The original documents are located in Box 23, folder "No Fault Insurance (1)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

S-1

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 23 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: No-Fault Automobile Insurance

I recommend that the Administration support the enactment of S. 354, a bill to establish minimum national standards for State auto insurance plans.

The Administration has always strongly supported the no-fault principle and after careful review I believe that the time has come for Federal action to ensure the speedy extension of this proven reform to the entire country.

S. 354 is vastly improved over earlier versions of national no-fault legislation, and I believe that it is a good bill with but only minor exceptions. If my Department were to draft its own bill, it would be quite similar to S. 354. The Administration can take substantial credit for the present form of S. 354 since it takes its essential form from the model State no-fault law, whose drafting was financed by my Department and the Ford Foundation.

Up until now, the basic difference between the Administration and the Senate's no-fault advocates has been on the question of the need for Federal action, with us holding that no-fault should be tested in the "laboratories" of the States. Since the underlying rationale for the Administration's past position is well known, let me concentrate on why I believe that we should now endorse Federal standards for no-fault.

1. Experience. In 1971 when the Administration took its original position, no-fault was still a theory with limited real world experience. Since that time, 16 States have adopted some kind of no-fault law, and no-fault's public and political acceptability has been proven beyond doubt. The experience of these States has heightened our confidence in the increased benefit and cost saving potential of meaningful no-fault reform

2. Improved Legislation. The first bills prepared by the Senate Commerce Committee during the 91st Congress in 1970 had many technical deficiencies and essentially called for Federal pre-emption of the automobile insurance area. S. 354 represents the end of an evolution away from this approach and calls only for minimum Federal standards, leaving the States with their traditional responsibilities for basic administration and regulation of automobile insurance and wide opportunities to shape the form of their individual no-fault plans.

3. State Activity. Since 1967, 24 States have enacted some type of auto insurance reform laws, of which 16 can be considered meaningful no-fault laws in the context of the Administration's original recommendations. While this may seem at first glance like a great deal of activity, the pace of State action on no-fault legislation has slowed. In 1973 six States enacted meaningful no-fault laws; in 1974 only four new States were added to the list. This year only two States passed no-fault legislation, with the prospects for further action slim. All the States have considered no-fault legislation in recent years, but only 16 States passed the type of legislation which approaches the kind that the Administration has said was needed. No-fault has been recently rejected in many States, including California, Maine, North Carolina and Virginia.

4. Nature of the State Plans. Part of the argument for allowing the States to enact individual no-fault plans is that this approach would allow the States to tailor their plans to their individual needs. Our analysis of the State plans adopted, however, reveals that the various State plans do not reflect economic or demographic differences but are rather the result of the strength of various interest groups. In addition, while certain States have adopted no-fault plans which do restrict tort liability, and therefore qualify as basic no-fault plans, a number of the States have enacted pseudo-no-fault plans which do not restrict tort recovery or have provisions in their plans which could be called discriminatory and inequitable. Thus, some State action has actually perverted one of the primary goals of no-fault, i.e., to produce a more equitable motor vehicle insurance system.

5. Political Posture. Support for a Federal standards approach to no-fault reform would clearly identify the Administration with a major advance for consumers in an area to which they are sensitive. It would also give us an opportunity to influence the shape of the legislation to minimize the Federal role.

The Department and the Administration can justly take credit for having made contributions to the development of S. 354. Besides financing the development of the model State bill on which S. 354 is based, it was Secretary Volpe who first discussed the minimum standards approach. The original Department of Transportation Auto Insurance Study and the Department-financed Milliman and Robertson costing model have provided much of the analytical and factual support for S. 354.

It should be noted that the Administration has never foreclosed the possibility of endorsing some type of Federal action to ensure the realization of no-fault auto insurance reform. From the beginning in 1971, various Administration officials have repeatedly and publicly stated that the alternative to timely and reasonable reform action by the States was preemption of the reform decision by the Federal Government.

We have publicly maintained that no-fault offers great opportunities to consumers in terms of cost savings, benefit increases and broader coverage of the population. As the pace of no-fault action at the State level slackens, our critics are likely to argue that our continued opposition to the Federal minimum standards approach is actually covert opposition to the no-fault principle itself.

We are aware that Administration support of S. 354 will antagonize certain elements of the bar and the insurance industry--although it will be applauded by other very large parts of the industry, by organized labor, by the auto industry, and by the consumer interest community. We have weighed these risks against the benefits that would accrue to the public and to the Administration. I am convinced that support of S. 354 would be in the best interests of both.

SIGNED BY
WILLIAM T. COLEMAN, JR.

William T. Coleman, Jr.

bcc: Honorable James T. Lynn
Director, OMB
(Sent via "EYES ONLY" envelope).

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 23, 1975

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William T. Coleman, Jr.

S-1

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 23 1975

MEMORANDUM FOR HONORABLE JAMES T. LYNN
Director
Office of Management and Budget

SUBJECT: No-Fault Insurance

This memorandum responds to your request for this Department's views on your draft options memo to the President regarding a Federal minimum standards approach for no-fault insurance.

The current Senate bill, S. 354, is vastly improved over earlier versions, and I believe that it is a good bill with certain minor exceptions. If the Administration were to draft its own bill, it would be quite similar to S. 354. Additionally, there is not time to draft a bill of our own, and even if we did, it would likely be rejected in favor of the previously submitted Congressional version. Moreover, the present form of S. 354 takes its essential form from the model State no-fault law, whose drafting was financed by the Department and the Ford Foundation.

Up until now, the basic difference between the Administration and the Senate's no-fault advocates has been on the question of the need for Federal action, with us holding that no-fault should be tested in the "laboratories" of the States. Since the rationale for the Administration's past position is well known and understood, let me outline briefly the considerations which argue for a reexamination of that position at this time.

1. Experience. In 1971 when the Administration took its original position, no-fault was still a theory with limited real world experience. Since that time, 16 States have adopted some kind of no-fault law, and no-fault's public and political acceptability has been proven beyond doubt. The experience of these States has heightened our confidence in the increased benefit and cost saving potential of meaningful no-fault reform.

2. Improved Legislation. The first bills prepared by the Senate Commerce Committee during the 91st Congress in 1970 had many technical deficiencies and essentially called for Federal pre-emption of the automobile insurance area. S. 354 represents the end of an evolution away from this approach and calls only for minimum Federal standards, leaving the States with their traditional responsibilities for basic administration and regulation of automobile insurance and wide opportunities to shape the form of their individual no-fault plans.

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5. Political Posture. Aside from the question of the appropriate Federal role in this matter, the Department and the Administration can justly take credit for making major contributions in the development of S. 354. Besides financing the development of the model State bill on which S. 354 is based, it was Secretary Volpe who first discussed the minimum standards approach. The original Department of Transportation Auto Insurance Study and the DOT-financed Milliman and Robertson costing model have provided much of the analytical and factual support for S. 354.

It should be noted that the Administration has never foreclosed the possibility of endorsing some type of Federal action to ensure the realization of no-fault auto insurance reform. From the beginning in 1971, various Administration officials have repeatedly and publicly stated that the alternative to timely and reasonable reform action by the States was pre-emption of the reform decision by the Federal Government.

We have always maintained that no-fault offers great opportunities to consumers in terms of cost savings, benefit increases and broader coverage of the population. As the pace of no-fault action at the State level slackens, our critics are likely to argue that our continued opposition to the Federal minimum standards approach is actually covert opposition to the no-fault principle itself.

We would suggest rewording Option #2 to recognize the option of an Administration initiative in the elimination or modification of certain provisions of the bill which are not essential to the no-fault or Federal standards concept.

There is attached a more specific commentary prepared by my staff on your proposed memorandum. If there is any way I or my staff may be of help to you in this matter, please let me know.

SIGNED BY
WILLIAM T. COLEMAN, JR.

William T. Coleman, Jr.

Attachment
bcc: Mike Duval- Associate Director, Domestic Council (Sent in "EYES ONLY" envelope
Prep by: TPI-30:DLougee/MAron/RFWalsh:bs:4/21/75
Rewritten by RFWalsh 4/23/75
cc: S-1, 2, 10
TGC, TCI
TPI-1, 2, 3, 5, 30, 34

DOT Staff Comments on Federal Standards
Memorandum Prepared for the President
by the Office of Management and Budget

The OMB paper is well written and provides a fair treatment of both sides of major issues surrounding the enactment of no-fault. The issues, however, are not listed in order of importance and place too much emphasis on whether no-fault insurance is beneficial or not. The Administration has already spoken to that issue by endorsing the no-fault concept in every public forum since 1971.

It seems to us that the important questions before the Administration today are: Shall we change our desire for individual action at the State level in favor of some sort of Federal incentives or coercion? If so, why should we make the change at this time? What type and degree of Federal incentives or coercions should the Administration support?

Key Issue: Federal no-fault would save money.

Cost should not be discussed without reference to benefits. The systems savings created by a shift from a tort system to a no-fault system can be used either to reduce individual premiums or to increase benefits, or some combination of each. Although subject to different interpretations, the bulk of the theoretical analysis indicates there would be cost savings, and existing State experience does indicate that there are system savings under meaningful no-fault. S. 354 shifts these system savings heavily toward increased benefits and coverage. Milliman and Robertson, in analyzing the effects of S. 354 on California, for example, forecast an 11 percent premium reduction and an 88 percent increase in persons receiving benefits.

The impact of inflation on the cost issue should be stressed. Insurance costs in no-fault States, like almost every other product, are subject to the pressures of inflation. However, every State that has enacted meaningful no-fault insurance has experienced at least an initial cost savings. None of these States have had to increase premiums back to pre-no-fault levels. In Florida, for example, there has been a slight premium increase this year, but no-fault premiums are still substantially below pre-no-fault levels.

Key Issue: Federal no-fault would achieve greater efficiency by returning more benefits per premium dollar.

While the con suggests an adverse impact on small companies, the extent of this impact is not clear. There are reinsurance facilities in the private sector which allow some companies to cover large insurance exposures without endangering their financial stability. Pressures other than a shift to no-fault insurance, such as the increase in direct selling and company agents, will ultimately be far more important to the financial fortunes and viability of small insurance companies.

Issue: No-fault is a more equitable damage recovery system.

It should be pointed out that there are potential differences in equity between individual State no-fault plans. Tort thresholds based on dollar costs of medical cost and wage loss, for example, discriminate against lower income classes. S. 354 does not contain a monetary tort threshold.

On the con side, it should be added that trial lawyers would argue that any restriction of pain and suffering recovery under no-fault was unjust and deprived people of a basic right.

In discussions of equity, it is important to make a distinction between a theoretical tort system and the practical application of tort law as we know it today. The Department of Transportation Auto Insurance Study established that the practical application of the present tort system is very inequitable, particularly to the seriously injured victim. In addition, the DOT Study showed, as had past studies, that the existing tort system does not "punish" the negligent driver. Most tort cases are resolved in out-of-court settlements paid by insurance companies.

Issue: Federal no-fault is an incursion into State responsibility.

Part of the insurance industry has actively participated in the development of Federal standards for no-fault insurance precisely because they fear the alternative would be greater Federal involvement in the insurance industry. Public dissatisfaction with auto insurance originally

resulted in Congressional attempts to provide a complete Federal solution. S. 354 represents an evolution away from a Federal system maintaining State responsibilities. It must be recognized, however, that S. 354 still represents some Federal presence in the insurance area, and last year, the Secretary's role in the administration of the Act was increased to some degree by floor amendment.

If the Administration were to endorse a Federal standards approach, we would have a strong opportunity to reduce the Federal presence in no-fault insurance to a minimum. If the Administration continues to oppose Federal standards, we may be faced with the unpleasant alternative of accepting a strong Federal presence or vetoing a popular consumer measure.

Political Positions on No-Fault

The Administration has had a major role in the development, refinement and evolution of no-fault insurance legislation. If we were to endorse a Federal standards approach at this time, we could almost certainly obtain the elimination of the few remaining objectionable provisions. The Administration could then claim credit for a popular consumer reform which we have rightly earned.

Attachments

Attachment A is misleading. The column entitled "Threshold for Economic Loss" should be entitled "Maximum Benefits for Economic Loss." An additional column indicating the tort thresholds for recovery of intangible loss would also be useful.

Attachment B (4) is incorrect. The final committee report on S. 354 eliminated the dollar threshold for lawsuits seeking pain and suffering damages and substituted a 90-day threshold for total disability, death, permanent and serious disfigurement or injury.

THE WHITE HOUSE
WASHINGTON

4/25/75

Dorothy--

Mr. Kemper had phoned earlier in the week wanting to talk with the President.

He seems anxious to have this material reach the President since it deals with testimony of the Sec. of Transportation on April 30.

Thanks

Dottie

4/24/75

Domestic Council
Jim Cannon

Kemper Insurance Companies
Long Grove, IL 60049 · 312 | 540-2000

April 23, 1975

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Since we were not able to talk by telephone yesterday I have asked Paul Knapp to have this message delivered to you personally. This is with respect to S. 354, the bill which would establish federal no-fault standards for automobile insurance.

At times in the past when you were in Congress, and on one occasion after you became Vice President, you asked my opinion as to whether some form of federal approach would be desirable. Each time I responded that in my judgment the state-by-state approach was preferable because it permitted diversity according to the needs of each state and because it avoided placing a substantial segment of a state regulated industry under at least partial federal regulation.

My judgment was based on the assumption and hope that the several states would act with reasonable promptness in passing sound no-fault auto insurance laws, thus making any federal standards approach unnecessary for the heavily populated states in which a no-fault system is most needed. Unhappily, and due primarily to the vigorous opposition of the trial attorneys and their lobbyists, progress at the state level has been very slow and several major states are still without no-fault legislation.

In the meantime, sponsors of S. 354 have become increasingly amenable to corrective amendments which make this bill more practical and more consumer oriented and which seem to reduce the federal role to a minimum.

Under the above circumstances, and even though our trade association, the American Mutual Insurance Alliance, remains opposed to S. 354, we have made a policy decision that

the Kemper Insurance Companies will work with appropriate members of Congress to support these remedial amendments and that we will not oppose the enactment of the legislation as so amended.

It is not my province to recommend positions to be taken by the Administration. However, I should now say to you that I think it would be reasonable for Secretary Coleman, when he testifies on this subject on April 30, to announce a change in the Administration position from one of opposition to one of support of S. 354, provided that it is appropriately amended. I am told that the Department of Transportation and your White House staff are aware of the amendments to which I refer. I am enclosing a copy of the amendment that we feel is most important and a copy of a memo which briefly describes that amendment.

Our past very brief discussions on this subject suggested to me that it would be proper for me to advise you of our change in position.

Respectfully,

Jim Kemper Jr

JAMES S. KEMPER, JR.
President

JSK,Jr/md
Enclosures

COPY TO The President, The White House, Washington, D.C.

Kemper
INSURANCE

DATE April 23, 1975

TO J. S. Kemper, Jr., Executive, Long Grove B-5

FROM P. R. Knapp, Federal Relations, Washington, D.C.

PREVIOUS COMM.

REGARDING AMENDMENTS TO S. 354
NATIONAL STANDARDS NO-FAULT MOTOR VEHICLE INSURANCE ACT

We discussed amendments to S. 354 that Kemper Insurance Companies will be supporting. The most important of these amendments would completely eliminate the federal government from any regulatory responsibility for auto insurance under the bill. We are presently working with Senator Stevens and through him with the Senate Commerce Committee staff and other sponsors of S. 354 on such an amendment and we anticipate that it will be accepted by the Senate Commerce Committee. The important features of this amendment are as follows:

- Each state's governor would certify to the Secretary of Transportation when his state enacted a no-fault program in compliance with the standards in S. 354. DOT would have no responsibility for determining the acceptability of a state program.

- DOT, acting through the Department of Justice would be given the authority to challenge a state program in federal court in the event DOT felt the program was improperly certified or if the state failed to enact a qualifying program.

- If a court, in the consideration of an action brought by the Department of Justice or others, was to determine that a state did not have a qualifying no-fault program, it would be required to order the Secretary of Transportation to terminate any federal financial assistance and to hold any funds which would otherwise be available to such state under any federal statute relating to transportation by motor vehicle.

We believe that if this amendment was adopted S. 354 would offer a program which would result in effective no-fault programs nationwide without federal usurpation of the insurance regulatory authority of the states. The role of the Department of Transportation in the no-fault system would be restricted to the initiation of civil action in the instance of the failure of a state to comply with national standards.

PRK:md

IN THE SENATE OF THE UNITED STATES

Referred to the Committee on Commerce and ordered to be printed.

AMENDMENT

Intended to be proposed by Mr. _____

to S. 354, a bill to regulate commerce by establishing a nationwide system to restore motor vehicle accident victims and by requiring no-fault motor vehicle insurance as a condition precedent to using a motor vehicle on public roadways.

(The first section of the amendment should:

- contain a complete list of deletions to the reference to Title III and the deletion of Title III itself.

- contain required revisions to Sec. 101(b) Table of Contents.)

On page 45, line 5, strike out FOR STATE

On page 45, beginning on line 6, strike out all through page 52, line 20, and insert in lieu thereof the following:

NATIONAL STANDARDS

SEC. 201. (a) GENERAL. - Except as provisions therein may apply to section 113 of this Act, title I of this Act, except sections 101, 102, 103, 112, 113, and title II of this Act except this section and section 202, exist solely as standards for state no-fault motor vehicle insurance plans and shall have force and effect only as they acquire it as part of a state law.

(b) NATIONAL STANDARDS. - (1) A State no-fault plan for motor vehicle insurance is in accordance with national standards if such plan includes provisions which meet or exceed each of the national standards pursuant to paragraph (2) of this subsection and if such plan does not include any provisions which are inconsistent, in whole or in part, with the national standards, in whole or in part.

(2) As used in this Act, the term "national standards" means all of the provisions of title I of this Act, except sections 101, 102, 112 and 113, and all of the provisions of this title, except this section and section 202. A provision in a State no-fault plan for motor vehicle insurance "meets" a national standard if its substance is the same as, or the equivalent of, the national standard which corresponds to it. A provision in a State no-fault plan for motor vehicle insurance "exceeds" a national standard if its substance is more favorable or beneficial to an insured, to a victim, or to a survivor of a deceased victim, than the national standard which corresponds to it. As used in the preceding sentence, a provision in such a plan is more favorable or beneficial to any such person if it is more restrictive of tort liability than the national standard set by section 206(a) of this title.

STATE NO-FAULT PLAN IN ACCORDANCE WITH NATIONAL STANDARDS

SEC. 202. (a) PREEMPTION. - Any provision of any State law which would prevent the establishment in such a State of a no-fault plan for motor vehicle insurance in accordance with national standards is preempted.

(b) STATE PLAN. - A State may at any time enact into law a no-fault plan for motor vehicle insurance in accordance with national standards.

(c) CERTIFICATION BY CHIEF EXECUTIVE OFFICER. - The Chief Executive Officer of a State who determines that that State has enacted a no-fault plan for motor vehicle insurance in accordance with national standards may at any time following the enactment of such plan submit to the Secretary a certification that such State has established a no-fault plan for motor vehicle insurance in accordance with national standards, together with a certified copy of such plan. Such certification and any recertification pursuant to subsection (d) of this section shall be in the following form, "The State of _____ has enacted a no-fault plan for motor vehicle insurance. I hereby (certify pursuant to Sec. 202 (c)) (recertify pursuant to Sec. 202 (d)) of the National Standards No-Fault Motor Vehicle Insurance Act, that such plan, a certified copy of which is attached (is) (remains) in accordance with national standards." Such certification and any recertification shall be conclusive determination, subject to subsection (e) of this section that such State's no-fault plan is in accordance with national standards.

(d) PERIODIC REPORT AND RECERTIFICATION. - The Secretary shall request, not more frequently than every two years nor less frequently than every four years, from the Chief Executive Officer of a State for which certification under subsection (c) of this section is on file with the Secretary (1) a report evaluating the success of such plan in terms of such State's contribution to the policy of the Congress set forth and declared in Section 102 (b) of this Act and in terms of:

(A) The cost to the purchasers of insurance resulting from the institution and continuing operation of such plan;

(B) The impact of such plan on various sectors of society;

(C) The effect of such plan on congestion and delay resulting from backlogs in the courts;

(D) The impact of such plan on competition within the industry particularly with respect to the competitive position of small insurance companies in such State.

and (2) a recertification in the form prescribed under subsection (c) of this section that such State's plan remains in accordance with national standards.

The Secretary shall report to the President and Congress simultaneously on March 1 each year on the results of all such reports to the Secretary during the preceding calendar year including any recommendations for legislation.

(e) JUDICIAL REVIEW. - (1) If the Secretary has reason to believe that a State does not have a no-fault plan for motor vehicle insurance that is in accordance with national standards the Secretary, acting through the Department of Justice, may

commence a civil action against such State for a declaratory judgment that such State does not have a no-fault plan for motor vehicle insurance in accordance with national standards:

(A) within thirty days following receipt by the Secretary of a State's certification pursuant to subsection (c) of this section or recertification pursuant to subsection (d) of this section; or,

(B) 180 days after requesting recertification under subsection (d) of this section, or thereafter, if recertification has not been received by the Secretary at the time the action is filed; or,

(C) after the second anniversary of the enactment of this Act, if as of the date the action is filed the state has never had in effect a no-fault plan for motor vehicle insurance which was certified pursuant to subsection (c) of this section.

(2) An action pursuant to paragraph (1) of this subsection may be maintained in a district court of the United States for such State or for the District of Columbia. A final declaratory judgment by such a court that a State does not have a no-fault plan for motor vehicle insurance in accordance with national standards shall include an order by such court directing the Secretary to terminate any Federal financial assistance and to withhold any funds which would otherwise be available to such State under any Federal statute relating to transportation by motor vehicle, including, but not limited to, chapter 1 of title 23, United States Code. The court shall order the Secretary to terminate assistance and withhold funds forthwith

in the event such final declaratory judgment is entered on or after the second anniversary of the enactment of this Act. The court shall order the Secretary to terminate assistance and withhold funds effective the second anniversary of the date of enactment of this Act if the final declaratory judgment is entered prior to that date.

The Secretary shall continue the denial of Federal financial assistance and the withholding of funds until such time as such State enacts, implements, and certifies pursuant to subsection (c) of this section a no-fault plan for motor vehicle insurance in accordance with national standards and such court enters a declaratory judgment that such State has a no-fault plan for motor vehicle insurance in accordance with national standards.

(3) An action pursuant to paragraph (1) of this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. When any such actions involving the same State are pending in two or more jurisdictions, such pending proceedings, upon application of the Attorney General or of such State, shall be consolidated for trial by order of such court, in accordance with procedures established by the judicial panel on multi-district litigation authorized by section 1407 of title 28, United States Code. The district courts of the United States shall have jurisdiction over any proceedings commenced in accordance with this subsection, and in any such action subpoenas for witnesses may be served in any judicial

district of the United States.

(If the provisions of the Biden amendment are to be retained, this section should include subsection (f).)

(f) EXCEPTIONS. - (1) The provisions of this section are inapplicable to the extent inconsistent with this subsection.

(2) In the case of a no-fault State, as defined in paragraph (4) of this subsection, a court acting pursuant to paragraph (2) of subsection (e) of this section shall order the Secretary to terminate assistance and withhold funds effective the fourth anniversary of the enactment of this Act if the final declaratory judgment entered under such paragraph is entered prior to the fourth anniversary of the enactment of this Act, or forthwith if the final judgment is entered on or after the fourth anniversary of the enactment of this Act.

(3) Subparagraph (C) of paragraph (1) of subsection (e) of this section notwithstanding, in the case of a no-fault state as defined in paragraph (4) of this subsection, the Secretary, acting through the Department of Justice, may commence a civil action pursuant to subsection (e) of this section after the fourth anniversary of the enactment of this Act if as of the date the action is filed the state has never had in effect a no-fault plan for motor vehicle insurance which was certified pursuant to subsection (c) of this section.

(4) As used in this subsection, a "no-fault State" means a state which has enacted into law and put into effect a motor vehicle insurance law not later than January 1, 1975 which provides, at a minimum, for compulsory motor vehicle insurance; payment of benefits without regard to fault on a first-party basis where the value of such available benefits is not less than $2,000; and restrictions on the bringing of lawsuits in

tort by victims for non-economic detriment, in the form of a prohibition of such suits unless the victim suffers a certain quantum of loss or in the form of a relevant change in the evidentiary rules of practice and proof with respect to such lawsuits.

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On page 22, delete subparagraph (5) beginning on line 1 and change (6) on line 8 to (5).

On page 36, line 15, strike out "The" and insert in lieu thereof "Notwithstanding any provision of this Act, the"

On page 37, delete lines 3 through 24 and page 38 delete lines 1 through 22.

Note: There are two reasons for this deletion:

- insurance commissioner should not be required to assume responsibilities which can be discharged only through another state agency, and
- the provision has effect only in states with a rehabilitation agency.

Page 6 of Commerce Committee draft.

Recommend deletion of this page which appears to be in lieu of Percy amendment provisions dealt with elsewhere in subsection 202 (d) of this amendment.

THE WHITE HOUSE

WASHINGTON

April 28, 1975

MEMORANDUM FOR: JIM CANNON

FROM: JIM FALK JF

SUBJECT: "No Fault Insurance"

BACKGROUND

The National Governors' Conference opposes the adoption of national no-fault or mandated federal standards for auto insruance. This position was reaffirmed to me today. As well, they expressed their reasons last year in a letter to Ken Cole which is attached at Tab A. I have also attached their most recent resolution at Tab B.

FURTHER ACTION

Mike Duval is preparing further information for you for a memorandum to the President.

cc: Mike Duval
Dick Dunham

National Governors' Conference
OFFICE OF FEDERAL-STATE RELATIONS
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE:
AREA CODE 202 785-5600

CHARLES A. BYRLEY,
DIRECTOR

April 9, 1974

Mr. Kenneth R. Cole, Jr.
Executive Director
Domestic Council
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ken:

I was particularly pleased to learn from your legislative affairs office, that the President has decided not to support S.354, a pending bill for federally mandated no-fault auto insurance. The press reports that the President was considering giving support to this bill were particularly disturbing to the Governors. As you know, the President sent a telegram to the Governors in Houston in June of 1972 stating that "I believe that the States not the federal government can best respond to the urgent need for auto reparations reform". The Governors in their Policy Position adopted in Houston and reaffirmed last year at Lake Tahoe, urged Congress not to take any action that would preempt state action in effectively bringing about meaningful reform in our auto reparations system.

The adoption of national no-fault or mandated federal standards is not an acceptable option to individual state action. State response is particularly appropriate since insurance needs and conditions vary so dramatically from state to state. National no-fault law cannot take into account the state differences in medical costs, urban-rural composition and accident statistics. No single bill could conceivably facilitate the requirements of all the different States with their different populations, economies, existing laws and political and philosophical backgrounds. Further, the enactment of a federal standards bill would impede meaningful wide-range experimentation on a state-by-state basis to ascertain the virtues and defects of different approaches and thereby (1) destroy flexibility, (2) freeze in mistakes, and (3) prevent self-determination.

The growing list of States which have enacted no-fault insurance laws proves that there is no need for federal no-fault programs. Some 90 million people (approximately 45 percent of the nation's total population) are now covered or soon will be able to obtain no-fault automobile insurance coverage in 22 States (Minnesota, Massachusetts, Delaware, Florida, Oregon, South Dakota, Connecticut, Maryland, Virginia, New Jersey, Michigan, New York, Arkansas, Utah, Kansas, Hawaii, Nevada, Texas, Georgia, Colorado, Kentucky and in Washington which has a voluntary program).

Ken, be assured that the States are all aware of current problems in the area of insurance and are actively pursuing a solution. We sincerely hope that the Administra will continue to support the States' position.

Sincerely,

B

We call for new and aggressive programs aimed at increasing export trade to expand the economy of the individual States. To this end, we support the concepts of 1) strengthening the role of the United States Department of Commerce in international trade negotiations; 2) expanding trade center activity abroad; and 3) making federal funds available to the States for use in promoting the export of their respective manufactured products and agricultural commodities.

The National Governors' Conference views the promotion of interstate tourism as a unique opportunity to strengthen national and state economies. We endorse the concept of a United States Travel Data Center and call upon the United States Travel Service and Bureau of the Census to assist in this effort. We also believe that federal matching funds should be available for promotion of interstate tourism, just as such funds are presently available for attracting foreign tourism. Further, we urge that tourism be given an equivalent priority rating with other major industries in any allocation of energy resources.

INSURANCE

States have historically had the basic responsibility for regulating the insurance industry. In response to an increasingly felt need, some forty-seven States have enacted auto insurance insolvency fund guarantee laws, providing consumer protection with no loss of state regulatory powers. State response to this problem has again demonstrated insurance regulations need not pass to the federal level.

A subject of growing interest is the establishment of a "no-fault" system of automobile insurance. Again, some have argued a uniform national system must be imposed from the federal level. However, we believe if "no-fault" is to be adopted, that individual state action and interstate cooperation could produce a "no-fault" system which is uniform enough to meet the needs of interstate vehicle accidents and flexible enough to suit the conditions in each State.

States have many automobile accident insurance systems available for study. We urge those States who have not enacted no-fault legislation to continue to examine options available and to achieve maximum interstate coordination in any actions they may take. We note the extensive research and drafting done by the National Conference of Uniform State Law Commissioners and by the Council of State Governments and urge each State to consider this model legislation.

The best possible solutions to the problems of auto insurance lie in continued state regulation and experimentation. We again urge Congress not to take any action that would preempt state action in effectively bringing about meaningful reform in our auto reparations system. The adoption of national no-fault or federal standards is not an acceptable option to individual state action.

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C.. 20410

April 29, 1975

MEMORANDUM TO: The President

FROM: Carla A. Hills

SUBJECT: Federal Standards for No-Fault Motor Vehicle Insurance

HUD favors Administration support for the currently pending legislation to establish minimum federal standards for no-fault automobile insurance (S.354). We would, however, prefer to see that legislation substantively amended as indicated below.

Our reasons for urging Administration support for no-fault legislation at this time include:

(1) The Administration has been committed to the no-fault automobile insurance concept for four years;

(2) The progress of the States in enacting meaningful no-fault legislation during that period has been very disappointing (only Michigan meets the DOT standards developed in 1971);

(3) No-fault is a demonstrably more cost-effective mechanism for compensating the losses of automobile accident victims than the current fault system;

(4) No-fault is also a more equitable means of distributing benefits than the existing fault system;

(5) No-fault will provide a more timely mechanism for compensating auto accident victims than the fault system;

(6) The pending no-fault legislation would more equitably distribute the costs of automobile insurance among the members of the premium-paying public;

(7) The fault system neither deters nor punishes the negligent driver;

(8) There is a need for minimum standards to achieve a degree of interstate uniformity in automobile accident compensation systems;

(9) Congress has the constitutional authority to enact Federal no-fault automobile insurance legislation;

(10) The pending minimum Federal standards approach represents an interesting experiment in shared State/Federal responsibility; and

(11) HUD's proposed amendment concerning Title III, described below, obviates any Tenth Amendment problem posed by this legislation.

The two amendments which we suggest the Administration propose are as follows:

(1) Title III of S.354 provides that whenever a State's automobile insurance plan fails to meet Federal standards, a Federal insurance mechanism is substituted. In any case, a State is required to implement the Federally mandated minimum standards for automobile insurance. We believe that these mandatory provisions should be removed in favor of a suspension of Federal highway funding and related

transportation aid as a sanction for noncompliance with the Federal minimum standards for no-fault automobile insurance.

(2) We would also suggest that the provisions guaranteeing the availability of no-fault automobile insurance and any supplementary insurance coverages should be strengthened to give a potential insured greater consumer choice and to thereby significantly increase competition. The current proposed legislation, at Section 105, requires only that coverage be available by any one of several enumerated mechanisms, including assigned risk plans. The report prepared by the Federal Insurance Administrator in September, 1974, entitled "Full Insurance Availability" demonstrates the inequity and high cost of assigned risk approaches to providing general access to insurance. Those inequities are only augmented by a system of universally required insurance, such as that envisioned by S.354. Accordingly, in order to maximize competition, reduce cost inequities, and insure that no-fault rates are at their lowest level consistent with sound actuarial practices, each State plan should be required to implement a "full insurance availability" program along with a uniform and simplified rate classification scheme. This additional requirement will enable the consumer to shop the market and choose the best insurance package, thus maximizing competition among insurers, with attendant cost and efficiency benefits to the motoring public at large.

The current no-fault legislative proposal was generated largely by a Department of Transportation study completed in 1971. Accordingly, the Administration could claim substantial credit for a Federal no-fault bill should it now support such a measure. No-fault automobile insurance is a popular consumer protection issue. The Administration could also seize the initiative on no-fault by proposing amendments to S.354 such as those described above.

Because Secretary Coleman is scheduled to testify on April 30, 1975, and S.354 is apt to be considered by the full Senate quite soon, we would suggest announcement of Administration support for minimum Federal no-fault standards and for the substantive amendments we propose for S.354, in the immediate future.

Attached is a memorandum discussing the reasons for our support for S.354 in greater detail.

Attachment

HUD'S POSITION FAVORING FEDERAL STANDARDS
FOR NO-FAULT AUTOMOBILE INSURANCE

1. The Administration's commitment to no-fault.

When Secretary Volpe testified on DOT's study of no-fault automobile insurance in April 1971, he strongly endorsed the no-fault concept but suggested that Congress enact a resolution giving the States 25 months to enact no-fault legislation before considering Federally mandated standards. At the close of the 25 month period, if the States' progress was not satisfactory, the Administration was to provide proposals for Federal action. The current Federal no-fault legislation was generated largely by the DOT study; S.354's benefit package is very similar to that suggested by DOT. 1/

2. The States' progress in implementing no-fault auto insurance is disappointing.

It is now two years beyond the time when the Administration had proposed to provide recommendations for Federal action on no-fault insurance and the States' progress has been quite disappointing. Only one State, Michigan, has enacted a no-fault plan that satisfies the minimum standards recommended by the DOT study. 2/

While a total of 15 States have enacted some form of no-fault, several retain a tort remedy for any injury which exceeds a low economic loss threshold -- $200 in medical bills in New Jersey, for example. Certain insurer groups also claim that

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1/ The actual benefit package contained in S.354 was developed by the Uniform Motor Vehicle Reparations Act group, which included representatives of Federal and State governments and was partially funded by DOT.

2/ "A Specific Recommendation" in Motor Vehicle Crash Losses and Their Compensation in the United States, at p. 133.

over one-half of the Nation's population is covered by some form of no-fault. But, as noted above, only Michigan has enacted legislation which complies with minimum no-fault standards generated by DOT's exhaustive study of the automobile insurance market. 3/

In view of these facts, HUD does not believe that the States have significantly advanced towards achievement of a national no-fault reparations system in the 4 years since the Administration endorsed both the concept of no-fault and a limited 25 month period for the States to implement that concept.

3. No-fault is a more cost effective mechanism for compensating the losses of auto accident victims than the current fault system.

In terms of cost effectiveness, empirical evidence indicates that for every $1 of premiums paid under the current tort system, only about 43 cents goes to the victims of automobile accidents and only 14-1/2 cents actually goes to compensate victims for their out-of-pocket expenses. Under a no-fault scheme like S.354, it has been estimated that 75 cents out of each premium dollar will reach the policyholder in benefits. Thus, a change to no-fault could achieve a 75% increase in the productivity of the auto accident reparations system.

Recent studies including those done for the Department of Transportation indicate total annual consumer savings of $1.5 to $2 billion if every State had a no-fault plan compatible with the proposed minimum Federal standards. HUD actuaries believe that the DOT study is an accurate assessment of the reduction in cost we could expect.

3/ Attached is a letter from William P. Jamieson, President, Michigan Association of Insurance Companies, analyzing Michigan's first year of experience under that State's no-fault law.

The Milliman and Robertson study, augmented by the actual experience in the four States in which data concerning implementation of a no-fault scheme is available (Massachusetts, New York, New Jersey, and Florida) demonstrate that aggregate decreases in insurance premiums will occur under S.354. Measuring no-fault only by the premium costs is, however, a misleading analytical tool. The savings which would result from the shift to a no-fault system, could be used either to reduce individual premiums or to increase benefits, or some combination of each. In analyzing its effect on California, for example, the study forecast an 11% premium reduction and an 88% increase in persons receiving benefits. In S.354 these system savings are largely used for increased benefits and coverage.

The fault system also consumes valuable community resources including the attention of our seriously overcrowded court system. Auto accident litigation occupies 17% of our state courts' time and 11.8% of the time of our federal district judges.

4. No-fault provides a more equitable means of distributing benefits than the existing fault system.

No-fault is not only a more cost effective means of compensating auto accident victims, but also a more equitable means of distributing benefits than the tort system. In other words, the same premium dollar provides not only more benefits, but also distributes those benefit dollars more equitably than the present system.

First, under the tort system 55% of all automobile accident victims go totally uncompensated. In many cases, compensation is unavailable because no one can be proven to have been at fault. In others, the innocent victim goes uncompensated because the driver at fault was uninsured and judgment proof. Estimates are that more than 18 million drivers or 20% of all cars on the road are uninsured, leaving their victims with little hope of compensation. These problems are largely avoided by a compulsory no-fault system, in which the driver's own insurer compensates his losses.

Second, the actual application of the present tort system of compensation is basically inequitable and particularly ineffective in compensating the seriously injured victim. The following chart, from a March 1971 DOT report, demonstrates the relationship of net recoveries to actual losses under the tort system:

Comparison of Reparation Received by Fatally or Seriously Injured Persons with Tort Recovery by Size of Loss

Total Economic Loss	Ratio of Net Recovery to Loss
1 - 499	4.5
500 - 999	2.6
1,000 - 1,499	2.4
1,500 - 2,499	2.0
2,500 - 4,999	1.6
5,000 - 9,000	1.1
10,000 - 24,999	0.7
25,000 - and over	0.3

Hence, under the current system, victims with small economic loss are generously over-compensated while those suffering serious loss are left seriously under-compensated. A true no-fault scheme like that proposed by S.354 should result in both categories of victims being compensated their true economic losses.

5. No-fault is also more efficient in terms of providing timely compensation.

Compensation under the tort system often comes long after treatment is needed or income lost, causing severe hardship to accident victims. An average claim is not settled until 16 months after an accident and the delay is even longer for accidents involving more serious injuries. Over half of the claims of victims with more than $5,000 in losses are unsettled after two years. And, fewer than 8% of accident victims receive interim benefits of any consequence under the tort system. The result is often that needed rehabilitation is delayed, hindering medical recovery, or that the victim's family suffers a painful and extended interruption in their income-stream.

6. No-fault is more equitable not only to the victim but also to the premium payer.

Questions regarding no-fault's potentially inequitable impact on certain regions, States, and rating classifications have been raised. HUD's actuaries believe that rating practices under no-fault will be more equitable than those under the tort system. Currently, the young and poor, for instance, pay much more than they would under no-fault because we assume that in an accident, the youth or poor person is apt to injure an "average" driver who will suffer an average wage loss. Under no-fault, the income level of the insured is known and the risk he presents is rated accordingly.

It is true that motorists in a very few rural States might pay minimally more in premiums under S.354 than they do currently. Again, however, premium costs alone are a misleading measure of the program. The residents of those States will also receive significantly more in benefits. For example, many single car accidents that now go uncompensated in such States would be covered by insurance under S.354. Thus, although drivers in these States may experience a less than 10% increase in average premiums, the expected pay-out in benefits will increase even more substantially. For example, where $1 in premiums under the tort system would produce 43 cents in recoveries, $1.10 in no-fault premiums would produce 83 cents in benefits. Even in rural States, no-fault is more cost-effective than the tort system alternative.

Additionally, nothing in S.354 changes the current practice of rating by actuarial territories. Thus, the charge that under no-fault rural drivers will be subsidizing urban drivers is patently false. Each area would be rated separately.

The claim that no-fault could be a windfall for commercial fleet owners, is resolved by a specific provision of S.354 (at Section 111(a)(3)).

Finally, it is argued that no-fault could impact adversely on some small insurers. Group merchandising does become more feasible under a no-fault plan. Group merchandising is also a more efficient insurance underwriting and marketing technique, hence, is apt to produce significant savings for the consumer. To the extent small insurers suffer, it is because of their incapacity to compete in the marketplace and provide consumers with the best service at the lowest price. The protection of inefficient commercial operations is not a proper consideration in determining the Administration's stance on no-fault legislation. Further, the lack of an effective auto insurance system only makes it more likely that National Health Insurance, rather than auto insurance, ultimately will cover medical losses, a prospect which poses an even greater threat to small auto carriers.

7. The fault system neither deters nor punishes the negligent driver.

The DOT study of automobile insurance also demonstrated that the existing tort system neither deters nor punishes the negligent driver. Negligent drivers are defended by their liability insurers, and judgments rendered against them are paid by their insurance companies. Moreover, most tort cases are resolved in out-of-court settlements by the insurer, avoiding any legal determination of culpability. The real loser in the current system is the prudent insured carrying high limit liability insurance, who is struck by a negligent uninsured motorist, and is uncompensated. In a no-fault scheme, this anomaly is avoided.

8. The need for interstate uniformity.

There is a need for minimum Federal standards to achieve a degree of interstate uniformity. Currently, more than 5 million drivers in assigned risk pools and a similar number holding policies from substandard writers cannot acquire coverage that increases to anything in excess of the limits of liability stated in their own policy. Their underwriters do not offer limits in excess of their particular State's statutory minimum. So when these drivers wander into higher limit States, they are driving, in effect, in violation of the host State's Financial Responsibility Laws. The result is a game of Russian roulette for the victim; the extent to which he is compensated for his loss may depend on the home state of the driver who causes the injury.

9. Congress has the authority to enact no-fault legislation.

The States' power to regulate insurance is a creature of Congressional statute. 4/ Congress, pursuant to the Commerce Clause, has retained the ultimate authority to legislate on insurance matters. Congress could mandate a totally Federal

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4/ The McCarran-Ferguson Act which provides that statutory sanction is currently under review by the Department of Justice.

automobile insurance scheme. Instead, S.354 seeks to establish a system of minimum Federal guidelines to be augmented and implemented by the States.

10. S.354 represents a shared State/Federal responsibility for auto insurance.

S.354 represents an interesting approach to shared State/Federal responsibility, in which the States are charged with implementing and augmenting minimum Federal standards for auto insurance. The legislation affords the States considerable latitude in constructing an automobile insurance scheme which meets the minimum Federal standards but is also tailored to the particular needs of that State's motoring public.

In several areas such as Fair Housing, to name but one at HUD, statutory provision is made for a State with equivalent laws and enforcement resources to take over the enforcement of a Federal law. The scheme of S.354 differs from such mechanisms only in that the State is required rather than allowed to implement the Federally mandated scheme. While the Supremacy Clause would require a State to abide by Federal standards such as those in S.354 in its regulation of insurance, arguably, S.354 goes somewhat further by requiring the State to regulate automobile insurance in accord with its terms. The Attorney General has suggested that this interesting approach to shared State/Federal responsibility may run afoul of the Tenth Amendment.

11. HUD proposes to amend S.354 to provide a sanction for noncompliance with the minimum Federal standards.

The amendments to S.354, which HUD has suggested, obviate the Tenth Amendment issue. We have proposed that S.354's minimum standards be retained, but that any State which failed to comply with those minimum standards be ineligible for highway trust funds or related Federal transportation aid until it came into compliance. This scheme would put the Federal Government into the position of encouraging the States to adopt a Federal regulatory model, a more traditional configuration.

12. Conclusions.

Since the current no-fault legislation was generated primarily by the DOT study, the Administration could claim substantial credit for a Federal no-fault bill should it now support that measure. The Administration could also seize the initiative on no-fault by proposing amendments to S.354 which would:

(1) remove Title III in favor of a suspension of Federal transportation aid as a sanction for noncompliance with the minimum Federal standards; and

(2) guarantee the full availability of standard insurance to every motorist. Section 105 of S.354 requires only that coverage be available by any one of several enumerated mechanisms, including assigned risk plans. The report prepared by the Federal Insurance Administrator in September 1974 entitled "Full Insurance Availability" demonstrates the inequity and high cost of assigned risk approaches to providing general access to insurance. Those inequities are only augmented by a system of universally required insurance, such as that envisioned by S.354. Accordingly, in order to maximize competition, reduce cost inequities and insure that no-fault rates are at their lowest level consistent with sound actuarial practices, each State plan should be required to implement a "full insurance availability" program along with a uniform and simplified rate classification scheme. This additional requirement will enable the consumer to shop the market and choose the best insurance package, thus maximizing competition among insurers, with attendant cost and efficiency benefits to the motoring public at large.

Because Secretary Coleman is scheduled to testify on April 30, we would suggest that, at that time, the Administration announce its support for S.354 as well as the substantive changes we would like to see in that legislation.

ANALYSIS OF FIRST-YEAR EXPERIENCE WITH THE MICHIGAN NO-FAULT AUTO INSURANCE LAW AND RECOMMENDATIONS FOR ITS IMPROVEMENT

To Honorable Matthew McNeely, Chairman; Dan Angel, William Hayward, Kirby Holmes, John Engler, John Kelsey, George Edwards, Casmer Ogonowski.

GENTLEMEN: The Michigan insurance companies were among the first to call for a no-fault law so that the auto insurance dollar could be concentrated on paying the expenses of the injured instead of those of the legal system.

But we expressed serious concern about some aspects of the law as it finally was adopted.

We feared that the revolutionary change which it made would create prolonged constitutionality issues, which would leave the insurance system operating under a cloud of uncertainty and make it impossible to determine the cost effect of the change.

We had grave doubts whether the nature of the law's restriction on injury fault claims and lawsuits would be adequate to support unlimited no-fault benefits without creating additional insurance cost for motorists.

And we questioned whether people would accept the elimination of their right to collect from an at-fault driver for damage to their vehicles.

Regardless of those reservations, we assured you and your colleagues that, as professional administrators of the insurance system, we would conscientiously provide the people of Michigan with the best possible protection at the least possible cost which the conditions would allow.

We have done that, and because the Michigan companies insure approximately half of the motor vehicles in the state we have had a very broad exposure to the practical application of the new law.

Briefly, this is what has happeend:

1. Your decision to provide unlimited no-fault medical and rehabilitation benefits and very substantial income loss compensation has created near-ideal economic protection for accident injury victims, and especially for the seriously injured. It is a dramatic improvement over the fault system.

2. The law's removal of fault system recovery for damage to motor vehicles has brought angry reaction from the motorist who does not have collision coverage and cannot collect from a negligent driver who smashes his car, or who has a form of collision coverage under which he does not get his deductible when another driver is at fault. This has created a distorted impression of public dissatisfaction with the entire no-fault concept because there are many more instances of vehicle damage than of injury, and the injured who are benefiting from no-fault have not been heard from.

3. Some segments of the law obviously need clarifying amendments. There is a question whether school districts were intended to insure the children on their buses. There is an almost certainly unintended provision for companies to recover no-fault benefits out of pain and suffering awards to their insureds. Mandatory liability limits should be stated in the act itself. And the right of a motorist to voluntarily coordinate his no-fault coverage with some other injury benefits is in doubt.

4. As we feared, the insurance system has been forced to operate without answers to whether the law will be upheld and, if so, in what form. The lack of those answers also has deferred the legal cases which will determine whether the law's provision which is intended to sharply cut the fault system expenses will work. As a result it has been impossible to determine the effect of the law on the cost of auto insurance, and the delay has created a multi-million-dollar possibility of double injury payments.

5. Michigan motorists have had considerable auto insurance cost savings during the first year of no-fault, even through the actual cost effect of the law could not be established. This resulted from company decisions to hold the line or decrease their premium levels until no-fault experience could be established, despite the uncertainties of the law and the impact of soaring inflation on the cost of everything auto insurance pays for.

As we advised you when this committee was created, we appreciate your decision to review the performance of the no-fault law and to consider the possibilities for its improvement, and we offer our fullest cooperation.

We believe the following elaboration upon the highlights of our experience with it should be a practical and important contribution to your considerations. In addition, we would be pleased to answer any questions which you may have, and to consult with you at any time.

MEDICAL, REHABILITATION, AND INCOME LOSS BENEFITS

Without question, this law is abundantly fulfilling the primary objective of the no-fault principle, which is to guarantee prompt, sure, adequate recovery of injury costs for all accident victims.

In the first year of no-fault, more than 135,000 persons were injured in Michigan auto accidents and nearly 1,800 were killed. Among the injured and the dependents of the fatally hurt who were insured by the Michigan companies the no-fault protection was universally well-received, and this undoubtedly was true of all others.

Companies have stressed prompt payment and in most instances it has been made within a few days of the receipt of proof of doctor and hospital bills, income loss, and replacement of services which an injured person would have done for himself. Dependency benefits, which are geared to the maximum $1,000 a month for three years income loss benefits, have been quickly established and paid. Under the fault system payment could have been made only if another driver was legally liable and after the total amount of the loss was established, both of which often had to be determined by lawsuit.

In all of these injuries and deaths no-fault has paid all medical and hospital costs, plus income loss or dependency benefits when applicable, except to the extent that workmen's compensation, social security or coordination with health benefits was involved. It has paid regardless of who was at fault or whether anyone was at fault. Under the fault system only about half of those injured would have been able to collect from someone else.

The no-fault benefits have been particularly important for those who have many thousands of dollars of hospital-medical costs which, under the old system, would not have been met by modest auto insurance medical coverage or health insurance, and for those who have extended work loss for which they have little or no other coverage.

The most dramatic effect of the change has been the creation of a new dimension in the role of auto insurance with the critically injured whose only hope for a future with any enjoyment of life, instead of as a helpless bed patient, lies in timely, comprehensive rehabilitation.

Under the fault system, auto insurance could do little to meet their treatment needs. Unless someone else was legally at fault for the injury, auto insurance has no role beyond the possibility of medical payments by the injured person's company, usually not more than $5,000. If the injury involved a fault claim, the role of auto insurance was for the other motorist's company to defend its insured and, if he was legally liable, to ultimately pay the determined award.

Now the critically injured are assured immediate access to all necessary treatment and rehabilitation, with all of the costs guaranteed directly by their own auto insurer. A number of such cases already are either in or scheduled to go to the best rehabilitation centers in the country, with their initial treatment and lifetime care costs reserved by their insurers at from $100,000 to $250,000 each.

In cooperation with Chairman McNeely, we have asked a few of those who have experienced the no-fault benefits, or their close relatives, and some of the specialists in rehabilitation treatment to give you at your hearings a firsthand picture of how the law is working.

RESULTS OF NO-FAULT VEHICLE DAMAGE CONCEPT

When the Legislature decided to extend the no-fault principle to include damage to motor vehicles it removed a form of protection which motorists long have accepted and relied upon and about which they generally have strong moral convictions.

Taking away the right to recover from an at-fault driver created a total void in vehicle damage recovery for those without collision insurance and a partial one for those with that coverage. The motorist with an old car to collect is gone. The great majority, who feels he cannot or does not want to pay for collision insurance, and those who ignore collision coverage because they are convinced that any damage would be another driver's fault are accustomed to expect payment when someone else is at fault. Now that right to collect is gone. The great mapority, who buy collision insurance, also expect to recover their deductible along with the rest of the damage if another is at fault. That right also was removed.

This condition has been remedied for most motorists by the offering of two new forms of collision insurance. One, called limited collision, pays for vehicle damage only if another is at fault. The other, called broadened collision, pays the deductible along with the rest of the damage if another is at fault.

When the no-fault law became effective, companies applied limited collision without charge to the policies of those without collision coverage, and broadened collision without charge to those with collision coverage. At the first policy renewal, the new coverages and their rates were explained and motorists were given the option of buying either of these or regular collision coverage with a deductible. Limited collision rates were the lowest of the three. Broadened collision rates were slightly higher than those for standard deductable collision. In addition, some companies provided limited collision with a deductible to give the motorist a lower rate.

The response among motorists differed by company, but in general about 70 to 80 per cent took either regular or broadened collision, 15 to 20 per cent took limited, and 5 to 15 per cent elected to have no collision coverage.

This still leaves those who have no collision insurance unable to collect for any damage to their vehicles, and those who have regular collision or limited collision with a deductible unable to collect the amount of the deductible, and many in this group have been expressing great dissatisfaction.

There are three alternatives for resolving this matter. One is to leave the law as it now is and attempt to educate those who are complaining that, like all others, they received a rate reduction from the elimination of property damage liability and if they want the substitute protection they must pay for it. Another is to restore property damage liability. The third is to make limited collision coverage, without a deductible, a mandatory part of the no-fault law.

If there is a change, it also should involve consideration of the status of the present residual property damage liability coverage and the property protection insurance provision, both of which are part of the overall rates for vehicle damage coverages.

Among the companies, there are differences of opinion as to which might be the better course. We believe it would be helpful to you to hear the different views about this and the reasons for them as you consider this question.

SITUATIONS WHICH NEED CLARIFYING

The question of school bus coverage already is before you in bill form. Those involving subrogation against pain and suffering awards, the liability limit, and coordination of benefits undoubtedly are drafting oversights requiring technical corrections. We would be happy to discuss these with you when you are ready to review the law after your hearings.

EFFECT OF THE CLIMATE OF LEGAL UNCERTAINTY

What has happened on the question of whether the no-fault law is constitutional has become an example of the long-delayed court decisions which were one of the motivations for creating a no-fault system.

Shortly after the law was adopted in October, 1972, the Supreme Court was asked to resolve this issue. It ruled only that the Legislature had acted properly in creating the law. Subsequently, two lawsuits in circuit courts have produced decisions which have clouded the law's status. Now, after more than two years, the issue again must go before the Supreme Court and apparently there is little likelihood that it may act for many more months.

If the law should then be thrown out insurers would be faced with the possibility of fault system claims, on top of the no-fault benefits already paid, in injury cases dating back to the October 1, 1973, effective date of no-fault. For the first year, that double payment potential is estimated at 250 million dollars. By the time there is a decision it could nearly double.

With the constitutionality question unanswered, the other serious legal uncertainty in the law also has been left in limbo. This is the question of whether the provision allowing legal action for pain and suffering damages in instances of "serious impairment of body function" will sharply reduce the fault expenses in the insurance system or whether it may open a floodgate of fault claims and lawsuits.

There has been a sharp drop in injury liability claims the past year, but that does not answer the question. Because of the prospect that the courts might restore the fault system, and with a three-year period in which to file suits, many law firms are known to be "stockpiling" suits rather than testing the language of the new law. In recent months, however, companies have begun to receive claims involving the "serious impairment" question.

How the intent of this language is interpreted by the injured and the courts will be a major factor in how the no-fault law will affect the price of auto insurance. If all manner of minor and temporary disabilities are construed to justify pain and suffering damages the fault system will be largely reimposed upon the no-fault system. This would make financing the new costs of unlimited care for all of the injured out of reduced fault costs obviously impossible.

PRESENT COST EFFECT OF NO-FAULT AND THE PROSPECTS

When no-fault became effective companies adjusted their rates between the new and old coverages to reflect the expected changes in loss exposure. This decreased premiums for those who bought only the mandatory no-fault coverages. It maintained or slightly decreased the former premium for those who also have collision coverage.

In addition, there were larger premium decreases for young drivers, those with low incomes, and retirees, to reflect the fact that they had smaller or less likely exposure to income loss. Retirees are charged only for the risk of services replacement for themselves or an uninsured passenger or pedestrian, or income loss for the latter.

Also, those who have elected to coordinate their no-fault auto insurance with their health insurance have received additional rate reductions.

As a result, the price of Michigan auto insurance, unlike that of almost any other commodity or service, has remained stable or decreased. In most companies rates have not increased since early 1973, for many not since 1971, and some have decreased rates during that period.

The present rates are based on loss experience under the fault system, adjusted to the probable effect of no-fault in the best judgment of the companies, pending the acquiring of adequate actual no-fault experience.

During the past year loss experience generally has improved, but this has had little to do with no-fault. Primarily it has resulted from the sustained decrease in accidents, injuries and deaths produced by the changed driving habits inspired by the energy problem.

Now the effect of the accident decrease is being offset by the sharpest inflation in recent times in the cost of everything which auto insurance pays for. Two graphs depicting the relationship of auto insurance price to those costs are attached. They are based on national figures but are essentially true of Michigan. In the period since last July, where these conclude, doctor's fees have jumped to an annual rate of increase of 19 per cent and hospital charges to an 18 per cent rate. The cost of car repair parts has soared 28 per cent and new car price increases have raised replacement costs some $500 on 1974 models and a like amount for 1975s.

Because of the conflicting factors in the basic cost trend and the threat of staggering double payments and a flood of pain and suffering suits, it is impossible for insurers to predict at this time what the effect may be on the future of auto insurance price.

The loss improvement of the past year could easily be removed quickly by the inflation trend alone, and would be wiped out many times over by an adverse answer to either of the legal uncertainties.

CONCLUSIONS

The improvement which the no-fault principle has created in compensating the injured overshadows the conditions which are plaguing it and deserves to be protected by resolving them.

The property damage liability situation should be carefully reviewed to determine how best to relieve those whom it has distressed and to prevent the erosion of confidence in the no-fault principle.

There is nothing you can do, of course, about the constitutionality question, but it is important that you be aware of and understand the threat which it poses to the economics of no-fault protection.

If the "serious impairment" language does become an open invitation to frivolous lawsuits instead of a protection against them we strongly believe that you should reconsider this section of the law.

The people of Michigan now have a tremendously broader and more effective auto injury loss protection at no greater price than the former system and at lesser price for many. Under the conditions it is not possible to predict whether the economics of this change will improve or worsen. If there are savings, the Michigan companies and others are pledged to pass them on to their insured motorists. If the costs increase, we will have no choice but to pass them on also.

Respectfully submitted,

WILLIAM P. JAMIESON,
President, Michigan Association of Insurance Companies.

THE HONORABLE GERALD R. FORD
PRESIDENT
THE WHITE HOUSE
WASHINGTON, D. C.

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C.. 20410

April 29, 1975

MEMORANDUM TO: The President

FROM: Carla A. Hills

SUBJECT: Federal Standards for No-Fault Motor Vehicle Insurance

HUD favors Administration support for the currently pending legislation to establish minimum federal standards for no-fault automobile insurance (S.354). We would, however, prefer to see that legislation substantively amended as indicated below.

Our reasons for urging Administration support for no-fault legislation at this time include:

(1) The Administration has been committed to the no-fault automobile insurance concept for four years;

(2) The progress of the States in enacting meaningful no-fault legislation during that period has been very disappointing (only Michigan meets the DOT standards developed in 1971);

(3) No-fault is a demonstrably more cost-effective mechanism for compensating the losses of automobile accident victims than the current fault system;

(4) No-fault is also a more equitable means of distributing benefits than the existing fault system;

(5) No-fault will provide a more timely mechanism for compensating auto accident victims than the fault system;

(6) The pending no-fault legislation would more equitably distribute the costs of automobile insurance among the members of the premium-paying public;

(7) The fault system neither deters nor punishes the negligent driver;

(8) There is a need for minimum standards to achieve a degree of interstate uniformity in automobile accident compensation systems;

(9) Congress has the constitutional authority to enact Federal no-fault automobile insurance legislation;

(10) The pending minimum Federal standards approach represents an interesting experiment in shared State/Federal responsibility; and

(11) HUD's proposed amendment concerning Title III, described below, obviates any Tenth Amendment problem posed by this legislation.

The two amendments which we suggest the Administration propose are as follows:

(1) Title III of S.354 provides that whenever a State's automobile insurance plan fails to meet Federal standards, a Federal insurance mechanism is substituted. In any case, a State is required to implement the Federally mandated minimum standards for automobile insurance. We believe that these mandatory provisions should be removed in favor of a suspension of Federal highway funding and related

transportation aid as a sanction for noncompliance with the Federal minimum standards for no-fault automobile insurance.

(2) We would also suggest that the provisions guaranteeing the availability of no-fault automobile insurance and any supplementary insurance coverages should be strengthened to give a potential insured greater consumer choice and to thereby significantly increase competition. The current proposed legislation, at Section 105, requires only that coverage be available by any one of several enumerated mechanisms, including assigned risk plans. The report prepared by the Federal Insurance Administrator in September, 1974, entitled "Full Insurance Availability" demonstrates the inequity and high cost of assigned risk approaches to providing general access to insurance. Those inequities are only augmented by a system of universally required insurance, such as that envisioned by S.354. Accordingly, in order to maximize competition, reduce cost inequities, and insure that no-fault rates are at their lowest level consistent with sound actuarial practices, each State plan should be required to implement a "full insurance availability" program along with a uniform and simplified rate classification scheme. This additional requirement will enable the consumer to shop the market and choose the best insurance package, thus maximizing competition among insurers, with attendant cost and efficiency benefits to the motoring public at large.

The current no-fault legislative proposal was generated largely by a Department of Transportation study completed in 1971. Accordingly, the Administration could claim substantial credit for a Federal no-fault bill should it now support such a measure. No-fault automobile insurance is a popular consumer protection issue. The Administration could also seize the initiative on no-fault by proposing amendments to S.354 such as those described above.

Because Secretary Coleman is scheduled to testify on April 30, 1975, and S.354 is apt to be considered by the full Senate quite soon, we would suggest announcement of Administration support for minimum Federal no-fault standards and for the substantive amendments we propose for S.354, in the immediate future.

Attached is a memorandum discussing the reasons for our support for S.354 in greater detail.

Attachment

HUD'S POSITION FAVORING FEDERAL STANDARDS
FOR NO-FAULT AUTOMOBILE INSURANCE

1. The Administration's commitment to no-fault.

When Secretary Volpe testified on DOT's study of no-fault automobile insurance in April 1971, he strongly endorsed the no-fault concept but suggested that Congress enact a resolution giving the States 25 months to enact no-fault legislation before considering Federally mandated standards. At the close of the 25 month period, if the States' progress was not satisfactory, the Administration was to provide proposals for Federal action. The current Federal no-fault legislation was generated largely by the DOT study; S.354's benefit package is very similar to that suggested by DOT. 1/

2. The States' progress in implementing no-fault auto insurance is disappointing.

It is now two years beyond the time when the Administration had proposed to provide recommendations for Federal action on no-fault insurance and the States' progress has been quite disappointing. Only one State, Michigan, has enacted a no-fault plan that satisfies the minimum standards recommended by the DOT study. 2/

While a total of 15 States have enacted some form of no-fault, several retain a tort remedy for any injury which exceeds a low economic loss threshold -- $200 in medical bills in New Jersey, for example. Certain insurer groups also claim that

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1/ The actual benefit package contained in S.354 was developed by the Uniform Motor Vehicle Reparations Act group, which included representatives of Federal and State governments and was partially funded by DOT.

2/ "A Specific Recommendation" in Motor Vehicle Crash Losses and Their Compensation in the United States, at p. 133.

over one-half of the Nation's population is covered by some form of no-fault. But, as noted above, only Michigan has enacted legislation which complies with minimum no-fault standards generated by DOT's exhaustive study of the automobile insurance market. 3/

In view of these facts, HUD does not believe that the States have significantly advanced towards achievement of a national no-fault reparations system in the 4 years since the Administration endorsed both the concept of no-fault and a limited 25 month period for the States to implement that concept.

3. No-fault is a more cost effective mechanism for compensating the losses of auto accident victims than the current fault system.

In terms of cost effectiveness, empirical evidence indicates that for every $1 of premiums paid under the current tort system, only about 43 cents goes to the victims of automobile accidents and only 14-1/2 cents actually goes to compensate victims for their out-of-pocket expenses. Under a no-fault scheme like S.354, it has been estimated that 75 cents out of each premium dollar will reach the policyholder in benefits. Thus, a change to no-fault could achieve a 75% increase in the productivity of the auto accident reparations system.

Recent studies including those done for the Department of Transportation indicate total annual consumer savings of $1.5 to $2 billion if every State had a no-fault plan compatible with the proposed minimum Federal standards. HUD actuaries believe that the DOT study is an accurate assessment of the reduction in cost we could expect.

3/ Attached is a letter from William P. Jamieson, President, Michigan Association of Insurance Companies, analyzing Michigan's first year of experience under that State's no-fault law.

The Milliman and Robertson study, augmented by the actual experience in the four States in which data concerning implementation of a no-fault scheme is available (Massachusetts, New York, New Jersey, and Florida) demonstrate that aggregate decreases in insurance premiums will occur under S.354. Measuring no-fault only by the premium costs is, however, a misleading analytical tool. The savings which would result from the shift to a no-fault system, could be used either to reduce individual premiums or to increase benefits, or some combination of each. In analyzing its effect on California, for example, the study forecast an 11% premium reduction and an 88% increase in persons receiving benefits. In S.354 these system savings are largely used for increased benefits and coverage.

The fault system also consumes valuable community resources including the attention of our seriously overcrowded court system. Auto accident litigation occupies 17% of our state courts' time and 11.8% of the time of our federal district judges.

4. No-fault provides a more equitable means of distributing benefits than the existing fault system.

No-fault is not only a more cost effective means of compensating auto accident victims, but also a more equitable means of distributing benefits than the tort system. In other words, the same premium dollar provides not only more benefits, but also distributes those benefit dollars more equitably than the present system.

First, under the tort system 55% of all automobile accident victims go totally uncompensated. In many cases, compensation is unavailable because no one can be proven to have been at fault. In others, the innocent victim goes uncompensated because the driver at fault was uninsured and judgment proof. Estimates are that more than 18 million drivers or 20% of all cars on the road are uninsured, leaving their victims with little hope of compensation. These problems are largely avoided by a compulsory no-fault system, in which the driver's own insurer compensates his losses.

Second, the actual application of the present tort system of compensation is basically inequitable and particularly ineffective in compensating the seriously injured victim. The following chart, from a March 1971 DOT report, demonstrates the relationship of net recoveries to actual losses under the tort system:

Comparison of Reparation Received by Fatally or Seriously Injured Persons with Tort Recovery by Size of Loss

Total Economic Loss	Ratio of Net Recovery to Loss
1 - 499	4.5
500 - 999	2.6
1,000 - 1,499	2.4
1,500 - 2,499	2.0
2,500 - 4,999	1.6
5,000 - 9,000	1.1
10,000 - 24,999	0.7
25,000 - and over	0.3

Hence, under the current system, victims with small economic loss are generously over-compensated while those suffering serious loss are left seriously under-compensated. A true no-fault scheme like that proposed by S.354 should result in both categories of victims being compensated their true economic losses.

5. No-fault is also more efficient in terms of providing timely compensation.

Compensation under the tort system often comes long after treatment is needed or income lost, causing severe hardship to accident victims. An average claim is not settled until 16 months after an accident and the delay is even longer for accidents involving more serious injuries. Over half of the claims of victims with more than $5,000 in losses are unsettled after two years. And, fewer than 8% of accident victims receive interim benefits of any consequence under the tort system. The result is often that needed rehabilitation is delayed, hindering medical recovery, or that the victim's family suffers a painful and extended interruption in their income-stream.

6. No-fault is more equitable not only to the victim but also to the premium payer.

Questions regarding no-fault's potentially inequitable impact on certain regions, States, and rating classifications have been raised. HUD's actuaries believe that rating practices under no-fault will be more equitable than those under the tort system. Currently, the young and poor, for instance, pay much more than they would under no-fault because we assume that in an accident, the youth or poor person is apt to injure an "average" driver who will suffer an average wage loss. Under no-fault, the income level of the insured is known and the risk he presents is rated accordingly.

It is true that motorists in a very few rural States might pay minimally more in premiums under S.354 than they do currently. Again, however, premium costs alone are a misleading measure of the program. The residents of those States will also receive significantly more in benefits. For example, many single car accidents that now go uncompensated in such States would be covered by insurance under S.354. Thus, although drivers in these States may experience a less than 10% increase in average premiums, the expected pay-out in benefits will increase even more substantially. For example, where $1 in premiums under the tort system would produce 43 cents in recoveries, $1.10 in no-fault premiums would produce 83 cents in benefits. Even in rural States, no-fault is more cost-effective than the tort system alternative.

Additionally, nothing in S.354 changes the current practice of rating by actuarial territories. Thus, the charge that under no-fault rural drivers will be subsidizing urban drivers is patently false. Each area would be rated separately.

The claim that no-fault could be a windfall for commercial fleet owners, is resolved by a specific provision of S.354 (at Section 111(a)(3)).

Finally, it is argued that no-fault could impact adversely on some small insurers. Group merchandising does become more feasible under a no-fault plan. Group merchandising is also a more efficient insurance underwriting and marketing technique, hence, is apt to produce significant savings for the consumer. To the extent small insurers suffer, it is because of their incapacity to compete in the marketplace and provide consumers with the best service at the lowest price. The protection of inefficient commercial operations is not a proper consideration in determining the Administration's stance on no-fault legislation. Further, the lack of an effective auto insurance system only makes it more likely that National Health Insurance, rather than auto insurance, ultimately will cover medical losses, a prospect which poses an even greater threat to small auto carriers.

7. The fault system neither deters nor punishes the negligent driver.

The DOT study of automobile insurance also demonstrated that the existing tort system neither deters nor punishes the negligent driver. Negligent drivers are defended by their liability insurers, and judgments rendered against them are paid by their insurance companies. Moreover, most tort cases are resolved in out-of-court settlements by the insurer, avoiding any legal determination of culpability. The real loser in the current system is the prudent insured carrying high limit liability insurance, who is struck by a negligent uninsured motorist, and is uncompensated. In a no-fault scheme, this anomaly is avoided.

8. The need for interstate uniformity.

There is a need for minimum Federal standards to achieve a degree of interstate uniformity. Currently, more than 5 million drivers in assigned risk pools and a similar number holding policies from substandard writers cannot acquire coverage that increases to anything in excess of the limits of liability stated in their own policy. Their underwriters do not offer limits in excess of their particular State's statutory minimum. So when these drivers wander into higher limit States, they are driving, in effect, in violation of the host State's Financial Responsibility Laws. The result is a game of Russian roulette for the victim; the extent to which he is compensated for his loss may depend on the home state of the driver who causes the injury.

9. Congress has the authority to enact no-fault legislation.

The States' power to regulate insurance is a creature of Congressional statute. 4/ Congress, pursuant to the Commerce Clause, has retained the ultimate authority to legislate on insurance matters. Congress could mandate a totally Federal

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4/ The McCarran-Ferguson Act which provides that statutory sanction is currently under review by the Department of Justice.

automobile insurance scheme. Instead, S.354 seeks to establish a system of minimum Federal guidelines to be augmented and implemented by the States.

10. S.354 represents a shared State/Federal responsibility for auto insurance.

S.354 represents an interesting approach to shared State/Federal responsibility, in which the States are charged with implementing and augmenting minimum Federal standards for auto insurance. The legislation affords the States considerable latitude in constructing an automobile insurance scheme which meets the minimum Federal standards but is also tailored to the particular needs of that State's motoring public.

In several areas such as Fair Housing, to name but one at HUD, statutory provision is made for a State with equivalent laws and enforcement resources to take over the enforcement of a Federal law. The scheme of S.354 differs from such mechanisms only in that the State is required rather than allowed to implement the Federally mandated scheme. While the Supremacy Clause would require a State to abide by Federal standards such as those in S.354 in its regulation of insurance, arguably, S.354 goes somewhat further by requiring the State to regulate automobile insurance in accord with its terms. The Attorney General has suggested that this interesting approach to shared State/Federal responsibility may run afoul of the Tenth Amendment.

11. HUD proposes to amend S.354 to provide a sanction for noncompliance with the minimum Federal standards.

The amendments to S.354, which HUD has suggested, obviate the Tenth Amendment issue. We have proposed that S.354's minimum standards be retained, but that any State which failed to comply with those minimum standards be ineligible for highway trust funds or related Federal transportation aid until it came into compliance. This scheme would put the Federal Government into the position of encouraging the States to adopt a Federal regulatory model, a more traditional configuration.

12. Conclusions.

Since the current no-fault legislation was generated primarily by the DOT study, the Administration could claim substantial credit for a Federal no-fault bill should it now support that measure. The Administration could also seize the initiative on no-fault by proposing amendments to S.354 which would:

(1) remove Title III in favor of a suspension of Federal transportation aid as a sanction for noncompliance with the minimum Federal standards; and

(2) guarantee the full availability of standard insurance to every motorist. Section 105 of S.354 requires only that coverage be available by any one of several enumerated mechanisms, including assigned risk plans. The report prepared by the Federal Insurance Administrator in September 1974 entitled "Full Insurance Availability" demonstrates the inequity and high cost of assigned risk approaches to providing general access to insurance. Those inequities are only augmented by a system of universally required insurance, such as that envisioned by S.354. Accordingly, in order to maximize competition, reduce cost inequities and insure that no-fault rates are at their lowest level consistent with sound actuarial practices, each State plan should be required to implement a "full insurance availability" program along with a uniform and simplified rate classification scheme. This additional requirement will enable the consumer to shop the market and choose the best insurance package, thus maximizing competition among insurers, with attendant cost and efficiency benefits to the motoring public at large.

Because Secretary Coleman is scheduled to testify on April 30, we would suggest that, at that time, the Administration announce its support for S.354 as well as the substantive changes we would like to see in that legislation.

OF FIRST-YEAR EXPERIENCE WITH MICHIGAN NO-FAULT AUTO INSURANCE AND RECOMMENDATIONS FOR ITS IMPROVEMENT

To Honorable Matthew McNeely, Chairman;
Dan Angel, William Hayward, Kirby Holmes, John Engler, John Kelsey, George Edwards, Casmer Ogonowski.

GENTLEMEN: The Michigan insurance companies were among the first to call for a no-fault law so that the auto insurance dollar could be concentrated on paying the expenses of the injured instead of those of the legal system.

But we expressed serious concern about some aspects of the law as it finally was adopted.

We feared that the revolutionary change which it made would create prolonged constitutionality issues, which would leave the insurance system operating under a cloud of uncertainty and make it impossible to determine the cost effect of the change.

We had grave doubts whether the nature of the law's restriction on injury fault claims and lawsuits would be adequate to support unlimited no-fault benefits without creating additional insurance cost for motorists.

And we questioned whether people would accept the elimination of their right to collect from an at-fault driver for damage to their vehicles.

Regardless of those reservations, we assured you and your colleagues that, as professional administrators of the insurance system, we would conscientiously provide the people of Michigan with the best possible protection at the least possible cost which the conditions would allow.

We have done that, and because the Michigan companies insure approximately half of the motor vehicles in the state we have had a very broad exposure to the practical application of the new law.

Briefly, this is what has happened:

1. Your decision to provide unlimited no-fault medical and rehabilitation benefits and very substantial income loss compensation has created near-ideal economic protection for accident injury victims, and especially for the seriously injured. It is a dramatic improvement over the fault system.

2. The law's removal of fault system recovery for damage to motor vehicles has brought angry reaction from the motorist who does not have collision coverage and cannot collect from a negligent driver who smashes his car, or who has a form of collision coverage under which he does not get his deductible when another driver is at fault. This has created a distorted impression of public dissatisfaction with the entire no-fault concept because there are many more instances of vehicle damage than of injury, and the injured who are benefiting from no-fault have not been heard from.

3. Some segments of the law obviously need clarifying amendments. There is a question whether school districts were intended to insure the children on their buses. There is an almost certainly unintended provision for companies to recover no-fault benefits out of pain and suffering awards to their insureds. Mandatory liability limits should be stated in the act itself. And the right of a motorist to voluntarily coordinate his no-fault coverage with some other injury benefits is in doubt.

4. As we feared, the insurance system has been forced to operate without answers to whether the law will be upheld and, if so, in what form. The lack of those answers also has deferred the legal cases which will determine whether the law's provision which is intended to sharply cut the fault system expenses will work. As a result it has been impossible to determine the effect of the law on the cost of auto insurance, and the delay has created a multi-million-dollar possibility of double injury payments.

5. Michigan motorists have had considerable auto insurance cost savings during the first year of no-fault, even through the actual cost effect of the law could not be established. This resulted from company decisions to hold the line or decrease their premium levels until no-fault experience could be established, despite the uncertainties of the law and the impact of soaring inflation on the cost of everything auto insurance pays for.

As we advised you when this committee was created, we appreciate your decision to review the performance of the no-fault law and to consider the possibilities for its improvement, and we offer our fullest cooperation.

We believe the following elaboration upon the highlights of our experience with it should be a practical and important contribution to your considerations. In addition, we would be pleased to answer any questions which you may have, and to consult with you at any time.

MEDICAL, REHABILITATION, AND INCOME LOSS BENEFITS

Without question, this law is abundantly fulfilling the primary objective of the no-fault principle, which is to guarantee prompt, sure, adequate recovery of injury costs for all accident victims.

In the first year of no-fault, more than 135,000 persons were injured in Michigan auto accidents and nearly 1,800 were killed. Among the injured and the dependents of the fatally hurt who were insured by the Michigan companies the no-fault protection was universally well-received, and this undoubtedly was true of all others.

Companies have stressed prompt payment and in most instances it has been made within a few days of the receipt of proof of doctor and hospital bills, income loss, and replacement of services which an injured person would have done for himself. Dependency benefits, which are geared to the maximum $1,000 a month for three years income loss benefits, have been quickly established and paid. Under the fault system payment could have been made only if another driver was legally liable and after the total amount of the loss was established, both of which often had to be determined by lawsuit.

In all of these injuries and deaths no-fault has paid all medical and hospital costs, plus income loss or dependency benefits when applicable, except to the extent that workmen's compensation, social security or coordination with health benefits was involved. It has paid regardless of who was at fault or whether anyone was at fault. Under the fault system only about half of those injured would have been able to collect from someone else.

The no-fault benefits have been particularly important for those who have many thousands of dollars of hospital-medical costs which, under the old system, would not have been met by modest auto insurance medical coverage or health insurance, and for those who have extended work loss for which they have little or no other coverage.

The most dramatic effect of the change has been the creation of a new dimension in the role of auto insurance with the critically injured whose only hope for a future with any enjoyment of life, instead of as a helpless bed patient, lies in timely, comprehensive rehabilitation.

Under the fault system, auto insurance could do little to meet their treatment needs. Unless someone else was legally at fault for the injury, auto insurance has no role beyond the possibility of medical payments by the injured person's company, usually not more than $5,000. If the injury involved a fault claim, the role of auto insurance was for the other motorist's company to defend its insured and, if he was legally liable, to ultimately pay the determined award.

Now [illegible] immediate access to all necessary treatment and rehabilitation, with all of the costs guaranteed directly by their own auto insurer. A number of such cases already are either in or scheduled to go to the best rehabilitation centers in the country, with their initial treatment and lifetime care costs reserved by their insurers at from $100,000 to $250,000 each.

In cooperation with Chairman McNeely, we have asked a few of those who have experienced the no-fault benefits, or their close relatives, and some of the specialists in rehabilitation treatment to give you at your hearings a firsthand picture of how the law is working.

RESULTS OF NO-FAULT VEHICLE DAMAGE CONCEPT

When the Legislature decided to extend the no-fault principle to include damage to motor vehicles it removed a form of protection which motorists long have accepted and relied upon and about which they generally have strong moral convictions.

Taking away the right to recover from an at-fault driver created a total void in vehicle damage recovery for those without collision insurance and a partial one for those with that coverage. The motorist with an old car to collect is gone. The great majority, who feels he cannot or does not want to pay for collision insurance, and those who ignore collision coverage because they are convinced that any damage would be another driver's fault are accustomed to expect payment when someone else is at fault. Now that right to collect is gone. The great mapority, who buy collision insurance, also expect to recover their deductible along with the rest of the damage if another is at fault. That right also was removed.

This condition has been remedied for most motorists by the offering of two new forms of collision insurance. One, called limited collision, pays for vehicle damage only if another is at fault. The other, called broadened collision, pays the deductible along with the rest of the damage if another is at fault.

When the no-fault law became effective, companies applied limited collision without charge to the policies of those without collision coverage, and broadened collision without charge to those with collision coverage. At the first policy renewal, the new coverages and their rates were explained and motorists were given the option of buying either of these or regular collision coverage with a deductible. Limited collision rates were the lowest of the three. Broadened collision rates were slightly higher than those for standard deductable collision. In addition, some companies provided limited collision with a deductible to give the motorist a lower rate.

The response among motorists differed by company, but in general about 70 to 80 per cent took either regular or broadened collision, 15 to 20 per cent took limited, and 5 to 15 per cent elected to have no collision coverage.

This still leaves those who have no collision insurance unable to collect for any damage to their vehicles, and those who have regular collision or limited collision with a deductible unable to collect the amount of the deductible, and many in this group have been expressing great dissatisfaction.

There are three alternatives for resolving this matter. One is to leave the law as it now is and attempt to educate those who are complaining that, like all others, they received a rate reduction from the elimination of property damage liability and if they want the substitute protection they must pay for it. Another is to restore property damage liability. The third is to make limited collision coverage, without a deductible, a mandatory part of the no-fault law.

If there is a change, it also should involve consideration of the status of the present residual property damage liability coverage and the property protection insurance provision, both of which are part of the overall rates for vehicle damage coverages.

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What has happened on the question of whether the no-fault law is constitutional has become an example of the long-delayed court decisions which were one of the motivations for creating a no-fault system.

Shortly after the law was adopted in October, 1972, the Supreme Court was asked to resolve this issue. It ruled only that the Legislature had acted properly in creating the law. Subsequently, two lawsuits in circuit courts have produced decisions which have clouded the law's status. Now, after more than two years, the issue again must go before the Supreme Court and apparently there is little likelihood that it may act for many more months.

If the law should then be thrown out insurers would be faced with the possibility of fault system claims, on top of the no-fault benefits already paid, in injury cases dating back to the October 1, 1973, effective date of no-fault. For the first year, that double payment potential is estimated at 250 million dollars. By the time there is a decision it could nearly double.

With the constitutionality question unanswered, the other serious legal uncertainty in the law also has been left in limbo. This is the question of whether the provision allowing legal action for pain and suffering damages in instances of "serious impairment of body function" will sharply reduce the fault expenses in the insurance system or whether it may open a floodgate of fault claims and lawsuits.

There has been a sharp drop in injury liability claims the past year, but that does not answer the question. Because of the prospect that the courts might restore the fault system, and with a three-year period in which to file suits, many law firms are known to be "stockpiling" suits rather than testing the language of the new law. In recent months, however, companies have begun to receive claims involving the "serious impairment" question.

How the intent of this language is interpreted by the injured and the courts will be a major factor in how the no-fault law will affect the price of auto insurance. If all manner of minor and temporary disabilities are construed to justify pain and suffering damages the fault system will be largely reimposed upon the no-fault system. This would make financing the new costs of unlimited care for all of the injured out of reduced fault costs obviously impossible.

PRESENT COST EFFECT OF NO-FAULT AND THE PROSPECTS

When no-fault became effective companies adjusted their rates between the new and old coverages to reflect the expected changes in loss exposure. This decreased premiums for those who bought only the mandatory no-fault coverages. It maintained or slightly decreased the former premium for those who also have collision coverage.

In addition, there were larger premium decreases for young drivers, those with low incomes, and retirees, to reflect the fact that they had smaller or less likely exposure to income loss. Retirees are charged only for the risk of services replacement for themselves or an uninsured passenger or pedestrian, or income loss for the latter.

Also, those who have elected to coordinate their no-fault auto insurance with their health insurance have received additional rate reductions.

As a result, the price of Michigan auto insurance, unlike that of almost any other commodity or service, has remained stable or decreased. In most companies rates have not increased since early 1973, for many not since 1971, and some have decreased rates during that period.

The present rates are based on loss experience under the fault system, adjusted to the probable effect of no-fault in the best judgment of the companies, pending the acquiring of adequate actual no-fault experience.

During the past year loss experience generally has improved, but this has had little to do with no-fault. Primarily it has resulted from the sustained decrease in accidents, injuries and deaths produced by the changed driving habits inspired by the energy problem.

Now the effect of the accident decrease is being offset by the sharpest inflation in recent times in the cost of everything which auto insurance pays for. Two graphs depicting the relationship of auto insurance price to those costs are attached. They are based on national figures but are essentially true of Michigan. In the period since last July, where these conclude, doctor's fees have jumped to an annual rate of increase of 19 per cent and hospital charges to an 18 per cent rate. The cost of car repair parts has soared 28 per cent and new car price increases have raised replacement costs some $500 on 1974 models and a like amount for 1975s.

Because of the conflicting factors in the basic cost trend and the threat of staggering double payments and a flood of pain and suffering suits, it is impossible for insurers to predict at this time what the effect may be on the future of auto insurance price.

The loss improvement of the past year could easily be removed quickly by the inflation trend alone, and would be wiped out many times over by an adverse answer to either of the legal uncertainties.

CONCLUSIONS

The improvement which the no-fault principle has created in compensating the injured overshadows the conditions which are plaguing it and deserves to be protected by resolving them.

The property damage liability situation should be carefully reviewed to determine how best to relieve those whom it has distressed and to prevent the erosion of confidence in the no-fault principle.

There is nothing you can do, of course, about the constitutionality question, but it is important that you be aware of and understand the threat which it poses to the economics of no-fault protection.

If the "serious impairment" language does become an open invitation to frivolous lawsuits instead of a protection against them we strongly believe that you should reconsider this section of the law.

The people of Michigan now have a tremendously broader and more effective auto-injury loss protection at no greater price than the former system and at lesser price for many. Under the conditions it is not possible to predict whether the economics of this change will improve or worsen. If there are savings, the Michigan companies and others are pledged to pass them on to their insured motorists. If the costs increase, we will have no choice but to pass them on also.

Respectfully submitted,

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