

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## Is Cost Containment under the Michigan No Fault Act Dead?

By Alison M. Quinn

The Michigan Supreme Court has recognized that the overall goal of Michigan's no fault system is to "provide victims with assured, adequate, and prompt reparations *at the lowest cost to both the individuals and the no fault system.*" See *Celine Mut Ins Co v Lake States Ins Co*, 452 Mich 84 (1996) (emphasis added). MCL § 500.3107(1)(a) and MCL § 500.3157 of the Michigan No Fault Act limit a provider to reasonable charges and amounts. The term "reasonable," however, is not defined under the Act. The reasonableness of charges has caused much debate (and litigation) in Michigan and attempts to implement a medical fee schedule has not yet been successful.

In a recent case concerning the reasonableness of charges, on February 12, 2015 the Michigan Court of Appeals released an unpublished per curiam opinion in the case of *Lakeland Hospitals at Niles & St. Joseph, Inc v Auto-Owners Insurance Company* (Docket No. 318440). In this case, Lakeland Hospitals brought suit against Auto-Owners after Auto-Owners paid a reduced amount for surgical implants; Lakeland Hospitals sought the difference between the amount charged and the amount paid. The matter proceeded to a jury trial where Lakeland Hospitals received a judgment in its favor. In Docket No. 318440, the issue was whether Lakeland Hospitals' charges for surgical implant products were "reasonable." Auto-Owners appealed to the Court of Appeals arguing that the trial court erred in denying its motion for directed verdict at trial.

Amongst the evidence presented at trial, Lakeland Hospitals put forth evidence as to the wholesale cost for the surgical implants, the amount charged by other providers, as well as other charges including overhead and employee salaries. With this type of evidence, the Court of Appeals held that the issue of reasonableness properly was before the jury to decide. The *Lakeland* Court also recognized that Auto-Owners had a statutory right to question the reasonableness of Lakeland Hospitals' charges and that Lakeland Hospitals had the ultimate burden of proof regarding the reasonableness of its charges.

Significantly, however, the Court of Appeals rejected Auto-Owners argument that cost containment provisions under the Michigan No Fault Act is a constitutional consideration and as such it should be a constraint on provider charges. The Court looked to *Shavers v Attorney General*, 402 Mich 554 (1978), and opined that case concerned the constitutionality of the No Fault Act in terms of its availability to individuals, not constitutional considerations as to how a charge is deemed "reasonable." Rather, according to the *Lakeland* Court, cost containment in terms of provider charges is a matter of public policy and not of constitutional concern.

### SECRET WARDLE NOTES:

*Lakeland Hospitals* is unpublished and therefore not binding authority but shows that the determination of whether a charge is "reasonable" is in a state of flux now more than ever. In addition, it begs the question as to whether allowing charges that are arguably reasonable yet higher than what non no-fault insurers pay in fact contravenes the intent behind Michigan's No Fault Act to make no-fault coverage affordable.

## CONTINUED...

On appeal Auto-Owners argued that charging higher amounts to accident victims was "unreasonable and results in impermissible cost-shifting to no-fault carriers, which in turn drives up healthcare costs in contravention of cost-containment." The Court of Appeals acknowledged that this "in theory" does not comport with the public policy behind cost containment but nevertheless held that providers are entitled to what is "reasonable" under the Act and evidence in this regard is without restriction. Further, Lakeland Hospitals' evidence as to overhead and the money it loses from providing services to individuals not covered by a no-fault insurer for example was permissible evidence of reasonableness and did not violate the public policy of cost containment.

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We welcome your questions and comments.

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