

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

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Executive Summary

This revised policy brief summarizes our research on auto no-fault insurance reforms and regulatory changes in Michigan. It is based on a revised version of our paper – *No-Fault Auto Insurance Reform in Michigan: An Initial Assessment, Revised* in which we evaluate the reforms and regulatory changes and their effects. The reforms have several key elements including allowing insurers to apply medical cost controls for Personal Injury Protection (PIP) coverage and allowing drivers to choose something less than unlimited PIP coverage. Additionally, the new law returned Michigan to a prior approval regulatory system for auto insurance rates and prohibits insurers from using several “non-driving” rating factors. Our revisions reflect new data that has become available as well as developments that have occurred since our original paper was released. Our revised analysis reveals several things.

- 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. *Our revised analysis indicates that the reforms have resulted in significant premium savings for some and perhaps many Michigan drivers and more recent data further confirm these savings.*
- High PIP costs had caused auto insurance premiums to be very high in Michigan. PIP costs were especially high in Michigan due to the high medical costs associated with this coverage. Medical costs soared because PIP coverage for all drivers provided unlimited medical benefits and insurers were highly constrained in imposing any medical cost controls. These unique features of Michigan’s no-fault system also encouraged considerable fraud and abuse. *The data indicate that PIP claim costs fell considerably due to the reforms.*
- The ruling of the Michigan Supreme Court in *Andary vs. USAA Casualty Insurance Company* has negated certain medical cost controls for persons injured before the reforms were enacted. Insurers had been instructed by regulators to stop using these cost controls in the wake of an earlier Court of Appeals decision that had favored the plaintiffs in this suit. *Hence, insurers are making higher payments for these “legacy” claims and increased their loss reserves for pre-2019 claims.*
- 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 its high PIP costs prior to the reforms. *With PIP costs coming down, the overall cost of liability coverage has decreased.*
- Michigan 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. The costs of the damages caused by uninsured motorists are borne by various parties including vehicle owners who buy auto insurance. *The number of uninsured drivers has fallen as auto insurance has become more affordable due to the reforms.*

- Based on commonly used measures, Michigan's auto insurance market is competitive; lack of competition has not been the cause of the state's high insurance rates. *Hence, we question whether it was necessary or beneficial to tighten the regulation of insurers' rates under the new law and prohibit certain rating factors.*
- Opponents of the no-fault reforms have signaled that they will push for legislation that will negate the cost controls contested in the Andary case for persons injured after the reforms were enacted. While such legislation would increase the benefits received by accident victims, it would also increase claim costs and premiums. Higher premium rates for PIP coverage could induce more drivers to lower the amount of their PIP coverage. *Legislators will need to carefully consider the tradeoffs involved with any proposal to reverse or temper the medical cost controls under the new law.*
- Certain groups also have expressed disappointment that the no-fault reforms and regulatory changes did not result in larger premium decreases in cities such as Detroit. Rather than recognizing the futility of arbitrary regulatory restrictions on rates where claim costs are high, these groups are calling for tightening regulation even further to bring about greater parity in auto insurance rates across the state. *If legislation is enacted to this effect, it will likely result in market distortions that will undermine the private supply of insurance in high-cost areas.*

Introduction

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, less costly, and more equitable system for administering auto insurance claims than tort liability. Unfortunately, the opposite eventually proved to be true with respect to its costs. Michigan's system was unique 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. Additionally, largely because of its high auto insurance premiums, it is estimated that Michigan had the second highest percentage of uninsured drivers among the states – 25.9% in 2019.

This motivated the state's Governor and Legislature to significantly reform its no-fault law and revise its regulation of auto insurance. The reforms were enacted in 2019 and were phased in from 2019 through 2021. While these reforms and regulatory changes are relatively nascent, there is considerable interest in knowing their effects, including the consequences of eliminating unlimited medical benefits, instituting medical cost controls, and tightening auto insurance rate regulation.

In our 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. It also appears that the number of uninsured drivers has fallen significantly. However, there are stakeholders who question whether the reforms have created a better system and are seeking to reverse or modify 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 also 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. Below, we summarize the key findings from our research to date.

No-Fault Auto Insurance in Michigan

In the years leading to the enactment of the reform legislation, 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 very high number of uninsured motorists due to its high premiums 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.

Under a no-fault system, there are limits on injured persons' ability to sue at-fault drivers. The damages suffered by an accident victim have to exceed a certain threshold – verbal or monetary – in order for the accident victim to recover from the driver at fault. Michigan is one of several no-fault states with a verbal threshold for lawsuits. Michigan's verbal threshold requires that the victim of an accident has died or suffered a serious impairment of body function, and serious permanent disfigurement has been reached as a result of the accident in order for the victim (or his or her representatives) to sue the at-fault party in tort. The research indicates that verbal thresholds can reduce the number of lawsuits over auto accidents and auto liability insurance costs and the evidence suggests that this has been the case in Michigan.

However, the other side of the coin is that injured persons can seek reimbursement for their medical expenses from their own insurance under their PIP coverage regardless of who is at fault in an accident. In Michigan, prior to the reforms, there was no limit on the medical benefits that injured persons could receive. Further, there was no medical fee schedule and insurers were severely constrained in their ability to control the utilization of services.

The system also was subject to considerable fraud and abuse. Some medical providers profited greatly by being reimbursed for their "reasonable and necessary" charges; charges considerably higher 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 in order to obtain a contingency fee.

The combination of unlimited medical benefits, the lack of medical cost controls, and the associated fraud and abuse drove claim costs to astronomical levels, causing Michigan drivers to pay very high premiums. In other words, any savings that were achieved due to Michigan's verbal threshold were swamped by its high PIP costs.

The Reforms and Regulatory Changes

After many years of political dithering on how to fix this greatly flawed system – those who profited from it were able to stymie reform – Governor Gretchen Whitmer fulfilled her 2018 election pledge and signed a sweeping no-fault reform bill that received strong bipartisan support in the Michigan Legislature that was enacted on May 30, 2019.

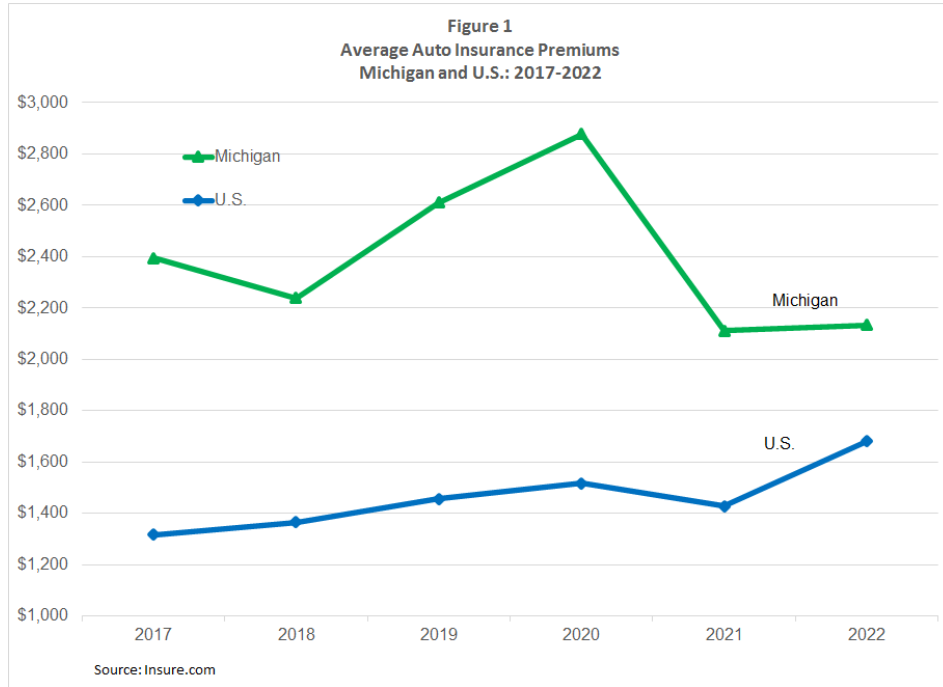
Importantly, the new law allows car owners to opt for less than unlimited PIP coverage for medical expenses. They can choose among five different PIP levels ranging from opting out of it entirely to unlimited coverage. Reimbursement rates for medical expenses are now scheduled based on Medicare reimbursement rates (190%-230% of the applicable Medicare rate). For a service for which there is no Medicare rate, providers are paid 52.5%-71% of what they charged in 2019 for the service. The reforms also now allow insurers to limit the reimbursement of services provided by the family members of an injured person to 56 hours per week. Additionally, insurers have been given the ability to exercise some control over the utilization of medical services. Further, a new fraud unit was established in the Department of Insurance and Financial Services (DIFS) to help combat the kinds of abuses that occurred under the old system.

There also were regulatory changes. Michigan returned to a prior approval system for regulating auto insurance rates, replacing the file-and-use system that it had since the early 1970s. 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. These regulatory changes were motivated by the concerns of some stakeholders and legislators that the reforms would not result in the promised premium savings without stricter regulation. Allegations that insurers unfairly discriminated against low-income and minority drivers, especially in cities like Detroit, also contributed to the support for stricter regulation.

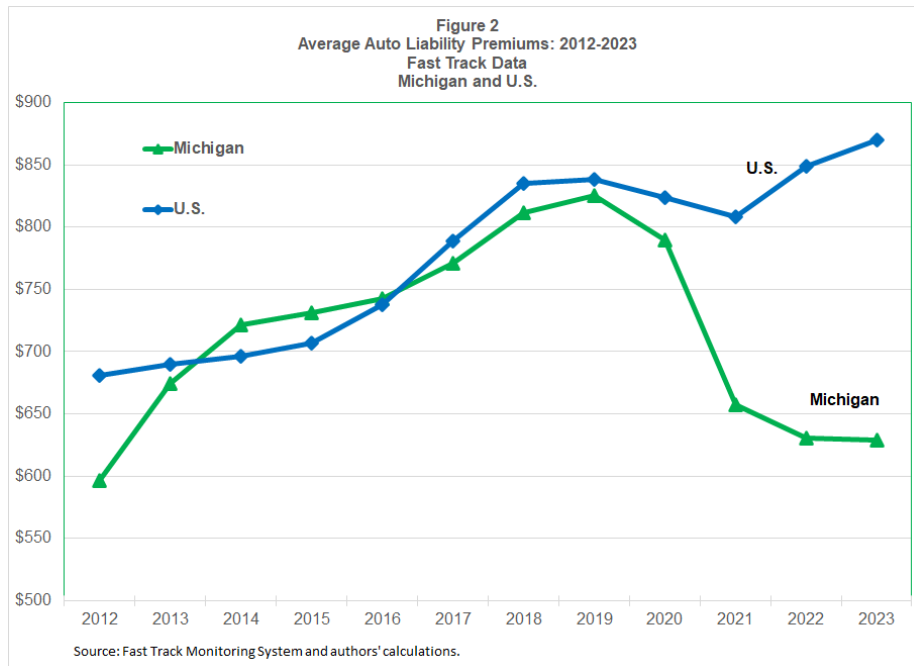
Effects of the New Law

While the new law has only been in effect for a couple of years, there are already indications that it is substantially lowering auto insurance costs and premiums for some and perhaps many Michigan drivers. As revealed in Figure 1, Michigan's average auto insurance premium for all coverages dropped from \$2,611 in 2019 to \$2,112 in 2021 – an 18.3% decrease. In 2022, the average premium rose slightly to \$2,133. This increase is

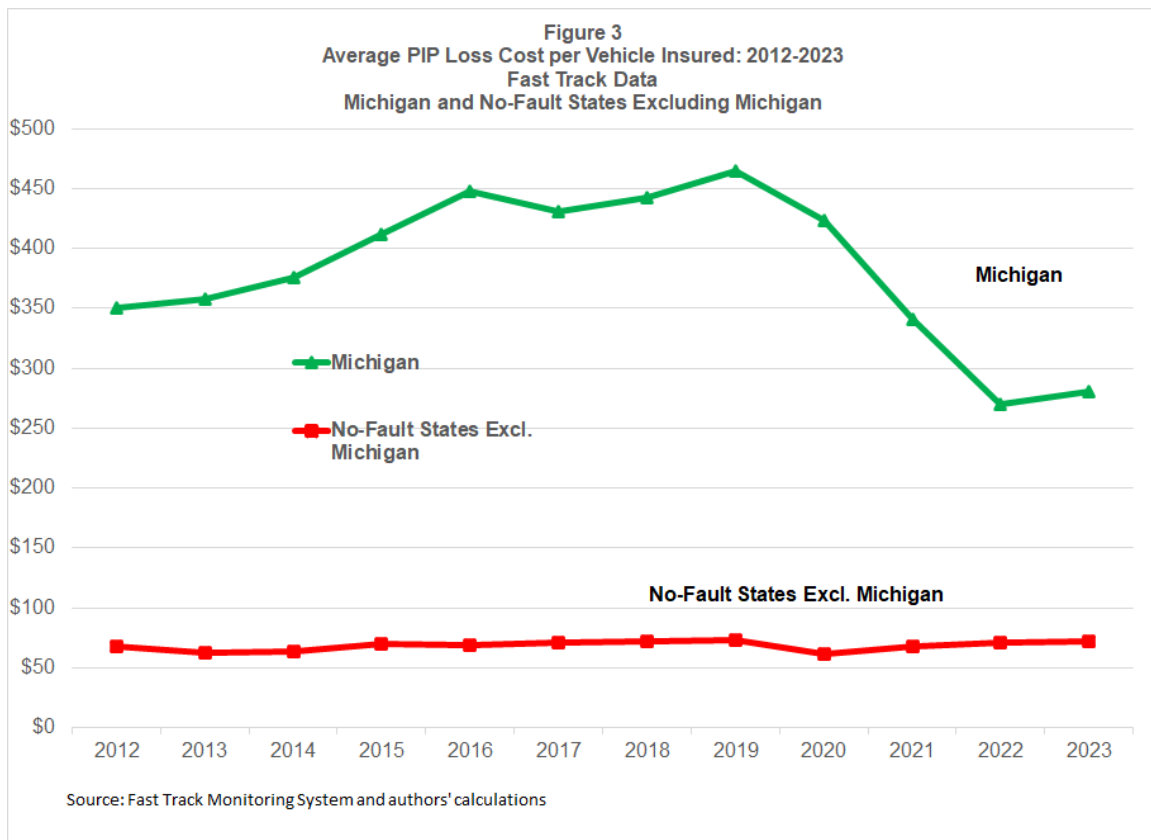
likely due to a rise in claim costs stemming from higher accident frequency and severity and not due to the no-fault reforms.



We can dig deeper into the data to gain some insight into how the new law is affecting the cost of auto insurance for Michigan drivers. Figure 2 shows the average premium for liability coverages including PIP for Michigan and the U.S. for the period from 2012 through the first quarter of 2023. From 2019 to the first quarter of 2023, the average liability premium declined from \$825 to \$629 – a 23.8% decrease.



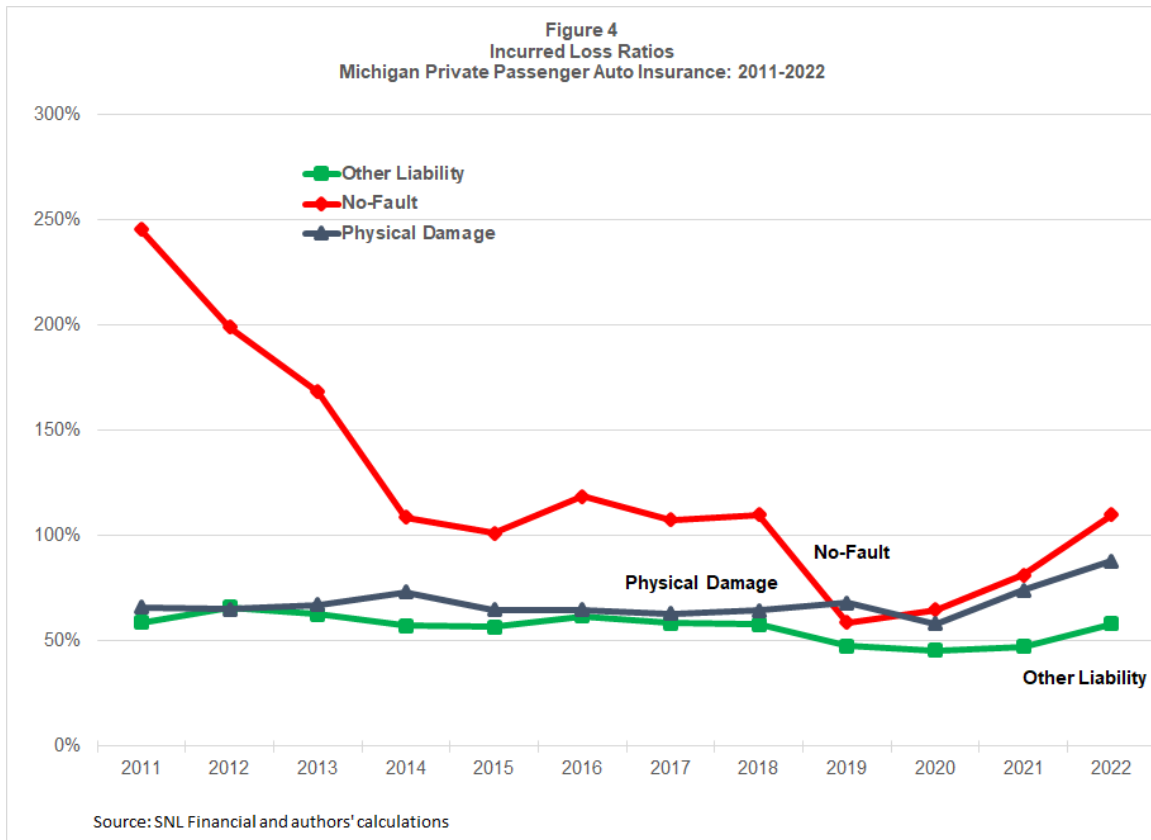
The primary cause of this decline in the average liability premium was a decrease in claim costs for PIP coverage. Figure 3 shows the average loss cost (total claim costs divided by the number of insured vehicles) for PIP coverage in Michigan and other no-fault states for the period 2012 through the first quarter of 2023. As revealed by these data, the average loss cost for PIP in Michigan fell from \$465 in 2019 to \$280 in 2023 – a 39.8% decrease. We attribute the decline in PIP costs to some drivers opting for something less than unlimited PIP coverage as well as medical cost controls for PIP insurance that insurers are now allowed to employ. PIP claims costs have begun to rise within the last year due to recent adverse court rulings discussed below as well as other factors such as more frequent auto accidents.



It is difficult to assess the effects of the regulatory changes with the data available. Insurers were required to reduce their rates according to their insureds' PIP choices. Because Michigan's auto insurance was workably competitive prior to the law change, we are skeptical that anything beneficial was achieved by the return to prior approval regulation. It is possible that the prohibition of certain rating factors could affect the rates different groups of drivers pay. In other words, because of these prohibitions, it is possible that some drivers may be paying less for auto insurance while others are paying more. As we discuss in our paper, these prohibitions could cause market distortions and inequities among different drivers.

In challenging the reforms, groups such as the Coalition to Protect Auto No-Fault (CPAN) and the Consumer Federation of America (CFA) have spun a false narrative that insurers

have profited greatly from the reforms rather than passing any savings on to consumers. These groups use this argument to support their contention that any modification of the contested controls can be funded from insurers' profits without raising premium rates. However, the data reveal that these arguments are not rooted in facts; there are no excess profits. As shown in Figure 4, insurers' loss ratio for auto no-fault insurance in Michigan was 109.7% in 2022. In other words, for every dollar insurers took in premiums in 2022, they paid out almost \$1.10 in losses, leaving no money left to cover their other costs.



The figures cited above regarding the premiums drivers are paying 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 of them may obtain premium savings if they opt for lower PIP limits. If legislation is passed that tempers the medical cost controls for all drivers, this will force PIP premium rates to rise which could induce more drivers to purchase less PIP coverage. There are also indications that the number of uninsured drivers has fallen as auto insurance has become more affordable for some.

Discontent with the Reforms

While many Michiganders may be benefiting from the reforms 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., medical providers, trial attorneys, etc. – are seeking to reverse or temper at least some of the reforms that were enacted. They may have a more sympathetic audience for such revisions in the Michigan Legislature in light of Democratic victories in the 2022 midterm elections.

One issue that is receiving considerable attention is the effects of limits on medical reimbursement rates and utilization reviews for medical providers and injured persons. Some providers contend that the medical cost controls are preventing them from caring for persons with severe injuries, e.g., brain trauma, and forcing them to lay off staff and eliminate facilities. Of particular concern to certain providers is the haircut applied to reimbursement rates for services or treatments that are not covered by Medicare – these services are typically provided in rehabilitation and post-acute care. There are also complaints that the 56-hour per week limit on home attendant care provided by family members is too tight. An insurer can choose to pay for more than 56 hours per week but is not required to by law. How the reforms are affecting the cost and quality of medical care for injured persons is a matter of debate that warrants further study.

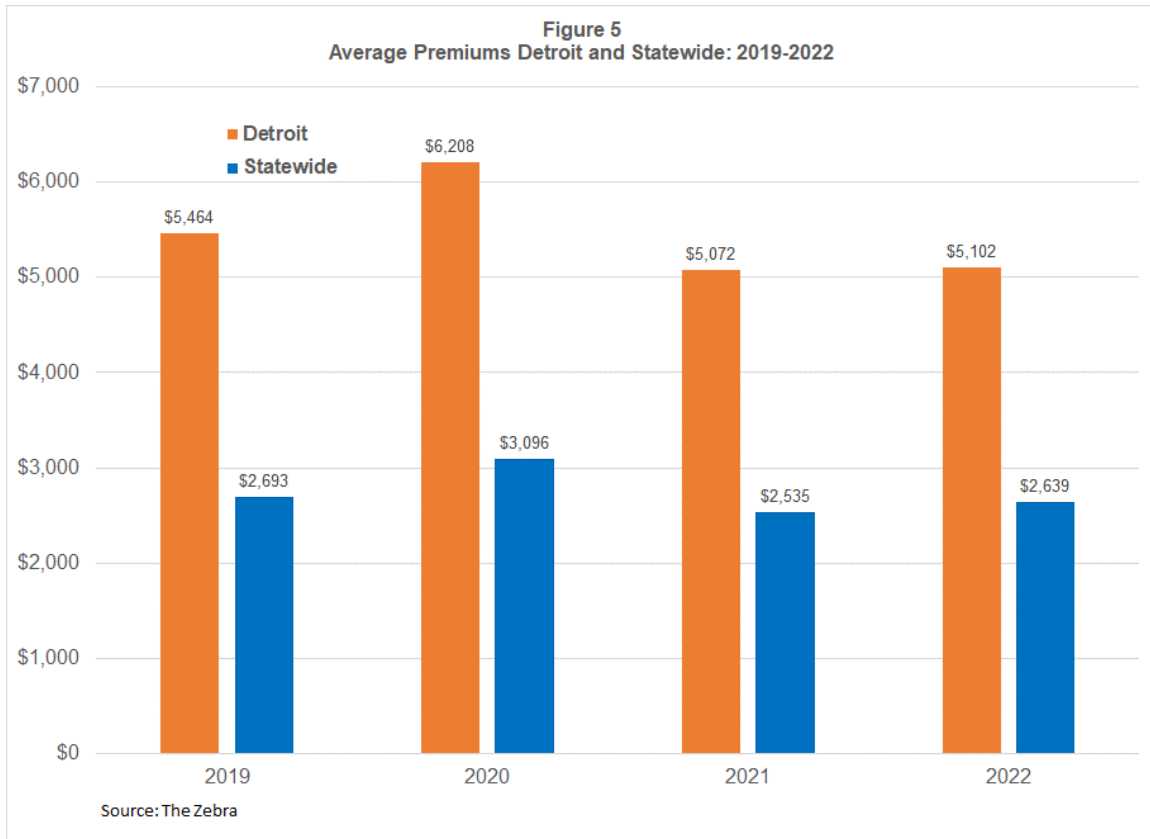
Both of these cost controls were challenged in a lawsuit – *Andary v. USAA Casualty Insurance Company* – that made its way to the Michigan Supreme Court. In a 5-2 decision, the Court ruled that these cost controls do not apply to persons injured before the law changed but left them in effect for persons injured after the law changed. Insurers will take a big financial hit due to this ruling but it is unclear as to how it will affect rates going forward. Groups opposed to these cost controls have signaled that they will seek legislation that will negate or temper them for all persons, including people injured after 2019. Such legislation will necessarily increase claim costs and premium rates for PIP coverage. Higher rates could motivate more drivers to choose lower levels of PIP coverage or opt out of it entirely.

The regulatory changes in the new law were intended to provide additional premium relief to Detroit drivers but some stakeholders and observers are dissatisfied with whatever savings have been achieved. As Figure 5 indicates, based on a survey by the Zebra, the estimated average premium in Detroit fell from \$6,208 in 2020 to \$5,102 in 2022 – a 17.8% decrease. In contrast, the estimated average statewide premium decreased from \$3,096 to \$2,639 over the same time frame – 14.8% decrease. Hence, premiums have decreased more in Detroit than they have statewide.

Balancing Tradeoffs and Looking Forward

Legislation like Michigan's no-fault reforms requires tradeoffs which affect various drivers differently and which they will value differently. The inherent tradeoff with any no-fault system is between the amount of damages that injured persons can obtain through suing in tort and the more certain and timely benefits they receive through their PIP coverage. In Michigan, it was the amount of PIP benefits available that became an issue. Advocates of the reforms would likely argue that the limits on the reimbursement of medical expenses and allowing drivers to choose the amount of their PIP coverage have produced substantial

premium savings, at least for some drivers, that justify the limits on medical costs. Some drivers may be seeing greater benefits from the reforms than others.



The challenge faced by policymakers is how to preserve the cost savings from the reforms while ensuring that accident victims receive adequate medical care. No legislation is perfect and it may be possible to tweak the new law to improve it without losing its principal benefits. It appears highly likely that the Legislature will take up the issue of whether the cost controls that were challenged in *Andary* should be modified for all persons regardless of when they were or are injured. There also may be legislative efforts to further tighten insurance regulation. The important thing to understand in evaluating any such legislation is that it will involve tradeoffs that policymakers will need to consider. 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 safety, improving consumers' knowledge and their ability to shop for insurance, etc.

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 new law is working and properly consider any proposed changes to it and how they would affect Michigan drivers. This paper takes an important step in this regard. To answer the questions associated with no-fault reform in Michigan, 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.