

STATE OF MICHIGAN

MI Court of Appeals

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/s/ Christopher Shanley

Signature

Speaker Law Firm

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

ELLEN M. ANDARY, a legally Incapacitated adult, by and through her Guardian and Conservator, MICHAEL T. ANDARY, M.D., PHILIP KRUEGER, a legally Incapacitated adult, by and through his Guardian, RONALD KRUEGER, and MORIAH, INC., d/b/a EISENHOWER CENTER, a Michigan Corporation,

Court of Appeals No. 356487
Ingham County Circuit Court
Case No. 19-738-CZ
Hon. Wanda M. Stokes

Plaintiffs-Appellants,

v

USAA CASUALTY INSURANCE COMPANY, a foreign corporation, and CITIZENS INSURANCE COMPANY OF AMERICA, a Michigan Corporation,

Defendants-Appellees.

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Stephen H. Sinas (P71039)
Thomas G. Sinas (P77223)
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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
OF BRAIN INJURY ASSOCIATION OF MICHIGAN**

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The Brain Injury Association of Michigan, through its attorneys Liisa R. Speaker and Jennifer M. Alberts at Speaker Law Firm, PLLC, moves pursuant to MCR 7.212(H) and MCR 7.211(A) for leave to file a brief as amicus curiae, and states the following in support of its motion:

1. The Brain Injury Association of Michigan (“BIAMI”) is a non-profit organization that serves as the conduit between approximately 200,000 brain injury survivors living in Michigan and the nation’s largest network of brain injury providers. BIAMI has over 1,000 members, over 500 of whom are brain injury survivors. According to the Michigan Public Health Institute, motor vehicle accidents are the second leading cause of traumatic brain injuries in the state (the first is falls).
2. At its core, BIAMI is a patient advocacy organization that strives to establish, protect and preserve the laws, policies and systems that comprise Michigan’s brain injury care. BIAMI also seeks to help provide immediate and equal access to these services for all brain injury survivors and their families. BIAMI works tirelessly on a grassroots level through its 20 chapters and support groups across the state, which meet monthly to provide support and community involvement opportunities for brain injury survivors and family members.
3. There are 18,000 auto accident survivors living with a traumatic brain injury and currently receiving no-fault benefits in Michigan, and approximately 1,600 of those are receiving 24-hour lifetime care.
4. In order to support these brain injury survivors, BIAMI offers training to family members so that they can learn how to provide appropriate care to their loved ones.
5. Ordinarily, a court will grant a motion to file an amicus curiae brief if, “the amicus has unique information or perspective that can help the court beyond the help that the lawyers

for the parties are able to provide.” *Ryan v Commodity Futures Trading Comm’n*, 125 F3d 1062, 1063 (CA 7 1997).

6. BIAMI believes that the retroactive application of MCL 500.3157(10) will gravely impact brain-injured auto accident survivors and the family members who have committed themselves to their loved ones’ care.
7. BIAMI is able to offer unique information and perspective as to how retroactive application of the statutory amendments will significantly impact persons who suffered brain injuries prior to enactment of the new amendment to the law, and their family members, who have often given up careers in reliance on no-fault benefit coverage of family-provided care. For example, family provided care is often better for the patient than care provided by strangers, and is also more cost effective.
8. BIAMI believes that allowing it to file an amicus brief will assist this Court in its decision-making process.

REQUEST FOR RELIEF

The Brain Injury Association of Michigan respectfully requests that this Court grant its motion for leave to file an amicus brief and accept the attached amicus brief.

Respectfully submitted,

Dated: May 26, 2021

/s Liisa R. Speaker
Liisa R. Speaker (P65728)
SPEAKER LAW FIRM, PLLC

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

ELLEN M. ANDARY, a legally Incapacitated adult, by and through her Guardian and Conservator, MICHAEL T. ANDARY, M.D., PHILIP KRUEGER, a legally Incapacitated adult, by and through his Guardian, RONALD KRUEGER, and MORIAH, INC., d/b/a EISENHOWER CENTER, a Michigan Corporation,

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AMICUS CURIAE BRIEF OF BRAIN INJURY ASSOCIATION OF MICHIGAN

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STATEMENT OF AMICUS CURIAE INTEREST BIAMI¹

The Brain Injury Association of Michigan (“BIAMI”) is a non-profit organization that serves as the conduit between approximately 200,000 brain injury survivors living in Michigan and the nation’s largest network of brain injury providers. BIAMI has over 1,000 members, over 500 of whom are brain injury survivors. 18,000 auto accident survivors living with traumatic brain injuries are currently receiving no-fault benefits in Michigan, and approximately 1,600 of those are receiving 24-hour lifetime care. According to the Michigan Public Health Institute, motor vehicle accidents is the second leading cause of traumatic brain injuries in the state (the first is falls).

At its core, BIAMI is a patient advocacy organization that strives to establish, protect and preserve the laws, policies and systems that comprise Michigan’s brain injury care. BIAMI also seeks to help provide immediate and equal access to these services for all brain injury survivors and their families. BIAMI works tirelessly on a grassroots level through its 20 chapters and support groups across the state, which meet monthly to provide support and community involvement opportunities for brain injury survivors and family members. BIAMI also offers training to family members so that they can learn how to provide appropriate care to their loved ones who are brain injury survivors.

BIAMI presents this amicus brief to shed light on how the retroactive application of MCL 500.3157(10) will gravely impact brain-injured auto accident survivors and the family members

¹ Pursuant to MCR 7.212(H)(3), BIAMI states that neither party’s counsel authored this brief in whole or in part. BIAMI further states that none of the parties or their counsel contributed money that was intended to fund the preparation or submission of the brief and that no person other than BIAMI and its members made such a monetary contribution.

who have committed themselves to their loved ones' care. BIAMI fully embraces the arguments presented in Plaintiffs' Brief on Appeal as to why this Court's intervention is necessary. Further, BIAMI wholeheartedly agrees with the legal analysis presented in the amicus brief of the Coalition Protecting Auto No-Fault. Because BIAMI relies on the Plaintiffs' Brief on Appeal and CPAN's Amicus Brief, the focus of this amicus brief is to show this Court how the No-Fault Act has helped families with brain-injured accident survivors, and more significantly, how enforcing the new legislation against these families will harm those brain injury survivors.

STATEMENT OF FACTS

This case was brought by Plaintiff-Appellants, in part, to challenge the constitutionality of MCL 500.3157(10), which limits No-Fault benefits for attendant care provided by family members to only up to 56 hours per week—effective July 1, 2021. When Defendants sought dismissal of the lawsuit, BIAMI filed an amicus brief in support of Plaintiffs.

On November 13, 2020, the Trial Court granted Defendants' motion to dismiss the case, and ruled that MCL 500.3157(10) applies retroactively to persons injured prior to enactment of the amendments to the act. The Trial Court denied reconsideration on February 18, 2021, and Plaintiffs filed a claim of appeal in the Court of Appeals on March 4, 2021. The Court of Appeals declined to expedite the appeal, so Plaintiff and Amicus are filing well before the time limits permitted by court rules due to the urgent nature of this case and the grave need for quick action by this Court.

ARGUMENT

I. Retroactive application of the new act hurts many brain-injured auto accident survivors whose families provide attendant care under the No-Fault Act.

Under the No-Fault Act of 1973, MCL 500.3107, first party insurance provides for reasonably necessary care for an injured person's care, recovery, and rehabilitation, which includes attendant care. Many brain injury accident survivors require 24-hour per day attendant care. These brain-injured auto accident survivors live at home with their parents, spouses, siblings, or some combination of family members. Often, family members have given up their careers so that they can take care of their loved ones, in reliance on their vested right to insurance coverage for that care. These brain injury survivors have been able to obtain superior care because the no-fault system protected them, and enabled family members to devote the 24/7 care these survivors require.

The new law caps reimbursement for family-provided attendant care at 56 hours per week (8 hours per day). MCL 500.3157(10). This limitation is made without regard to the extent of the brain-injured auto accident survivor's injuries or whether a doctor has prescribed more than 56 hours per week of attendant care. The bottom line is for that those families currently caring for critically injured auto accident survivors, the family will be required to bring strangers into their home to provide commercial in-home care for up to 112 hours every single week. The statute makes no exceptions for brain-injured auto accident survivors who require 24-hour care. The statute makes no exceptions for families who have been successfully—and economically—providing that care to the patient for years. The statute makes no exception for family members who have

given up careers, including careers in the medical field, to provide attendant care to their family members. The statute provides no exceptions whatsoever.

A new or amended statute is presumed to apply prospectively only unless the Legislature indicated an intent to give it retroactive effect, and that intent is “clearly manifested.” *Seaton v Wayne Co Prosecutor (On Second Remand)*, 233 Mich App 313, 316; 590 NW2d 598 (1998); *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). Retrospective application of a new law is improper where the law “takes away or impairs vested rights acquired under existing laws.” *In re Certified Questions*, 416 Mich 558, 572; 331 NW2d 456 (1982).

The retroactive application of MCL 500.3157(10) is improper because the Legislature did not express that it applies retroactively, and applying it retroactively impairs vested rights, impairs the insurance contracts formed prior to enactment of the amendments to the act—as injured persons paid premiums that were set based on the prior entitlement to payment for all reasonably necessary care—and violates due process. As the Michigan Supreme Court noted in *Shavers v Attorney General*, 402 Mich 554 (1978):

The existence of interests or benefits entitled to due process protection depends on the extent to which government activity has fostered citizen dependency and reliance on the activity. We are reminded: "It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.

Limiting the number of hours for family-provided care has no basis in quality of care and is overly broad in protecting insurers from fraud. The new act is arbitrary and has no rational basis.

Moreover, the Trial Court here held that MCL 500.3157(10) applies retroactively to these brain injury accident survivors who receive 24/7 care. (11/13/20 Trial Court Opinion, p. 9).

This amicus brief will show how taking away that immensely successful and cost-effective care will be detrimental to the health and safety of these brain injury survivors. Accordingly, BIAMI advocates that this Court should not permit the retroactive application of MCL 500.3157(10), and instead allow those brain injury survivors who are receiving benefits from a no-fault auto insurance policy purchased before July 1, 2021 to continue to receive the reasonably necessary attendant care benefits that they purchased with their insurance policies, and as existed at the time of the auto accident that caused their brain injuries.

If this Court does not address this issue promptly, it will be too late for numerous brain injury survivors. They will be required to hire strangers to provide attendant care services that may no longer be covered by family members. Family members who abandoned careers to care for their loved ones will face financial hardship, and may need to pursue new employment. Everything will change for these brain-injury accident survivors and their families on July 1, 2021, due to the retroactive application of this legislation and the Trial Court's decision. This Court's urgent attention is required to ensure these injured persons continue to receive the benefits that they contracted and paid for.

But the new legislation is even worse for these brain injury accident survivors receiving in-home attendant care. Many of the facilities who provide commercial in-home care are at risk of going out of business due to the fee schedules imposed by the Legislature. If family members can only provide 56 hours of paid attendant care – and consequently are forced to work outside the

home and bring in commercial care providers to cover the balance of the 24/7 required -- then it is critical that commercial care providers be able to operate their businesses. If these commercial attendant care providers are forced to close their doors – and some of them have already done so or are in the process of doing so due to the new legislation putting them out of business – then family members may have no choice other than to institutionalize their loved ones and throw away all the progress they have made with family provided in-home care. (04/29/21 David Hutchings Affidavit for Eisenhower Center – forced to close by December 31, 2021, attached as **Exhibit A**; 04/29/21 Aspire Rehabilitation Letter – closing doors on June 30, 2021, attached as **Exhibit B**; 05/03/21 Joseph Richert Affidavit for Special Tree Rehabilitation System – forced reduction of services starting July 1, 2021, attached as **Exhibit C**).

A. In many cases, family-provided attendant care is better than commercial in-home care by strangers, as brain injured auto accident victims have achieved greater improvements than expected.

For those brain injury survivors who can live at home, their family members provide hygiene care, such as helping use the toilet (or changing diaper), bathing and grooming, and assisting with dressing and undressing. Family members also assist the brain injury survivors with eating (for those survivors who are not intubated), moving them from a bed to a wheelchair, assisting with walking, meal preparation, and transportation. Many family members also provide necessary medical care, such as administering medication (including injections), changing bandages and dressing wounds, and assisting with the use of medical equipment. Family members provide socialization and reintegration, which is extremely important for the recovery of brain injury survivors. In addition to all of these necessary day-to-day activities in the life of a brain

injury survivor, for those survivors who require 24/7 care, the family members are present to supervise and monitor their loved ones and are “on-call” all day and night to help the brain injury survivor from suffering further injury.

Many brain injury survivors live with multiple family members, such as their parents, siblings, nieces, and nephews. These family members re-arrange their lives to provide the full-time attendant care required by their loved one. Having a brain-injured family member literally becomes a family affair, particularly when the patient cannot be left unattended. For brain injury survivors, the day-to-day care under the new legislation is completely different than what it has been under the No-Fault Act. Retroactively applying the attendant care limitations of MCL 500.3157(10) will be injurious to the health of the brain-injured auto accident survivors. Patient care is higher quality care when it is rendered by properly trained, instructed, and supervised family members rather than a revolving door of aides and nurses sent from an agency.

Moreover, the family members who have sacrificed to care for the brain injury survivors will be subjected to an invasion of their privacy in their home by the new act. Because the act only permits 56 hours per week of family-provided care, the remaining 112 hours per week of care will have to be provided by strangers. This means that 66% of the care currently being provided by family members for patients requiring 24/7 care will need to be provided by others—beginning in less than two months. There is not one person who will be able to provide the commercial care. In fact, there will most often be an endless stream of strangers traipsing through their homes at all hours of the day and night in order to provide the required 24-hour care to the brain injury survivor. These strangers will often be “aides” with less training than the typical family member who have devoted themselves to the full-time care of their loved ones. This Amicus Brief will share the

experiences of just a few of the brain injury survivors (and their family members) that BIAMI serves.²

The Howell Family. At age 15, Sam Howell won the International Science Fair in biochemistry finding a cause of a disease from which his sister suffered. At age 18, Sam went to work at Harvard Medical labs to continue his research. A few months later, in February 2005, while Sam was home on break from Harvard, he sustained a traumatic brain injury in an auto accident. Sam's parents devoted themselves completely to his care. Sam's mother Maureen was a trauma nurse manager and neuro-nurse educator who taught other nurses how to treat brain injury patients and James Howell was an attorney and Republican legislator representing Saginaw in the Michigan House (1999-2004). Jim worked for 2 years after the accident but had to quit his job as Maureen was unable to care for Sam without assistance. Later, Jim was the Chairman of BIAMI (2012-2014).

Sam was in a coma for 3 months. He remained in the ICU and his mother stayed by his side. Sam went into arrest and the on-call nurse did not know what to do, so Sam's mother stepped in and saved Sam's life. The doctor recommended a rehabilitation facility, and again, Sam's mother stayed by his side and provided Sam the majority of his care. Sam came home after 8 months of hospitalization. Sam's condition was still acute. He had to be turned every 2 hours, he required a feeding tube for 2 years, he could not speak for 2 years, and was in a wheelchair for 7 years. Sam had pituitary and pulmonary system failures, required every other day labs drawn by

² Much of the factual recitation in this Amicus Brief derives from phone interviews conducted by Attorney Liisa Speaker on April 17, 2020 with Linda St. Amant, the mother of David St. Amant, and James and Maureen Howell, the parents of Sam Howell.

Maureen, and he used IVs, catheters, and tube feedings. Sam's spleen was removed and he is a high risk for infections. His parents worked very hard for Sam's condition to improve. Jim slept on a mattress in Sam's room for 2 years so that Maureen could have a good night's sleep, particularly since she spent all her waking hours caring for Sam's needs.

Sam has greatly improved. Sam attended college, both remotely and in-person (with his mother in the college hallway and a cognitive therapist in the classroom next to Sam). Sam obtained a B.S. degree in human health. Sam can feed himself. He walks without assistance inside the home, but otherwise requires stand-by assistance due to balance issues. When Sam is under stress or ill, he requires pills or injections of steroids to prevent adrenal crises. Although Sam has suffered 5 seizures due to adrenal failure, his mother has learned to assess his condition, so she recognizes the signs and can often prevent a medical crisis from occurring. Maureen has also trained her husband to give intramuscular injections in the event of a seizure. Sam has never been readmitted to the hospital in 14 years. He has also never been left alone since 2005.

Sam is blind in his right eye and has balance issues. He is also a choking hazard. He has trouble using appropriate judgment, particularly when it comes to his safety. His brain does not recognize his left arm, so he needs cueing or assistance while doing simple tasks. He has difficulty with visually scanning his environment, which means he is a tripping hazard because he does not notice objects on the floor. Sam is unable to use divided attention; he cannot read and cognitively learn at the same time. In class, he cannot listen and take notes. No doubt, Sam is a success story of the no-fault system, but he still requires 24/7 care.

Sam would be far worse off without in-home family-provided attendant care. Receiving commercial care is a tricky business. There would be a revolving door of aides. These aides would not know the patient. There are many reports of home healthcare workers stealing from the patient or the family. For a brain injury survivor like Sam who requires care 24/7, the family members would have to spend all their time monitoring the commercial care providers, at which point they may as well provide the care themselves. Sam's parents, having both left their jobs to commit themselves completely to Sam's care, would be without financial compensation for many hours of care, and may need to re-enter the workforce outside of the home. But doing so would be a dramatic change for Sam, who may suffer from medical crises due to the increased stress of having a revolving door of strangers in the home. In all likelihood, medical costs for insurers would increase, and at the same time, Sam's quality of care would be reduced as strangers with less experience take on more of his care. All of these substantial changes will start occurring on July 1, 2021, if this Court does not protect individuals such as Sam and his family.

Moreover, as witnessed in these examples, properly administered family-provided attendant care has many benefits to the brain injury survivor, including substantial therapeutic value which cannot be replicated either in an institutional setting or by commercial attendant care providers.

The St. Amant Family. David St. Amant suffered a traumatic brain injury in an auto accident in 2003. He was 16 years old. David was in a coma for 3 months and spent more than 5 months in a hospital after the accident. David suffered a "full brain injury." When he was released from the hospital, he could not walk for over one year. David's speech was unintelligible. David had to be retaught absolutely everything. A full brain injury survivor has to retrain his brain on how to

move limbs, chew food, communicate, and see. Even today, David has to “mindfully swallow” which means swallowing is not a reflex but requires careful thinking to tell his muscles to swallow food. He is a fall hazard and a choking hazard.

Once David returned home, David’s parents took care of him full-time. Linda St. Amant was a dental hygienist, and Steve St. Amant was a prominent attorney in Ingham and Clinton Counties. For a time after David’s accident, his mother continued to work as a dental hygienist, which required commercial care to come into their home for 8-9 hours per day for 4 days per week. The commercial care provided a false sense of security, especially when it came to David’s outbursts, which occur regularly but are difficult to predict, especially for a stranger. When David would have outbursts, the commercial care provider would not know how to handle David and often their solution was to recommend medication to sedate David. In contrast, David’s mother has learned how to anticipate and minimize outbursts, and when they do occur, she and other family members know how to manage David without medication.

In 2010, his parents attempted institutional care by placing David with the Hope Network, a very well-respected brain injury treatment center. David stayed at Hope Network for 4 months. Their idea was to move David to Hope Network so he would have more opportunities to interact. It did not work. David was extremely confused by the different caretakers in his room and being in a strange place—particularly one that he did not know before the auto accident. His parents brought him home because he fared better at home with fewer outbursts.

When David’s father passed away 8 years ago, Linda needed help. She had already stopped working as a dental hygienist and devoted herself to the full-time care of her son. But she could

not provide 24/7 care alone. David's sister and brother-in-law (and their young daughter) decided to move from Arizona into the family home to help Linda with David's full-time care and so that an adult could always be home with David.

When David was released from the hospital, his doctors told Linda that he would have all his noticeable improvement in the first year following the accident. The doctors were totally wrong. The continued therapy that David receives and the family-provided 24/7 attendant care is only available because of the No-Fault Act, and it has resulted in David continuing to improve even 17 years post-accident. David's family members organize his schedule to maximize the therapies and socialization available to him.

Today, David is doing well. He is articulate, has a sense of humor, enjoys music, ambulates with assistance of AxioBionics, a device that stimulates his muscle to replace the fact that his brain does not communicate with his leg (he is still a fall hazard), feeds himself (with supervision as he is a choking hazard). Reading is still a challenge because David's brain has difficulty doing two things at once—so he can read the words or he can comprehend the words, but his brain cannot do both at the same time. Instead, he can listen to a family member read to him so he can comprehend the words as he is listening. David enjoys spending time with his extended family—the family who live with him along with visits from his brother and his 4 children.

After 17 years of improvement, returning David to commercial care—which is what is required under the new legislation—would be returning him to the care of strangers, which failed in the past. David's mother left her employment to care for David full time. She has also proven more capable of controlling his outbursts than strangers. But without this Court's intervention, the

Trial Court's ruling would prevent people like David from receiving the care that not only works best but is most cost effective. Not to mention that a revolving door of different commercial aides means that David's mother, sister, brother-in-law, and niece, would all be exposed to various strangers every day in their own home.

The Park Family. Robert Park shares how his family's life has changed after his sister Letrice suffered a brain injury in an auto accident.³ Letrice's auto accident occurred in 2006. Robert was 20 years old and returned home to provide full-time care to his sister. Shortly after the accident, Letrice was told she had a 10% chance of survival. The No-Fault Act enabled Robert to make his sister's care his full-time job. Due to her severe brain injury, when commercial care came into the home, Letrice had an adverse reaction. "She has great difficulty working with those she didn't know before the accident and often has seizures, outbursts and severe breakdowns when working with others. I have spent my time as her caregiver researching and creating programs for her recovery and rehabilitating her myself. The new law will take away my ability to care for her full time."

These families are only a small sampling of the families that will be affected by the retroactive application of the statutory amendments to MCL 500.3157. The Coalition Protecting Auto No-Fault (CPAN) conducted a survey of its members, and 187 of the 254 members who responded indicated that they provide attendant care services to an individual they knew or had a relationship with prior to the accident. (CPAN attendant care survey findings, attached as **Exhibit E**; CPAN attendant care press release, attached as **Exhibit F**). For over 157 of those individuals,

³ Factual recitations from Robert Park, whose sister is another brain injury survivor, come from his 12/04/19 letter to the Governor. (Attached as **Exhibit D**).

family, friends, and prior acquaintances provided more than 56 hours per week of attendant care services. Many of the individuals who responded expressed concerns similar to the families detailed above: that it would be financially difficult or impossible to continue to have family members provide attendant care with only compensation for 56 hours per week; that family members would likely have to obtain other jobs and turn the patient over to commercial care; that the patients do not respond well to strangers or change, and starting commercial care could make their conditions worse; and that commercial care is both less effective and costs more.

There is no rational basis for the new act's limitations on family-provided attendant care. In the vast experience of BIAMI, there is no question that family-provided attendant care is better than commercial care, but also that brain injury survivors fare worse, deteriorate, and lose progress when their attendant care is provided by strangers. The COVID-19 pandemic highlights how the new act will actively harm brain-injured auto accident survivors and their families. If the new act were in effect today, it would force brain injury survivors and their family to interact with strangers on an intimate basis every day, exposing the vulnerable brain injury survivors and their family members to the coronavirus. If this Court does not intervene, these articulated problems will become reality in July 2021. Numerous individuals will lose the best care they could receive and their family members may suffer financial hardship on the basis of being unable to be paid for all of the care provided, even though they abandoned careers in reliance on the No-Fault Act, in order to provide such care for their loved ones.

Indeed, contrary to Defendants' arguments that the injuries in this case are purely speculative (05/15/20 Defendants' Response to Amicus Briefs, p. 10), and the Trial Court's conclusion that there could be no as-applied challenge to the statutory sections at issue because

there is no “actual injury” (11/13/20 Order, pp. 21-22), the problems that are described in this amicus brief are very real. Insurers have already begun sending letters to insureds indicating that family provided attendant care will be limited to 56 hours per week, beginning in July 2021. (04/05/21 State Farm Letter, attached as **Exhibit G**; 01/28/21 Farm Bureau Letter, attached as **Exhibit H**; 04/08/21 Frankenmuth Mutual Letter, attached as **Exhibit I**). It is clear that major changes will happen in July 2021, many of which could harm brain-injured individuals across the state, and could even prove fatal due to brain-injured individuals’ poor reactions to such changes. When July 2021 comes, it will be too late to avert disaster for many families.

B. Family-provided care is cheaper than commercial in-home care, particularly when many of the auto accident victims require 24-hour daily care.

There is no rational basis for MCL 500.3157(10) because family-provided attendant care is more economical than in-home commercial care for those patients who require 24/7 care and certainly less expensive than institutional care. The new act is irrational because its stated goal is to reduce the cost of insurance rates, yet retroactively applying its terms to brain injury survivors will be more expensive under the new act, as compared to the family-provided care under the No-Fault Act. Moreover, the quality of the commercial care provided by strangers, often who have less training than the family members, will most certainly be a lower quality care (but more expensive).

Once her husband became ill, Linda St. Amant negotiated a contract with David’s insurance carrier. She receives \$5,500 per month for David’s care. This includes the 24/7 attendant care by her and other family members, David’s living expenses, and David’s therapies. This rate

has not been increased in over 8 years. Even by attributing the entire monthly allotment to 24/7 attendant care of a single family member, that is less than \$8/hour—far less than what commercial care would cost the insurance company. Yet this monthly amount allows Linda to stay home full-time and care for her son, as well as pay for his other necessary expenses. It is unthinkable to Linda and the rest of David’s family who have devoted themselves to his care that the insurance company is willing to pay more for strangers to come to their home, while simultaneously reducing the quality of David’s care.

No-fault insurance also pays for the 24/7 attendant care provided by the Howell family, including 4 hours daily of RN care (by Maureen) but at far lower rate than a commercial RN. In fact, the rate paid is even less than a commercial LPN or aide. And certainly, the cost of family-provided attendant care for Sam is far less than the cost of Sam living in a nursing home or rehabilitation facility.

Jim Howell noted that there are many ways for insurance companies to control and minimize the risk of abuse in the no-fault system. The insurance company can assign a case manager to come into the home to verify that the brain injury survivor is receiving the appropriate care from family members. And of course, the level of family-provided attendant care is dictated by a doctor’ recommendation based on the needs of the brain injury survivor. The current no-fault system adequately protects the insurance companies, while allowing brain injury survivors to receive the most beneficial care possible – from their family members.

C. The amendment to MCL 500.3157(7) limiting reimbursement to healthcare providers will cause many patients who are cared for by commercial providers to lose care.

MCL 500.3157(7) cuts reimbursement to providers by 45% for types of care for which there is no corresponding Medicare code, which includes most services provided by brain injury rehabilitation centers. A recent survey of over 110 brain injury rehabilitation providers across Michigan commissioned by the Michigan Brain Injury Provider Council indicates that 86% of those providers have no or very little confidence they will be staying in business after July 1, 2021. (MBIPC Survey, attached as **Exhibit J**). It is anticipated that between 4,800 and 6,200 patients will lose care from the surveyed providers alone. Another survey conducted by IBH Analytics of firms who serve persons injured in auto accidents indicated that 90% of firms anticipate a reduction of services offered for traumatic brain injury patients once the law takes full effect in July 2021. (IBH Analytics Survey, attached as **Exhibit K**). 57% of those firms stated that they are likely to exit the business of serving individuals injured in auto accidents. Almost all of the firms cannot sustain quality services with a 45% pay cut. Another provider, Health Partners, indicated it will be unable to continue business and expects to close its doors on June 30, 2021. (04/13/21 Affidavit of John G. Prosser for Health Partners, II, ¶ 6, attached as **Exhibit L**).

Due to the poor prospects for brain injury rehabilitation providers come July 2021, even patients who rely on commercial providers will be affected by the new law. With so many providers likely to go out of business, many patients will lose care that they currently have. With the loss of both family-provided care, due to the 56-hour limitation, and commercial provided care,

due to the fee schedules, the retroactive application of MCL 500.3157 will dramatically impact a large number of brain injured accident survivors if this Court does not take action.

CONCLUSION AND REQUEST FOR RELIEF

Retroactive application of MCL 500.3157(10) will actively harm brain injury survivors who receive family-provided attendant care, while costing the insurance industry and taxpayers more money. BIAMI respectfully requests this Court hold that MCL 500.3157(10) only applies prospectively to brain injury survivors injured in an auto accident after July 1, 2021.

May 26, 2021

/s/ Liisa R. Speaker
Liisa R. Speaker (P65728)
Jennifer M. Alberts (P80127)
SPEAKER LAW FIRM, PLLC
Attorneys for Amicus Curiae, BIAMI
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AMICUS BRIEF APPENDIX

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1	J	27	MBIPC Survey
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Tab A: 04/29/2021 David Hutchings Affidavit for Eisenhower Center

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AFFIDAVIT OF DEVIN HUTCHINGS

STATE OF MICHIGAN)
)
COUNTY OF Washtenaw)

I, Devin Hutchings, being first duly sworn, deposes and states as follows:

1. I am the President and Chief Operating Officer of Eisenhower Center, a Michigan medical provider that specializes in traumatic brain injury rehabilitation.

2. Eisenhower Center currently employs approximately 464 people.

3. Eisenhower Center currently services approximately 192 patients, including 170 residential patients who live at the Eisenhower Center. Of these residential patients, approximately 125 are catastrophically injured motor vehicle accident victims, many of whom have lived at Eisenhower Center for years.

4. One of the patients the Eisenhower Center currently treats is Philip Krueger. Mr. Krueger was involved in a motor vehicle collision in 1990 in which he sustained catastrophic injuries, including a traumatic brain injury. Mr. Krueger has been a residential patient of Eisenhower Center since 1997. Due to his traumatic brain injury, Mr. Krueger is unable to live on his own. He requires a very structured environment and constant supervision.

5. 90 percent of the services that Eisenhower Center provides are not compensable by Medicare. Thus, beginning on July 1, 2021, reimbursement for these services will be capped at 55% of what Eisenhower Center was charging for these services on January 1, 2019 pursuant to the no-fault amendments, MCL 500.3157(7).

6. This 55% non-Medicare fee schedule is unsustainable and unsurvivable for Eisenhower Center, and therefore if the 55% non-Medicare fee schedule will begin being

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applied on July 1, 2021 to patients of Eisenhower Center who were injured prior to that date, I anticipate that Eisenhower Center will be unable to continue in business and would expect to be closing its doors on or about December 31, 2021. When Eisenhower Center ceases to do business it will lay off approximately 450 employees and approximately 130 residential patients, including Philip Krueger, will have to find alternative living facilities.

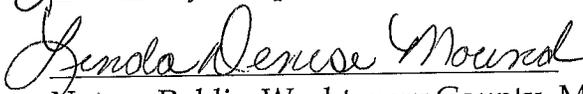
7. If Eisenhower Center closes and Philip Krueger is forced to leave, it is likely that he will not be able to receive the care and supervision he needs. Mr. Krueger's father and guardian, Ronald Krueger, has terminal cancer and will likely be unable to care for him. I am unsure of what will happen to Mr. Krueger if Eisenhower Center closes.

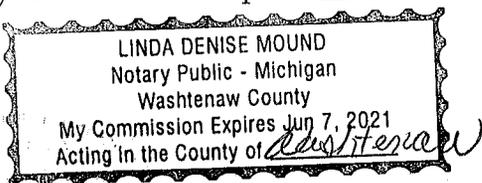
8. I am an adult competent to testify and I can completely testify as to the facts contained in this Affidavit. I have read the contents of this Affidavit and my statements are made voluntarily and I make this Affidavit based upon the personal knowledge of the statements contained herein.

FURTHER, AFFIANT SAYETH NOT.


Devin Hutchings

Subscribed and sworn before me on this
19th day of April, 2021.


Linda Denise Mound
Notary Public, Washtenaw County, Michigan
My Commission Expires: _____



Tab B: 04/29/2021 Aspire Rehabilitation Letter

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April 29, 2021

Dear Clients, Guardians, and Case Managers:

In June of 2019, Governor Whitmer signed the auto no-fault 'reform' bill that brought many changes to the insurance law. One of these changes will take effect on July 1, 2021, which is a 45% reduction in what auto no-fault insurers reimburse rehabilitation companies (including Aspire Rehabilitation Services, LLC ("Aspire")), in caring for injured individuals such as our Clients.

This is a catastrophic market-changing decrease, and is well beyond Aspire's ability to absorb as a functioning company. Although we have fought hard and long against these changes that will cut company revenue nearly in half, have looked at every option, and have run every reasonable scenario, and we cannot find a way forward under this new law.

Based upon these imposed circumstances well beyond our control, Aspire will cease all Client care at 5:00 PM, E.S.T. on June 30, 2021, and wind-up its business operations. We are very sorry to bring this news to you, but we have no other choice.

As a result, we will need to have all Clients transition to one of the options below on or before 5:00 PM, E.S.T. on June 30, 2021:

1. Move to a new program and vacate your apartment, or
2. Assume the lease in your current apartment, if landlord consent is obtained on or before May 31, 2021, or
3. Find a program that will take over your lease and allow you to stay in your apartment, if landlord consent is obtained on or before May 31, 2021.

Aspire does not plan on hiring any new staff and we may experience attrition as our employees may transition to other employment prior to planned termination on June 30, 2021. This unavoidable dynamic may impact the performance of certain services. We will promptly notify you if Aspire may be unable to provide any service that we consider essential. However, due to the uncertainty of the situation, Clients should plan to transfer to a new placement or program as soon as able.

Additionally, Aspire will no longer be able to provide any transportation, including transportation to any appointment, activity, or other event after May 30, 2021. We will continue to provide for all apartment utilities, including cable and internet services through June 30, 2021, and continue to provide \$75 per week for groceries, but the activity cards and the \$40 per week for activities will be discontinued on April 30, 2021.

We thank you sincerely for your business and allowing us to provide the care that we have taken such pride in and which has been our privilege to undertake. As a token of our appreciation and in exchange for your helpful cooperation in this process, we are allowing clients to take certain property with them if they move out by 6/30/2021. The client and/or their team members will need to make a list of what they would like to take, and this list will need approval by Aspire Management prior to move-out. Clients are allowed to take anything that is not attached to the apartment, such as furniture, tables, TVs, dishes, pots and pans, silverware, bedding, towels, etc. Clients are not allowed to remove fixed items such as window shades and blinds, microwave, stove, refrigerator, washer, dryer, cable, modem and wi-fi boxes. It will be the responsibility of the client/team to move anything out of the apartment, including approved Aspire property and personal belongings. Aspire staff and management will not be able to provide any assistance with moving.

Should you have any questions, please feel free to reach out to us at 248-951-8180, and we would be happy to answer any questions you may have. We want to wish you all the best in your continued rehabilitation, and for a healthy and happy life ahead.

Best wishes,
Aspire Rehabilitation Services Management

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Tab C: 05/03/2021 Joseph Richert Affidavit for Special Tree Rehabilitation Center

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AFFIDAVIT OF JOSEPH RICHERT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

I, Joseph Richert, being first duly sworn, deposes and states as follows:

1. I am the President and Chief Executive Officer of Special Tree Rehabilitation System, a Michigan medical provider that specializes in traumatic brain injury and spinal cord injury rehabilitation.

2. Special Tree currently employs approximately 300 people.

3. Special Tree currently services approximately 96 patients, including 21 residential patients who live at the Special Tree. Of these residential patients, approximately 95 are catastrophically injured motor vehicle accident victims, many of whom have lived at Special Tree for years.

4. 12.3 percent of the services that Special Tree provides are not compensable by Medicare. Thus, beginning on July 1, 2021, reimbursement for these services will be capped at 55% of what Special Tree was charging for these services on January 1, 2019 pursuant to the no-fault amendments, MCL 500.3157(7).

5. If the 55% non-Medicare fee schedule will begin being applied on July 1, 2021, Special Tree will have to reduce its costs by approximately \$1.3 million in order to be able to stay in business. In order to make up these costs, Special Tree will have to lay off employees and turn away patients that require more extensive care. Additionally, Special Tree will have to reduce the services and level of care it currently offers. Patients will have to reduce their expectations regarding the services that Special Tree can provide them.

6. I am an adult competent to testify and I can completely testify as to the facts contained in this Affidavit. I have read the contents of this Affidavit and my statements are made voluntarily and I make this Affidavit based upon the personal knowledge of the statements contained herein.

FURTHER, AFFIANT SAYETH NOT.



Joseph Richert

Subscribed and sworn before me on this
3 date of May, 2021.

Jan Kiser

Notary Public, Oakland County, Michigan
Acting in the County of Ingham
My Commission Expires: 9/4/2025

Tab D: 12/04/2019 Park Letter to Governor Whitmer

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Exhibit A: 12/04/2019 Letter

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From: donotreply@votervoice.net
Sent: Wednesday, December 04, 2019 5:11 AM
To: Martha Levendowski
Subject: Protect the right to recover. Fix the new auto insurance law.

Martha Levendowski:

User Robert Park has sent message to following recipients:

- * Governor Gretchen Whitmer
- * Senator Adam Hollier
- * Representative Joe Tate

The content of the message is as follows:

[The message(s) you sent had each recipient's salutation here]:

Below is some information that I have written about my personal story as a family caregiver and how my sisters life and future are in jeopardy. We are not alone there are thousands of recovering persons and family members that care for them whose lives will be destroyed if the law goes through as is. The good news is that the final details haven't been written and there's still time to change people's minds and bring to their attention what the new auto no fault law really means to both drivers and accident victims. Thank you for your time and please let me know if you'd like more information? I'd love the opportunity to talk to you more about it. I have a passion for helping people who are differently abled have a good quality of life and this new bill strips auto accident victims of their "right to recover" something that was promised to them under the old law.

It was 2006 on "Good Friday" my sister was in an auto accident and sustained many injuries to her body and her mind. She broke her femur, ulna and tibia and shattered her sacrum. In addition to this she sustained a severe traumatic brain injury. She was given a 10% chance to live and despite that small chance of survival she came through and lived. For me and my family it was the best "Good Friday" of our lives because God allowed her to live and allowed us to keep her. I slept in the hospital's ICU wing for a month and a half until she recovered enough to go home. I never left the hospital and lived in the waiting room during that time. I didn't know at the time just how hard her recovery would be for her or for my family. I was caught in a difficult situation and had to choose between living my life as a twenty year old or caring for my sister full time. I made the decision to care for her full time because it was the right thing to do and because she deserved it. Under the old law I have been able to be her full time care provider and in that time myself and her medical team have taken her from a 10% chance to live to make it to her recently celebrated 36th birthday. Had the law been the one that was just passed I would not have had the opportunity to take care of my sister full time and I would have had to bring on outside people. However because of her severe traumatic brain injury she has great difficulty working with those she didn't know before the accident and often has seizures, outbursts and severe breakdowns when working with others. I have spent my time as her caregiver researching and creating programs for her recovery and rehabilitating her myself. The new law will take away my ability to care for her full time. This is something that was promised to her under the unlimited lifetime benefits part of the previous no fault law. The main thing that we are fighting for is to show people that this new law will take away care from people like my sister and it will not save them any money, which is how the law was passed in the first place. I believe that when we work together we all win. By allowing people who are differently abled as a result of an auto accident to properly recover we can help make our whole society better. Under the new law I will have to stop taking care of my sister full time and bring on strangers to care for her. Not only will this not work for us but it will also cost much more money as agencies can charge two to three what a family caregiver can

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charge. I have more details that I'd like to share with you but I wanted to give you a condensed version to give you and idea of what the situation is and how our lives have been improved by the old law and how they will be drastically changed by the new law.

For years, Michigan's no-fault system offered unparalleled medical care and rehabilitation for auto accident victims. Now, under the law passed earlier this year, many motorists will be woefully underinsured and won't be able to afford needed rehabilitation or therapy. I and many other survivors will have nowhere to turn without the help of specialized rehabilitation centers that have changed the lives of so many.

The new law will likely raise taxes in Michigan, as more accident victims are forced to declare bankruptcy and end up on Medicaid. Further, Medicaid nursing homes do not have the space nor specialized care available to support traumatically injured patients. The 56-hour attendant care limit is devastating to people who need round-the-clock care.

We're counting on you to make the right choice for your constituents. I urge you to look at the law, look at its shortcomings, and work together before it fully takes effect to ensure it protects drivers, accident victims and all consumers.

Thank you for your service to Michigan.

Sincerely,

Robert Park

[User's postal address was included here]

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Tab E: CPAN attendant care survey findings

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Home-Based Attendant Care Survey Findings: At-A-Glance

Total responses: 568

Most accident victims in Michigan who receive in-home care receive it from family members or loved ones.

- 73.62% provide attendant care services to a motor vehicle accident victim that they knew or had a relationship with prior to the victim's accident.
- The majority of survey respondents (55.79%) provide attendant care services to a victim that needs 24/7 attendant care.

These victims will be severely impacted by the new 56 hour per week cap on attendant care services, which will be disruptive to their care.

- 92.31% are concerned that the services they provide are going to be affected by the 56 hour per week limitation.
- "I had to quit my job to take care of my daughter. I am now 64 years old and have been out of the job force for 14 years. What am I supposed to do to take care of both of us now?"
- "No one else will understand how to deal with my sister who has a traumatic brain injury... they don't have a program for adult daycare around here, she has needed 24/7 safety and supervision since her car accident in 1994."

At a time when more accident victims and their families will need to look to agencies to help them provide care, many will be forced to shut their doors due to the 45% reimbursement cut in the new fee schedule.

- 91.04% are concerned that the rate they are paid for attendant care services is going to be reduced or limited by the fee schedule.
- "The agency notified us that they may not be able to provide the extra help we need... I have no idea how we can care for 24 hours a day and only receive 56 hours of pay... I can't find even any openings in foster care..."

This is a crisis of care: 81.43% are concerned that the services they receive are going to be affected by the 56 hour per week limitation.

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Tab F: CPAN attendant care press release

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****FOR IMMEDIATE RELEASE****

CONTACT: Scott Swanson
scott@moonsailnorth.com
[517.582.0084](tel:517.582.0084)

CPAN survey finds vast majority of Michigan accident victims who receive in-home care are concerned about their future

Home care elements of no-fault reform will cause chaos for vulnerable patients

LANSING, Mich.—(April 29, 2021)—A new **CPAN** survey of Michigan auto accident victims and their home-based attendant caregivers—often family members—finds that the majority are deeply worried about how they'll continue to function after impending cuts to reimbursement rates are enacted.

2019 changes to the no-fault insurance law which take effect this July limit reimbursement for in-home family-provided attendant care to 56 hours per week—even if the patient requires help and supervision around the clock. If the patient requires additional care beyond 56 hours per week, he or she will have to turn to a commercial agency. In addition to this hourly limitation, a new fee schedule cuts reimbursement rates for attendant care by 45% after July 1, 2021. This will have a devastating impact on both the family members and the commercial agencies that provide home health care. Family members will be unable to adequately be compensated for their services and commercial home health care agencies will be forced to lay off staff or close their doors entirely, leaving many patients without recourse to get the care they need.

CPAN's survey found that the majority of provider respondents (56%) deliver home-based attendant care services to patients that need 24/7 care. Nearly half of accident victims have been receiving attendant care for more than five years and rely on routines that allow them to live with some measure of independence and dignity. Fifty percent of accident victims are cared for at home exclusively by family members.

There were 568 total responses to the survey, which gave users the opportunity to anonymously tell their heartbreaking stories.

"I had to quit my job in 2009 due to the severity of issues she encounters on a daily basis," one caregiver said. "Things have worsened over the past couple years and I have to be with her 24/7

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because NO ONE understands her or her reactions as I do. She has five types of seizures, a traumatic brain injury, is non-verbal, has left side hemiparesis and has over 50 allergies to medications... she requires my attention every second of the day. Her survival is crucial to my diligence and detail of her everyday care.”

Another caregiver added: “If we are limited to 56 hours of care a week, Angie will drastically lose her care... care that keeps her from injury or death.”

Said another: “Our family doesn’t want our daughter to go into a group home or other facility... my daughter would be extremely lonely without her loved ones nearby.”

A whopping 81% of patients said they are concerned that the services they receive are going to be affected by the 56 hour per week limitation, throwing vulnerable Michigan residents into chaos while they’re contending with a resurgent pandemic that continues to rage across the state.

“I have been providing attendant care to my brother for almost 14 years,” a caregiver said. “I made a decision to walk away from my career to help with his care. I knew family being involved was the key to him surviving. I am the one who changes his trach (tracheostomy tube) monthly. I am the one who drives him to all his appointments. I am the one who is there to wipe his tears when he gets depressed.”

In addition to issues with access to care, patients and family members are concerned about having to rely on commercial providers. In many cases, family-provided attendant care is the best suited for the patient’s needs. Having to get additional care from a commercial agency would result in a disruption of the care system that the patient is used to and oftentimes does not provide the patient with the same level of care and dedication that a family member provides.

Another caregiver said: “My daughter requires all of her needs to be done by others. Hygiene, dressing, meds, feeding, positioning, everything. Many of these functions require two caregivers to [perform]. My wife and I want to provide care to our daughter and want to be compensated the same as anyone else would be. She is familiar with us and we provide the absolute best care available. We do use professional caregivers also. Problems we have with professional caregivers are, they don't show up, they are late, it could be a different caregiver every day, every time we have a new caregiver, they have to learn all the procedures for caring for our daughter. Our daughter is a human being not a robot without feelings. She deserves the most appropriate care at a reasonable price that is available, family provides that care.”

CPAN President **Devin Hutchings** said the survey was conducted to provide lawmakers and other decision makers with data around attendant care, since there is no database of individuals who receive home-based care stemming from auto accidents. Home-based care is an important tool in health care delivery and often critical for the progress in patient recovery.

Hutchings said our lawmakers need to understand the ripple impact of these changes on patients and the health care community in our state.

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"As Michigan's watchdog for policyholders and accident victims, it is important to gather this information, especially as coronavirus is still spreading," Hutchings said. "The cuts to home-based, family-provided care impacts not only current accident victims, but also anyone who needs care in the future. We will continue to fight to ensure that these vulnerable Michiganders receive the access to the care they need."

Please see an additional fact sheet on the survey here.

###

CPAN is a broad bi-partisan, Michigan based coalition, whose mission is to be the consumer advocate for auto insurance policyholders, those who have been injured in a motor vehicle crash and the medical providers caring for them, representing them at the Capitol, in the courts, and in the public forum. For more information, please visit www.CPAN.us.

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Tab G: 04/05/2021 State Farm Letter

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April 5, 2021

[Redacted]
[Redacted]
[Redacted]

State Farm Claims
PO Box 106170
Atlanta GA 30348-6170

RE: Claim Number: [Redacted]
Date of Loss: June 2, 2005
Our Insured: [Redacted]

Dear [Redacted]:

We are writing in follow up to our conversations to give notice of the impact of the changes to family attendant care effective July 2021. Please note effective July 2021 family provided attendant care will be limited to 56 hours per week

If you have any questions or need further assistance, please call us at (844) 292-8615 Ext. 9729075056.

Sincerely,

Coronda Anderson
Claim Specialist
(844) 292-8615 Ext. 9729075056
Fax: (844) 218-1140

State Farm Mutual Automobile Insurance Company

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Tab H: 01/28/2021 Farm Bureau Letter

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Farm Bureau Mutual
Farm Bureau Life
Farm Bureau General

7373 West Saginaw Highway, PO Box 30400, Lansing, Michigan 48909-7800
FarmBureauInsurance.com

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01/28/2021

[REDACTED]
[REDACTED]
Holly MI 48442

RE: Claim No.: [REDACTED]
Date of Loss: 10/18/1977
Your Client: [REDACTED]

Dear [REDACTED]

This letter is to follow up and outline our position following our 3/1/21 phone conversation regarding your request for an attendant care rate increase. I have reviewed the file as well as the Bureau of Labor statistics regarding the attendant care rates. Per the file in April of 2018 you spoke to the claim rep and settled on an agreed upon monthly rate for 24-hour attendant care. This rate breaks down to \$12.25 per hour.

I have reviewed the Bureau of Labor statistics website, it appears the average rate for a home health care provider is \$12.15 per hour (as of 2019). At this time, you are being paid over the mean or median rate for family provided home health aide. This, based on research, appears to be a reasonable rate for family provided attendant care in the area. No change will be considered at this time. If you have any documentation you would like to submit for our review please feel free to do so.

In the second part of our conversation we discussed the change in the no-fault law regarding family provided attendant care. On 7/1/2021 the no fault statute changes regarding family provided attendant care will go into effect. We will only be considering 56 hours per week for family provided attendant care. I have included the applicable case law below for your review and records.

500.3157 Charges for treatment or training for injured persons; limitation on eligibility for payment or reimbursement; applicability; "freestanding rehabilitation facility" defined; qualification for payment requirements; attendant care; neurological rehabilitation clinic; applicability to ambulance operation; definitions.

(10) For attendant care rendered in the injured person's home, an insurer is only required to pay benefits for attendant care up to the hourly limitation in section 315 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315. This subsection only applies if the attendant care is provided directly, or indirectly through another person, by any of the following:

- (a) An individual who is related to the injured person.
- (b) An individual who is domiciled in the household of the injured person.
- (c) An individual with whom the injured person had a business or social relationship before the injury.

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(11) An insurer may contract to pay benefits for attendant care for more than the hourly limitation under subsection (10).

Section 315 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315

(1) ... Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons.

If you have any questions please feel free to contact me.

Respectfully,

Jennifer Rosso

Jennifer Rosso

Medical Claims Representative

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Tab I: 04/08/2021 Frankenmuth Mutual Letter

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Frankenmuth Mutual Insurance Company
Ansur America Insurance Company
Patriot Life Insurance Company
Patriot Insurance Company

April 8, 2021



T4 P1 - 648 *****AUTO**ALL FOR AADC 480

[Redacted]

SUBJECT: MICHIGAN NO-FAULT REFORM – NEW FEE SCHEDULE

Dear [Redacted]

The Michigan auto fee schedule will go into effect on July 2, 2021. (MCL 500.3157)

Michigan Auto Fee Schedule Structure

The new Michigan auto no-fault fee schedule is set up as a three-tier pricing structure.

The three tiers, in priority order, are defined in the legislation as follows:

- 1. The amount payable to the person for the treatment or training under Medicare*
- 2. Amount payable under the person's charge description master (person meaning provider, attendant, etc.), effective Jan. 1, 2019*
- 3. The average amount the person charged for the treatment on Jan. 1, 2019*

To ensure our compliance of paying bills in accordance to the new fee schedule, **please submit your official Jan. 1, 2019 charge description master or average charge sheet to us within 30 days.**

This can be emailed to (preferred):

or

Mailed to:

MIAutoFeeSchedule@fmins.com

Frankenmuth Insurance Company
1 Mutual Avenue
Frankenmuth, MI 48787-0040
Attn: Medical Bill Review

If your organization operates multiple locations, a separate submission will be required for each. However, if the business name, tax identification number, rates, codes and billing address are identical, then one submission will cover all locations.

Any questions or comments, please email: MIAutoFeeSchedule@fmins.com

or contact:

Bonnie Ellison
1-800-234-4433 x2914

Jamie Martin
1-800-234-4433 x2659

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Tab J: MBIPC Survey

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****FOR IMMEDIATE RELEASE****

Statewide survey finds 6,000 accident victims expected to lose care and 5,000 health care providers to lose jobs if House Bill 4486 is not passed

The bill provides a technical fix to legislation, but its passage is needed well before July 1 to avoid devastating impacts

BRIGHTON, Mich. — (March 18, 2021) — A recent survey of more than 110 brain injury rehabilitation providers across the state commissioned by the **Michigan Brain Injury Provider Council (MBIPC)** indicates that nearly all are planning for the worst, including going out of business, if legislators don't pass a technical fix that enables post-acute facilities to continue providing care.

The statewide survey found that facilities will be forced to lay off thousands of workers, discontinue catastrophic care for thousands of auto accident patients and potentially go out of business, if House Bill 4486 isn't passed well before July 1.

"Nearly nine in ten post-acute care facilities have little or no confidence that they will be staying in business after July 1 of this year if House Bill 4486 is not passed. It behooves us to listen to those on the front lines, providing care for the most vulnerable. They have first-hand knowledge of the day-to-day realities and the urgent need for this fix. Lansing bureaucrats and special interests won't find more reliable data than that," said MBIPC President **Tom Judd**. "We are hurtling toward a crisis of catastrophic proportions for Michigan caregivers and the post-acute patients they serve."

The bill contains a technical legislative fix to the state's auto insurance law. Under the 2019 auto insurance reform, health care services that do not have a corresponding "Medicare code"—which includes most services provided by brain injury rehabilitation centers—would be required to slash reimbursements by 45%.

The statewide survey of providers reveals the following key findings:

- **Nearly nine in ten post-acute care facilities have little or no confidence in staying in business under the fee schedule outlined in Michigan's Public Act 21:** Eighty-six percent (86%) of post-acute care facilities have either no confidence at all (65%) or very little confidence (21%) that they can operate their business at a sustainable level under the new auto no-fault fee schedule in its current form. Another 21% are only slightly confident.
- **Thousands of patients will potentially lose care across the state:** Nearly eight in ten of all respondents (79%) expect a decrease in the number of auto no-fault patients for which their facility can provide care, if the fee schedule goes forward unchanged. When asked to quantify how many patients will potentially lose care, the average response was between 31 to 40 expected patients lost per facility; meaning that between 4,800 and 6,200 patients across the state will potentially lose care from these facilities alone.
 - Nearly four in ten (38%) expect that care to be lost immediately, while more than eight in ten (85%) expect it to be lost within the first few months after the new fee schedule goes into effect.

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- The facilities surveyed currently provide care for between 6,350 and 7,800 post-acute care patients across Michigan.
- **Thousands of jobs will potentially be lost across the state:** Nine in ten facilities (90%) expect to decrease their number of employees if the fee schedule goes forward unchanged. When asked to quantify how many jobs will be lost, the average response was between 21 and 30 expected jobs lost per facility; meaning that between 3,250 to 4,650 jobs will potentially be lost across all facilities in the state. This estimate does not account for indirect jobs lost.
 - More than four in ten (45%) expect to lose those jobs immediately, while more than eight in ten (85%) expect those job losses within the first few months after the new fee schedule goes into effect.
 - The facilities surveyed currently provide jobs for between 6,350 and 7,800 post-acute care practitioners across Michigan.

The survey was commissioned by MBIPC and conducted by **ROI Insight**, a Michigan-based market research company.

“The most vulnerable individuals with the most complex needs will need to be transitioned out of specialized residential programs, beginning well before July 1,” Judd said. “It’s unclear where these individuals will go to receive the specialized care, supervision, and treatment they need and deserve – not to mention the potential job losses we are facing. In addition, this survey does not capture the disruption facing families providing care to their loved ones inside their homes.”

Last week, **HB 4486** was introduced by Rep. **Doug Wozniak** of Shelby Township, proposing limits on how much post-acute care providers can charge while enabling patients to access care and providers to remain in business.

“This proposed legislative solution to the unintended consequences of Public Act 21 is a simple fix and narrowly focused on meeting the intent of the law,” Judd said. “It does not add cost to the system.”

###

Members of the Michigan Brain Injury Provider Council are committed to providing high quality, ethical rehabilitation services, with the mission of achieving the best outcomes for patients. As a trade association established in 1987 and based in Brighton, Michigan, MBIPC offers resource-sharing, information exchange, professional development and education, advocacy for brain injury standards of care and legislation protecting Michigan families, and the promotion of ethical conduct.

PRESS CONTACT

Rose Tantraphol
 Moonsail North
rose@moonsailnorth.com
 517.775.2152

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Support HB 4486

Support Access to Care

House Bill 4486 is needed to protect access to care for thousands of individuals and families, and must be passed into law quickly to prevent the closing of brain injury rehabilitation centers throughout the state. HB 4486 maintains access to care and averts mass job layoffs. This legislation does not add cost to the system.



4,800 to 6,200 Patients
Lose Access to Care

Doors Shut on Michigan Patients

Nearly 8 in 10 of all respondents (79%) expect a decrease in the number of no-fault patients at their facility if HB 4486 does not get enacted. On average, each facility expects to lose 31 to 40 no-fault patients – this extrapolates to 4,800 to 6,200 patients across the state losing care from these facilities.



Community-Based
Centers Close

Nearly 9 in 10 post-acute care facilities have little or no confidence in staying in business

Eighty-six percent (86%) of post-acute care facilities have either no confidence at all (65%) or very little confidence (21%) that they can operate their business at a sustainable level under the auto no-fault fee schedule set to go into effect July 1.



3,250-4,650
Lose Jobs Across Michigan

Pink Slips Statewide

Nearly all respondents (90%) expect a decrease in the number of jobs at their facility if House Bill 4486 does not get enacted. On average, each facility expects to lose 21 to 30 jobs – this extrapolates to 3,250 to 4,650 jobs lost across the state that are directly connected to these facilities. This does not even account for thousands of lost jobs dependent on these community facilities.

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Survey

Under the New Auto No-Fault Law Fee Schedule, Michigan Expected to Lose Nearly 5,000 Health Care Jobs, More Than 6,000 Patients to Lose Care

A recent survey of brain injury rehabilitation care providers across the state indicates that nearly all are planning for the worst, including going out of business, if legislators don't fix technical issues in the fee schedule set by the new auto no-fault reform law. This new fee schedule goes into effect July 1 this year. Because of a technical error in the language of the fee schedule, the codes established treat these post-acute care facilities more negatively than other health care providers, slashing the amount they can charge for care by nearly half. It unfairly and severely diminishes their ability to be reimbursed for the care provided to patients with catastrophic injuries from automobile accidents.

To quantify the impact of the new auto no-fault law fee schedule on the industry, the Michigan Brain Injury Provider Council (MBIPC) commissioned a survey of care providers in professions related to brain injury rehabilitation. According to this statewide survey of over 110 brain injury rehabilitation care providers, their facilities will be forced to lay off thousands of workers, discontinue catastrophic care for thousands of auto accident patients and potentially go out of business, if a legislative fix to this flawed fee schedule isn't passed.

Here is a summary of the survey's findings:

- » **Nearly nine in ten post-acute care facilities have little or no confidence in staying in business:** More than six in ten (65%) post-acute care facilities have no confidence at all that they can operate their business at a sustainable level under the new auto no-fault fee schedule in its current form. Another 21% are only slightly confident. Only 3% say they are either somewhat or extremely confident they will be able to continue their business at a sustainable level.
- » **Thousands of patients potentially losing care across the state:** Nearly eight in ten of all respondents (79%) expect a decrease in the number of auto no-fault patients for which their facility can provide care, if the fee schedule goes forward unchanged. When asked to quantify how many patients will potentially lose care, the average response was between 31 to 40 expected patients lost per facility; meaning that between 4,800 and 6,200 patients across the state will potentially lose care from these facilities alone.
 - Nearly four in ten (38%) expect that care to be lost immediately, while more than eight in ten (85%) expect it to be lost within the first few months after the new fee schedule goes into effect.
 - The facilities surveyed currently provide care for between 6,350 and 7,800 post-acute care patients across Michigan.
- » **Thousands of jobs potentially lost across the state:** Nine in ten facilities (90%) expect to decrease their number of employees if the fee schedule goes forward unchanged. When asked to quantify how many jobs will be lost, the average response was between 21 and 30 expected jobs lost per facility; meaning that between 3,250 to 4,650 jobs will potentially be lost across all facilities in the state. This estimate does not account for indirect jobs lost.
 - More than four in ten (45%) expect to lose those jobs immediately, while more than eight in ten (85%) expect those job losses within the first few months after the new fee schedule goes into effect.
 - The facilities surveyed currently provide jobs for between 6,350 and 7,800 post-acute care practitioners across Michigan.

This survey of more than 110 post-acute care facilities across Michigan was commissioned by MBIPC and conducted by ROI Insight, a Michigan-based market research company.

Tab K: IBH Analytics Survey

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MICHIGAN NO-FAULT LAW CHANGE BUSINESS IMPACT

Survey Details

IBH Analytics conducted an industry survey to determine the impact of changes to Michigan's No-Fault Insurance laws that came into effect in July of 2020. IBH Analytics surveyed firms who serve those who have suffered injuries from vehicle accidents. The firms invited to participate in the survey were contacted via an email list provided and are all located in the State of Michigan. Firms self-reported their projected impacts once the laws come into full effect.

Impact to Services

A negative impact to services provided: 90% of firms estimate a reduction in services offered for TBI clients once the law is in full effect. 0% believe that they will be able to expand their services for TBI clients and only 10% believe that their services will stay the same once the law is enacted.

Exiting the business: 57% of firms stated they are either very likely or likely to exit the business of serving individuals who have experienced a vehicle accident. 29% of firms reported they were unlikely or very unlikely to exit the business of serving individuals who have experienced a vehicle accident 14% of firms that were indifferent to this question.

Fee schedule to sustain quality services: Almost all firms note they cannot sustain quality services at the fee schedule enacted to begin July 2021. The average pay cut an organization can withstand while continuing to provide quality services is 13.7% compared to enacted pay cut of 45%.

Impact to Revenue

Confidence in replacing no-fault revenue severely diminished: 72% of firms are not at all confident that they would be able to replace No-Fault revenue due to the law that has been enacted. 16% are only slightly confident in their ability to replace No-Fault revenue while 8% are moderately confident. Only 3% of firms are highly confident that they would be able to replace No-Fault revenue.

Change in annual revenue: 81% of firms estimate a decrease in annual revenue due to the law enacted. Approximately half of these estimate a decrease in revenue of 50% or more with 9% estimating a 100% decrease in revenue. 19% of all firms estimate no change or a positive change to the firm's annual revenue due to the newly enacted law.

REVENUE AND EMPLOYEE IMPACT

Across all organization settings the average number of full-time employees in 2021 is projected to decrease from 2019. The table to the right shows the average annual revenue percent change estimate by organization setting along with 2019 and projected 2021 average full-time employee counts.

With the number of full-time employees projected to decrease in 2021, industry layoffs are expected to occur.

Percent Change in Revenue by Organization Setting with Full-Time Employee Summaries				
Organization Setting	Number of Firms	Revenue Percent Change	2019 FTE	Projected 2021 FTE
Acute Care Hospital	5	-39%	308	254
Inpatient Rehabilitation Unit within an Acute Care Hospital	5	-45%	153	119
Specialty Care Hospital (Long Term Acute Care Hospital)	4	-39%	33	29
Free Standing Rehab Hospital	3	-48%	29	25
Subacute Rehabilitation Facility	6	-38%	749	314
TBI Residential Program (AFC licensed beds)	13	-45%	1,360	755
TBI Residential Program (Semi-independent or apartments)	12	-46%	1,002	510
Outpatient Rehabilitation (Hospital Based or affiliated)	4	-45%	127	97
Outpatient Rehabilitation (Non-Hospital Based – Private)	19	-45%	1,212	627
Vocational Programs/ Sheltered Workshops	9	-37%	1,042	496
Private Practice	20	-36%	388	329
Home Health Care	13	-31%	1,555	1,030

SUMMARY OF IMPACTS

72%

of firms are not at all confident that they will be able to replace the lost No-Fault revenue

OVER HALF

of firms are likely or very likely to exit the business of serving individuals who have experienced a vehicle accident

9 OF 10

firms estimate a reduction of services once the law is in full effect

13.7%

the average pay cut a firm can withstand while continuing to provide quality services

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Tab L: 04/13/2021 Affidavit of John G. Prosser for Health Partners

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AFFIDAVIT OF JOHN G. PROSSER II

STATE OF MICHIGAN)
)
COUNTY OF Oakland)

I, John G. Prosser II, being first duly sworn, deposes and states as follows:

1. I am the Vice President of Health Partners, Inc., a Michigan medical provider that specializes in rehabilitation home care programs and private home care solutions.

2. My current staff consists of approximately 530 field staff who perform home health care services and 50 administrative staff.

3. Health Partners currently services approximately 100 patients. Of these 100 patients, approximately 95 are motor vehicle accident victims, many of whom have been serviced by Health Partners for many years. Many of these patients need around the clock care, 24 hours per day/7 days per week.

4. Of the 530 field staff, approximately 46 of those individuals are family members of the patient and are employed by Health Partners to provide attendant care services to their injured family member.

5. 100% percent of the services that Health Partners provides are not compensable by Medicare. Thus, beginning on July 1, 2021, reimbursement for these services will be capped at 55% of what Health Partners was charging for these services on January 1, 2019 pursuant to the no-fault amendments, MCL 500.3157(7).

6. This 55% non-Medicare fee schedule is unsustainable and un-survivable for Health Partners, and therefore if the 55% non-Medicare fee schedule will begin being applied on July 1, 2021 to patients of Health Partners who were injured prior to that date, I know that

Health Partners will be unable to continue in business and will expect to be closing its doors on or about June 30, 2021. When Health Partners ceases to do business it will lay off approximately 580 employees.

7. I am an adult competent to testify and I can completely testify as to the facts contained in this Affidavit. I have read the contents of this Affidavit and my statements are made voluntarily and I make this Affidavit based upon the personal knowledge of the statements contained herein.

FURTHER, AFFIANT SAYETH NOT.



John G. Prosser II

Subscribed and sworn before me on this
13th day of April, 2021.



Notary Public, ~~Ingham County~~, Michigan Oakland County
My Commission Expires: 01/25/2027

Alex Gardner
Notary Public, State of Michigan
County of Oakland
My commission Expires 01/25/2027
Acting in County of Oakland

