

## **Florida's Ailing No-fault Auto Insurance System**

### **(Part 2 in our series)**

In 1971, Florida became the second state in the nation to adopt a no-fault automobile insurance system. An alternative to a fault-based system, no-fault was proposed as a way to reduce auto insurance premium costs, to lessen the number of lawsuits arising from accidents, and to quickly and adequately compensate the injured, regardless of who was at fault.

Underpinning the no-fault law is a trade-off of benefits: assuring payment of medical, disability (wage loss) and death benefits, regardless of fault, in return for a limitation on the right to sue for non-economic damages (pain and suffering).

Under Florida law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverage. The no-fault PIP coverage provides \$10,000 of coverage for: payment of 80 percent of reasonable medical expenses, 60 percent of loss of income, plus a \$5,000 death benefit, for bodily injury sustained in a motor vehicle accident, without regard to fault.

PIP covers the people named in the policy, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured vehicle.

PIP coverage gives policyholders immunity from liability to another injured party for economic damages up to their policy limits and for non-economic damages (pain and suffering) for most injuries. This immunity protects the insured from tort actions by others for pain, suffering, mental anguish, and inconvenience arising out of the vehicle accident, except when one or more of the following exists: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability; or (3) significant and permanent scarring or disfigurement.

This “per \_\_\_\_\_ threshold” means that lawsuits for non-economic damages may be filed in court only if injuries meet one or more of these levels.

### **A System With Problems**

Currently, only 12 states have adopted the no-fault system. Although not at the crisis level, Florida's is costly and has serious problems. The market is competitive and coverage is readily available. Nonetheless, Florida policyholders experienced significant premium increases, particularly for PIP coverage, from 1999 through 2003. Rate decreases or small increases followed in 2004 and 2005. PIP loss costs in Florida have continued to outpace costs in other no-fault states for the past five years.

In Florida, high medical costs and utilization of medical services drive PIP costs and the incidents of PIP fraud and abuse. PIP health care fraud and abuse are at record levels.

In 2001 and 2003, the Florida Legislature enacted significant no-fault reforms. But, these reforms have not resolved the problems of fraud, abuse, inappropriate medical treatment, inflated claims and inadequate compensation to injured persons.

### **Insurance Industry Lobbies Hard**

One of the glaring inequities of the current Florida no-fault system is the PIP "threshold" mentioned above. At the behest of the insurance industry, the Legislature again and again has made it more difficult for those severely injured to reach the "tort threshold," that is, the ability to bring a lawsuit to recover non-economic damages.

In 1976, the Legislature replaced the "dollar threshold," which specifies a dollar amount that medical costs must exceed before an injured person can pursue a liability claim, with the "verbal threshold" (which distinguishes claims in terms of the description of the injury).

Then, in 1978, the Legislature again tightened the "verbal threshold" by eliminating the right to sue for certain serious nonpermanent injuries, and raised the PIP benefit level to \$10,000.

### **PIP Threshold Must Go**

"The PIP threshold should be eliminated altogether," argues attorney Steve Wittmer.

"As it stands, the PIP threshold acts as a barrier for people to recover damages for pain and suffering, mental anguish and just plain aggravation damages after being injured in a motor vehicle accident," Wittmer says.

“The insurance industry wanted and received the threshold in exchange for the industry's promise to make prompt payments under the PIP system regardless of who was at fault for the accident. The industry reasoned and convinced the Legislature that in exchange for prompt payment regardless of fault, injured people needed to prove they were permanently injured in order to recover from the at-fault party.

“The insurance companies reasoned this would keep costs down and present a barrier for people who received minimal injuries from accidents. However, insurance companies, in addition to PIP policies, also wrote liability policies so it was a way to keep their claim costs down.

“The problem is when people are seriously injured in an accident, but don't break bones. For example, if a person suffers a spinal disc injury or ligament damage, members of a jury can't “see” the injury so they think it is not a big deal. The injured party needs to prove that he or she is permanently injured and that requires a physician's testimony. In this way, every case grows expensive and time consuming.”

According to the American Medical Association guidelines on the evaluation of a permanent injury, a patient should be treated for three to six months before a determination of permanency is made.

“The injured person doesn't understand why he or she can't recover money and must go to a doctor for such an extended period of time,” Wittmer says. “Only the insurance industry benefits from this arrangement because insurers can hire the best physicians to explain why a person's injury is not permanent. As a result, the jury doesn't award any money for pain and suffering, mental anguish, etc.”

### **Contact Your Legislator**

In 2006, the Legislature will have to either renew Florida's no-fault system or create a new auto insurance system. A staff report of the Florida Senate recommends keeping the no-fault system, but strongly encourages lawmakers to make more than a dozen fixes to help reduce system complexity, fraud, abuse, and other inequities inherent in the system. We encourage you to contact your legislator and add the elimination of the PIP threshold to that list of long-overdue changes.