against Bob if Bob causes an accident that damages Susan's vehicle. The property damage liability coverage in Bob's policy would be Susan's source of recovery up to the policy limit.⁴³ The damage to Bob's vehicle would be insured under the collision coverage in his policy. However, in Michigan, Susan would recover against the collision coverage in her own policy. She could only go against Bob for \$3,000 in property damages under Michigan's mini-tort provision. Hence, we would expect collision claim costs to be higher in Michigan than in other states due to the limited ability to recover physical damages from at-fault drivers.

⁴³ If the damage to Susan vehicle exceeded the property damage liability limit in Bob's policy, Susan could attempt to sue Bob to recover the additional damage from Bob's assets.

Figure III.13 shows collision pure premiums in Michigan and the U.S. for the years 2010-2019 based on developed actuarial data provided by the NAIC. We can see from this chart that collision costs have been trending upward during the last decade and



are somewhat higher in Michigan than the national average. From 2010 to 2019, the average loss cost increased from \$268.90 to \$365.10 – a 36.2% increase. Nationally, the average loss cost increased from \$190.04 to 289.91 – a 52.5% increase. Hence, while loss costs are higher in Michigan, they have increased at a slower pace than what has occurred in other states.

To gain a better understanding of what is driving collision claim costs and causing Michigan's costs to be higher than other states, we can examine the frequency and severity

of claims. Figure III.14 shows collision claim frequency and Figure III.15 shows collision claim severity for the years 2010-2019.

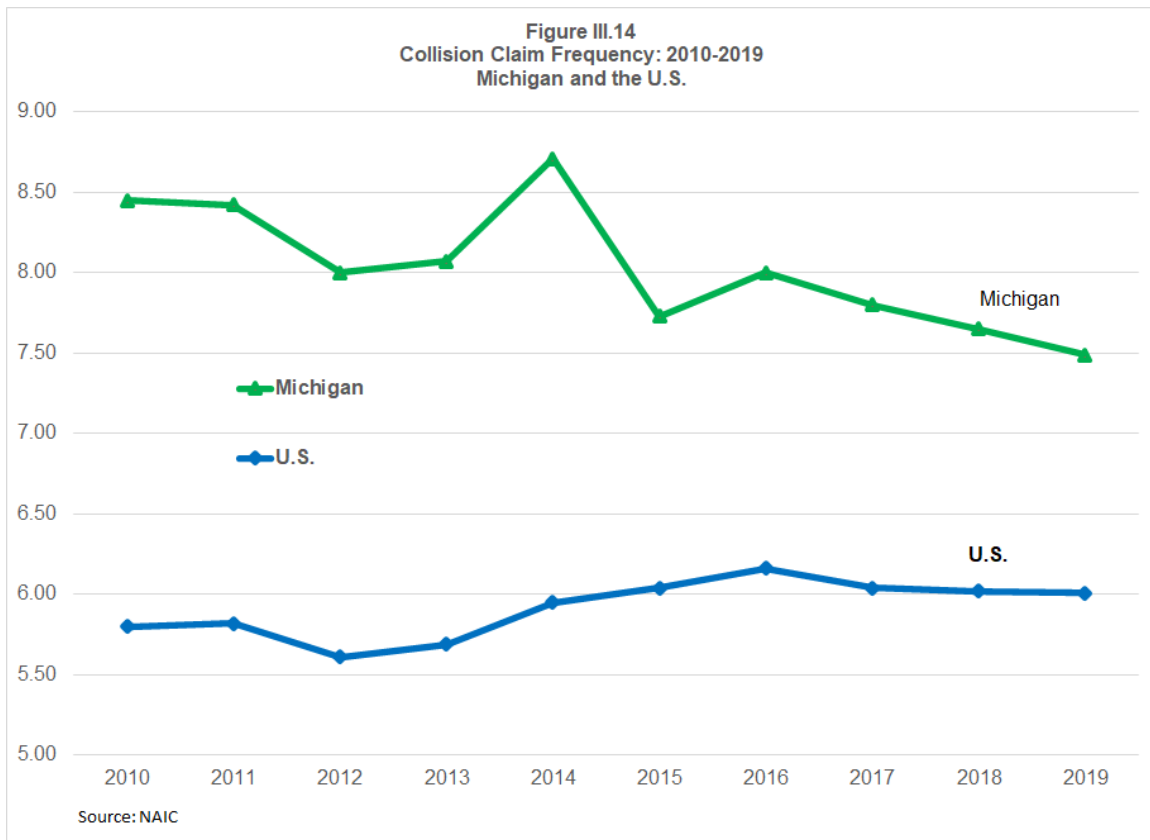
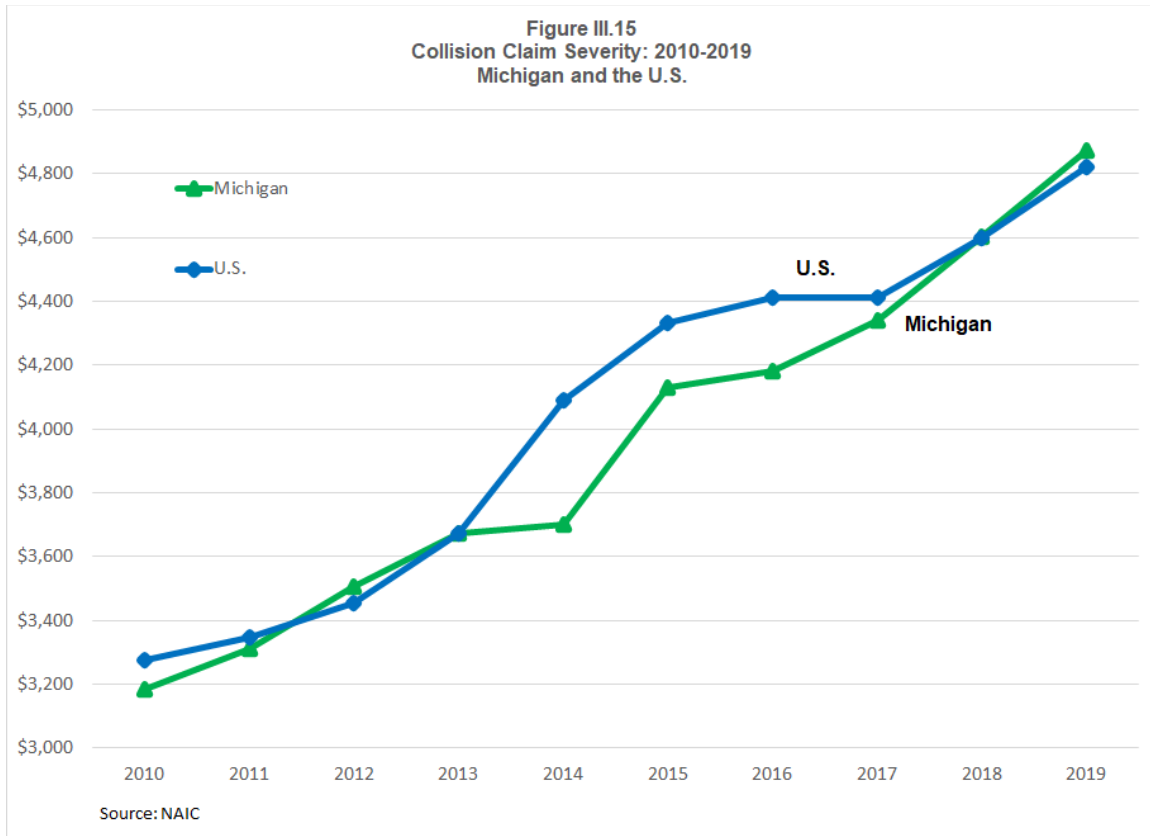


Figure III.14 reveals that collision claim frequency has been much higher in Michigan than in other states, although it has been trending downward, falling from 8.45 in 2010 to 7.49 in 2019. Nationally, collision claim frequency has been trending upward – it was 5.8 in 2010 and 6.01 in 2019. The higher frequency of collision claims in Michigan likely accounts for its higher average collision claim costs.

This observation is further confirmed by Figure III.15 where we see that collision claim severity in Michigan has closely tracked the national average. There has been a substantial increase in the severity of collision claims; it rose from \$3,182 in 2010 to \$4,873 in 2019. Hence, in Michigan, collision claim costs have increased substantially due to more expensive claims and not more frequent claims. Nationally, the increase in collision claims

costs is due both to an increase in claim frequency and an increase in claim severity. We can presume that the increase in the frequency of collision claims nationally is due to an increase in the frequency of auto accidents relative to the number of vehicles insured. Why claim frequency is much higher in Michigan than in other states (although it has decreased in Michigan) is a question for further investigation.

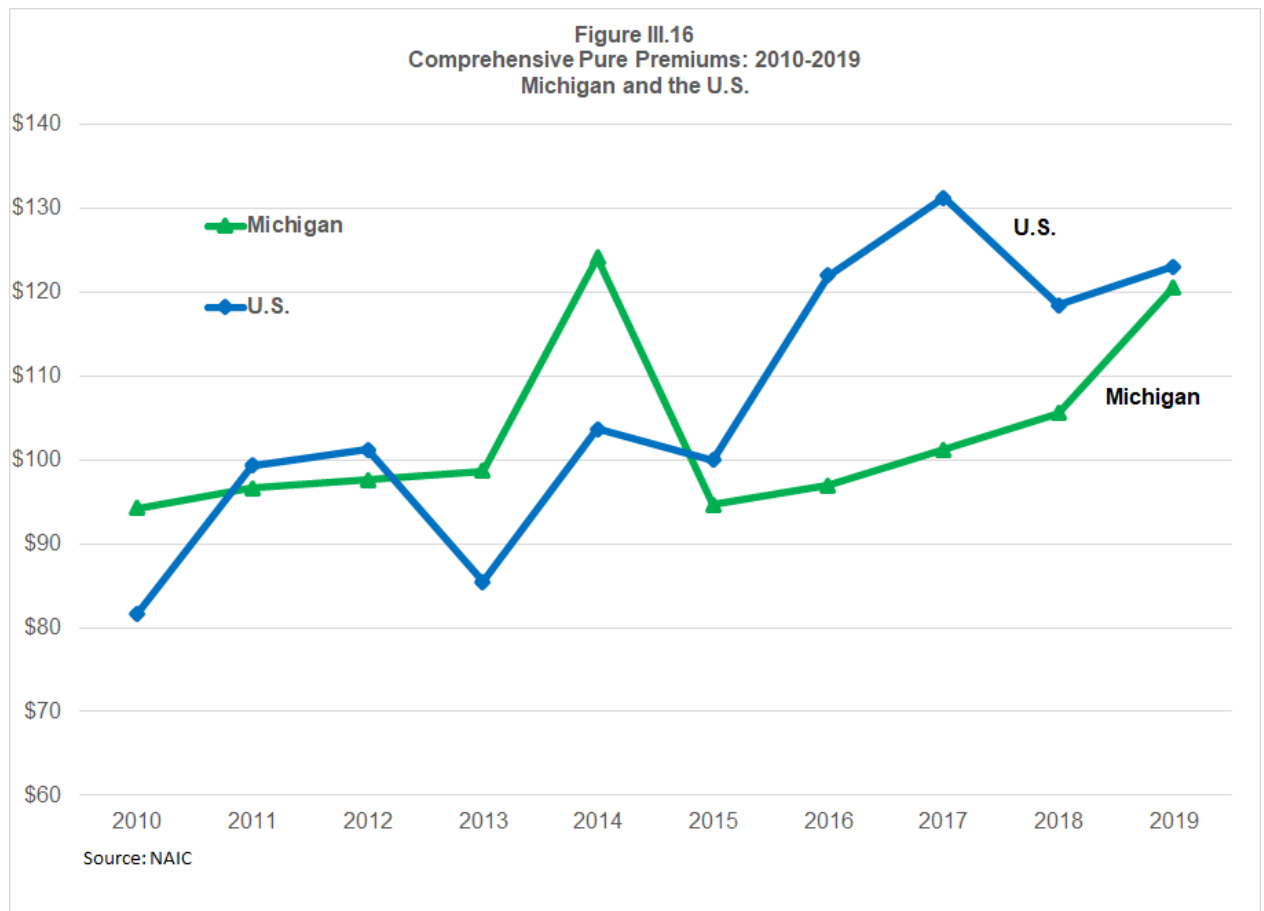


2. Comprehensive Claim Costs

Comprehensive or other-than-collision (OTC) insurance covers damages to a vehicle not caused by a collision, e.g., vehicle theft, weather damage, vandalism, etc. Additionally, OTC insurance covers vehicle damage due to a collision with an animal such as a deer. Generally, if a driver purchases collision insurance they will also purchase comprehensive insurance. The deductibles for collision and comprehensive coverage are

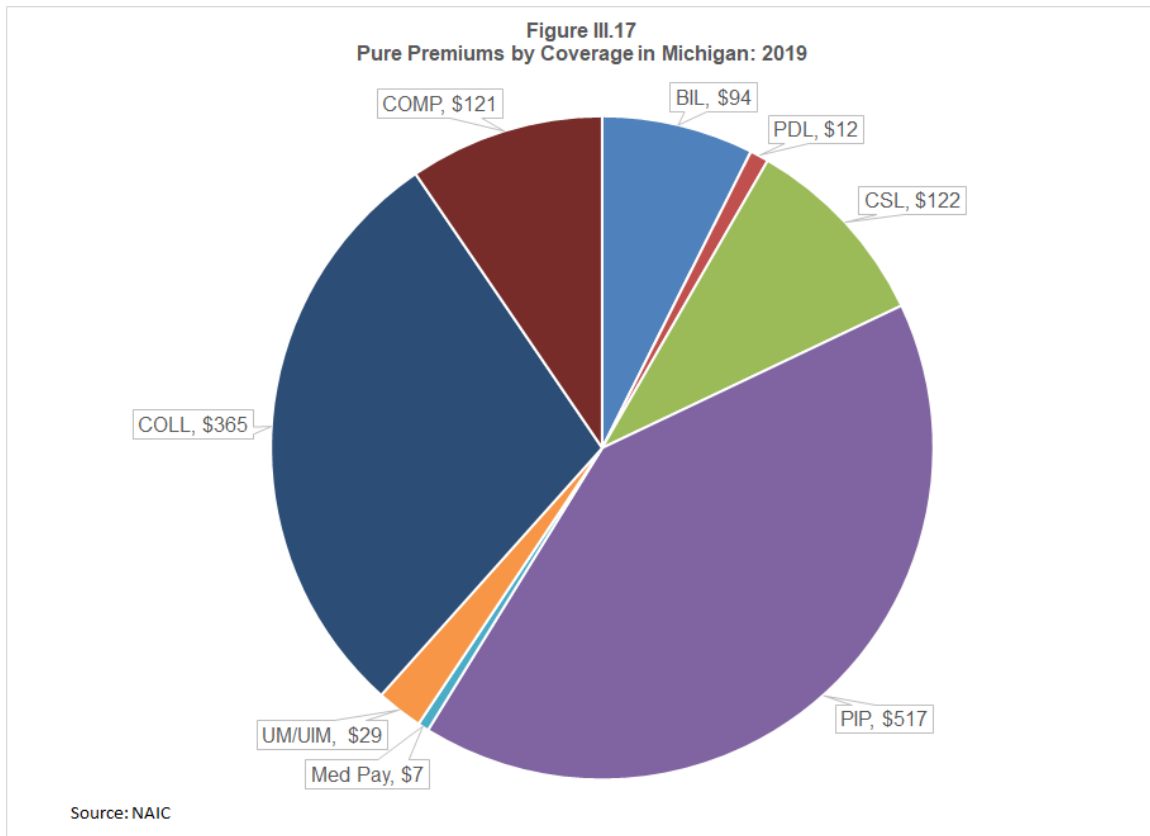
typically the same and commonly range from \$500 to \$1,000. Purchasing collision and OTC coverage does not make economic sense for vehicles with low market values.

Figure III.16 shows comprehensive pure premiums in Michigan and the U.S. for the years 2010-2019 based on the NAIC data. We can see from this chart that OTC costs have been trending upward during the last decade but have been lower in Michigan than in the U.S. since 2015. From 2010 to 2019, the average loss cost increased from \$94.20 to \$120.51 – a 28.9% increase. Over this same period, the Consumer Price Index (CPI) increased by 17.2%. In Michigan, the frequency of OTC claims decreased over this period from 8.45 to 7.49, but their severity increased from \$3,183 to \$4,873.



D. Claims Costs for All Coverages

We can gain some additional perspective by examining data on claim costs for all of the primary auto insurance coverages. To conduct this exercise, we can observe the pure premiums for the various coverages and determine which ones contribute the most to overall insurance costs. Figure III.17 shows the pure premium for each coverage in relation to the pure premiums for all of the coverages. We can see that, in 2019, the average loss cost in Michigan for PIP was \$517 which represented 40.1% of the loss costs for all coverages combined - \$1,265. Interestingly, collision coverage in Michigan was \$365 which represented 28.9% of the combined cost of all coverages. By comparison, nationally, the liability coverages accounted for about 70.3% and collision coverage accounted for 20.9% of all claim costs. Comprehensive coverage claim costs accounted for 8.9% of all claim costs, nationally.

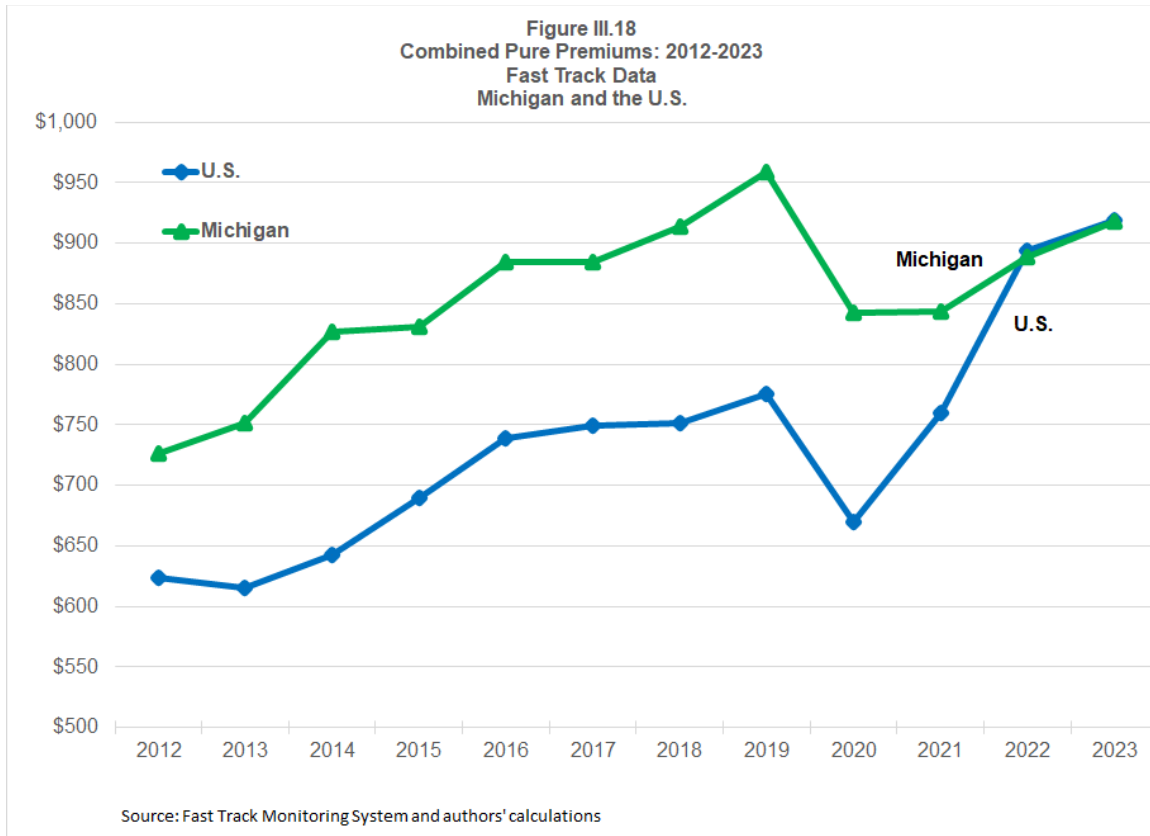


These data are consistent with our understanding of how Michigan's no-fault system has functioned, especially before the reforms took effect. Michigan's tight verbal threshold has likely been the primary cause of its relatively lower liability claim costs. On the other side, Michigan's generous PIP benefits and lack of cost controls had caused its PIP costs to assume the lion's share of its total claim costs. The generosity of Michigan's claim costs also could have reduced the incentives of accident victims to sue in tort to recover their losses even if their injuries would have met the verbal threshold. We should also note that under Michigan's no-fault law, drivers use their own collision coverage to cover damage to their vehicle caused by another driver. This would help to explain why collision costs are higher in Michigan than in other states.

The Fast Track data can give us some insight into how the pure premiums for the major coverages have been trending over time and most recently following the enactment of the 2019 no-fault reforms. Figure III.18 shows the sum of the pure premiums for the liability and physical damage coverages for the years 2012-2023 in Michigan and the U.S. The coverages included in this chart are bodily injury liability, property damage liability, PIP, collision, and comprehensive.

We can see from this figure that the claim costs for these coverages have increased substantially over the last decade both in Michigan and nationally. In Michigan, the combined pure premium increased from \$726 in 2012 to \$918 in 2023 – a 26.4% increase. This was less than the cumulative increase in the CPI over this same period – 33%. Nationally, the combined pure premium increased from \$624 to \$919 – 47.3% increase. Hence, while total claim costs have generally been higher in Michigan than the national average until 2022, they have increased at a slower pace in Michigan than in the rest of the

country. The reasons for increasing auto insurance claim costs and premiums are discussed elsewhere in this paper. We can only speculate as to why claim costs have increased at a slower pace in Michigan than they have nationally in recent year. It is possible that Michigan's no-fault reforms are partly responsible for its slower increase in claim costs and premiums.



IV. Uninsured Drivers

One unfortunate consequence of Michigan's high auto insurance costs is its relatively high number of uninsured drivers. Various factors affect a vehicle owner's choice to purchase and maintain insurance coverage including the premium they would be or are

required to pay.⁴⁴ All states, with one exception, require car owners to carry a minimum amount of liability insurance on their vehicles. States vary in terms of how their minimum insurance requirements are enforced and their financial penalties for driving without insurance.⁴⁵ Nonetheless, some car owners still choose to take their chances and go without insurance.

To the extent that Michigan's system for auto insurance has increased its cost, this will induce more vehicle owners to go without coverage. Figure IV.1 shows estimates of the percentage of uninsured drivers in Michigan relative to the national average for the years 2007, 2009, 2012, 2015, and 2019. These estimates, developed by the Insurance Research Council (IRC), indicate that in 2019, 25.5% of Michigan drivers were uninsured.⁴⁶ This figure was considerably higher than the national average of 12.6%. Additionally, as shown in Table IV.1, in 2019, Michigan ranked second among all states in the estimated percentage of uninsured drivers. Both the percentage of uninsured drivers in Michigan and its ranking for this metric have increased considerably since 2007. This problem is more severe in certain areas of the state such as Detroit where it was estimated that 50% of drivers did not have auto insurance prior to the reforms.⁴⁷

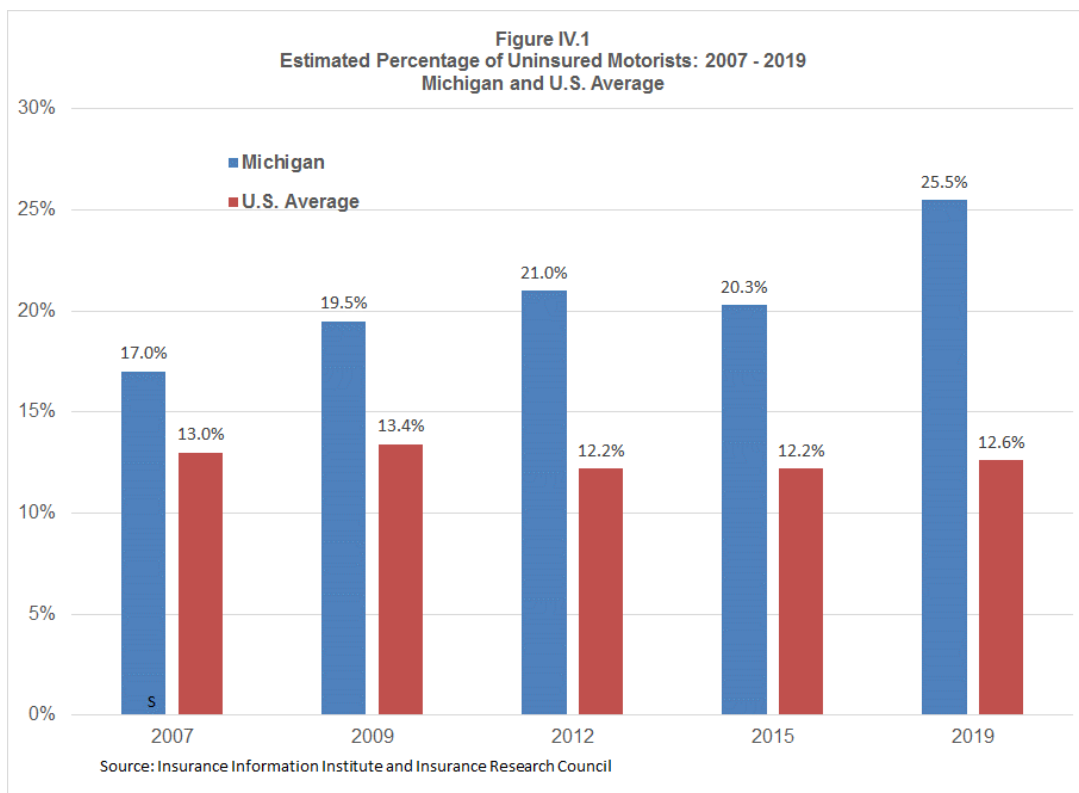
⁴⁴ Borba (2019) examines the factors associated with differences in the incidence of uninsured motorists across states. He found that economic factors – particularly differences in income, education, and employment rates – explain a large portion of state differences in uninsured motorists (UM) premium rates.

⁴⁵ In Michigan, an individual convicted of driving without insurance can be fined up to \$500 for two years and required to pay court costs. Additionally, an individual can have their license suspended for 30 days and face up to one year in jail for driving without insurance.

⁴⁶ The number or percentage of uninsured drivers is estimated by dividing the number of uninsured motorists (UM) claims by the number of BIL claims. There may be other ways to estimate the number/percentage of uninsured drivers, but this is the method that insurance researchers typically use.

⁴⁷ See, "High Cost of Insuring Cars in Detroit," *Black Life, Arts & Culture*, April 2, 2013. Cooney et al. (2019) determined that, in Detroit, average auto insurance rates represent between 12% and 36% of residents' pre-tax income in nearly every ZIP code.

Several concerns arise from Michigan's high number of uninsured drivers including its negative effects on drivers who do not have coverage and the shifting of accident costs to vehicle owners who purchase coverage. In essence, this is a problem that, to a degree, could be self-perpetuating and self-reinforcing. As more car owners go without coverage or choose to buy lower liability limits to lower their premiums, the costs of uninsured and underinsured motorist coverage increase for those who buy this coverage.⁴⁸ In turn, higher insurance premiums, due to more uninsured/underinsured drivers, induce more drivers to go without insurance.



Both uninsured drivers and those they injure are at risk. A driver without insurance will not be able to collect on their own policy for any damages they suffer and will not be

⁴⁸ A car owner could avoid this additional cost by not purchasing uninsured/underinsured motorists coverage as this coverage is not mandatory in Michigan. However, this coverage is typically included when consumers seek quotes in buying auto insurance.

allowed to sue other drivers who cause harm to them. Further, the costs of damages not covered by insurance and otherwise not paid by uninsured drivers are shifted to others including people injured by drivers without insurance, medical providers, and taxpayers who absorb the medical costs arising from accidents not covered by insurance. Further, not having insurance will not relieve a driver of their liability for the damages they cause. Any assets they have are subject to being taken and their future wages and other income can be garnisheed to pay for the damages they owe.

Table IV.1
Estimated Percentage of Uninsured Motorists by State: 2019

Rank	State	2019	Rank	State	2019
1	Mississippi	29.4	27	Iowa	11.3
2	Michigan	25.5	28	Kansas	10.9
3	Tennessee	23.7	29	South Carolina	10.9
4	New Mexico	21.8	30	Oregon	10.7
5	Washington	21.7	31	Virginia	10.5
6	Florida	20.4	32	Nevada	10.4
7	Alabama	19.5	33	Minnesota	9.9
8	Arkansas	19.3	34	Hawaii	9.3
9	District of Columbia	19.1	35	Nebraska	9.3
10	California	16.6	36	West Virginia	9.2
11	Rhode Island	16.5	37	Vermont	8.8
12	Missouri	16.4	38	Delaware	8.5
13	Colorado	16.3	39	Montana	8.5
14	Alaska	16.1	40	Texas	8.3
15	Indiana	15.8	41	North Carolina	7.4
16	Maryland	14.1	42	South Dakota	7.4
17	Kentucky	13.9	43	Utah	6.5
18	Oklahoma	13.4	44	Connecticut	6.3
19	Wisconsin	13.3	45	New Hampshire	6.1
20	Idaho	13.2	46	Pennsylvania	6.0
21	North Dakota	13.0	47	Wyoming	5.8
22	Ohio	13.0	48	Maine	4.9
23	Georgia	12.4	49	New York	4.1
24	Arizona	11.8	50	Massachusetts	3.5
25	Illinois	11.8	51	New Jersey	3.1
26	Louisiana	11.7			

Source: Insurance Information Institute and Insurance Research Council

Additionally, these estimates of uninsured drivers do not reflect how high auto insurance costs affect peoples' ability and decision to own a vehicle. The higher this cost, the more people we would expect to not own a vehicle, all other things equal. This may be less of a concern for people who have good access to public transportation, but it is a greater concern for people who lack good access to alternative forms of transportation. Lack of access to transportation could have negative effects on a person's ability to obtain employment and engage in other activities.⁴⁹ Indeed, some argue that the Detroit Metro area lacks good public transportation systems compared to other large cities.⁵⁰ Hence, the high cost of auto insurance in certain areas could adversely affect the economic status of households and the economic health of those areas.

In testimony before the Michigan House Committee on Insurance and Financial Services, Douglas Heller – Director of Insurance for the Consumer Federation of America – argued that insurers' charging “unfair premiums drive safe motorists out of the market” leading to more uninsured motorists (Heller, 2019). Heller contended that insurers' use of “personal characteristics & socio-economic factors that have nothing to do with driving safety” result in unfair discrimination in pricing that adversely affects certain groups of drivers, e.g., low and middle-income drivers. We discuss these factors in Section VI. Insurance economists have not found evidence that insurers' pricing of auto and home insurance is unfairly discriminatory (Klein, 2021).

It is possible that the changes to PIP coverage that have enabled car owners to lower their premiums have had a beneficial effect in reducing the number of uninsured drivers.

⁴⁹ Kiertzner (2018) discusses how public transportation is under-resourced. This creates a problem for Detroit residents who wish to take jobs in surrounding areas.

⁵⁰ “How Detroit Ended Up with the Worst Public Transit,” *Detroit Metro Times*, March 11, 2014. Available at <https://www.metrotimes.com/news/how-detroit-ended-up-with-the-worst-public-transit-2143889>.

There are indications that some drivers who previously could not afford or chose not to buy auto insurance have chosen to purchase coverage. According to a 2022 press release issued by the DIFS, more than 202,000 previously uninsured drivers took advantage of the law's amnesty period to buy coverage without paying a penalty. This is a development that warrants further analysis.

V. Other Cost Drivers for Auto Insurance

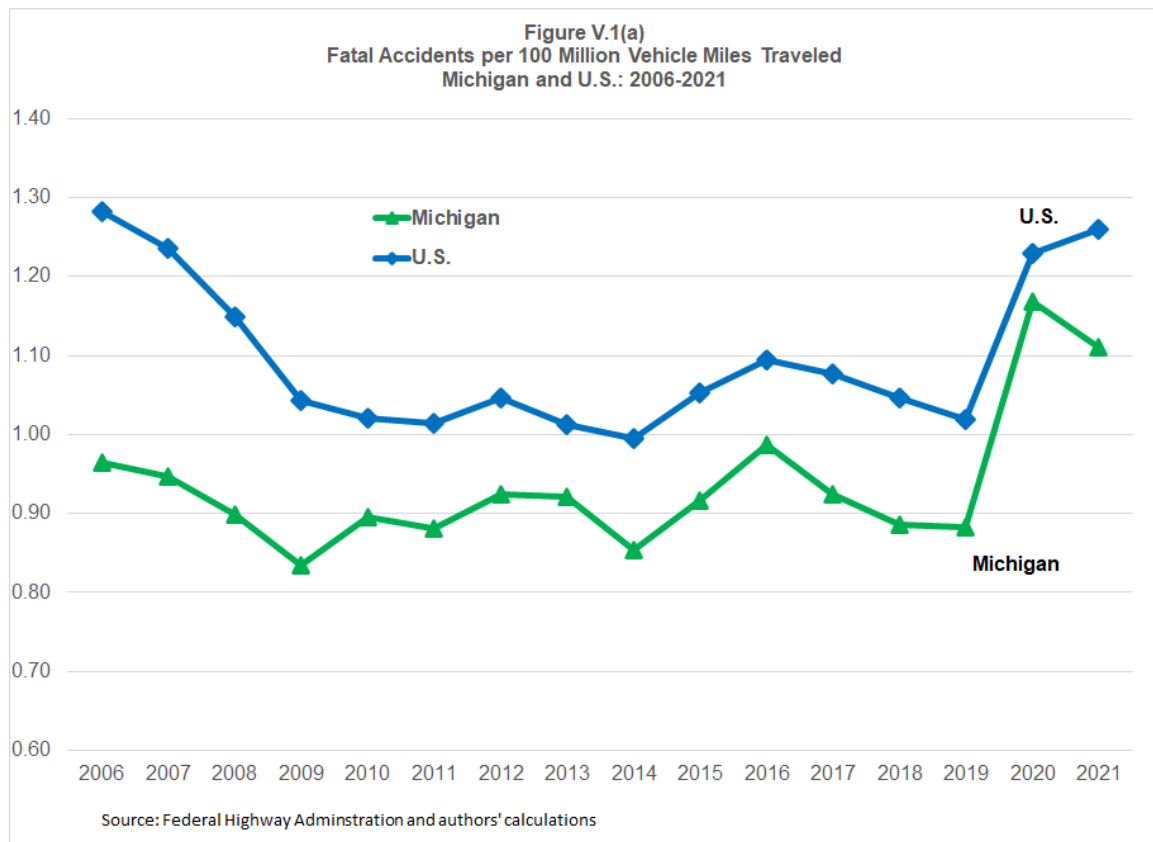
Other factors affect the cost of auto insurance in a state beyond its restrictions on injured parties' ability to sue in tort, PIP benefits, and minimum liability insurance requirements. For example, states and areas within a state with high traffic density – the number of vehicle miles traveled per mile of roadway – tend to have more auto accidents and higher insurance costs than states and areas with low traffic density, all other things equal. It is helpful to review some of these factors to gain a better perspective on how Michigan's no-fault system has affected its auto insurance costs versus other cost drivers. Further, addressing some of these cost drivers could provide opportunities to further lower Michigan's auto insurance costs and premiums beyond the no-fault changes that were enacted.

A. Traffic Conditions

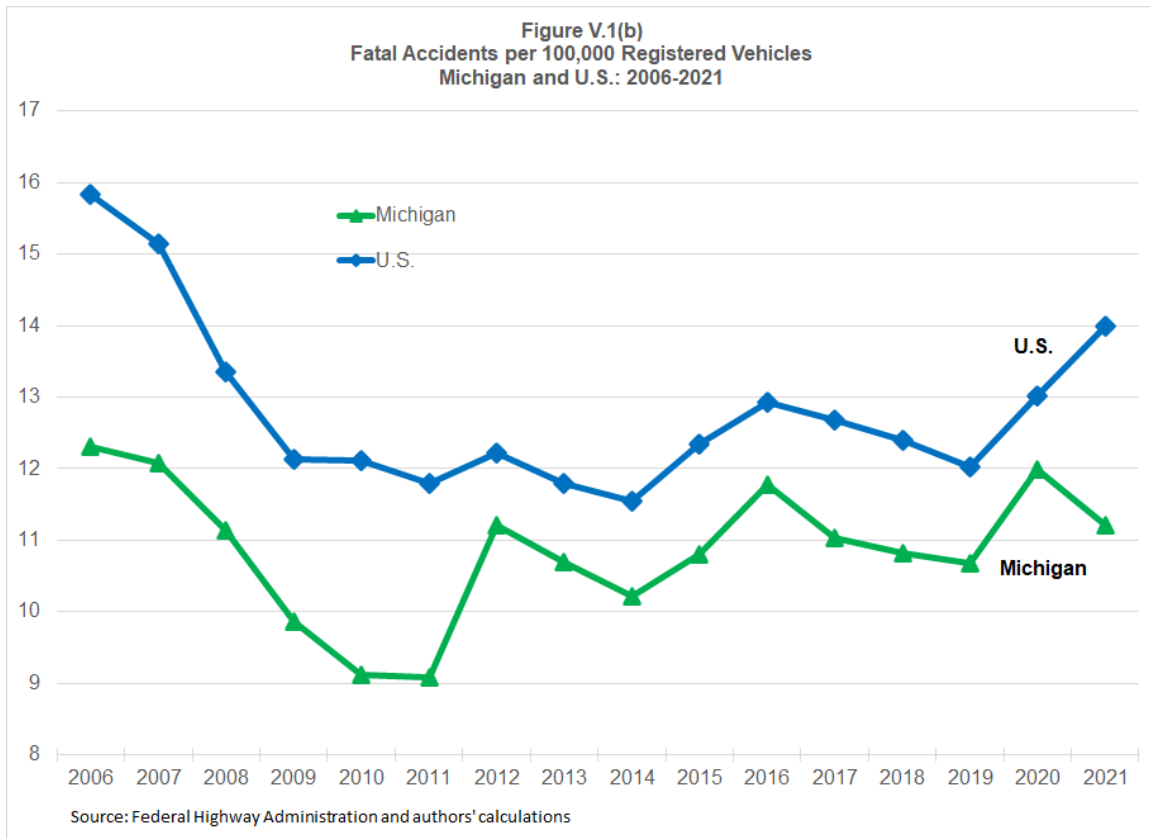
1. Accident Rates

We begin our review by examining fatal accident rates. A fatal accident is any accident in which a fatality occurs. While most vehicle accidents do not result in a fatality, the number of fatal accidents in relation to the miles driven or vehicles registered in a state

can provide some indication of accident frequency and severity.⁵¹ Figure V.1(a) compares the fatal accident rate per 100 million vehicle miles travelled (VMT) in Michigan to the U.S. for the years 2006-2021. Figure V.1(b) provides a similar comparison using the fatal accident rate per 100,000 registered vehicles.



⁵¹ According to the Federal Highway Administration, in 2020, 0.7% of vehicle crashes were fatal. Injury-only crashes accounted for 30.3% of all crashes and property damage only crashes accounted for 69% of all crashes.



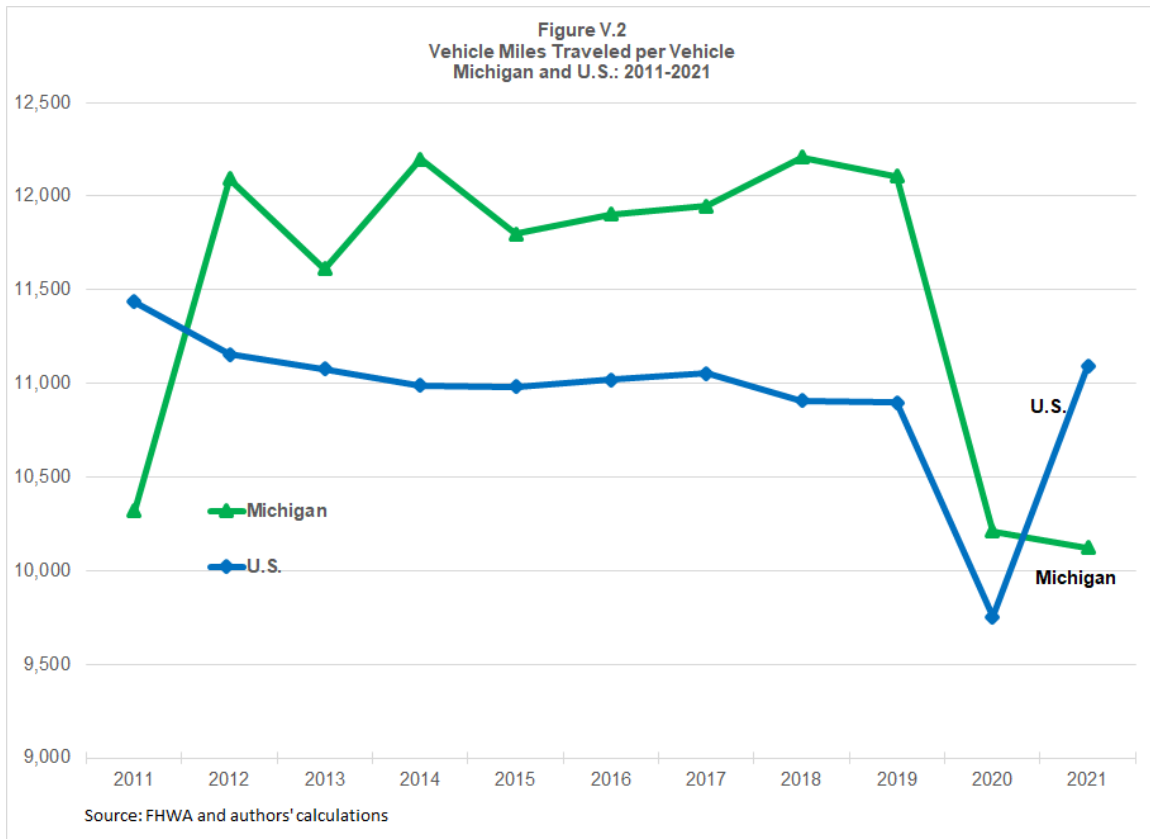
These figures indicate that fatal accident rates using both measures were trending downward in the U.S. and in Michigan until 2020.⁵² Further, fatal accident rates in Michigan have been consistently below the national average. In 2021, the fatal accident rate per 100 VMT was 1.11 in Michigan compared to 1.26 nationwide. The fatal accident rate per 100,000 registered vehicles in 2021 was 11.22 in Michigan compared to 13.99 nationwide. This pattern is consistent with Michigan's lower claim frequency for PIP coverage and BIL coverage.

It is interesting to note that, from 2020 to 2021, both measures of the fatal accident rate declined in Michigan while it increased nationally. While the number of fatal accidents and traffic fatalities have been increasing in Michigan and nationally, the two accident rates

⁵² There are likely several reasons for this downward trend. One reason is that more vehicles have enhanced safety measures (e.g., air bags) although this also makes them more expensive to repair.

dropped in 2021 in Michigan. This suggests that increased driving and more vehicles on the road have increased the number of fatal accidents, but this effect is stronger nationally than it has been in Michigan. The decrease in vehicle miles traveled in 2020 can be attributed to the Covid19 pandemic. Consequently, it appears that the miles driven are returning to pre-pandemic levels.

We can also examine the number of vehicle miles traveled in Michigan and nationally as reflected in Figure V.2. We see that vehicle miles traveled per vehicle dropped sharply from 2019 to 2020 in Michigan and nationally. In Michigan, this figure fell from 12,106 in 2019 to 10,210 in 2020. Nationally, this figure decreased from 10,899 in 2019 to 9,755 in 2020. In 2021, miles per vehicle increased to 11,094 nationally while they further decreased in Michigan to 10,123. The trend in Michigan may seem counterintuitive due to the increase in post-pandemic driving. One explanation for this anomaly in Michigan is a substantial increase in the number of registered vehicles as more drivers were able to purchase auto insurance which is required for vehicle registration.



Regardless, we would expect that increased driving would increase the number of auto accidents, all other things equal. However, all other things are not equal. There are a number of reasons why traffic fatalities and fatal crashes have increased, even after adjusting for miles driven and the number of vehicles registered. A recent article in the *New York Times* discusses how fatal accidents are declining internationally but not in the U.S.⁵³ Generally, it appears that drivers are engaging in more risky behavior such as distracted driving, alcohol and drug abuse, and speeding (NHTSA, 2021).⁵⁴ Some believe

⁵³ “Why Road Deaths Are Declining Across Globe, but Not in the U.S.”, *New York Times*, November 28, 2022. One factor particular to the U.S. is lagging investment in alternative forms of transportation and making roads safer has not been a priority. There also has been an uptick in fatalities among motorcyclists, cyclists, and pedestrians.

⁵⁴ A decline in the use of seat belts is another example of risky behavior that can contribute to more accident injuries and deaths. See, for example, “Rise in Car Crash Deaths Prompts New Seat-Belt Push”, *Wall Street Journal*, July 30, 2021.

that the Covid19 pandemic has caused more reckless driving.⁵⁵ Even though fatal accidents in Michigan are below the national average, the fact that they are still higher than long-term historical averages could offset some of the cost-saving effects of the no-fault reform legislation. An important point is that an increase in the number of people injured in auto accidents will result in more PIP claims and possibly BIL claims. Auto accidents and their causes warrant continued monitoring and investigation.

We can also examine trends in the types of auto accidents in Michigan over time. The Michigan State Police (MSP) provide various statistics on traffic accidents including a breakout of accidents by type: fatal, injury non-fatal, and property damage only. As accidents involving fatalities and injuries would be expected to lead to more costly insurance claims, we can examine the association between more serious accidents and insurance claim costs.

Table V.1 shows traffic crashes by type in Michigan over the years 2009-2021 (MSP, 2022). Crashes involving fatalities were around 0.30% of all crashes over this period until 2020. There was a sharp increase in this percentage to 0.41% in 2020 which then decreased slightly to 0.38% in 2021, suggesting that the severity of accidents has increased which would be consistent with what we are seeing with fatal accident trends. It appears that the increase in fatal accidents and traffic fatalities may be sustained for some time.

⁵⁵ While during the early days of the pandemic drivers appeared to drive fewer miles, they may have done so in more risky ways.

Table V.1
Traffic Crashes by Type in Michigan: 2009-2021

Year	Fatal	% of Total	Injury	% of Total	Property Damage	% of Total	Total
2009	806	0.28%	52,283	17.97%	237,889	81.75%	290,978
2010	868	0.31%	51,672	18.32%	229,535	81.37%	282,075
2011	834	0.29%	52,487	18.48%	230,728	81.23%	284,049
2012	870	0.32%	51,685	18.87%	221,336	80.81%	273,891
2013	881	0.30%	51,949	17.97%	236,231	81.72%	289,061
2014	806	0.27%	52,523	17.58%	245,370	82.15%	298,699
2015	893	0.30%	54,008	18.18%	242,122	81.52%	297,023
2016	980	0.31%	57,964	18.57%	253,228	81.12%	312,172
2017	937	0.30%	57,263	18.18%	256,721	81.52%	314,921
2018	905	0.29%	55,430	17.72%	256,553	82.02%	312,798
2019	902	0.29%	54,539	17.35%	258,936	82.36%	314,377
2020	1,010	0.41%	44,417	18.10%	200,005	81.49%	245,432
2021	1,068	0.38%	51,666	18.28%	229,906	81.34%	282,640
2022	1,053	0.36%	51,066	17.41%	241,222	82.23%	293,341

Source: Michigan State Police and authors' calculations

Fatal accidents began surging in the summer of 2020, despite a decline in driving due to the Covid19 pandemic.⁵⁶ There has been a rise in aggressive driving that has continued as driving has increased in the post-pandemic phase. Erratic behavior and rising drug abuse also have been identified as factors contributing to more auto accidents.

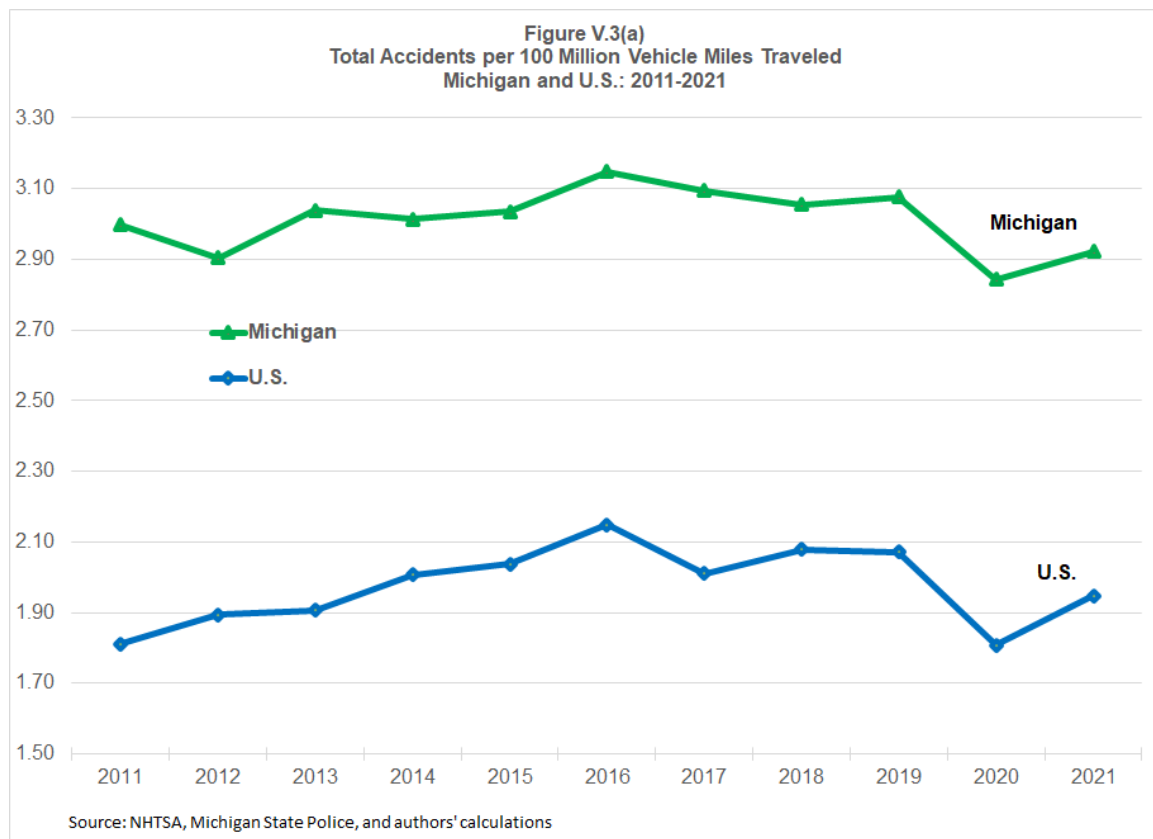
There also is evidence that traffic fatalities are on the rise. According to the NHTSA, traffic fatalities rose from 39,007 in 2020 to 42,939 in 2021 and then dropped slightly to 42,795 in 2022. Traffic fatalities in Michigan have followed a similar pattern – increasing from 1,010 in 2020 to 1,068 in 2021 and then falling to 1,053 in 2022.

Crashes involving injuries but no fatalities in Michigan have hovered around 18% over this same period. There has been greater variation in this percentage than the fatality crash percentage but there is no clear trend here. According to the NHTSA, nationally in 2021, fatal accidents accounted for 0.7% of all crashes; injury-only accidents accounted

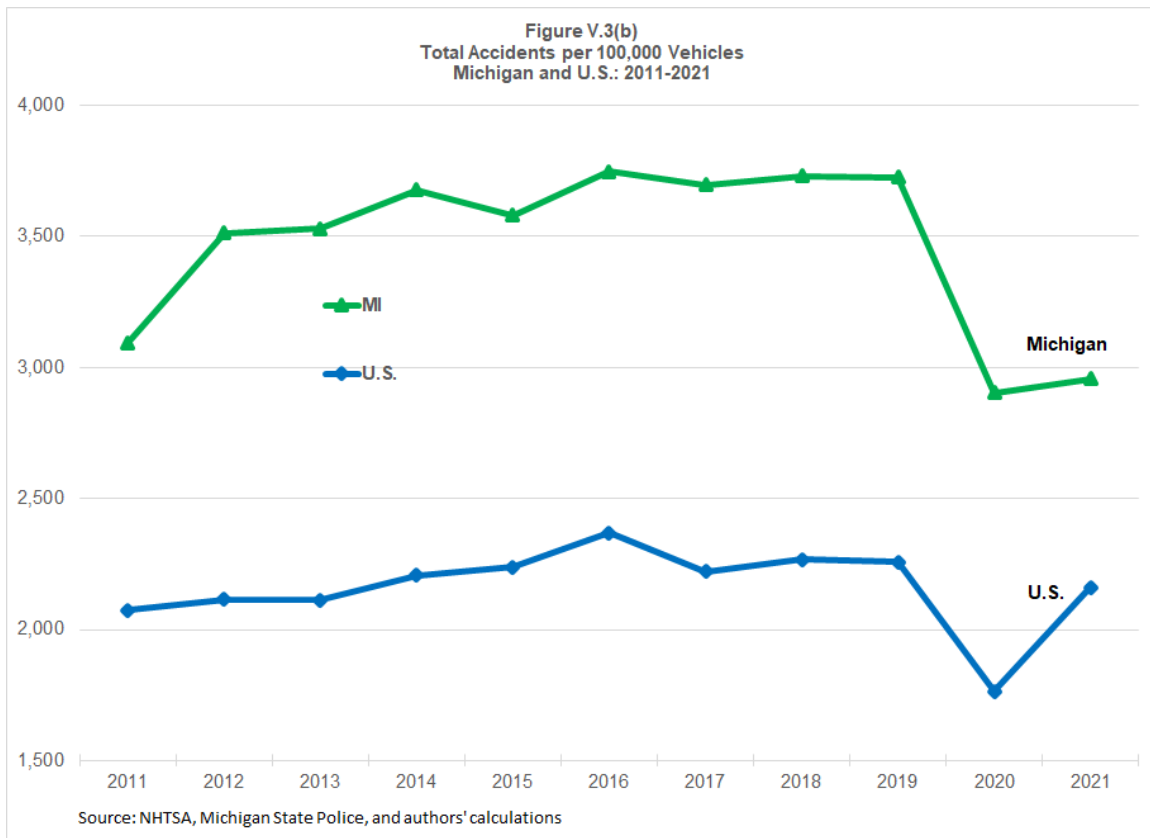
⁵⁶ “Vehicle Crashes, Surging,” *New York Times*, February 15, 2022.

for 28.3% of all accidents (NHTSA, 2023). Hence, based on these data, we cannot conclude that the severity of accidents per se – i.e., the proportion of accidents resulting in fatalities and injuries – has been a significant contributor to higher PIP claim costs in Michigan.

It is also helpful to look at the total number of accidents (fatal, injury, and property damage only) in relation to vehicle miles traveled or the number of vehicle registrations as non-fatal accidents also contribute to total insurance costs. Figure V.3(a) compares the total accident rate per 100 million VMT for Michigan and the U.S. for the years 2011-2021. Figure V.3(b) compares the total accident rate per 100,000 registered vehicles for Michigan and the U.S. for the same period. It is interesting to see here that while the fatal accident rate in Michigan has been below the national average, the total accident rate in Michigan by either measure has been considerably above the national average.



Providing an adequate explanation for this disparity between Michigan and the U.S. is beyond the scope of this paper but we can offer some observations. Michigan is not as densely populated as some states, but it does have a number of urban areas where accident rates are typically higher. Michigan is also subject to adverse weather conditions that could lead to more accidents. Additionally, Michigan has notoriously bad roads which also could be contributing to more accidents (Zaloshnja and Miller, 2009).



We also note that the frequency of PIP and bodily injury liability claims in Michigan are below that of the nation and no-fault states. Hence, while Michigan appears to have a relatively higher number of accidents, it also appears that a smaller proportion of these accidents result in PIP and BIL insurance claims under these coverages. Our analysis does reveal that the frequency of collision claims is much higher in Michigan relative to other states; the reason for this warrants further investigation.. Another factor to consider

is Michigan's high number of uninsured vehicles. If a driver damages their own vehicle in an accident and does not have insurance, they cannot file a claim.

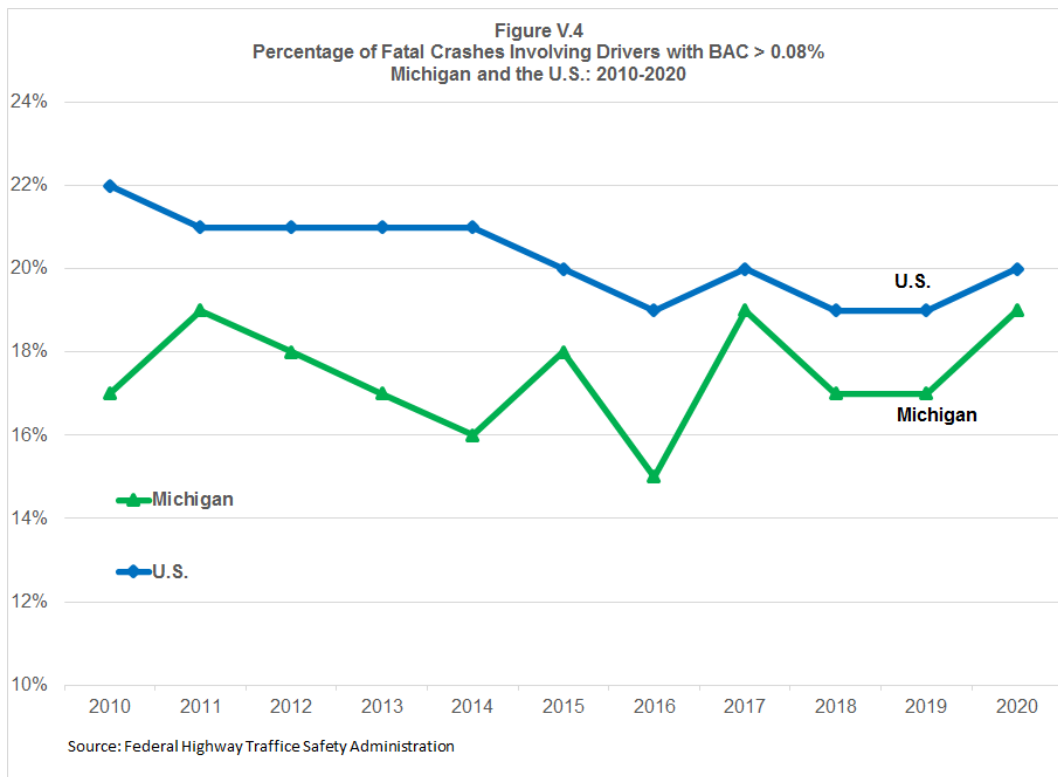
2. Risky Driving

It is helpful to review certain indicators of “risky driving” as Michigan's no-fault system could affect drivers' incentives to drive safely or otherwise be affecting accident rates and insurance claim costs. It is possible that some drivers, knowing their injuries will be covered by insurance even when they are at fault, will drive less safely. The hypothesis here is that no-fault restrictions on liability and PIP coverage create moral hazard which in turn induces drivers to behave in riskier ways.

Alcohol

One possible indicator of risky driving behavior is the number or proportion of accidents involving alcohol. When someone chooses to drive while under the influence of alcohol, they disregard their own safety and others' safety. Figure V.4 shows the percentage of fatal accidents with the driver having a Blood Alcohol Content (BAC) of 0.08% or greater for Michigan and the U.S. for the years 2010-2020. A BAC of 0.08% is currently the legal limit for driving in every state except Utah where it is 0.05%. What we see in this figure is that the percentage of alcohol-impaired drivers involved in fatal crashes in Michigan has remained within a range of 17% to 19%; this percentage did increase by two points from 17% to 19% in 2020 and stayed at 19% in 2021. During this entire period, the percentage of fatal accidents involving impaired drivers was higher nationwide than in Michigan. Hence, based on this indicator, we cannot infer that Michigan's no-fault law and PIP coverage have caused Michigan drivers to drive less safely in terms of alcohol-

impaired driving. Statistics supplied by the Michigan State Police indicate that crashes involving alcohol decreased from 9,787 to 9,078 in 2020; this decrease is likely due to the pandemic (MSP, 2022). Crashes involving alcohol then increased to 9,557 in 2021 and then fell to 9,331 in 2022.



We should note that Michigan is one of 23 states where the recreational use of marijuana is legal. There is the issue of whether drivers who have ingested marijuana are driving impaired and increasing the chance that will get in an accident (NIDA, 2020). If the legalization of recreational marijuana in Michigan has led to an increase in impaired driving, this development would not be reflected in the data on alcohol-impaired driving. MSP statistics indicate that, in 2022, there were 2,452 crashes in which drugs were involved; 229 of these crashes were fatal.

Speeding

Driving at excessive speeds is another indicator of risky driving behavior. Table V.5 shows statistics on speeding-related traffic fatalities for the years 2010-2021 at a national level and in Michigan. Over this time period, the percentage of traffic fatalities associated with speeding has been lower in Michigan than the national average. The data also indicate that speeding accounted for a declining portion of traffic fatalities until 2019 when this trend reversed both nationally and in Michigan. In 2021, the percentage of fatalities associated with speeding was 28.3% in Michigan compared to 28.7% nationally. We can only speculate as to why the trend in speeding-related accidents reversed. It is possible that the Covid19 pandemic has been a factor although the effects of the pandemic would only have become a factor in 2020. Regardless, from the data currently available, we cannot infer that conditions unique to Michigan accounted for its speeding-related fatalities and that speeding has contributed to its higher high PIP costs.

Table V.4
Speeding Related Traffic Fatalities

Year	National			Michigan		
	All Fatalities	Fatalities Speeding	Percent Speeding	All Fatalities	Fatalities Speeding	Percent Speeding
2010	32,885	10,395	31.6%	942	231	24.5%
2011	32,367	9,944	30.7%	889	238	26.8%
2012	33,561	10,219	30.4%	938	250	26.7%
2013	32,719	9,613	29.4%	947	255	26.9%
2014	32,675	9,262	28.3%	901	235	26.1%
2015	35,092	9,557	27.2%	963	264	27.4%
2016	37,461	10,111	27.0%	1,064	245	23.0%
2017	37,133	9,717	26.2%	1,070	241	22.5%
2018	36,096	9,478	26.3%	985	250	25.4%
2019	36,355	9,592	26.4%	986	250	25.4%
2020	39,007	11,428	29.3%	1,086	291	26.8%
2021	42,939	12,330	28.7%	1,136	321	28.3%

Source: National Highway Traffic Safety Board and authors' calculations.

Distracted driving is another problem that has received increased attention within the last decade. While drivers can be distracted by many things, the increasing use of cell phones and other electronic devices while driving has become a severe problem. This is an important manifestation of risky driving behavior as drivers using their cell phones compromise their own safety as well as others' safety.

Broadly defined, distracted driving is any activity that diverts a driver's attention away from driving. These include activities such as talking or texting on a cell phone, eating or drinking, fiddling with an entertainment or navigation system, talking with people in a car, and various other things. Activities that take a driver's eyes off the road are the most dangerous; a car traveling at 55 miles per hour will cover the length of a football field in five seconds.⁵⁷ However, even activities that do not take a driver's eyes off the road can diminish his or her attention to driving and reacting to hazards.

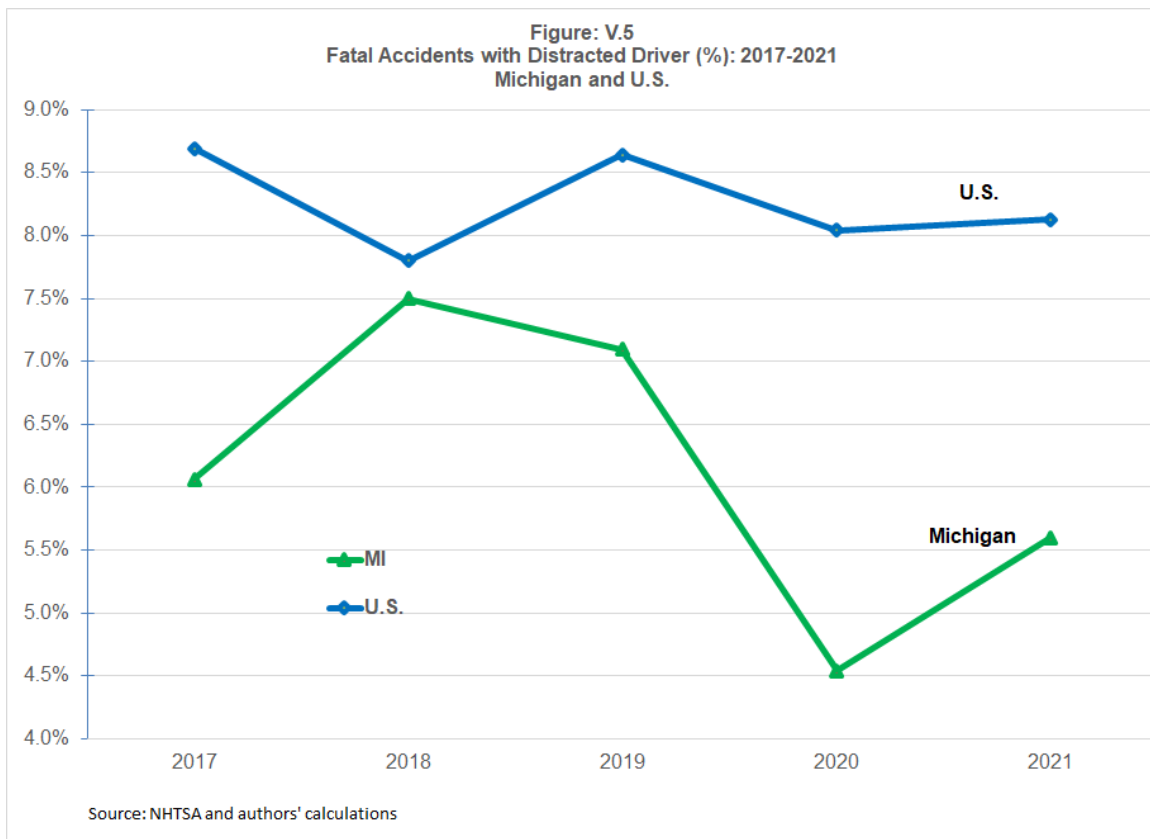
The research on the incidence of distracted driving and whether it is increasing or declining is mixed. Generally, the conclusions seem to be that cell phone use while driving is declining but the drivers still using cell phones are doing so in riskier ways. Further, hands-free systems in newer vehicles likely have reduced hand-held cell phone use but have not eliminated driver distraction. Studies also indicate that driver hand-held cell phone use declines with age and is highest among drivers aged 16-24 (NHTSA, 2019).

The economic and social effects of distracted driving are substantial (NHTSA, 2015). Crash risk is 2-6 times higher when a driver is manipulating a cell phone. The economic costs of accidents caused by distracted driving include medical and rehabilitation

⁵⁷ Downloaded from CDC on January 26, 2023 and available at https://www.cdc.gov/transportationsafety/Distracted_Driving/index.html#print.

costs, productivity losses, property damage, legal and court costs, emergency services, and traffic congestion.

Figure V.5 provides statistics on the percentage of fatal accidents in which a driver is determined to be distracted nationally and in Michigan for the years 2017-2021. Data specific to Michigan are only available back to 2017. These data indicate that the percentage of fatal accidents associated with distracted driving has remained relatively stable over time nationally – generally in the area of 8%. By comparison, this percentage has increased and then declined in Michigan over this same period; it was 6.1% in 2017 and 5.6% in 2021.



We note that this percentage has been considerably lower in Michigan than it has been nationally. There is some evidence that distracted driving decreased in Michigan – total crashes involving a distracted driver decreased from 16,543 in 2021 to 15,441 in 2022.

There could be many reasons for the differences across states. Note that the accuracy of these statistics depends on the accuracy of accident reports; there may be many accidents for which distracted driving was a primary cause, but this is not reflected in the accident reports that are filed by law enforcement. Also, state laws restricting the use of cell phones while driving vary considerably. Understanding all of the reasons for this difference between Michigan and the national experience, the data do not indicate that Michigan drivers are engaging in more risky driving as reflected by this metric. We should note that, on June 30, 2023, legislation took effect which toughened Michigan's restrictions on distracted driving.⁵⁸

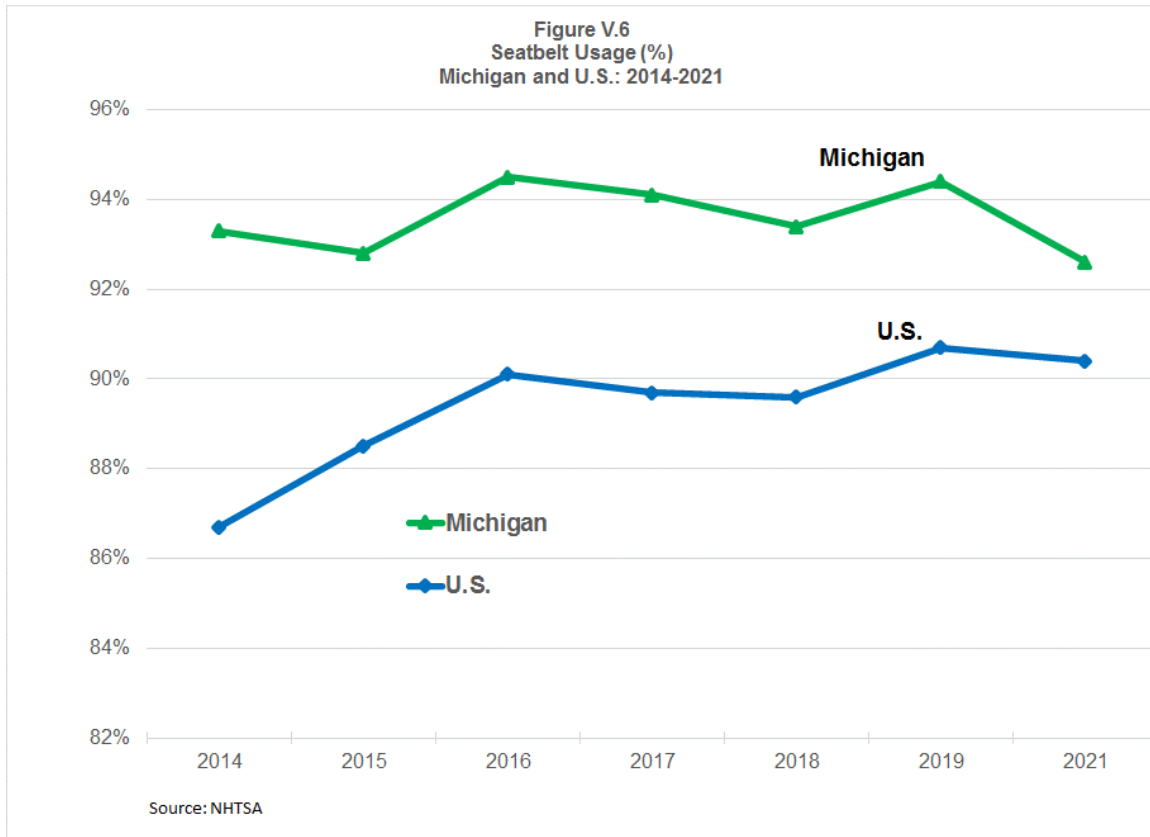
Seat Belt Use

Although not wearing a seat belt does not indicate risky driving behavior per se, the failure to use a seat belt exposes a driver and his or her passengers to greater injuries in an accident. Hence, lower levels of seat belt usage could contribute to higher bodily injury liability and PIP costs in a state. Seat belt usage has been one of the aspects of traffic safety targeted by federal, state, and local authorities.

Figure V.6 compares statistics on seat belt usage in Michigan and nationwide for the years 2014-2021. These statistics are derived from surveys conducted by the NHTSA. Nationally, the rate of seat belt use has increased since 2014 and now hovers around 90%. Seat belt use in Michigan has been a bit higher than the national average and has ranged between 93% and 94% over this same period. Consequently, the failure to comply with

⁵⁸ "4 Things to Know About Michigan's Expanded Distracted Driving Law," *MLive*, May 15, 2023. Under the new law, drivers cannot hold or use a mobile electronic device while behind the wheel. Previously, only texting while driving was prohibited. The penalties for distracted driving also have increased.

seat belt laws does not appear to be a particular problem in Michigan that has contributed to its high PIP costs.



B. Economic Factors

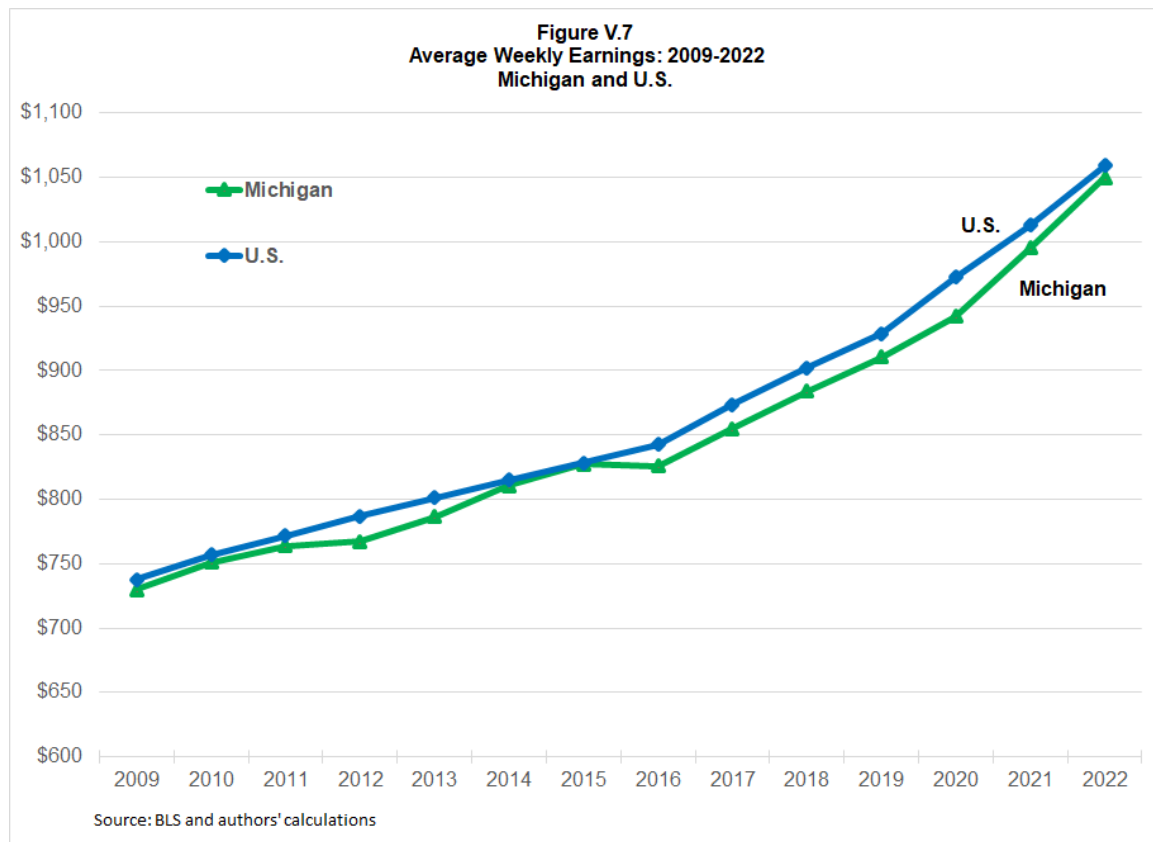
There are several economic factors that could affect the cost of PIP and BIL claims. The economic factors most relevant here are wage levels and spending on medical services as both variables should affect the damages that could be claimed under both coverages.

1. Average Weekly Earnings

The wages earned by workers in a state would be expected to affect the cost of PIP and BIL coverages as they cover the lost earnings of people injured or killed in an auto

accident. Hence, we would expect that states with higher wage levels would have higher PIP and BIL costs, all other things equal.

Figure V.7 compares average weekly earnings in Michigan to the U.S. for the years 2009-2022. This figure indicates that weekly earnings in Michigan have closely followed and are only slightly below the national average. In 2022, weekly earnings in Michigan were \$1,050 compared to \$1,059 nationwide. Consequently, it does not appear that wage levels in Michigan are a primary contributor to its relatively high PIP costs and BIL claim severity.

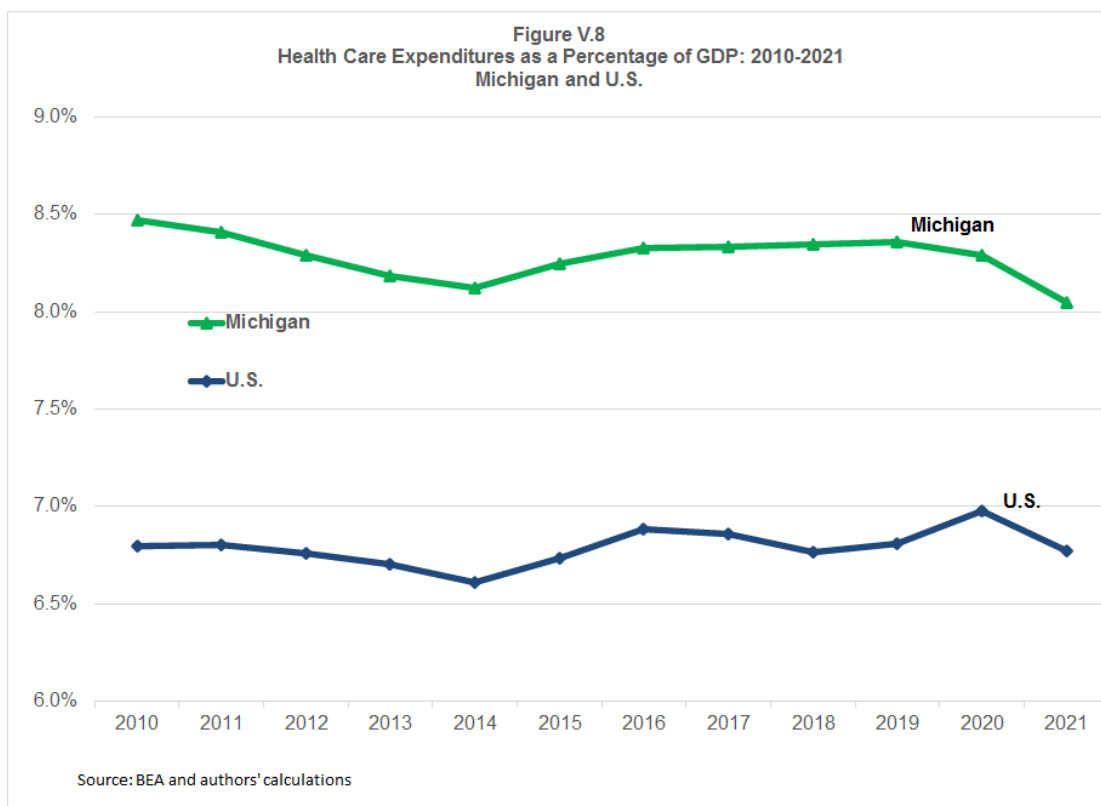


2. Health Care Expenditures

We expect that higher health care costs and greater utilization of health care services would increase the cost of BIL and PIP claims. However, information on consumer prices for medical care is not published at the state level and utilization of health care is

affected by many factors such as access to medical facilities and health insurance coverage. Understanding the limitations of the data available, we compare the percentage of the Gross Domestic Product (GDP) allocated to health care services nationally and in Michigan. The GDP for health care consists of three categories of spending: ambulatory health care services, hospitals, and nursing home and residential care.

Figure V.8 provides statistics on relative health care expenditures for the years 2010-2021 in Michigan and the U.S. The data indicate that relative health care spending



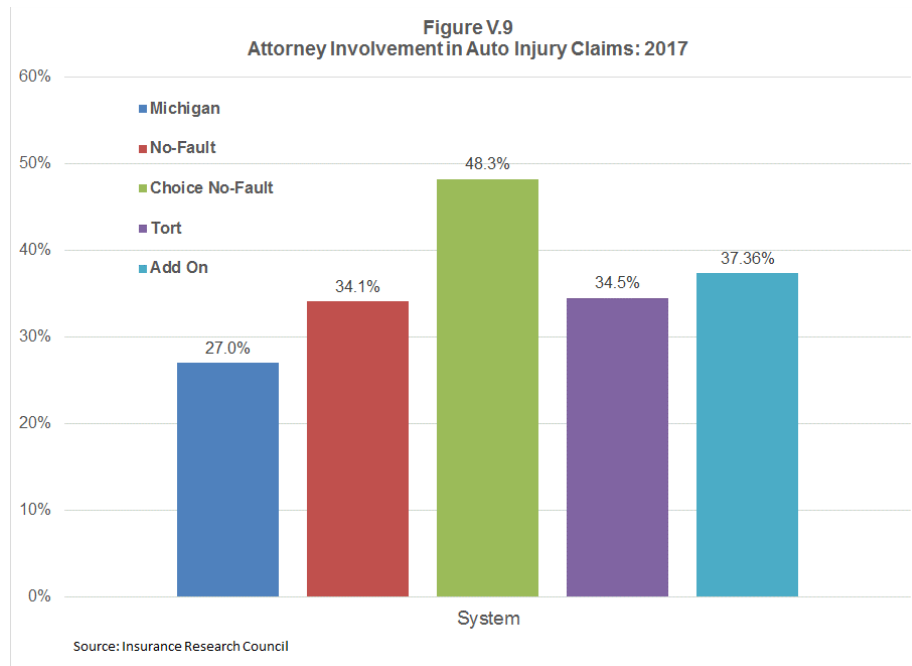
is somewhat higher in Michigan than it is nationally. Nationally, health care expenditures as a percentage of GDP ranged from 6.6% to 7.0% over this period. In Michigan, this percentage ranged from 8.1% to 8.4%. This lends support to the contention that the cost of health care services or greater utilization of these services have contributed to higher PIP claim costs in Michigan.

C. Legal Environment

1. Attorney Involvement in Bodily Injury Auto Insurance Claims

One factor that has received considerable attention among insurance experts is attorney involvement in auto liability claims. According to the Insurance Research Council (IRC), there is an association between attorney involvement in auto bodily injury claims and higher claim costs and delays in claim settlement. Here we examine attorney involvement in bodily injury claims in Michigan relative to other states in 2017 using data from the IRC's *Countrywide Patterns in Auto Injury Claims* (IRC, 2017).

Figure V.9 shows the percentage of auto injury claims in which an attorney is involved in Michigan compared to that in other states categorized by their type of system – mandatory no-fault, choice no-fault, add on, and tort. What we see is that, in 2017, Michigan had a relatively low level of attorney involvement – 27% – compared to other states, including states with mandatory no-fault systems – 34.1%. Interestingly, choice no-fault states had the highest level of attorney involvement – 48.3% – followed by add-on states – 37.4%. Attorneys were involved in only 34.5% of auto injury claims in tort states. This suggests that factors other than the type of liability system affect attorney involvement in BIL auto insurance claims. It may be the case that attorney involvement has been relatively low in Michigan because of its verbal threshold which is consistent with its relatively low pure premiums for BIL claims.



2. Legal Environment

The IRC research brief cited above discusses how the legal environment for settling auto insurance claims varies by state and implies that this could affect the resolution of auto insurance claims. It offers the example that certain states allow third-party bad-faith lawsuits for insurance claims while others do not. The brief provides scores developed by the Institute for Legal Reform (ILR) that indicate how businesses rated each state's litigation environment in 2019 (ILR, 2019).

The scores were compiled from a survey of in-house general counsel, senior litigators or attorneys, and other senior executives at companies who were knowledgeable about litigation matters in the various states. A higher score indicated a more favorable legal environment and vice versa. Although the survey did not pertain specifically to insurance, we can surmise that a lower score would indicate that auto insurers face a tougher legal environment in matters involving insurance claims. More specifically, in states with less favorable legal environments, insurers may experience more lawsuits being

filed, higher transactions costs, and/or more adverse judgements that would increase their claims costs.

Table V.5 shows each state's score and rank in 2019. Michigan scores a bit less favorably relative to other states on this dimension with a score of 68.3% and a rank of 33. The national average for 2019 was 69%. In previous surveys by the ILR, Michigan ranked higher – 22nd in 2017, 24th in 2015, and 27th in 2012. The ILR notes that because prior surveys employed a different methodology, the scores for previous years are not directly comparable with the 2019 scores. Regardless, while the 2019 scores indicate that Michigan has a less favorable score than the national average, the difference is negligible. Hence, we cannot surmise that Michigan's legal environment generally has been a significant contributor to its high PIP costs. This does not mean that Michigan's legal environment has not been a problem for auto insurance claims.

D. Other Factors

1. Utilization of Medical Services

As we discuss above, one of the concerns with Michigan's prior no-fault system was the excessive medical spending for injuries covered by PIP benefits. While there are no public data on the medical portion of PIP claim costs, we can examine certain indicators of the utilization of medical services generally. Such indicators may be affected by auto injury claims to the degree that medical services provided for auto injuries contribute to the provision of all medical services. Further, if the residents in a state are more inclined to use medical services than residents in other states, this could also contribute to higher auto insurance claim costs, all other things equal.

Table V.5
Legal Environment Index: 2019

State	Index	Rank	State	Index	Rank
Delaware	76.3%	1	Maryland	69.7%	27
Maine	73.8%	2	Massachusetts	69.6%	28
Connecticut	73.8%	3	Arkansas	69.5%	29
Wyoming	73.1%	4	Nevada	69.5%	30
Alaska	73.1%	5	Indiana	68.9%	31
North Dakota	72.6%	6	Kansas	68.8%	32
Montana	72.5%	7	Michigan	68.8%	33
Nebraska	72.3%	8	Tennessee	68.3%	34
Idaho	72.2%	9	Ohio	67.7%	35
South Dakota	72.0%	10	New York	67.7%	36
Vermont	71.7%	11	South Carolina	67.6%	37
Virginia	71.3%	12	Texas	67.1%	38
Wisconsin	71.2%	13	Pennsylvania	66.6%	39
Oklahoma	71.2%	14	Kentucky	66.5%	40
Hawaii	71.1%	15	Georgia	66.1%	41
North Carolina	70.9%	16	Alabama	65.6%	42
Arizona	70.8%	17	New Jersey	65.4%	43
New Hampshire	70.7%	18	Missouri	64.4%	44
Minnesota	70.7%	19	West Virginia	63.3%	45
Utah	70.7%	20	Florida	62.3%	46
Colorado	70.7%	21	Mississippi	61.9%	47
Iowa	70.6%	22	California	60.2%	48
New Mexico	70.6%	23	Louisiana	60.0%	49
Rhode Island	70.5%	24	Illinois	59.6%	50
Oregon	69.9%	25			
Washington	69.8%	26	Average	69.0%	

Source: Institute for Legal Reform

To gain a better understanding of medical utilization in Michigan relative to other states, we employ a medical utilization index developed by the IRC. Specifically, the index is calculated based on the usage of magnetic resonance imaging (MRI); higher values of this index indicate a less favorable rating. Table V.6 shows this index for each state and its ranking in 2017. The table reveals that Michigan has a high ranking for this index with a

value of 0.99 and a rank of 13. This implies that medical utilization is relatively high in Michigan compared to other states. Hence, high medical utilization could help to explain Michigan's high PIP costs.

Table V.6
Medical Utilization Index: 2017

State	Index	Rank	State	Index	Rank
Florida	2.30	1	West Virginia	0.51	27
New Jersey	1.76	2	Indiana	0.50	28
Louisiana	1.47	3	New Mexico	0.50	29
New York	1.42	4	Virginia	0.49	30
Delaware	1.40	5	Oregon	0.49	31
Nevada	1.40	6	Tennessee	0.49	32
Wyoming	1.25	7	Arizona	0.47	33
Minnesota	1.24	8	South Carolina	0.44	34
Hawaii	1.21	9	Idaho	0.42	35
Texas	1.12	10	Utah	0.40	36
Georgia	1.11	11	District of Columbia	0.39	37
Kentucky	1.09	12	Missouri	0.38	38
Michigan	0.99	13	Maryland	0.36	39
California	0.98	14	Arkansas	0.35	40
South Dakota	0.89	15	Washington	0.34	41
Pennsylvania	0.89	16	Rhode Island	0.34	42
Alabama	0.87	17	Ohio	0.32	43
Vermont	0.78	18	North Carolina	0.32	44
Maine	0.74	19	Mississippi	0.28	45
Colorado	0.74	20	Iowa	0.18	46
Kansas	0.68	21	Wisconsin	0.17	47
Connecticut	0.65	22	New Hampshire	0.11	48
Montana	0.63	23	North Dakota	0.00	49
Oklahoma	0.60	24	Nebraska	0.00	50
Massachusetts	0.56	25	Alaska	0.00	51
Illinois	0.54	26	Average	0.70	

Source: Insurance Research Council

There is also evidence that auto accidents account for a large number of emergency room visits which could be especially costly. A study by Weiss et al. (2020) found that 2,957,700 emergency department visits in 2017 could be attributed to motor vehicles

nationwide. We expect that an insurer is particularly constrained in controlling costs in an emergency. Grace et al. (2019) discuss cost shifting by medical providers when they charge private payers, such as auto insurers, higher rates than they charge other payers. Indeed, there is the issue of how medical providers allocate their fixed costs between the services they provide for treating auto related injuries and other users of their services. If insurers are disadvantaged in this regard, the results will be higher claim costs, all other things equal. This issue of cost shifting is discussed by Consumer Research Council (2013).

2. Claim Abuse and Fraud

Another concern that may be particularly pertinent to Michigan is what the IRC terms “claim abuse.” Claim abuse can be what some call “hard fraud” as well as “soft fraud”; soft fraud is also known as “buildup.” With respect to auto insurance, common frauds include submitting claims for injuries or damages that never occurred (this could be viewed as hard fraud) and padding or inflating claims (soft fraud or buildup) (Insurance Information Institute, 2022). The Insurance Information Institute (2022) observes that, in many no-fault states, “unscrupulous medical providers, attorneys, and others pad costs associated with legitimate claims – for example, by billing an insurer for a medical procedure that was not performed.”⁵⁹ Medical providers and attorneys might also encourage their patients or clients to authorize medical procedures that are unnecessary.

To examine claim abuse as a possible contributor to high insurance costs in Michigan, we utilize an index developed by the IRC using data from its 2012 closed-claims

⁵⁹ Padding might be more common in no-fault states with monetary thresholds. The concern here is that the alleged damages or expenses are inflated so that a state’s monetary threshold is exceeded in order that a lawsuit may be filed.

study. The index is the percentage of all auto injury claims from the study that were found by file reviewers to involve the appearance of claim fraud and/or buildup. Table V.7 shows this index for all states. Based on this index, it appears that Michigan is in the middle relative to other states with respect to claim fraud and buildup. In Michigan, 15% of the claims reviewed were identified as involving the appearance of fraud and/or buildup with a rank of 25. The average for all states was 15.8%. Hence, from these data, we cannot infer that claim abuse per se has been a significant contributor to high PIP and high BIL claim severity in Michigan relative to other states. This does not mean that claim abuse and fraud have not been problems for auto insurance claims or should not be pursued but rather that there are other factors that are greater contributors to Michigan's high PIP costs.

Table V.7
Auto Insurance Claim Fraud Index: 2012

State	Index	Rank	State	Index	Rank
Florida	35%	1	Nebraska	14%	27
Minnesota	29%	2	South Dakota	14%	28
New York	28%	3	Ohio	14%	29
Massachusetts	25%	4	Arizona	14%	30
California	24%	5	Oklahoma	14%	31
Maryland	23%	6	Wyoming	13%	32
Hawaii	22%	7	Alabama	13%	33
Alaska	22%	8	Pennsylvania	12%	34
Missouri	22%	9	West Virginia	12%	35
Oregon	21%	10	Rhode Island	12%	36
Connecticut	20%	11	Utah	11%	37
Kentucky	20%	12	Indiana	11%	38
Georgia	20%	13	District of Columbia	11%	39
North Dakota	19%	14	Arkansas	11%	40
Washington	19%	15	New Mexico	11%	41
Texas	19%	16	Maine	10%	42
Nevada	19%	17	North Carolina	10%	43
Louisiana	19%	18	Tennessee	10%	44
Colorado	17%	19	Delaware	10%	45
Montana	16%	20	New Hampshire	9%	46
South Carolina	16%	21	Kansas	9%	47
Wisconsin	15%	22	Mississippi	9%	48
Illinois	15%	23	Iowa	8%	49
New Jersey	15%	24	Vermont	8%	50
Michigan	15%	25	Idaho	8%	51
Virginia	14%	26	Average	15.8%	

Source: Insurance Research Council

VI. Competition and Regulation

Some contend that Michigan's historically high auto insurance premiums were due to insurance companies charging excessive rates and the failure or inability of Michigan regulators to properly control these rates.⁶⁰ Critics of the no-fault reforms also contend that insurers have profited from the reforms and failed to pass any costs savings on to consumers through lower premiums. One premise underlying these contentions is that Michigan's auto insurance market is not sufficiently competitive, absent strong regulation, to keep insurers' rates in check so that they are not excessive or unfairly discriminatory. A second premise is that the DIFS lacked the ability under its prior file-and-use system to regulate rates to ensure that they were not excessive or unfairly discriminatory and is still failing to apply adequate regulation to the industry.

Prior to July 1, 2020, Michigan had a file-and-use (FU) system for auto insurance rates, and some argue that this type of system does not provide regulators with adequate authority to regulate rates.⁶¹ This implies that the DIFS now has the necessary authority to adequately regulate rates under a prior approval (PA) system. Because of the concerns expressed by Michigan's Governor and others that the reforms enacted would not necessarily result in the promised premium reductions under a FU system, the new law returned Michigan to a PA system for auto insurance. In essence, increased regulation was

⁶⁰ See Consumer Federation of America (2021) for allegations that auto insurers reaped nearly a \$30 billion pandemic windfall profit nationally in 2020. Heller (2019) discusses the need for regulation to prevent unfair discrimination in pricing auto insurance in Michigan.

⁶¹ Under a FU system, insurers file their rates and they automatically become effective after a certain date unless regulators disapprove the rates or require an insurer to re-file them. Under a prior approval (PA) system, an insurer's rates or rate changes must be filed and approved by regulators before they become effective. As discussed by Born et al. (2022), how the regulators in each state administer their system can make a big difference. In some PA states, regulators effectively let competition and the market set rates without any direct intervention on their part. In some FU states, regulators seek to impose tight constraints on insurers' rates and effectively administer their system as de facto prior approval. Hence, how rates are regulated in a particular state and line depends on the type of rating law it has as well as how it is administered.

the quid pro quo for the no-fault reforms sought by the industry and other stakeholders. Whether the DIFS is properly exercising its expanded authority under the law changes is an issue that has been raised post-reform.

Despite the tighter regulation of rates under the new law, some observers and stakeholders are expressing disappointment with the premium reductions that have occurred under the new law and other issues.⁶² This disappointment is especially acute regarding Detroit. For example, some public officials contend that the rate reductions in Detroit are considerably less than what they should be. Hence, there appears to be growing discontent with the reforms among some stakeholders that could lead to more proposed legislative changes. The DIFS also may be facing greater pressure to enforce the current law's provisions in a more aggressive manner.

To argue that insurers are charging too much for auto insurance in the absence of regulation, one must make the case that the market for auto insurance is not “workably competitive.” The concept of *workable competition* is derived from the conditions for *perfect competition*. The conditions for perfect competition are that: 1) sellers and buyers are price takers and no one firm has a substantial market share; 2) firms produce a homogeneous good or service; and 3) there are no barriers to entry into or exit from the market (Scherer and Ross, 1990). It also could be argued that perfect competition requires buyers and sellers to have perfect information (Martin, 1988).

In the real world, few if any markets satisfy the conditions for perfect competition. Hence, economists have developed standards for workable competition by which real-world markets can be judged (Scherer and Ross, 1990). Put simply, a market can be

⁶² “Many Michigan Drivers Drop Unlimited No-Fault Insurance – Yet Rates Slow to Fall,” *Detroit Free Press*, April 12, 2022.

considered workably competitive when its conditions sufficiently approximate the conditions for perfect competition such that the market's performance could not be materially improved by government intervention, e.g., regulation.

Prior research has generally concluded that state auto insurance markets are workably competitive, although many academics acknowledge that consumers are challenged in understanding their policies (Klein, 2014).⁶³⁶⁴ Here we evaluate the competitiveness of Michigan's auto insurance market using metrics commonly employed by economists for this purpose.⁶⁵ We then discuss certain elements of regulation pertinent to how the new law may be affecting Michigan's auto insurance market.

A. Competition

1. Market Structure

Table VI.1 shows several measures to assess the structural competitiveness of private passenger auto insurance markets in Michigan and Ohio. These are measures that economists commonly use to evaluate competition. All calculations define the firm at the group level, i.e., all companies affiliated within an insurance group are treated as one firm.⁶⁶ Insurers' markets shares are calculated according to their Direct Premiums Written (DPW), which serves as a proxy for their sales. Ohio provides a basis of comparison

⁶³ See, also, "Survey: Most Drivers Don't Understand Their Car Insurance Coverage," *Forbes*, April 5, 2022.

⁶⁴ One of the conditions for pure or perfect competition is that both buyers and sellers have perfect information. It is generally recognized that many consumers have difficulty in understanding their insurance policies. However, most buyers of auto insurance are price and quality conscious which should motivate insurers to compete on price and quality. In other words, buyers need not fully understand their policies for a market to be workably competitive. Further, consumers who are well informed can drive the behavior of firms in a market which benefits consumers who are not well informed.

⁶⁵ Scherer and Ross (1990) is a text commonly used by industrial organization economists as a reference for issues related to competition and its measurement. See also Martin (1988).

⁶⁶ The companies within an insurer group are assumed to not compete with each other.

because of its proximity to Michigan and market size. Ohio is a tort liability state and has a FU system for regulating auto insurance rates.⁶⁷

Based on commonly used economic metrics, both markets appear to be structurally competitive. While the four-firm (CR4) and ten-firm (CR10) concentration ratios might seem high to some, these are typical for personal lines insurance markets.⁶⁸

Table VI.1
Private Passenger Auto Insurance: 2022
Market Structure in Michigan and Ohio

Measure	Michigan	Ohio
No. of Firms	46	75
CR4	63.2%	55.5%
CR10	86.3%	75.4%
HHI	1,213	967
Total DPW (000s)	9,228,961	7,332,431
Sources: SNL Financial and authors' calculations		

The best and most inclusive measure of market concentration is the Herfindahl-Hirschman Index (HHI).⁶⁹ In 2022, the HHI in Michigan's was 1,213 and it was 967 in Ohio. According to the Department of Justice's merger guidelines, both markets can be classified as “unconcentrated” because their HHIs are below 1,500.⁷⁰⁷¹ It is interesting to note that Ohio has 29 more groups and unaffiliated companies than Michigan. Why this is the case is unclear, but it may be that Ohio has been a more attractive market to insurers than Michigan due, at least in part, to Michigan's high PIP costs.

⁶⁷ In 2020, there were 2.7 million personal auto liability exposures in Michigan and 4.2 million in Ohio. Hence, the market for personal auto insurance is considerably larger in Ohio than it is in Michigan in terms of vehicles, but the opposite is true in terms of direct premiums written.

⁶⁸ The four-firm concentration ratio is the combined market share of the top four companies; the ten-firm concentration ratio is the combined market share of the top ten companies.

⁶⁹ The HHI is calculated by squaring and summing the market shares of all companies in a market and multiplying the product by 10,000.

⁷⁰ The merger guidelines are available at <https://www.justice.gov/atr/horizontal-merger-guidelines-0>.

⁷¹ The HHI is a commonly used measure of market concentration that is generally considered to be more informative than concentration ratios.

Table VI.2 shows the 20 leading insurer groups and stand-alone companies in Michigan's personal auto insurance market in 2022 and how their market shares have changed since 2019. In 2022, Progressive was the leading group with 20.5% market share, followed by State Farm with an 18.1% market share, the Auto Club with a 13.7% market share, and Auto-Owners with a 10.8% market share. Some insurers gained market share since 2019 while others lost market share.⁷² Among the 20 leading groups/companies are both large national insurers and smaller regional carriers. The presence of both types of companies is indicative of a healthy market.

Table VI.2
Leading Insurer Groups Michigan Auto Insurance
Market Shares 2019-2022

Rank 2022	Group/Company	2022	2021	2020	2019
1	Progressive	20.5%	20.4%	19.7%	17.9%
2	State Farm	18.1%	17.1%	16.9%	16.3%
3	Auto Club	13.7%	13.9%	14.3%	15.3%
4	Auto-Owners	10.8%	10.9%	11.0%	10.7%
5	Allstate	7.4%	7.6%	7.7%	8.7%
6	Hanover	6.7%	6.7%	6.5%	6.5%
7	Liberty Mutual	4.8%	5.2%	4.8%	4.1%
8	Michigan Farm Bureau	4.3%	4.4%	4.7%	5.0%
9	USAA	2.6%	2.7%	3.1%	3.0%
10	Farmers Insurance	1.9%	1.9%	2.1%	2.3%
11	Pioneer State Mutual Ins Co.	1.6%	1.7%	1.9%	1.9%
12	Frankenmuth Insurance	1.5%	1.6%	1.6%	1.7%
13	Berkshire Hathaway	1.0%	0.9%	0.8%	1.0%
14	The Hartford	0.7%	0.8%	0.8%	1.0%
15	Westfield Insurance	0.6%	0.6%	0.6%	0.7%
16	Nationwide	0.5%	0.5%	0.5%	0.6%
17	Citizens United Reciprocal Exch.	0.5%	0.0%	0.0%	0.0%
18	Market	0.4%	0.4%	0.3%	0.3%
19	USA Underwriters	0.3%	0.3%	0.2%	0.1%
20	Donegal	0.3%	0.3%	0.3%	0.3%

Source: SNL Financial and authors' calculations

⁷² Note that an insurer's market share is calculated based on its DPW. Pricing differences among insurers could affect their market shares in any particular year and changes in their market shares over time.

We also examined the entry into and exit from Michigan auto insurance market pre-reform and post-reform to gain some perspective on how insurers have viewed the market as it has evolved. Between 2017 and 2022, eight insurer groups exited the market.⁷³ It appears that most of these insurers were on their way out by 2017 and so the new law likely did not affect their decision to exit. Over this same period, two insurer groups entered the market. As discussed below, a large number of insurers have expressed interest in entering the Michigan market due to the reforms, but this is not yet reflected in the data. It is possible that the uncertainty caused by the Andary suit caused these companies to pause their entry depending on its outcome. One notable entry resulting from the reforms is Citizens United Reciprocal Exchange (CURE) which we discuss further below.

We note that the DIFS and the Governor's office have indicated that a number of insurers have expressed interest in coming into the Michigan in light of its no-fault reforms.⁷⁴ Our calculations would not reflect such interest until insurers had actually entered the market and written premiums. Given that the new law has actually tightened regulation, we surmise that insurer interest in entering the Michigan market largely stems from the expected cost savings from the PIP reforms.⁷⁵ It is possible that actual entry into Michigan's market was deferred by companies awaiting the Supreme Court's decision in the Andary case and what the Legislature may do with contested cost controls.

⁷³ If an insurer has positive premiums in 2017 but zero or negative premiums in 2022, we consider that to be an exit. Similarly, if an insurer had zero or negative premiums in 2017 but positive premiums in year 2022, we treat that as an entry.

⁷⁴ In a July 11, 2022 press release, the DIFS indicated that 46 insurers had expressed interest in entering the Michigan market. The press release is available at <https://www.michigan.gov/difs/news-and-outreach/press-releases/2022/07/11/governor-whitmer-state-leaders-celebrate-cost-savings-provided-by-auto-no-fault-reform-law>.

⁷⁵ Some insurers may be waiting to see how the reforms work and how the increased regulation is implemented before committing to entering the market.

One new entrant attracting considerable attention is Citizens United Reciprocal Exchange (CURE) which is domiciled in New Jersey.⁷⁶ CURE does not use credit or insurance scores in its pricing and relies more heavily on other factors, such as an insured's driving record. CURE contends that it is offering considerably lower auto rates to drivers relative to what they would be charged by the larger, more traditional carriers in the state.⁷⁷ Cure's CEO, Eric Poe, has said that his company's entry into Michigan would not be feasible without the state's no-fault reforms.

2. Measures of Market Performance

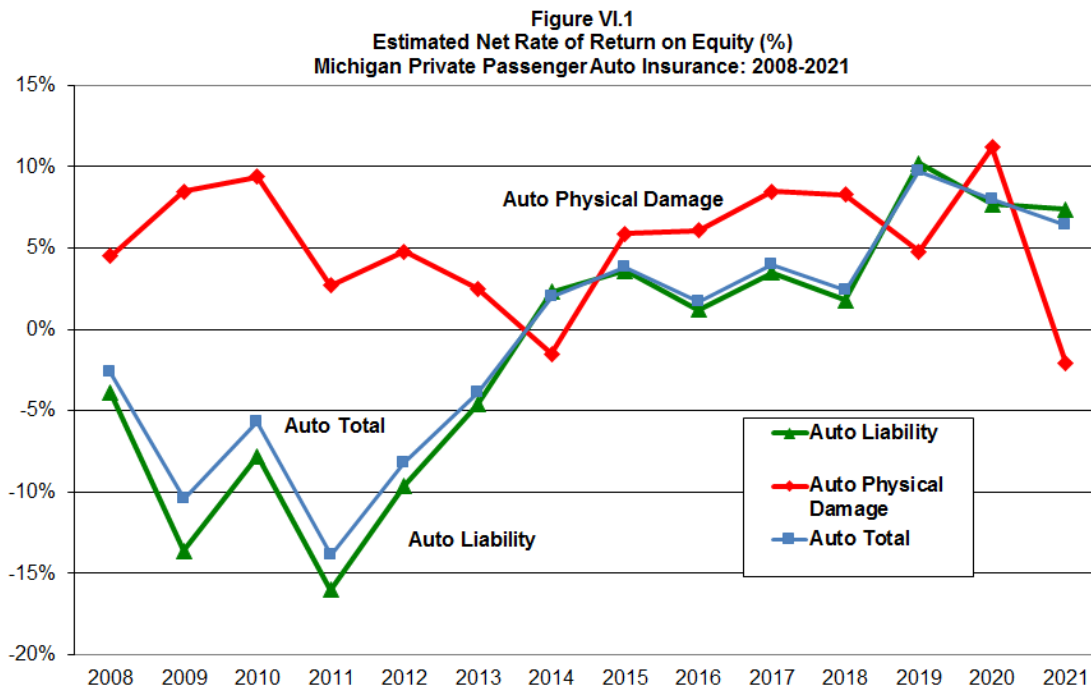
Another metric of the competitiveness of an insurance market is the effective rate of return on the amount of capital that companies allocate to the market. In a competitive market, we would expect firms to be able to earn a "fair profit" that approximates their cost of capital, but not profits considerably in excess of this on a sustained basis. In Figure VI.1, we show estimates of the net rate of return on equity (RORE) for private passenger auto insurance in Michigan published by the NAIC.⁷⁸ As can be seen from this figure, the net RORE for auto liability and total auto (all coverages combined) remained below 5% in Michigan over the period 2008-2018. In 2019, the net RORE rose to 10.2% for auto liability and 9.7% for total auto and then fell to 7.4% for auto liability and 6.4% for total auto in 2021. The RORE for auto physical damage reached a high of 11.2% in 2020 and then dropped precipitously to -2.1% in 2021.

⁷⁶ "New Michigan Auto Insurer Doesn't Use Credit Scores, Charges Lower Rate," *Detroit Free Press*, July 9, 2021.

⁷⁷ Because CURE's rate structure differs from that of other carriers, some drivers may be able to obtain considerable savings from the company while others would do much better with other insurers.

⁷⁸ The data used for this portion of our analysis comes from NAIC (2021). The net RORE is commonly used as a measure of a firm's profits.

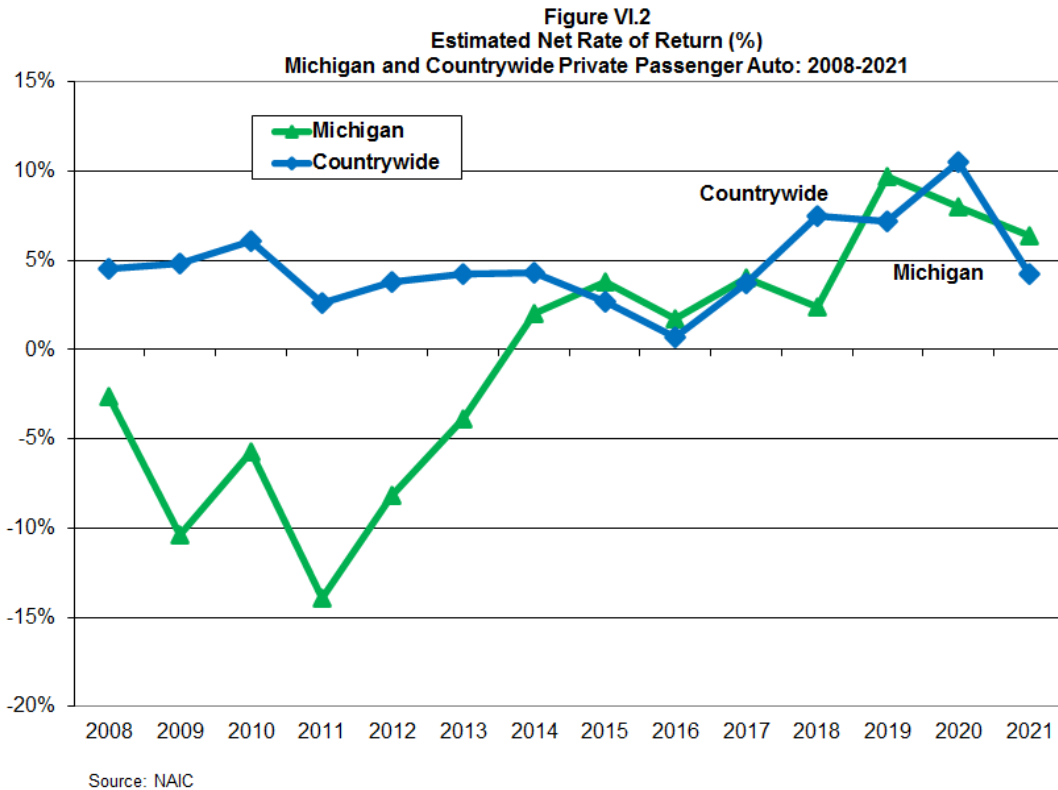
These estimates indicate that rather than being excessive, insurers' profits in Michigan were inadequate for the years 2008-2018. It appears that insurers' profitability subsequently increased to more adequate levels that would still not be considered excessive. Additionally, it appears that while insurers' profits for auto physical damage have been more adequate in most years than they have been for auto liability, they were insufficient to pull insurers' overall rate of return for personal auto insurance up to an adequate level. The net RORE for auto liability and total auto insurance has increased over this period, which may reflect rate increases and/or other adjustments insurers made to improve their profitability.



Source: NAIC

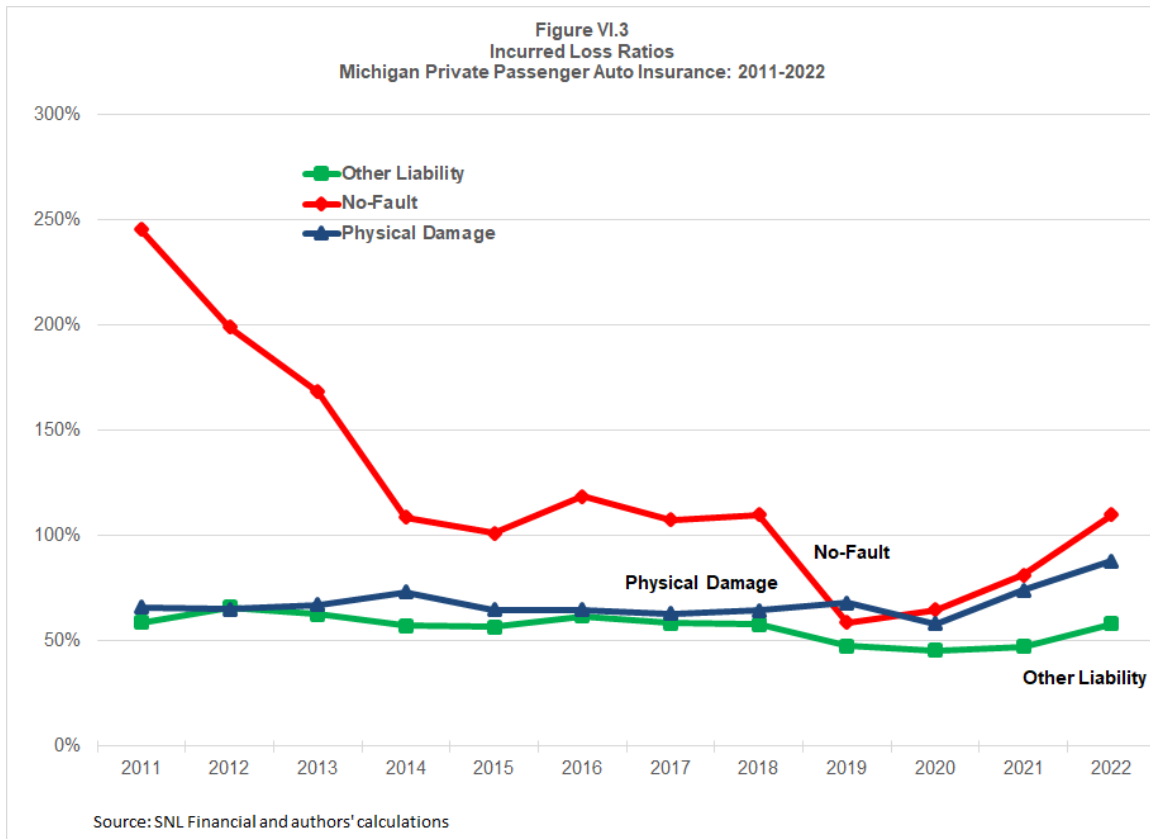
In Figure VI.2, we show the net RORE for auto total in Michigan compared to what insurers have earned countrywide for the period 2008-2021. Until 2015, insurers' RORE for auto insurance in Michigan was lower than their RORE countrywide. Since 2014, insurers' RORE in Michigan has exceeded their RORE countrywide in some years and fell

below it in other years. Hence, if one argues that insurers are earning an excessive rate of return on auto insurance in Michigan, by implication, insurers are earning an excessive rate of return on auto insurance in many other states.⁷⁹



We can gain some perspective on how no-fault has affected auto insurers' profitability in Michigan by examining the incurred loss ratios for the different auto coverages over time. The incurred loss ratio is equal to direct losses incurred divided by direct premiums earned. The higher the loss ratio, the lower profits will be, all other things equal. Figure VI.3 shows incurred loss ratios for auto no-fault, other liability, and physical damage insurance coverages in Michigan for the period 2011-2022.

⁷⁹ As calculated by the NAIC, the countrywide RORE for personal auto insurance is based on financial data aggregated for all companies writing auto insurance in all states. Consequently, the countrywide RORE is effectively a weighted average for which the larger state markets will have greater weight.



What we can see from this figure is that the loss ratio for no-fault was very high in the early part of the last decade. We can also see that this loss ratio fell considerably over this period, reaching a low of 58.8% in 2019, and then increased in 2020, 2021, and 2022; it was 109.7% in 2022. The data indicate that the decrease in the no-fault loss ratio through 2019 was the consequence of both increases in direct premiums earned and decreases in direct losses incurred.

It is difficult to determine the reasons why the no-fault loss ratio decreased from 2011 to 2019 from these data alone. The most likely reason for the increases in premiums earned is that rates increased. The fall in losses incurred is most likely due to fewer car owners buying auto insurance. The rate hikes increased the financial pain felt by consumers and probably caused more drivers to drop their auto insurance. Nonetheless, these rate

increases were likely necessary to enable insurers to earn a reasonable profit on no-fault coverage.

The significant increase in the no-fault loss ratio in 2022 was due to both a decrease in the premiums that insurers collected as well as a substantial increase in the losses they incurred. Premiums decreased by \$214 billion and losses increased by \$713 billion. The decrease in premiums likely stems from rate cuts by insurers as well as some drivers opting for something less than unlimited PIP coverage. The increase in losses incurred was likely due, at least in part, to insurers increasing their payouts on and reserves for PIP claims. As we discuss below, certain of the medical cost controls enacted in 2019 had been challenged in court and insurers probably increased their estimates of the losses they would eventually have to pay on PIP claims for the affected policies. An increase in the number of car owners buying auto insurance, e.g., fewer car owners going without insurance, also would cause incurred losses to rise and more claims would be filed.

Taken together, the data indicate that Michigan's auto insurance market has been competitive and has functioned as one would expect given how claim costs for PIP coverage have moved. Hence, it appears that the state's historically high auto insurance rates were caused by factors driving the cost of claims and other costs reflected in its rates rather than a lack of competition. Further, the data contradict the claim of no-fault reform critics that insurers profited from the reforms. These metrics on insurers' market performance bolster our opinion that changes in Michigan's rating law alone were unlikely to have caused premiums to fall.

B. Regulation

1. Rates

The states employ various systems for regulating auto insurance rates that are shown in Table VI.3. There are essentially five different systems (NAIC, 2014). They are: 1) prior approval (PA); 2) file and use (FU); 3) flex rating (FR); 4) use and file (UF); and 5) no file (NF). Under a PA system, insurers are required to file and receive approval of their rates before they can be implemented. Under a FU system, rates must be filed prior to their use; specific approval is not required but regulators retain the right of subsequent disapproval. Hence, under a FU system, insurers will typically wait until their rates are approved or not disapproved before they implement them.⁸⁰ FR is a hybrid of PA and FU rating systems. Under an FR system, rate changes that fall within certain boundaries (e.g., +/-7%) are subject to file and use and rate changes that fall outside these boundaries are subject to prior approval. Under a UF system, rates must be filed within a specified period after they have been implemented. Insurers are not required to file their rates under an NF system. Additionally, as indicated in Table VI.3, certain states allow insurers to file their rates under one of two systems, e.g., FR or PA in Kansas.

Until recently, the general trend has been for states to move from more restrictive to less restrictive rating systems. Between 2001 and 2022, five states moved from PA regulation to FU or UF regulation. Kansas moved from file and use to flex rating and Michigan changed from a FU to a PA system. In 2023, the Georgia Legislature gave the insurance prior approval authority over rate filings for minimum liability coverage. The trend towards less restrictive regulation had been consistent with many regulators' views that competition is sufficient to ensure that rates will not be excessive nor unfairly

⁸⁰ Insurers tend to prefer to wait until their rates are approved (or not disapproved) to avoid having to refund premiums collected under their new rates if subsequently disapproved. Additionally, in some FU states, the insurance commissioner is required to determine that there is a lack of competition to reinstate prior approval.

discriminatory without specific regulatory intervention. We should note, however, that recent large increases in auto insurance rates in a number of states have resulted in political pressure in some state legislatures to reinstitute prior approval regulation where a less restrictive system has been in place.

Table VI.3
State Rate Filing Laws for Auto Insurance

State	Rating Law	State	Rating Law
Alabama	Prior Approval	Montana	File & Use
Alaska	File & Use/Flex	Nebraska	File & Use
Arizona	Use and File	Nevada	Prior Approval
Arkansas	File & Use	New Hampshire	File & Use
California	Prior Approval	New Jersey	Prior Approval
Colorado	File & Use	New Mexico	File & Use
Connecticut	Prior Approval	New York	Prior Approval
DC	File & Use	North Carolina	Prior Approval
Delaware	File & Use	North Dakota	Prior Approval
Florida	Prior Approval	Ohio	File & Use
Georgia	Prior Approval	Oklahoma	Use and File
Hawaii	Prior Approval	Oregon	File & Use
Idaho	Use and File	Pennsylvania	Prior Approval
Illinois	Use and File	Rhode Island	File & Use/Flex
Indiana	File & Use	South Carolina	Flex Rating
Iowa	Use and File	South Dakota	File & Use
Kansas	Flex/Prior Approval	Tennessee	Prior Approval/Flex
Kentucky	Flex Rating	Texas	File & Use
Louisiana	Prior Approval	Utah	Use and File
Maine	File & Use	Vermont	Use and File
Maryland	File & Use	Virginia	File & Use
Massachusetts	File & Use	Washington	Prior Approval
Michigan	Prior Approval	West Virginia	Prior Approval
Minnesota	File & Use	Wisconsin	Use and File
Mississippi	Prior Approval	Wyoming	No File
Missouri	Use and File		

Source: NAIC

Many consumer advocates generally argue that stricter rate regulation will make insurance markets function better and benefit consumers (See, for example, Heller, 2019).

Heller (2019) recommends that adopting best practices in insurance regulation in Michigan would entail the following: “1) Require insurers to justify their rates and pricing practices; and 2) Adopt pro-consumer rules to enhance the Michigan auto insurance market.” To bolster his argument, he cites a Consumer Federation of America study that found that Michigan, among the states, had the fourth highest rate change – 123.5% – from 1989 to 2015 (CFA, 2019). The CFA study also provides statistics indicating that stricter regulatory systems are associated with lower rate increases and lower insurer profits.

As discussed by Born et al. (2022), the enforcement of a given rating law can vary among states. For example, regulators in some PA states place tight constraints on rates while others do not. Regulators in some FU states may seek to constrain rates (de facto PA regulation) while others do not. The evidence indicates that regulators in UF states rarely if ever try to constrain rates. Generally, regulators who do not constrain rates assume that market forces and competition will function as implicit regulators and will not permit excessive or unfairly discriminatory rates.

Rate regulation also involves the review and approval of the rate differentials between different groups of insureds based on the rating factors that insurers are allowed to use. State law typically determines permissible rating factors or those that are prohibited. Certain prohibited rating factors are universal such as race and ethnicity. Other prohibited factors vary among the states.

In his testimony before the Michigan House Select Committee on Insurance, Douglas Heller identified the rating factors he believes are unfair: gender, occupation, education, home ownership, prior insurance coverage, ability to pay up front, marital status, and credit score. He argued that, because insurers use these rating factors, that: “1) A

smaller number of drivers make up the insurance pool responsible for funding accidents; and 2) The insurance pool has a higher concentration of bad drivers and not enough good drivers.” He went on to contend that: “By eliminating unfair discrimination that keeps good drivers out of the market, the market will: Spread the risk better; Bring in more total premium; Reduce the number of uninsured motorists; and Lower individuals (sic) premiums.”

Table VI.4 shows current prohibitions on rating factors for auto insurance in other states and the rating factors that are now prohibited in Michigan. Nine states prohibit one or more rating factors other than race and ethnicity. These prohibited rating factors include age, credit score, education/occupation, gender, marital status, ZIP code, and home ownership. Michigan now prohibits more rating factors than any other state and is the only state that prohibits home ownership as a rating factor.

Table VI.4
Prohibited Ratings Factors for Auto Insurance

State	Age	Credit Score	Education/ Occupation	Gender	Marital Status	ZIP Code	Home Ownership
California		X		X			
Hawaii	X	X		X			
Massachusetts	X	X	X	X			
Michigan		X	X	X	X	X	X
Montana					X		
New York			X				
North Carolina	X			X			
Pennsylvania					X		
Washington		X					

* These are states with prohibited rating factors beyond the standard ones, e.g., race, ethnicity, etc.

Source: American Property Casualty Insurance Association

When reviewing a specific rate filing, a regulator can determine if the rates filed are excessive or unfairly discriminatory. Regulators also may tell an insurer that its filing lacks adequate information or analysis to support the rates that it has filed. Ultimately, a

rate filing will be approved or disapproved, or regulators will allow the filed rates to go into effect after a deemer period has expired. Typically, if an insurer's filing is disapproved or regulators signal that this will happen, it will withdraw its filing and submit a new filing that will be more likely to receive approval.

When a regulator disapproves a rate filing for being unfairly discriminatory, this can have implications for the insurer's ability to achieve rate adequacy. For example, a regulator may require an insurer to reduce or cap its rates for certain high-risk rating territories. This would likely reduce the premiums that the insurer will be able to collect for all territories as competition will prevent the insurer from raising rates in other areas to compensate for the caps on rates in high-risk areas. Michigan experienced this problem in its efforts to enforce the territorial rate differential caps mandated under the Essential Insurance Act (Bartlett et al., 1999).⁸¹

The use of credit scores in underwriting and pricing has been especially contentious and greatly criticized by consumer advocates.⁸² They contend that credit scores are not good predictors of drivers' risk of having accidents and also tend to penalize low-income drivers and minorities. However, the academic research indicates that there is a statistical association between drivers' credit scores and their accident risk (see, for example, Brockett and Golden, 2007; Golden et al., 2016). Hence, the prohibition on the use of credit scores in underwriting and pricing auto insurance could result in less accurate pricing and pricing inequities among drivers.

⁸¹ Michigan's Essential Insurance Act (EIA), which became effective in 1981, imposed several restrictions on auto insurance territorial rates that were intended to cap rates in urban areas relative to rates in other areas. Specifically, 1) an insurer could not have more than 20 territorial base rates, 2) its lowest territorial base rate could not be less than 45% of its highest base rate, and 3) for adjacent territories, the rate in the lower-rated territory could not be less than 90% of the rate in the higher-rated territory.

⁸² See, for example, Heller (2019).

2. Other Market Practices

The states also regulate various other aspects of insurers' market activities. These other activities include policy forms, marketing, underwriting, and claims settlement. Here we discuss the regulation of marketing and underwriting as insurers might seek to compensate for or work around regulatory rating constraints through these functions. Marketing and underwriting were topics of considerable interest in the negotiations on the reform legislation.

In marketing, insurers use various distribution systems, methods, and tools to sell their products and interact with consumers in the purchase process. Most insurers still rely on insurance agents to sell their products.⁸³ An agent may be exclusive to one insurer or be independent and represent multiple insurers. Over time, insurers have increasingly used the Internet and web-based platforms to market their products and receive requests for premium quotes and applications for insurance. Consumers can obtain quotes from multiple carriers by going to each of their websites or using aggregators who provide preliminary quotes for multiple carriers.

Even with this technology, access to agents can be important for consumers to purchase coverage at a competitive price. The reason that this is important is that an insurer could attempt to avoid insuring certain people by making it difficult for them to contact an agent. For example, some industry critics contend that insurers avoid writing business in certain areas by not having agents physically located in or near these areas (Hunter and Heller, 2019). Indeed, this is an issue that was raised with respect to Michigan's Essential

⁸³ A few insurers such as GEICO and Amica Mutual operate as "direct writers" and do not use insurance agents.

Insurance Act – insurers sought to avoid writing business in Detroit by not having agents in Detroit.⁸⁴ This concern is compounded for consumers who have difficulty in using web-based platforms to shop for and purchase insurance.⁸⁵

An insurer’s marketing and underwriting functions should be closely linked and coordinated. Underwriting is the process by which an insurance company considers the application of a potential insured, determines whether coverage will be provided, and the premium that will be charged. An applicant for insurance could be rejected, their coverage restricted, or placed with a different company within the same group. Many insurer groups have preferred and standard carriers and possibly non-standard companies. Preferred companies have the lowest rates and non-standard companies have the highest rates. Applicants should be placed with the lowest-price company for which they qualify. Hence, the underwriting process can have implications for the premium an insurance applicant would be required to pay.

Insurers have rules and guidelines that they should follow in making underwriting decisions. Regulators can review these rules and guidelines, as well as their application, in determining whether an insurer is in compliance. Regulators encourage consumers to file complaints if they believe that they have not been treated fairly. Regulators will rarely weigh in on factual disputes, but they will get involved if they believe an insurer is failing to comply with laws and regulations. In the next section, we discuss provisions of the reform legislation that pertain to underwriting.

⁸⁴ An insurer could have an agent located in or near Detroit, but they could not be reached by phone using the number that was listed.

⁸⁵ A 2021 study by the Pew Research Center found that Black and Hispanic adults in the US are less likely than White adults to have access to a traditional computer and home broadband internet (Perrin and Atske, 2021).

We should note that how insurers handle auto insurance claims from their insureds and third parties also can raise issues. We discuss the claim-handling issues associated with implementation of the medical cost controls that were part of the reform legislation. In 2023, legislation was introduced in the Michigan Legislature – the Insurance Policyholder Bill of Rights (H.B. 4681 and S.B. 329) – that would further increase the ability of insureds and trial attorneys to file bad faith claims against insurers for various coverages including auto insurance.⁸⁶ If this legislation is enacted, it could cause auto insurance rates to rise as insurers will anticipate more litigation and higher settlements. As a general principle, the greater the leverage that insureds have in the claim settlement process, the higher settlements will likely be. This is not expressing an opinion on the fairness of any particular legal provision regarding bad faith claims.

VII. Evaluation of No-Fault Reforms

Here we evaluate key provisions of the reform legislation and consider issues that have been or could be raised with respect to these provisions. We focus on the provisions dealing with PIP coverage, reimbursement of medical expenses, minimum liability insurance requirements, rate regulation, rating factors, and underwriting. While the proponents of this legislation believed that its changes to PIP coverage would substantially reduce the costs of auto insurance for many drivers, some stakeholders have expressed concerns that those who choose low PIP limits, or opt out of PIP coverage entirely, will not have adequate coverage if they are seriously injured. Medical providers and others contend that some of the medical cost controls for PIP coverage are too tight and are

⁸⁶ It is our understanding that this legislation was requested by trial attorneys as compensation for the no-fault reforms that the Legislature enacted.

causing accident victims to receive inadequate care; the critics of these controls have challenged them in court and may also push for legislation to eliminate or temper them. Moving Michigan back to a PA system for regulating auto insurance rates also could prove to be problematic depending on how the new system is administered. The prohibitions on certain rating factors are attractive to some but could create market distortions and fail to provide their perceived benefits.⁸⁷ We evaluate the key provisions of the reform legislation in some detail and their likely or possible effects on Michigan's auto insurance market and its consumers.

A. Changes to PIP and Minimum Insurance Requirements

1. PIP Options

Under the new law, car owners have five options with respect to their PIP coverage levels. These options include: 1) \$50,000, if the insured is enrolled in Medicaid, or if the person's spouse and resident relatives have “qualified health insurance,” Medicaid, or other insurance that provides PIP benefits; 2) \$250,000; 3) \$500,000; or 4) unlimited coverage. Additionally, a “qualified person” is allowed to opt out of PIP coverage entirely if the person's spouse and any resident relative has “qualified health insurance” or PIP coverage.

Qualified health insurance is deemed to be other health or accident coverage for which both of the following apply: 1) the coverage does not exclude or limit coverage for injuries related to motor vehicle accidents; and 2) the annual deductible for the coverage is \$6,000 or less for each individual covered or is Medicare Parts A and B coverage.⁸⁸ A qualified person is a person who has qualified health insurance.

⁸⁷ Indeed, some have expressed considerable disappointment with how much the new law has actually reduced rates (Kaffer, 2022).

⁸⁸ This deductible amount will be adjusted for inflation each year by the Director of the DIFS.

There is some information on the PIP choices of Michigan drivers that has been published in newspaper articles and cited in other sources. An April 12, 2022 article in the Detroit Free Press reported the following statistics on drivers' PIP choices for the fourth quarter of 2021⁸⁹:

PIP Choice	% of Drivers
Unlimited	63%
\$500,000	3%
\$250,000	10%
\$50,000	3%
Opt out	9%
Unknown	12%

Source: Detroit Free Press

It is interesting to note that, based on these statistics, more than 60% of Michigan car owners were still opting for unlimited PIP coverage at the end of 2021. There may be a number of reasons for this, but car owners maintaining unlimited PIP coverage will limit the premium savings they can achieve. It is possible that, over time, more drivers will opt for something less than unlimited PIP coverage as they become more familiar with the new law. This would further reduce the premiums for these drivers, all other things equal. This is a matter that warrants further monitoring and investigation.

Regardless of the mandated rate reductions, the new law should have lowered premiums significantly for many drivers if they chose something less than unlimited PIP coverage. Indeed, over time, competition among insurers could prompt them to offer even larger rate reductions than those mandated. In fact, in 2020, the DIFS reported that the average statewide rate reductions initially filed by insurers for PIP coverage were greater

⁸⁹ "Many Michigan Drivers Drop Unlimited No-Fault Insurance – Yet Rates Slow to Fall," *Detroit Free Press*, April 12, 2022.

than those mandated by the new law.⁹⁰ How insurers have positioned themselves with respect to their initial rates under the new law warrants further analysis. A company may not want to lose business by setting its rates too high. On the other hand, it also may wait until it can review its historical claims experience under the new law to avoid setting its rates too low. Uncertainty regarding whether the Legislature will allow the new cost controls to remain in place also could prompt insurers to charge higher rates for PIP coverage, all other things equal.

Our initial analysis suggests that some drivers are benefiting from substantial reductions in their premiums due to the reform legislation. The savings that any particular driver will achieve depends on many things including their choices on PIP coverage, liability limits, and deductibles. With the average premium falling by almost 20% from 2019 to 2022, we expect that some drivers are seeing much larger premium reductions, e.g., drivers who have opted out of PIP coverage. Rates are rising again for several reasons but this does not mean that the reforms have not had desirable effects if premiums are still lower than they would be otherwise for many drivers.

On July 11, 2022, the DIFS issued a press release touting the cost savings and other benefits that have been achieved under the new law.⁹¹ The press release stated that the reforms had generated more than \$1 billion in premium savings. It also stated that Michiganders received \$3 billion in premium refunds.⁹² According to the press release, more than 202,000 previously uninsured drivers took advantage of the law's amnesty

⁹⁰ Press release available at <https://www.michigan.gov/difs/News-and-Outreach/press-releases/2020/06/09/new-auto-insurance-rate-filings-approved-average-statewide-savings-exceed-new-law-requirements>.

⁹¹ Available at <https://www.michigan.gov/difs/news-and-outreach/press-releases/2022/07/11/governor-whitmer-state-leaders-celebrate-cost-savings-provided-by-auto-no-fault-reform-law>.

⁹² To place these savings in perspective, auto insurers in Michigan collected \$9.1 billion in direct premiums written in 2021.

period to buy coverage without paying a penalty. Further, 46 companies or their affiliates received authorization to enter Michigan's market.

In addition to the premium savings that many Michigan drivers could be seeing, the premium reductions available could be reducing the number of uninsured drivers as indicated in the DIFS press release. If auto insurance becomes more affordable for certain drivers, they should be less likely to go without insurance, all other things equal. Further, some people who did not own a car because they could not afford the cost of insurance may now be able to purchase a vehicle. Having a car could help some people to become employed or get a better job.

One issue that has been raised concerning the new law is how well drivers are covered for the medical expenses they incur if they are injured.⁹³ To the extent that someone relies on their health insurance to cover their medical costs from an auto accident, they will be subject to out-of-pocket payments such as deductibles, co-pays, and coinsurance. This should not be a big concern for people with health insurance with low out-of-pocket payments. This could be a problem for drivers with high out-of-pocket payments in their health plans and something they need to consider in choosing their level of PIP coverage.⁹⁴

Beyond the issue of out-of-pocket payments, the limits on private health insurance and Medicaid should not be an issue. Private health insurance obtained through an employer or purchased by an individual has no limit on the total amount of expenses

⁹³ See, for example, Kaffer (2022).

⁹⁴ Out-of-pocket payments can be especially large for those with traditional Medicare coverage (Parts A, B, and D). Traditional Medicare functions much like a hospital-surgical expense plan, which is an older and outdated form of health insurance that does not provide broad major medical coverage that is typical of most private health insurance plans.

payable. There could be a problem for drivers who rely on traditional Medicare for their health insurance coverage. There are limits on traditional Medicare benefits that can be addressed through purchasing a Medicare Supplement policy. Medicare Advantage plans function essentially like private major medical health insurance so limits should not be a concern for people with this coverage. In early 2023, there were 2.2 million Medicare enrollees in Michigan and of these enrollees, 59% were in Medicare Advantage plans.⁹⁵⁹⁶

Another significant issue could be the expenses associated with custodial care and other types of care that are typically not covered by health insurance.⁹⁷ Custodial care is the assistance that someone receives to help them with daily living activities, such as bathing, dressing, etc. This type of care is different than the home nursing care that a person would receive such as the administration of medications, physical therapy, etc. Home nursing care is typically covered by health insurance, but custodial care is not.⁹⁸⁹⁹ This could be an issue even for drivers who opt for \$50,000 in PIP coverage and do not coordinate their health insurance with their auto insurance. In this instance, a person's auto insurance would be treated as their primary source of coverage for their medical expenses. Hence, if someone incurs significant medical expenses due to an auto accident, the medical coverage under their auto policy could be exhausted by these expenses leaving little or no funds left for custodial care. There is a provision in the new law that allows Michigan

⁹⁵ Available at <https://www.kff.org/medicare/state-indicator/total-medicare-beneficiaries/>.

⁹⁶ The proportion of people enrolled in Medicare Advantage has been trending upward as many see this as superior to traditional Medicare. One catch with Medicare Advantage plans is that they typically use a managed care model (PPO or HMO) which limits the in-network providers that enrollees can use.

⁹⁷ The annual cost of nursing home care in Michigan can easily exceed \$100,000 depending on the level of care.

⁹⁸ Long-term care insurance is designed to cover the costs of custodial care. However, relatively few people buy this coverage because of its high cost and young people rarely purchase this coverage.

⁹⁹ Medicaid will cover the custodial care of individuals who have essentially exhausted all their assets. However, only a limited number of nursing homes are qualified to accept Medicaid patients.

residents to sue at-fault drivers for damages that exceed their PIP limits that we discuss below.

There is another potential problem with respect to how drivers are allowed to opt out of PIP coverage. In applying for a new insurance policy or renewing an existing one, a vehicle owner is required to submit a form to their insurer that certifies that they and all other persons insured under the policy have qualifying health insurance coverage. It is possible that some vehicle owners will provide false information on this form, e.g., state that they have qualifying health insurance when they do not.¹⁰⁰ A vehicle owner also could truthfully state that they have qualifying health insurance when they apply for insurance or renew their policy, but their health coverage is subsequently terminated. Developing a sufficiently robust system for verifying that someone has and is maintaining health insurance coverage could be challenging.

We must note that while at least some Michigan drivers may have obtained substantial savings under the new law, other payers of medical expenses are likely seeing increases in their costs. These other payers include employers who offer health insurance to their employees, Medicare, and Medicaid.¹⁰¹ Cost increases for these payers will be limited to the extent that their plans exclude coverage for medical expenses arising from auto accidents.¹⁰²

¹⁰⁰ Insurers could require insurance applicants to document that they do have qualifying health insurance.

¹⁰¹ The Michigan Senate Fiscal Agency estimated that Medicaid costs could increase 0.13% annually over a ten-year period due to the reform legislation. The actual amount of this increase could be higher or lower depending on drivers' PIP choices. Medicare costs also will likely increase but there are no estimates of how much this will be. For employer-based plans, employee contributions for their health care coverage also could increase. Analysis available at <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/Senate/pdf/2019-SFA-0001-F.pdf>.

¹⁰² It is possible that some employers may amend their health insurance plans to remove such exclusions, but it is uncertain as to how many will do this.

The cost of liability coverage also could increase if drivers with low amounts of or no PIP coverage who are injured in accidents caused by others are more likely to sue those at fault. The new law allows injured persons, if they are Michigan residents, to sue at-fault drivers for medical expenses and lost wages that exceed their PIP limits even if their injuries do not meet the verbal threshold. One justification for this provision is that it gives injured persons a means of recourse to recover excess damages not covered by their own insurance. Additionally, all other things equal, this provision could prompt more drivers to choose low PIP limits. However, this provision also effectively weakens the application of the verbal threshold and could lead to more litigation and higher liability insurance costs.

Indeed, there is anecdotal evidence that some Michigan drivers are buying umbrella liability policies or increasing their umbrella liability limits in response to the new law.¹⁰³ It appears that these drivers are concerned that, with some drivers purchasing lower PIP coverage or opting out of it entirely, they are more likely to be sued if they cause an accident that injures someone who has lower PIP limits or no PIP coverage.

2. Limits on Reimbursement Rates

Reimbursement rates also changed for medical providers. Under the new law, insurers are only required to reimburse medical and rehabilitation providers for services rendered at 200%-250% of Medicare reimbursement rates. For most providers, the maximum reimbursement rate started at 200% and dropped each year by five percentage points to 190% of Medicare rates after July 1, 2023, where it will stay. The limits on

¹⁰³ “After Michigan Auto Insurance Overhaul; Some Drivers Grab Umbrella Liability Policy,” *Detroit Free Press*, January 20, 2022. Premiums paid for umbrella liability coverage are not included in auto insurance premiums.

reimbursement rates are higher for certain medical facilities such as hospitals with a high percentage of indigent patients and stand-alone rehabilitation facilities that specialize in treating traumatic injuries. Beginning July 21, 2021, these facilities were allowed to charge up to 230% of Medicare rates; this rate dropped to 220% by 2023. Additionally, certain facilities were allowed to charge up to 240% for emergency medical services starting in 2021, falling to 230% in 2023.

If Medicare does not provide an amount payable for a treatment, then a provider's reimbursement was initially capped at 55%-78% of their scheduled fee for the treatment in effect on January 1, 2019 for the period July 1, 2021 through July 1, 2022. As with the scheduled fees for services covered by Medicare, certain facilities receive a smaller haircut on their regular fee. For the sake of simplicity, we will term this the "55% rule." For the following year, the lower end of this range dropped to 54%, and then dropped to 52.5% for treatment provided after July 1, 2023. Some medical providers that specialize in post-acute care have expressed concerns that the reimbursement rates that insurers are now allowed to use for services not covered by Medicare are insufficient to cover their costs of providing care.¹⁰⁴ These concerns are articulated by the Coalition Protecting Auto No-Fault (CPAN).¹⁰⁵ In conversations with JC Reindl – a reporter with the Detroit Free Press who has written extensively on auto no-fault issues and reforms – we learned that this haircut for non-Medicare-coded services is of much greater concern to medical providers than the scheduled reimbursement rates. Indeed, this is one of the two cost controls that were challenged in the Andary lawsuit.

¹⁰⁴ See, for example, "Uncertainty Looms for Hospitals Under New Auto Insurance Law," *Crain's Detroit Business*, June 2, 2019. The Michigan Hospital Association (MHA) also has taken a position on the no-fault reforms available at <https://www.mha.org/newsroom/mha-ceo-report-auto-no-fault-our-work-continues/>.

¹⁰⁵ CPAN's website can be accessed at <https://protectnofault.org/>.

The Michigan Public Health Institute (MPH) conducted a study – consisting of two surveys – on the impact of the new fee structure on the availability of services for people with catastrophic injuries resulting from a car crash.¹⁰⁶ While the results of the studies may have had greater implications for legacy insureds, they also provide some indication of how providers could be reacting to the application of the contested controls for all insureds.

In the first survey, 349 providers participated, representing 273 unique organizations that collectively had more than 16,296 employees and that served more than 16,753 patients before July 1, 2021. The key results from this survey were:

- Out of 11,733 employees from the 140 organizations that provided employment data, 3,049 (26%) jobs were eliminated;
- Out of 16,751 patients served by the 208 organizations that provided patient discharge data, 1,548 (9%) patients had to be discharged;
- Top services provided were case management, private duty/attendant care, outpatient therapy/treatment, and therapy services; and
- 263 (96%) organizations reported that their services were impacted by the 55% reimbursement cap.

In the second survey, 209 unique organizations participated, including 166 organizations that also participated in the first survey. The 73 organizations with data on the amount of revenue loss reported a combined total of \$81,366,027 loss in revenue during the last 12-month period. The 109 organizations with data on percentage of revenue loss reported an average of 41% loss of revenue during the last 12-month period. Out of 19,994 employees from the 154 organizations with employment data, 4,082 jobs (29% of all jobs) had been eliminated since July 2021. The 55% reimbursement cap affected the following operations of the organizations:

¹⁰⁶ The study was commissioned by the Brain Injury Association of Michigan (BIAMI).

- 140 (51%) had to significantly reduce their services and products;
- 96 (35%) cannot accept new patients with auto insurance funding;
- 30 (11%) had to discharge patients;
- 21 (8%) had to close operations completely; and
- 56 (63%) of them reported that they anticipated not being able to serve patients with auto insurance funding within the next 12 months.

The leader of the study – Dr. Clare Tanner – expressed her opinion on the effects of the no-fault reforms:

As months go by, the data clearly show that Michigan's brain injury care industry is continuing to shrink, and more and more patients are being impacted. In addition to the numbers, anecdotal perspectives submitted by care providers assert that they are continuing to lose money, are dealing with unnecessary barriers put up by insurance companies and are frustrated by a lack of assistance from state regulatory officials.

According to JC Reindl, some of the job losses claimed due to the reform's cost controls were family members of MCCA patients who had been hired by outside care providers. The services provided by these family members were billed at higher rates via these providers; these family members were then let go by these providers. Now these family members are being paid directly by insurance companies at the lower scheduled rates.

Additionally, for drivers who continue unlimited PIP coverage for medical services, insurers are not required to pay for more than 56 hours of home attendant care by family members; insurers can choose to pay for more than 56 hours in specific cases. Under the new law, family members can be paid based on the fee schedule used for medical providers. Previously, there was no fee schedule for services provided by family members so insurers were hampered in their ability to limit what they were required to pay. These provisions of the new law were added to address the concern that the reimbursement of family members

for home attendant care had been abused in some cases under the old law. To provide some perspective, home attendant care accounted for \$1.2 billion – 57% – of claim costs of the MCCA in 2018 (MCCA, 2018).¹⁰⁷

It is important to note that there has been litigation regarding whether the 55% rule and the 56-hour limit for family care should apply retroactively to accidents and injuries that occurred before the new law took effect.¹⁰⁸ Two suits were filed against insurers: 1) *Andary v. USAA Casualty Insurance Company*, and 2) *Krueger v. Citizens Insurance Company of America*. These suits were combined into one suit which had made its way to the Michigan Supreme Court (MSC). The MSC issued its ruling on the Andary case on July 31, 2023 which we discuss below.

The plaintiffs in this suit made two arguments. One argument was that the plaintiffs suffered injuries prior to the effective date of the new law. They contended that the provisions of the law that limit reimbursement for their medical expenses cannot be applied retroactively to their claims, even for services provided after the law changed. The plaintiffs' second argument was that the insurers' application of the new law would violate the insurance policies that were in effect when they were injured.

The defendants in this suit argued that the amendments to Michigan's no-fault law with respect to the limitations on medical reimbursements did apply to the plaintiffs' claims and did not violate the applicable contracts. The trial court sided with the defendants but its ruling was reversed by the Michigan Court of Appeals (COA) in a 2-1 decision.¹⁰⁹ The

¹⁰⁷ This figure includes the care provided by a residential facility, care within a home provided by an agency, and care within a home provided by a person's family members. Family attendant care accounted for \$210.7 million – 17.7% – of the MCCA claims payments in 2018.

¹⁰⁸ See “Appeals Court: Michigan’s No-Fault Overhaul Does Not Apply to Previous Crash Survivors,” *Detroit Free Press*, August 25, 2022.

¹⁰⁹ The Court’s opinion is available at https://www.courts.michigan.gov/4aaeb4/siteassets/case-documents/uploads/opinions/final/coa/20220825_c356487_97_356487d.opn.pdf.

defendants appealed the ruling of the appeals court to the MSC. The MSC held a hearing on the case on March 8, 2023 and issued its decision on July 31, 2022.¹¹⁰ The Court ruled for the plaintiffs in a 5-2 decision. It is likely that, if the MSC had ruled for the defendants, then Democrats in the Legislature would have introduced legislation to invalidate the contested controls for “legacy insureds” – people injured before the law changed.¹¹¹

According to the MCCA, as of September 2022, there were 14,782 victims of pre-amendment auto accidents whose benefits would have been reduced in terms of lower reimbursements for expenses for covered services if the defendants in the Andary suit had prevailed. In a note to its 2022 financial statement, the MCCA indicated that a ruling favorable to the plaintiffs would compel it to increase its reserves for losses and loss adjustment expenses by \$3.7 billion. Michigan drivers are subject to a \$48 MCCA assessment in 2023, due in part to the expectation that the defendants would lose their appeal.¹¹² Presumably, the effects would have been the same if the objectives of the plaintiffs were accomplished legislatively.

The concerns that motivated the plaintiffs in the Andary suit also could affect the limits on reimbursement rates going forward. The Supreme Court had directed the parties to address whether the Court of Appeals erred when it ruled that the application of the new law to the plaintiffs would violate the contracts clause of the Michigan Constitution. In its ruling, the MSC affirmed that the reimbursement limits as enforced by insurers reduced

¹¹⁰ See “Michigan Supreme Court to Hear No-Fault Insurance Case: What’s at Stake,” *Detroit Free Press*, March 8, 2023.

¹¹¹ “Gov. Whitmer, State Democratic Lawmakers to Push for These Policies Next Session,” *Detroit Free Press*, November 14, 2022. See also, “No-Fault Insurance Reform May Be in Play as Democrats Take Power in Michigan, Bridge Michigan available at <https://www.bridgemi.com/michigan-government/no-fault-insurance-reform-may-be-play-democrats-take-power-michigan>.

¹¹² Other reasons for this assessment include recent declines in the stock market and the \$400 refunds that were issued earlier in 2022. See “Michigan Drivers Face New \$48 Fee in 2023, No More \$400 Checks,” *Detroit Free Press*, October 14, 2022.

legacy insureds' benefits in a way that violated their contractual rights. The opinion states that:

Their vested contractual right to continuation of those benefits at pre-amendment levels cannot be stripped away or diminished when the Legislature has failed to clearly state its intent to do so.

Importantly, the MSC also opined that the plaintiffs lack standing to move forward with their due process and equal protection challenges with their prospective claims. Its opinion states:

As to Andary's and Krueger's due process and equal protection challenges to prospective application of the 2019 no-fault amendments, we agree with the Court of Appeals that there is no further relief that can be provided to these plaintiffs and thus that they lack standing to move forward with their prospective claims. Plaintiffs also lack standing to maintain the alleged due process and equal protection challenges to MCL 500.3157(7) and (10) on behalf of nonparty future patients and other medical providers.

Finally, the MSC reversed the COA's decision to revive Eisenhower's due process and equal protection challenges and to remand for discovery. The MSC's opinion states:

Contrary to the conclusion reached by the Court of Appeals, discovery is not necessary to resolve these claims under rational basis review. Curbing escalating PIP benefits costs and lowering insurance premiums are legitimate governmental objectives, and the new fee schedules contained in MCL 500.3157(7) are reasonably and rationally related to accomplishing these objectives regardless of their effectiveness or wisdom. Accordingly, we reinstate the circuit court's dismissal of plaintiffs' constitutional challenges to prospective application of the amended statutes, albeit for slightly different reasons.

Hence, the Supreme Court's ruling in Andary appears to have settled the matter with respect to whether the contested cost controls apply to legacy insureds. The Legislature, in its present configuration, is unlikely to come back and clarify that it did intend that these controls applied to legacy insureds. What remains open is the issue of

whether these controls should be reversed or modified for persons injured after the law changed. Groups such as CPAN have indicated that they intend to pursue legislation to this effect and they may have a receptive audience for such legislation among many Democrats.

If such legislation is passed, it will affect rates looking forward. Insurers will need to raise their rates to adjust for higher claim costs stemming from the elimination or tempering of the controls in question. In turn, this will raise premiums for drivers who continue to purchase some amount of PIP coverage. This could induce more drivers to lower their PIP coverage or opt out of it entirely.

A thorough evaluation of the concerns expressed by medical providers regarding the reimbursement rates and the challenges to the 56-hour per-week limit for family-provided care is beyond the scope of this paper, but we can offer an observation. Medical providers already are constrained by the reimbursement rates used by private health insurers, Medicare, and Medicaid. Additionally, the scheduled reimbursement rates under no-fault exceed the scheduled fees for workers compensation. Consequently, assuming their marginal costs are adequately covered by these payers, the issue for providers is how they cover and allocate their overhead (fixed) costs. Under the old system, providers had become accustomed to relying on auto insurance to cover an inordinate portion of their fixed costs. They are not able to do this to the same extent under the new law. Michigan drivers could contend that this is only fair. Nonetheless, if medical providers are being truthful with respect to the concerns they have expressed, it appears that some are being forced into cutbacks of their services and facilities. This reflects one of the tradeoffs between the adverse and beneficial outcomes of the no-fault reforms that policymakers need to consider.

Assessing the reasonableness of and recommending alternatives to these two cost controls are also beyond the scope of this paper. However, we can offer some observations on these provisions in the law that policymakers and other stakeholders may wish to consider in determining if and how they might be modified. To begin, we have sought to determine the origin and rationale for the 55% rule. We have been told by insurance industry representatives that this rule was not something they suggested although they defend it now. Our inquiries suggest that the idea for this rule came from close advisors to the Governor in the final negotiations on the reform legislation. We have written to the Governor's office seeking an explanation but have not received a response.

It does not appear that the 55% rule was vetted or was a subject of negotiation between reform proponents and medical providers. Rather, we have been told that medical providers expressed strong opposition to this rule when they learned that it had become part of the final legislation but that their concerns went unheeded. It seems that, in retrospect, if an alternative approach to determining reimbursement rates for non-Medicaid services had been developed and negotiated with buy in from providers, at least one element of the Andary suit would have been moot. Whether a negotiated compromise could have been achieved in crafting the original reform legislation is a matter of speculation.

Alternative approaches have been proposed that would stop short of eliminating the 55% rule altogether. It seems these proposals would be a starting point in any legislative negotiations that occur in the Fall 2023. Under H.B. 4486 (2021), rehabilitation clinics would be paid the lesser of the amount payable under the "Michigan auto no-fault rehabilitation clinic fee schedule" or the average amount charged by the clinic on January

1, 2019.¹¹³ The fee schedule would be based on a survey of rates of accredited rehabilitation clinics in the state. The objective would be to set fees that would approximate the same kind of relationship between the scheduled fees and Medicare fees that the law has established for services covered by Medicare, i.e., a given fee would be roughly 200% of what Medicare would pay if there was a Medicare fee for the treatment. Such a fee schedule has already been developed for 2020 and is available at <https://mifeescheduleproject.org/wp-content/uploads/2021/03/Michigan-Auto-No-Fault-Rehabilitation-Clinic-Fee-Schedule-V6.2.pdf>.¹¹⁴

H.B. 4992 (2021) took a simpler approach to determine the reimbursement rates medical providers can use for services not covered by Medicare. The key provision in this bill states, for a given treatment or training, the provider is not eligible for payments greater than the:

... average amount charged for the treatment or training in the relevant geographic region as determined by the 3 most recent market surveys conducted under section 3157c. However, if the person had a charge description master in effect on January 1, 2019, the person is not eligible for payment or reimbursement of more than the amount payable for the treatment or training under the person's charge description master in effect on January 1, 2019.

In the bill, the "relevant geographic region" is defined as the area that is within 50 miles from the location where the person rendered the treatment or training. The DIFS would be charged with conducting the annual surveys needed to inform the administration of this approach.

¹¹³ A copy of the bill which was introduced in March 2021 is available at [http://www.legislature.mi.gov/\(S\(jg4aaejpo00nmfyc2nkofjfa\)\)/mileg.aspx?page=GetObject&objectname=2021-HB-4486](http://www.legislature.mi.gov/(S(jg4aaejpo00nmfyc2nkofjfa))/mileg.aspx?page=GetObject&objectname=2021-HB-4486). There was no further action on the bill after it was introduced.

¹¹⁴ A description of the project that developed the fee schedule is available at <https://mifeescheduleproject.org/>.

To our knowledge, no one has conducted any research on how either of these bills would affect the services received by auto accident victims or how they would affect claim costs and premiums. Presumably, the provider community and trial bar believe that these bills would provide sufficient reimbursement of the cost of providing post-acute care that is not covered by Medicare. The questions that remain unanswered are whether the objectives of this proposed legislation could be achieved at a lower cost and how it would affect claim costs and premiums going forward.

The origin of the 56-hour per week limit on home attendant care provided by family member is more apparent as this same limit exists for workers compensation. The complaint about this limit is that some severely injured accident victims require more than 56 hours of care per week. An insurer can choose to compensate family members for more than 56 hours a week but does not have to do so. Otherwise, severely injured persons might receive care at a nursing or rehabilitation facility. Such facilities may be reluctant to accept new patients under the 55% rule but if higher fees are allowed then this problem may go away. The other issue is that some injured persons may fare better at home than in a facility. We are not aware of any research on or data that has been published that would shed light on how often the 56-hour limit is invoked and how it affects accident victims.¹¹⁵

Resolving the issues concerning payments for family-provided home attendant care could prove challenging. Removing the 56-hour limit or setting it at a much higher level invites the kind of abuse that occurred prior to the law change. One possible option would be to establish an administrative process for adjudicating disputes over family care rather than forcing a family to sue in court. This could be less costly and faster than using the

¹¹⁵ In amicus briefs filed in the Andary case, there are a number of anecdotal stories of specific cases of accident victims receiving care at home but there are no statistics on their total number.

regular courts. Indeed, workers compensation relies on an administrative law system to resolve disputes over benefits due injured workers.

The two bills summarized above do not exhaust the possible approaches to determining the reimbursement rates for non-Medicare services under no-fault and neither address the criticism of the limits on family care. In essence, there are important tradeoffs between the extent and quality of care received by people injured in auto accidents and the cost of insurance for all consumers. Historically, Michigan has favored the former at the expense of the latter, but this had become untenable for many. Consumer Research Council (2013) provides a thorough discussion of these tradeoffs and the policy options to address the tension between “good” medical care and insurance costs.

3. Utilization Controls

The new law has enabled insurers, including the MCCA, to institute greater control over the utilization of medical services arising from auto accidents. Insurers are allowed to conduct utilization reviews which refer to an insurer’s initial evaluation of the appropriateness of both the level and the quality of treatment, products, services, or accommodations provided to an insured under their PIP coverage based on medically accepted standards. A medical provider can be required to submit necessary records and other information concerning treatment or service they have provided. A provider that knowingly submits false or misleading records or other information to an insurer or the DIFS commits a fraudulent insurance act and is subject to sanctions.

It appears that one intention of the new provisions is to flag and require medical providers to justify services that go beyond what is normally provided for a particular injury. Specifically, under the new law, if a provider provides services that are not usually

associated with the diagnosis or condition for which a patient is being treated, the insurer may require the provider to explain the necessity or indication for the services.

The DIFS oversees the utilization review process. Auto insurers must have a certified utilization review program that complies with the Department's utilization review administrative rules and is subject to its approval. Insurers are also required to submit an annual report to the DIFS detailing its review program and activities. Additionally, insurers' utilization decisions are subject to appeal to the DIFS.

We are not aware of any published evaluations of how well utilization review is working under the new law and how it may be affecting the cost and quality of medical care provided. Anecdotally, our discussions with insurers indicate that their enhanced ability to control utilization has helped to lower PIP claim costs. As with the limits on reimbursement rates, this is an area that warrants further study.

4. Pedestrians and MotorcyclistsThe new law has provisions that affect the sources and amounts of recovery for pedestrians and motorcyclists injured in accidents.¹¹⁶ The reform legislation changes PIP medical benefits for a pedestrian who has been hit by an auto. If the pedestrian or his or her spouse or resident relative has an auto policy, their PIP medical coverage will be limited to the PIP coverage limit in the applicable policy.¹¹⁷ If the pedestrian has no auto insurance, they can apply for benefits through the Michigan

¹¹⁶ In 2020, in Michigan, 170 (15.7%) of persons killed in auto accidents were motorcyclists and 171 (15.8%) were pedestrians (NHTSA, 2021). Nationally, 3.6% of persons injured in accidents were motorcyclists and 2.4% were pedestrians.

¹¹⁷ The applicable policy is in this order: the pedestrian's own policy, the pedestrian's spouse's policy, the policy of a resident relative.

Assigned Claims Plan (MACP). Under the Plan, the maximum PIP medical benefits available to the pedestrian are \$250,000.¹¹⁸

Motorcyclists will continue to first seek no-fault benefits from the insurer of the *owner* of the motor vehicle involved in the accident and then the insurer of the *operator* of the vehicle. After that, injured motorcyclist can turn to their own insurer. If no coverage is available through any of these sources, the injured cyclist will need to file a claim for no-fault benefits with the MACP.

However, the new law has changed the amount of PIP benefits available to a motorcyclist who has been injured in a crash with a car or truck. An injured motorcyclist's PIP medical benefits are limited by whatever no-fault coverage level exists in the auto insurance policy from which they are seeking benefits. This means that even if the motorcyclist has unlimited PIP coverage on his or her own motorcycle or vehicle, the benefits to which he or she will be entitled is first limited by the coverage levels chosen by the owner or driver of the vehicle involved in the crash. If no coverage is available from either of these sources, then a motorcyclist can go to their own policy. Also, as for pedestrians, MACP benefits for motorcyclists are limited to \$250,000.

Medical coverage for motorcyclists is particularly important given the types and severity of injuries that motorcyclists suffer in accidents such as head and spinal cord injuries. Michigan also is one of a number of states that does not require adult motorcyclists to wear a helmet. Not wearing a helmet increases the likelihood that a motorcyclist will suffer severe head injuries if they are in an auto accident (Coben et al., 2007). This potentially makes the limits on PIP benefits for motorcyclists who do not wear a helmet a

¹¹⁸ This provision of the Act took effect on July 11, 2019.

greater concern. If a motorcyclist is severely injured in an accident caused by another driver, they could seek recourse by suing the at-fault driver but the driver may lack sufficient insurance or assets to provide for an adequate recovery.

5. Mandatory Rate Reductions

The reform legislation also requires an insurer to implement rates that provide average premium reductions per vehicle from their rates for PIP coverage that it had in effect on May 1, 2019; these mandated rate reductions remain in effect till July 1, 2028. These reductions are as follows: 1) 45% or greater for policies with a \$50,000 limit; 2) 35% or greater for policies with a \$250,000 limit; 3) 20% or greater for policies with a \$500,000 limit; and 4) 10% or greater for policies with unlimited coverage. Drivers who opt for no PIP coverage could receive premium reductions as much as 50% as PIP accounted for about 40%-50% of drivers' auto insurance bills prior to the law change. The DIFS reports that insurers filed for larger rate decreases than those mandated by the new law. Additionally, the new law has significant implications for the MCCA. Under the new law, the MCCA does not have liability for PIP claims on policies with something less than unlimited coverage. Car owners who either opt out of PIP entirely or choose less than unlimited coverage only have to pay for the portion of the MCCA's assessment that is used for paying down its debt. This could change if limits on medical reimbursements to people injured with PIP coverage are constrained. Drivers who choose unlimited PIP coverage are currently required to pay an annual assessment of \$86 per vehicle. For FY2023, this assessment will be \$74 which will be coupled with a \$48 assessment for deficit recoupments that all insured drivers will pay.

6. Minimum Liability Insurance Requirements

The new law also raised the minimum liability insurance requirements for drivers. Previously, drivers were required to carry liability coverage with at least a \$20,000 per person limit, a 40,000 all-persons limit, and a \$10,000 property damage limit. After July 1, 2020, the minimum bodily injury liability coverage limits were increased to \$50,000 per person and \$100,000 for all persons.¹¹⁹ Insurers must also offer bodily injury liability coverage with limits of \$250,000 per person and \$500,000 for all persons. A driver's liability coverage defaults to these higher levels unless they choose lower limits.

One argument for raising the minimum liability insurance requirements is that the change to PIP requirements increases the likelihood that drivers will be sued for accidents they cause. The new law allows injured persons to sue at-fault drivers for damages that exceed their PIP limits. A second argument for higher liability limits is that they will help injured persons to recover more of the damages they suffer from the insurance of at-fault drivers. A vehicle owner can purchase underinsured motorists coverage but this comes at a cost.

The downside of higher liability insurance requirements is that they increase premiums for vehicle owners who would otherwise choose lower amounts of coverage. The premium costs of higher limits could be particularly burdensome for low-income car owners and could cause more of them to drop their insurance. Consequently, policymakers have to consider the tradeoff between the greater protection provided by higher limits against their costs and effects on certain drivers. We expect that this aspect of the new law

¹¹⁹ Only two states – Alaska and Maine – have minimum liability insurance requirements this high. Some states also require vehicle owners to purchase uninsured/underinsured motorists coverage but Michigan does not.

has raised premiums for this coverage for drivers who had previously opted for lower liability limits.

Further, the increase in minimum liability insurance requirements will likely lead to higher liability claims costs, all other things equal. This is not just a matter of higher amounts of insured losses. Some injured persons could choose to sue for higher damages than they would otherwise if the at-fault driver has higher liability limits. Hence, while higher minimum insurance requirements will provide greater protection for at-fault drivers, they could also lead to more lawsuits and higher court awards and settlements. Anticipating an increase in BIL claim costs, insurers may be raising premiums for this coverage that will partially offset the savings from lower PIP limits.¹²⁰

B. Rate Regulation and Rating Factors

There have been long-standing debates regarding the appropriate level of regulation of auto insurance rates and permissible rating factors. Insurance economists tend to favor less regulation and consumer advocates tend to favor more regulation. These different views of the welfare effects of insurance rate regulation are reflected in our evaluation of the changes Michigan has made for auto insurance.

In his testimony before the Michigan House Select Committee on Insurance, Douglas Heller identified the elements of what he believes to be best insurance regulatory practices (Heller, 2019).

Regarding “stronger oversight,” he recommends:

- “Prior approval of rates, rules, and forms.”
- “Clear standards to determine rate appropriateness.”
- “Efficiency standards.”

¹²⁰ Increased costs due to higher minimum liability insurance requirements could be offset somewhat by lower costs for underinsured motorists (UIM) coverage.

- “Full transparency in ratemaking process – no “black boxes.”
- “Public participation.”

Regarding “consumer protections,” Heller commended:

- “Prioritize driving-related factors.”
- “Take all good drivers.”
- “Prohibit shifting good drivers to no-preferred, higher rate subsidiaries.”
- “Enforce anti-trust laws.”
- “Strong consumer protection ethic at Department.”

Most insurance economists question the need for and value of strict regulation of rates in personal lines insurance markets. This stems from their view that these markets are workably competitive. Economists also are concerned that prior approval regulation can be used to arbitrarily constrain rates below a competitive level resulting in rate inadequacy and contributing to availability problems. Excessive rate constraints can be motivated by public pressure from interest groups and consumers to lower premiums (Boyer, 2000).

1. Prior Approval Rate Regulation

The reform legislation moved Michigan back from a FU to a PA system for regulating auto insurance rates. Michigan had an FU system for auto, home, and workers compensation insurance since the early 1970s. Over the last several decades, the trend has been for states to move from PA systems to "competitive rating" systems although this seems to be changing.¹²¹ Proponents of competitive rating argue that strict regulation of rates should be unnecessary if an insurance market is competitive. By implication, proponents of PA regulation believe that insurance markets are not sufficiently competitive

¹²¹ Generally, states with something other than PA systems are considered to have "competitive rating" systems. States falling into this category include those with FU, Use and File, and Flex Rating laws as well as states that require no rate filings.

to ensure that rates are not excessive or unfairly discriminatory without strict regulation. As we discuss in Section VI, the evidence indicates that Michigan's auto insurance market is workably competitive.

There is a considerable literature on the effects of rate regulation in auto and home insurance. Generally, this research has found that prior approval rate regulation per se has only had modest effects on auto insurance rates (See, for example, Harrington, 2004; Born et al, 2022). Studies have generally found that PA regulation has either decreased rates slightly or had no effect. Rate regulation may have a greater effect when regulators attempt to impose tight constraints on insurers' rates. However, because auto insurance markets are competitive, regulatory attempts to suppress rates below competitive levels or constrain rate structures (i.e., rate differentials between different rate classes) tend to harm rather than help consumers over the long term. Insurers will attempt to avoid offering insurance to drivers for whom they cannot cover their costs. Insurers also may find work-arounds for or find other ways to compensate for inadequate rates.

2. Prohibitions on Rating Factors

The new law also prohibits insurers from using several "non-driving" rating factors in pricing. One of the principal motivations for these prohibitions was the concern of some that insurers were engaging in unfair discrimination against certain groups of drivers, e.g., low-income drivers, minorities, drivers who live in Detroit and perhaps certain other cities, etc. Allegations that insurance companies unfairly discriminate against certain persons in auto and home insurance are long-standing and not confined to Michigan (See, for example, Hunter and Heller, 2017). Indeed, there is evidence that insurers did engage in redlining in the 1950s and 1960s. Whether they have done so since has been a matter of

considerable debate. In studies performed since the 1970s, insurance economists generally have not found evidence that insurers engage in unfair discrimination in the pricing of auto and home insurance (Klein, 2021).

The allegation of unfair discrimination or redlining does not hinge on intent per se. The marketing, underwriting, and pricing of an insurer can be alleged to have unfair and negative effects on certain groups even if this is not its intent.¹²² More specifically, certain rating factors that insurers typically use are alleged by some to be inherently unfair, i.e., they do not accurately reflect an insured's risk of having a claim and unreasonably penalize certain groups of drivers.

Some contend that the prohibited factors do not reflect a driver's risk of having a claim and unfairly punish low-income drivers and drivers in cities such as Detroit. There is little question that household income is statistically associated with home ownership, occupation, location, and credit scores. Similarly, people belonging to certain racial or ethnic groups are less likely to own a home, more likely to work in low-paying or "blue collar" jobs, tend to have lower credit scores, and more often live in places (e.g., older urban areas) where there are more auto insurance claims.¹²³¹²⁴ Hence, when insurers use these rating factors, it will appear to some that they unfairly discriminate against certain groups of drivers.

Insurers use several criteria to evaluate whether a certain variable will be an effective rating factor (Casualty Actuarial Society, 2019). First, a variable should be

¹²² The term "disparate impact" is sometimes used to characterize this type of alleged discrimination.

¹²³ "Detroit is America's Capital of Bad Credit," *Bloomberg*, October 14, 2016.

¹²⁴ In research by the Department of the Treasury, in the second quarter of 2022, the homeownership rate for White households was 75% compared to 45% for Black households and 48% for Hispanic households (available at <https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing>).

statistically significant, i.e., there should be a strong statistical association between the variable and the probability that a driver will have accidents and claims. Second, the groups identified by a variable should be as homogeneous as possible, e.g., people with bad driving records should not be grouped with people who have good driving records. Third, the data used for a particular group should be statistically credible meaning that the group should be large and stable enough to develop an accurate estimate of its risk. Further, an effective rating variable should be objective and verifiable as well as inexpensive to administer. For example, ideally, insurers would like to know the skill level of each driver, but it would be difficult, subjective, and costly to determine this. Hence, insurers use proxies for a driver's skill such as their age or years of driving experience. Consumer advocates believe that significant weight should be placed on a driver's record (e.g., points for driving violations, number of at-fault accidents, etc.) but insurers have not found a person's driving record to be as accurate a predictor of their accident risk as some seem to believe to be.¹²⁵

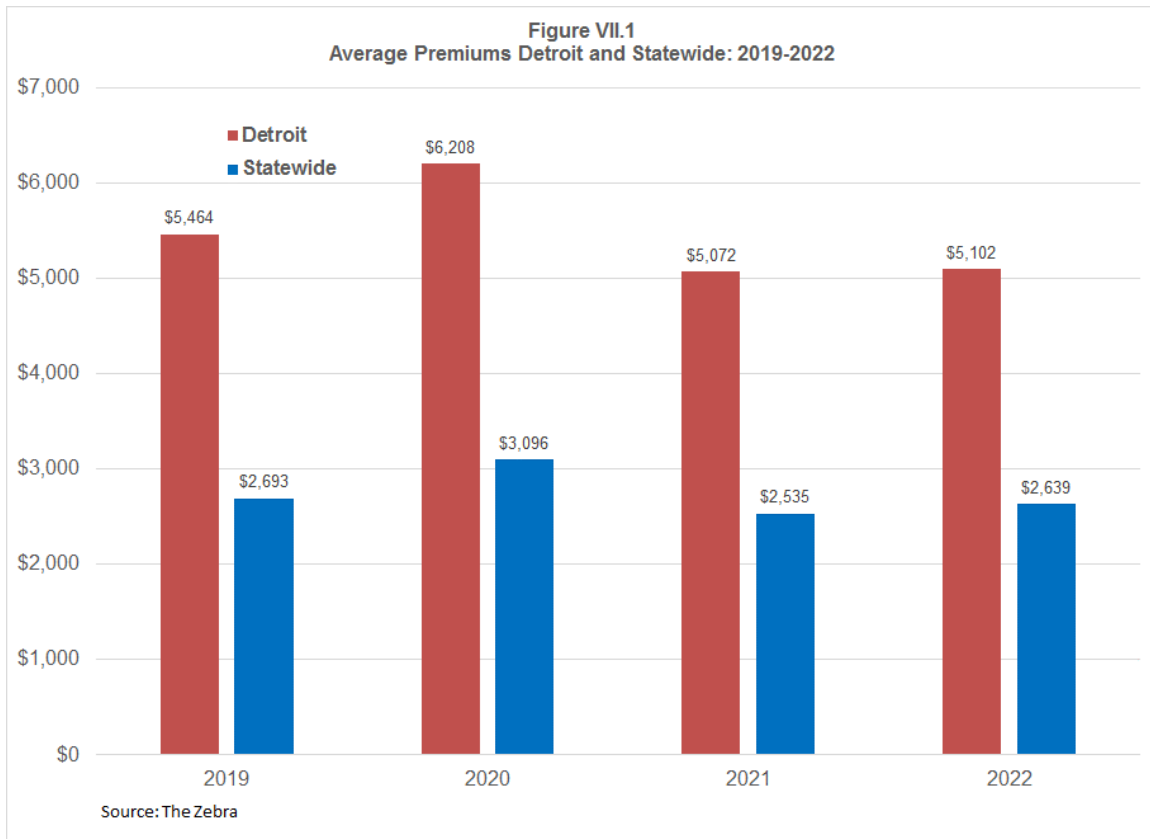
Insurers contend that their rating factors are not inherently unfair or discriminatory. Their data indicate strong statistical associations between these driver characteristics and their likelihood of having an auto insurance claim, all other things equal. Insurers' rating systems, albeit imperfect, are structured to attempt to accurately reflect a driver's risk, utilizing information that is readily available and verifiable. In a competitive market, insurers should be motivated to estimate and price each driver's risk as accurately as is feasible.¹²⁶

¹²⁵ This is probably more the case of points for minor driving violations and the first at-fault accident. If insurers see a pattern of more serious violations and/or multiple accidents, then a driver's risk becomes a major concern.

¹²⁶ If an insurer fails to accurately measure and price drivers' risk, they will be more prone to adverse selection and will lose business to insurers who are better at this.

It appears that some are disappointed that the new law has not delivered the premium relief to drivers in Detroit that they had hoped for. According to Kaffer (2022), premiums in Detroit “remain astronomically high, consuming about 18% of median household income.” The average auto insurance premium in Detroit represents 10.8% of the average personal income per capita in the city. Kaffer further states that Detroit Mayor Mike Duggan, who had been an early advocate for no-fault reform, admits that it has not done enough to bring Detroiters’ insurance rates down. At a June 2021 press conference Duggan, was quoted as stating that “Geographically, Detroiters are still being charged more.” Consequently, while premiums may have declined substantially for many drivers in the state, it appears that this view may not be widely shared by many Detroiters given their own experience.

Figure VII.1 compares the average auto insurance premium in Detroit with the statewide average premium for the years 2019-2022. The data indicate that the relationship between the average premium in Detroit compared to the statewide average premium has remained approximately the same over this period. In 2019, the Detroit premium was roughly double the state premium. In 2022, the Detroit premium was 93% higher than the statewide premium. Hence, while the average driver in Detroit has received some rate relief, we can also see why some Detroit drivers may feel that they are still paying too much.



We expect that insurers, under the new law, are seeking to continue to estimate and price each insured's risk as accurately as feasible without the availability of the prohibited rating factors. By necessity, insurers are compelled to adjust the weights they use for the rating factors they still are allowed to use. We can only speculate as to how these weights have changed but it is possible that at least some of the allowed rating factors are serving as proxies for the prohibited rating factors.¹²⁷

It is helpful here to consider the rating factors that insurers typically use and are still allowed to use under Michigan's new law. These factors include location, age, years of driving experience, prior driving violations, prior at-fault accidents and claims, vehicle

¹²⁷ To elaborate, in statistical analysis, when a model omits a relevant and significant variable, other variables in the model may reflect the effect of the omitted variable. Casualty Actuarial Society (2019) discusses how allowed rating variables may be used as proxies for prohibited rating factors and the implications of this for different groups of drivers.

use, miles driven, and whether the insured had previous insurance coverage. The type of vehicle that is insured and the coverages and deductibles chosen also will affect a driver's premium. Additionally, drivers are eligible for certain premium discounts such as for being a good student, taking a defensive driving course, maintaining insurance with the same company for several years (loyalty), and purchasing other policies from the same company such as homeowners insurance. There are also vehicle-related discounts for things such as anti-theft devices and anti-lock brakes.

The allowed rating factors may serve as proxies for the prohibited rating factors. Insurers typically use historical data on claims with adjustments to project their rate needs in the future as well as what they believe should be the rate differentials between different groups of insureds, e.g., older versus younger drivers, drivers with driving violations versus those without violations, etc.¹²⁸ We can consider how an allowed factor may serve as a proxy for a prohibited factor with the following example.

In Michigan, insurers are now prohibited from using education as a rating factor but can use location. Let us assume that drivers with higher education levels tend to have fewer and less severe auto accidents than drivers with lower education levels. To the extent that there is a statistical association between education and location (i.e., people in certain rural and urban areas tend to have less education than people in other areas), the location variable will "pick up" some of the effect of education on claim frequency and severity in insurers' statistical analysis. This could result in even greater rate differentials between locations where drivers tend to have lower levels of education and locations where they

¹²⁸ For example, insurers will analyze the differences between the claim frequency and severity among drivers based on their age or years of driving experience, controlling for all other factors, to determine how to set rate differentials for these variables, holding other variables constant.

tend to have higher levels of education, all other things equal. Other rating factors that insurers are still allowed to use also may assume some of the effects of education. We can only speculate on how this will play out for all rating factors as it will depend on what insurers' historical data indicate and how it is used.

Consequently, the prohibition of certain rating factors could create or increase cross-subsidies flowing from low-risk drivers to high-risk drivers. In other words, given that insurers' pricing systems are imperfect regardless of how they are constrained, the prohibition of certain rating factors could lead to even greater discrimination against certain drivers that some would consider unfair. To the extent that they are allowed to do so, insurers also could respond to restrictions on rating factors through underwriting, i.e., finding ways to avoid covering drivers for whom they are not allowed to charge an adequate rate.

It should not be surprising that consumer advocates and other stakeholders are disappointed that the new law did not produce the premium reductions in Detroit that they were hoping for. Arbitrary and misguided restrictions on rating factors and rate differentials that fail to address the underlying economic costs of providing coverage to different groups of drivers are doomed to fail. This is a lesson that regulators in many states have learned through trial and error but a mistake that will likely continue to be repeated.

C. Marketing and Underwriting

Importantly, the reform legislation contains provisions that pertain to insurers' underwriting practices. These provisions are important because they could have implications for the availability of insurance and how different insureds will be affected by the new law. Insurers are not allowed to refuse to insure, refuse to continue to insure, or

limit the amount of coverage available based on the location of a vehicle. Such actions are deemed to constitute "redlining" and are prohibited. Further, insurers are not allowed to deny coverage to a driver because they had failed to previously maintain coverage. The concerns of Democrats and consumer advocates that insurers could or do engage in unfair discrimination led to these provisions in the new law.

On their face, these restrictions on insurers' underwriting do not appear to be problematic. With respect to underwriting based on location, insurers generally understand that basing decisions on offering coverage to a vehicle owner strictly based on their location would be asking for trouble from most regulators. This said, it is also the case that many insurers will tend to view some areas more favorably from a risk or a business perspective than others. Some insurers may seek to concentrate their business in low-risk areas while others may specialize in high-risk areas with appropriate rate structures. Underwriting insurance in older urban areas like Detroit can be particularly challenging. Non-standard insurers tend to be better positioned to take on such challenges.

Insurers' geographic preferences will be reflected in their marketing activities. They will target their marketing to areas that they favor through measures such as where they have agents and their pricing of different areas. If insurers are restricted on these measures it could cause them to be concerned about rate inadequacy and being exposed to more risk than they are comfortable with. Hence, the implications of restrictions on geographic underwriting will depend, in part, on other regulatory constraints.

Not allowing insurers to refuse to insure a vehicle owner because he or she had not maintained previous coverage could be viewed as more problematic by insurers. There are at least a couple of reasons for this. Insurers tend to view drivers without recent coverage

as being higher risk; without recent claims history to review insurers tend to assume the worst. A second concern is that drivers who have previously terminated their coverage or let it lapse present a “persistency” problem. All other things equal, insurers tend to prefer drivers who consistently maintain coverage as this allows them to better recover their acquisition costs and other expenses associated with issuing a policy.

VIII. Summary and Conclusions

This paper provides an initial and high-level look into no-fault auto insurance reform in Michigan. This initial analysis reveals several things. One, prior to the enactment of the reform legislation, what car owners were paying for auto insurance in Michigan had been increasing at a fast pace and was much higher than what they were paying in other states. Two, high PIP costs appear to be the main culprit that had caused auto insurance premiums to be so high in Michigan. Three, it was the severity and not the frequency of PIP claims that has been the problem in Michigan. Four, Michigan's verbal threshold for liability claims appears to have acted to reduce auto insurance costs and premiums in Michigan relative to other states but any cost savings from this were swamped by high PIP costs prior to the reforms.¹²⁹ Five, Michigan has had a high number of uninsured motorists which is likely due, at least in part, to its high auto insurance premiums; the costs of the damages caused by uninsured motorists are borne by various parties including vehicle owners who buy auto insurance. Six, based on commonly used measures, Michigan's auto insurance market is competitive; lack of competition has not been the cause of the state's

¹²⁹ If such a weakening has occurred and is a matter of concern, this could be addressed through legislation that would clarify the Legislature's intent regarding the criteria that should be used in determining whether a liability claim meets the verbal threshold.

high insurance rates. Hence, we question whether, from a normative or practical perspective, it was necessary or beneficial to tighten the regulation of insurers' rates under the new law and prohibit certain rating factors.

Our initial evaluation of the likely effects of the reform legislation indicates that it is significantly reducing the costs of auto insurance for many Michigan drivers. How much the savings will be for any given driver will depend on the amount of PIP coverage they choose among other factors. Based on recent data available from the Fast Track Monitoring System, we see sharp reductions in average liability premiums and PIP average loss costs from 2020 to the first quarter of 2023. These data also indicate that the severity of PIP claims has fallen considerably as the medical cost controls have taken effect. These statistics suggest that the new law has provided considerable premium savings, at least for some Michigan drivers.

However, there are reasons to be concerned that we could see PIP costs and premiums begin to increase again looking forward. The Michigan Supreme Court's decision in the Andary case will cause insurers to pay out more on PIP claims for people injured before the law changed. If the PIP medical cost controls are relaxed for persons injured after the law changed, this will increase claim costs for these insureds and compel insurers to increase their rates for PIP coverage, all other things equal.

As time passes and more data become available, we will be able to better gauge how the reforms and any modifications of these reforms are affecting claim costs and premiums. One development that we need to examine is drivers' choices regarding their liability limits and PIP coverages. If drivers are significantly reducing their PIP coverage as allowed under the new law, we would expect this to substantially reduce claim costs and

premiums. Over time, more drivers may reduce their premiums by choosing lower amounts of PIP coverage.

Another important development will be whether the Legislature will seek to eliminate or modify the cost containment rules that were challenged in the Andary case. The Supreme Court's ruling that the new rules do not apply to services provided to "legacy insureds" will cause insurers to absorb a severe financial hit. However, this alone, could be viewed as a "one off" and may not have a material effect on insurers' rates going forward. If the Legislature also invalidates or tempers the cost controls for all injured persons, then this could result in large rate increases for PIP coverage which could induce more drivers to lower or opt out of this coverage. The effect of such legislation will depend on how much the cost controls are modified.

We should note that a thorough evaluation of Michigan's no-fault reforms is not just an academic exercise. As we have discussed, there are a number of stakeholders (e.g., trial attorneys, medical providers, etc.) who are unhappy with the new law and have indicated that they will seek to modify some of its provisions. Given that with the 2022 midterm elections, Democrats control both the Michigan House and Senate along with the Governor's office, the push for reversing or tempering at least some of the no-fault reforms and other legislative changes may have a more receptive audience among policymakers. Proposals for such changes should be informed by thoughtful analysis of the tradeoffs involved and how injured persons and vehicle owners will be affected by what is proposed.

Some groups have also called for further tightening of insurance rate regulation. Given that we question the need and value of the additional regulatory restrictions that were part of the 2019 reforms, it should be no surprise that we believe that more regulatory

restrictions would be counterproductive. Fundamentally, premium rates are driven by claim costs. No amount or type of regulation can alter this relationship. If there is a desire to further lower premium rates in cities such as Detroit or statewide, then policy measures will need to address cost drivers such as “risky driving,” utilization of medical services, and attorney involvement in auto insurance claims.

More in-depth analysis could be performed to determine what had been causing high auto insurance costs in Michigan. Such an analysis could be helpful in further evaluating how the new law is now affecting auto insurance costs and premiums in the state. For example, it would be helpful to have data that would reveal the distribution of PIP claims by the amount paid. The distribution of PIP claims would be informative in terms of considering how much the different PIP options available to drivers could be reducing the costs of their coverage without leaving them fully uncovered for any medical expenses they might incur due to an accident. Such pre-reform data could be compared to data on drivers’ PIP choices post reform. As more time passes, it will be possible to compare the claim costs and premium of different groups of drivers according to their coverage choices. These data exist but are not publicly available.

Additionally, we need to gain a better understanding of how the reforms are affecting the cost and quality of medical care for persons injured in auto accidents. It would be desirable to disentangle the effects of the scheduled reimbursement rates for medical providers, the “55% rule,” the limits on family-provided home attendant care, utilization controls, and drivers’ choices on their PIP coverage. How have these measures affected the adequacy and quality of the medical care received by injured persons? How are injured persons dealing with cost of custodial care if they do not have PIP coverage? To what

extent and with what effect are drivers suing at-fault drivers for auto accidents if their PIP coverage is insufficient to cover their medical costs?

Further, given the allegations of some that many Detroit drivers are still paying premiums that are too high, it would be helpful to conduct an analysis of the relative pricing of different groups of insureds and locations across the state. Are low-income and urban drivers paying too much from an actuarial perspective? If so, why is this the case? What are the other factors that may account for the much higher rates in older cities like Detroit?

There are a number of questions we would like to investigate further in determining how the no-fault reforms and other legislative changes are affecting the market and consumers. These questions include:

1. How have insurers' rates changed post reform in different areas of the state?
2. How have insurers responded to the new regulatory restrictions, including the new prohibitions on rating factors?
3. How have rates changed in Detroit relative to other areas in the state?
4. What choices are Michigan's drivers making regarding their liability limits and PIP coverage?
5. What are the demographic and economic factors associated with drivers' liability and PIP choices?
6. How are drivers' insurance choices changing over time as they become more familiar with the new law?
7. How well do the state's drivers understand the new law and the options they have? How could consumer information be improved to help them make better choices?
8. How well is competition working in the state? Are there consumers who have difficulty in shopping for insurance because of limited access to the Internet and insurance agents?
9. How are the medical cost controls affecting the cost and quality of the medical care received by persons injured in auto accidents?

10. Are there ways in which the new law could be “tweaked” to achieve better outcomes without gutting its most beneficial elements?
11. What other measures could be employed to lower the cost and improve the quality of auto insurance available to Michigan’s drivers?

To answer these questions and others, we need to obtain considerable data and other information that are not currently available, at least from public sources. Our hope is that regulatory authorities and the industry will help us in obtaining these data and supporting further research that will be crucial to inform sound policy decisions.

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