

## NO-FAULT INSURANCE IN OTHER STATES

Saskatchewan has had no-fault insurance since 1946 and Puerto Rico has had no-fault insurance since 1968. The first state to adopt the modified no-fault insurance system was Massachusetts in the early 1970s. In the 1970s no-fault laws were enacted in 16 states. Since that time, five of those states repealed no-fault laws--Colorado, Connecticut, Georgia, Nevada, and Pennsylvania. Although Pennsylvania repealed its law in 1984, it adopted a new law in 1990.

Twelve states have some form of no-fault insurance. No state has enacted a no-fault law since 1976.

Theoretically there are three ways to classify no-fault insurance:

- Absolute no-fault.
- Modified no-fault.
- Choice no-fault.

Absolute no-fault is when a driver relinquishes the right to sue for pain and suffering in exchange for coverage for all economic loss. No state has this form of no-fault. The state with the closest form to absolute no-fault is Michigan. Michigan has unlimited coverage and it is very difficult to sue for non-economic loss.

Modified no-fault is coverage in which first-party benefits are provided regardless of fault and the right to sue for pain and suffering is permitted only after meeting a statutorily defined threshold. Some states use a dollar threshold and some states use a verbal threshold. Every state with a no-fault law is a modified no-fault state. These states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

Of the states that are modified no-fault states, three are choice no-fault states. Under this system, a driver may choose to be included in the modified no-fault system or the tort system. States with this form of no-fault coverage are New Jersey, Pennsylvania, and Kentucky.

"Add-on" insurance is expanded first-party coverage that has first-party, no-fault benefits for medical expenses and lost wages but does not restrict lawsuits for pain and suffering. Although this type of insurance is closely related to no-fault, it is not no-fault. The reason the coverage is called "add-on" is because it is added on to the existing tort liability system. The nine add-on states are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington.

The remaining 29 states are tort liability states. An individual injured in a motor vehicle accident must collect payment from the at-fault driver, if any, and

must be able to prove negligence. However, some vehicle owners purchase medical payments coverage to provide personal injury protection (PIP).

The following table, based on information provided by the National Conference of State Legislatures, lists states with no-fault insurance and add-on laws. Although in this state the terms "no-fault" and "personal injury protection" are used interchangeably, the table differentiates between the two terms. No-fault is PIP with the tradeoff of the loss of the right to sue. Use of the term PIP alone means a person has insurance to cover that person's expenses for bodily injury. In addition, the "first-party benefit" column in the table indicates the minimum medical or the overall first-party benefit that the insurer must provide. Coverages within an overall cap or in addition to the medical benefit include wage loss, replacement services, survivor benefits, and funeral expenses.

State	Type	First-Party Benefit
Arkansas	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$5,000; other coverages
Delaware	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Overall - \$15,000 per person/\$30,000 per accident within two years
Florida	No-fault verbal threshold	Overall - \$10,000 with sublimits
Hawaii	No-fault monetary threshold - PIP benefits are provided and lawsuits are essentially limited only by a dollar amount threshold	Overall - \$15,000 with sublimits
Kansas	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Medical - \$4,500; other coverages
Kentucky	No-fault monetary threshold optional - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold; persons suffering loss are entitled to basic reparations benefits unless they have explicitly rejected limits upon their tort rights	Overall - \$10,000
Maryland	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Overall - \$2,500 with sublimits
Massachusetts	No-fault monetary threshold - PIP benefits are provided and lawsuits are essentially limited only by a dollar amount threshold	Overall - \$8,000 with sublimits
Michigan	No-fault verbal threshold - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold	Medical - Unlimited; other coverages
Minnesota	No-fault monetary threshold - PIP benefits are provided and	Overall - \$40,000 with sublimits

State	Type	First-Party Benefit
Nevada	lawsuits are essentially limited only by a dollar amount threshold Although considered a tort liability state, this state may be considered an "add-on" state. PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; these are first-party medical payment coverages, which are less comprehensive than what is traditionally characterized as PIP coverage, which are payable without regard to fault.	Medical - \$1,000
New Hampshire	Although considered a tort liability state, this state may be considered an "add-on" state. PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; these are first-party medical payment coverages, which are less comprehensive than what is traditionally characterized as PIP coverage, which are payable without regard to fault.	Medical - \$1,000 within one year
New Jersey	No-fault verbal threshold optional - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold. PIP benefits are payable to all insureds; the insured's choice is whether or not to be bound by a lawsuit threshold; failure to choose results in a verbal threshold.	Medical - \$250,000; other coverages
New York	No-fault verbal threshold - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold	Overall - \$50,000 with sublimits
North Dakota	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Overall - \$30,000 with sublimits
Oregon	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$10,000; other coverages
Pennsylvania	No-fault verbal threshold optional - Insurers can offer coverage through health maintenance organizations or preferred provider organizations; PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold	Medical - \$5,000; additional medical and other coverages available
South Carolina	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; persons suffering loss are entitled to basic reparations benefits unless they have explicitly rejected limits upon their tort rights; medical benefits are payable to all insureds; the insured's choice is whether or not to be bound by a verbal threshold; failure to choose results in no threshold	No provision
South Dakota	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$2,000 within two years; other coverages
Texas	Add-on - PIP or similar first-party	Overall - \$2,500

State	Type	First-Party Benefit
	benefits are provided or "added on" with no significant limitation upon lawsuits	within three years
Utah	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Medical - \$3,000 per person; other coverages
Virginia	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$2,000 within three years; other coverages
Washington	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$10,000 within one year; other coverages

## COLORADO

The most recent state to convert to a tort system, after being in a no-fault system, is Colorado. Colorado's no-fault insurance statutes sunsetted on July 1, 2003. During the 2003 session, the General Assembly of Colorado considered a number of bills to reform the no-fault insurance system. However, legislation was not adopted to reform the no-fault system. The General Assembly considered bills with many cost-saving provisions, including a bill that would have reduced average premiums for no-fault insurance by as much as 30 percent. The most viable options appeared to have died after intense lobbying efforts by trial lawyers and health care providers. This resulted in the application of the sunset clause and a return to the tort system.

The impetus for change was that Colorado's average insurance premiums were the ninth highest in the country. This resulted in the Governor challenging the legislature to either fix the "broken" no-fault insurance system or join the other states that have a tort system. The Governor indicated he would not sign any legislation extending no-fault unless there were significant savings attached to the legislation. He also expressed comfort with going to a tort system.

Commentators stated the main reason for the need for change to the no-fault system was it provided expensive and broad medical coverage. Policyholders were required to buy \$130,000 in no-fault coverage. This was the third largest medical benefits package in the country. It was argued that this much coverage was not required because the average claim was about \$7,800 and 96 percent of the claims were under \$25,000. In addition, the law did not have delineated cost-containment standards but limited the medical expenses to those that were reasonable. This allowed for a broad range of treatments to be included under the no-fault insurance.

Whether there have been cost-savings as a result of the repeal of no-fault in Colorado depends upon who is asked and what is evaluated. In fact, the issue has been contentious as is evidenced by reports received by the Colorado interim Committee on Auto

Insurance made up of state legislators. On July 26, 2005, the Colorado Insurance Commissioner told that committee that insurers, on average, lowered rates by nearly 14 percent in the months after the state eliminated no-fault insurance coverage. In response, Representative Morgan Carroll found after review of public rate filings with the Colorado Division of Insurance that only 15 out of 200 insurance carriers met the previously promised 15 percent rate decrease without filing rate hikes before the switch from no-fault to tort. Sixty-one out of the 200 insurance carriers filed rate reductions after the switch; however, 30 of those carriers had filed rate increases before the switch. Forty-eight out of 200 insurance carriers made no reductions in rate filings after the switch and 80 out of 200 insurance carriers filed rate increases after the switch.

In a September 28, 2005, letter from the Colorado Insurance Commissioner to the committee in response to the analysis done by Representative Carroll, the commissioner explained the reason for the disparate findings on the same issue. The commissioner stated that the analysis done by the Division of Insurance was based on 24 companies comprising more than 50 percent of Colorado's auto insurance market. In addition, he stated that Representative Carroll's findings are a "starting point for an analysis of the premium impact of the tort conversion. It is, however, only a starting point; using it as the only data will result in entirely flawed results." The commissioner stated that depending on individual circumstances, not everyone will save money but many will under the new system.

In his September 21, 2005, testimony to the committee, the Colorado Insurance Commissioner provided the following information in comparing insurance rates after the repeal of no-fault with rates before the repeal.

It is important to recognize that \$100,000 of Medical Payments coverage is not equivalent to \$100,000 of PIP coverage. For example, PIP provided benefits based on a "reasonable and necessary" standard. Medical Payments is generally on a more stringent "medically necessary" standard. Therefore, the average amount of a claim paid under a \$100,000 PIP policy will generally be greater than the average amount of a claim paid under a \$100,000 Medical Payments endorsement. As a result, the premium of a \$100,000 PIP policy should also be greater than the premium for the same policy with Medical Payments coverage instead of PIP.

Based on our survey, we have compared the cost of a tort policy issued on July 1, 2004 with \$50,000 medical coverage to a PIP policy issued July 1, 2002. The average premium for the \$50,000 med-pay

tort policy (liability only coverage) is \$591.44; if full coverage (including comprehensive and collision) is included, the premium is \$1,238.05. The PIP policy costs were \$624.89 for liability only coverage, and \$1,131.43 for full coverage. In other words, our average driver who purchases a liability only policy will pay less for a tort policy with \$50,000 MedPay than for a PIP policy, but still more than for a tort policy without MedPay. For a driver with full coverage, adding \$50,000 MedPay to his tort policy will eliminate all of the "conversion" savings, and, in fact, cause his rates to slightly increase.

Plan	Tort - \$50,000 MedPay, Liability Only	PIP - Liability Only	Tort - \$50,000 MedPay, Full Coverage	PIP - Full Coverage
Premium	\$591.44	\$624.89	\$1,238.05	\$1,131.43

Regardless of some savings to individual drivers, some groups are against the repeal of no-fault. The Colorado Health and Hospital Association wants to reinstitute mandatory medical coverage on auto insurance policies because of the shift of costs to medical facilities after the repeal of no-fault. Any shifting of costs may create financial difficulties elsewhere, besides with drivers. On August 18, 2005, the Colorado interim Committee on Auto Insurance received a memorandum from the Colorado Legislative Council staff on funding for trauma care and emergency medical services. The memorandum stated "because of the growing financial problems of trauma centers, many states have passed legislation to establish dedicated funding sources for trauma centers or to provide temporary funding until long-term solutions are addressed. States with dedicated funding sources have typically imposed a new surcharge upon vehicle registration fees, drivers' licensing fees, traffic infraction fines, DUI fines. . . . Some states have also dedicated a portion of tobacco settlement moneys to finance the uncompensated trauma costs of indigent patients, or impose new surcharges on cigarettes or telecommunications services. . . . Two states have also implemented alternative financing sources for trauma care. . . . Illinois imposes a \$100 fine on the illegal discharge of firearms and Arizona voters recently passed a ballot initiative to dedicate a portion of Indian gaming revenue for trauma care."

The Colorado Health Institute was created to provide objective, impartial information for decisionmaking relating to health and health-related policy issues. A report entitled *The Jury's Out: Monitoring the Shift From No-Fault to a Tort Auto Insurance System in Colorado*, July 2004, and reiterated in a presentation to the Colorado interim Committee on Auto Insurance on July 27, 2005, states that the jury's

out regarding the policy and fiscal impacts resulting from the shift to a tort system. The report listed the following issues that policymakers may want to consider in evaluating the impact of a new tort system:

- A tort system represents a different business model of that of a no-fault system.
- Coloradans will have greater flexibility to choose from a menu of insurance coverage options and, therefore greater opportunity to manage their premiums. Depending on the level of coverage selected, drivers stand to save between 5 to 27 percent of their premiums. At the same time, some consumers may tradeoff premiums saving for adequacy of coverage, particularly as it relates to the rare event of a serious or catastrophic injury.
- The timeliness of insurance payments to auto accident victims and their health care providers depends on the regulatory framework of the system in force.

- Costs associated with medical claims settlement and health benefits coordination may increase under a tort system given the primacy of determining fault and the potential number of payers.
- Under a tort system, hospitals, particularly emergency systems and trauma centers, have reported increased payment delays and administrative costs for billing and collections and higher patient default rates.

The following is a table contained in *The Economic Impact of Motor Vehicle Crashes 2000* compiled by the National Highway Traffic Safety Administration. The table lists the estimated source of payments for motor vehicle crashes. The most common of these are private insurance claims. Medicare is the primary payer for people over age 65. When these sources are not available, government programs, for instance Medicaid, may provide coverage. Expenses not covered by private or governmental sources must be paid out of pocket by individuals or absorbed as losses by health care providers.

Estimated Source of Payment by Cost Category							
	Federal	State	Total Government	Insurer	Other	Self	Total
Medical	14.40%	9.77%	24.16%	54.85%	6.36%	14.62%	100%
Emergency Services	3.87%	75.75%	79.62%	14.74%	1.71%	3.93%	100%
Market Productivity	16.20%	3.06%	19.26%	41.09%	1.55%	38.10%	100%
HH Productivity			0%	41.09%	1.55%	57.36%	100%
Insurance Admin	.89%	.51%	1.40%	98.60%			100%
Workplace Costs					100%		100%
Legal/Court				100%			100%
Travel Delay					100%		100%
Property Damage				65%		35%	100%

Source: Blincoe, 1996

In testimony to the Colorado interim Committee on Auto Insurance on August 23, 2005, the National Conference of State Legislatures provided information on the average no-fault premiums over a four-year period from 1999-2002 in selected states. This information is presented in the form of a table in the appendix. The table shows if no-fault premiums have been increasing and the average amount that may be saved if no-fault was repealed in various states.

**PENNSYLVANIA**

In the *Journal of Insurance Regulation* published by the National Association of Insurance Commissioners in a fall 2004 article entitled "Choice Automobile Insurance: The Experience of Kentucky, New Jersey, and Pennsylvania" the article provided a history on conclusions about Pennsylvania. Pennsylvania became a choice no-fault state after having a near absolute system repealed in favor of a tort system. The original no-fault system allowed

accident victims to recover unlimited medical and rehabilitation benefits and had a tort threshold of \$750. According to the article, given those standards it is not surprising that auto insurance premiums in Pennsylvania increased 875 percent over the life of the original no-fault system; however, converting to a tort system did little to help.

Under the current system, Pennsylvania drivers are offered two options--limited tort and full tort. Drivers who choose full tort preserve the right to seek noneconomic damages for injuries caused by others. Full tort is the default choice of the driver. If the driver wishes to choose limited tort then the driver must choose in writing. Policyholders who choose limited tort can expect a minimum savings of 15.3 percent relative to full tort. Because limited tort is less expensive, insurance agents have little incentive to recommend it; however, about 60 percent of the drivers in metropolitan areas and 33 percent of drivers in

counties where premiums are relatively low choose limited tort.

Both full and limited tort drivers are required by law to purchase bodily injury coverage as well as personal injury protection. The legal personal injury protection minimum is \$5,000 and if a limited tort driver sustains economic injuries in excess of this limit, the driver can sue the at-fault driver for the remainder of economic damages. In short, Pennsylvania drivers are essentially offered a choice between a tort system with a mandatory personal injury protection add-on and a no-fault system with a verbal threshold.

In 2005 the Insurance Research Council released a study comparing auto injury claims in New Jersey

and Pennsylvania to states that have choice auto insurance systems. Pennsylvania had lower claim costs and hence lower insurance rates. The study attributed the lower claims to Pennsylvania's stricter restrictions on no-fault claims for pain and suffering and more than half of the visits to chiropractor, uses of MRIs, and hiring attorneys than in New Jersey. Pennsylvania also has medical costs containment provisions that limit reimbursement levels for medical care to 110 percent of the prevailing Medicare rate.

ATTACH:1