Originally Published: March 27, 2011 3:01 AM Modified: March 29, 2011 5:43 AM

Stage set for ‘battle royal' between auto insurers and providers over cutting reimbursement under Michigan's expansive no-fault auto law

By Jay Greene

I haven't been to a good old fashioned "battle royal" legislative committee hearing in Michigan for a while.

The last contentious hearings I attended, held in early 2008, were ones that Tom George, M.D., the Kalamazoo anesthesiologist and former chairman of the Senate Health Care Committee, conducted on Blue Cross' effort to "reform" the individual health insurance market.

Blue Cross, the insurer, lost that battle royal. The individual health insurance market is still a mess, although health care reform and the insurance exchanges will most likely to help Blue Cross cut their losses in the individual market starting in 2014.

That is another story that I may blog about soon.

Now we are in the 2011 Michigan legislative season and we have a new insurance battle brewing, this time over medical fee schedules for hospitals, doctors and other providers that submit auto insurance claims.

I wrote a news story about this in Crain's Detroit Business this week. Click here to read it.

Of course, the Michigan state budget deficit and related issues take front and center and that debate may drain the swamp of other serious debates.

But it is almost certain that the bill (Senate Bill 294) introduced last week by Sen. Joe Hune, R-Hamburg Township, to set a medical fee schedule will be heatedly debated.

A medical fee schedule is very upsetting to hospitals, physicians, physical therapists and other health providers because it would drastically cut their payments, among other things.

The Insurance Institute of Michigan is preparing a lobbying campaign to restate their case that the state's no-fault auto laws, which offers unlimited medical coverage, should be modified.

But for whose benefit? Critics say insurers are simply trying to reduce their claim expenses. Insurers say they are trying to reduce premiums by giving people who purchase auto insurance choices.

One point is clear: Reforming Michigan's no-fault auto law, which went into effect in 1973, has been on the agenda of auto insurers for many years.

The Coalition for Protecting No-Fault Auto - formed in 2006 by the hospital, physician, nursing, trial lawyers, consumer and labor union lobbies – has successfully beat back similar legislation.

The Coalition may not succeed this year because both state houses and the governor's office are controlled by Republicans. Democrats in previous years held the insurance industry at bay in previous years. If you haven't noticed, Republicans are all about cutting costs these days.

It is important to note that Michigan voters took up the issue of medical fee schedules back in 1992 and 1994. Voters rejected Proposal D and Proposal C.

Under current law, insurers cannot use fee schedules to pay claims, although they often refuse to pay the full amount of a doctor's or hospital's bill.

Stacie Saylor, reimbursement manager for the Michigan State Medical Society, said auto insurers regularly reject physician bills for their treatment.

"Doctors have to resubmit or appeal denials all the time," she said. "Insurers hope to delay payments or pay lower amounts."

The Insurance Institute contends a medical fee schedule – similar to that used in workers' compensation since the mid-1980s – could lower auto premiums by 10 percent to 30 percent, depending on coverage levels, according to a 2007 study for the institute by Epic Consulting, Carlock, Ill.

But if a medical fee schedule were used to pay auto accident claims, hospitals, physicians, nursing homes and other providers could stand to lose millions of dollars in reimbursements.

"A reduction in payment for services rendered would be significant and in excess of $25 million on an annual basis," said Nick Vitale, senior vice president of financial operations at three-hospital William Beaumont Hospitals in Royal Oak.

"The bill portrays to save money for those insured, but it reduces the level of benefits," said Vitale, adding: "If somebody gets really injured and can't work, somebody has to pay for the claims. There could be huge out-of-pocket expenses for health care."

In a statement to Crain's, the Michigan Orthopaedic Society said imposing a fee schedule on top of low reimbursement rates by Blue Cross Blue Shield of Michigan could worsen the shortage of surgeons in the state and not "allow patients to return to pre-injury function."

But Pete Kuhnmuench, executive director of the Lansing-based Insurance Institute, said a fee schedule and other reforms are needed to check growing provider reimbursement. The state's 38-year-old auto no-fault law contains the nation's only unlimited and lifetime medical benefit provision.

"There has been a stalemate legislatively and all the while medical costs continue to grow," said Kuhnmuench, who said unlimited medical benefits, overbilling and insurance fraud has contributed to rising premiums in Michigan.

Two recent studies indicated that Michigan's auto premium rates are one of the highest in the country.

For example, a recent study by www.insure.com, a consumer website, showed auto rates in Michigan for a 40-year-old man with a clean driving record is $2,541 per year, the highest in the country.

On the other hand, the National Association of Insurance Commissioners said in December that Michigan ranks 11th most expensive with an average premium of $1,032 in 2008.

Kuhnmuench points out that during the past decade medical care costs have risen 51 percent in Michigan, while inflation increased 27 percent. From 1997 to 2007, the average auto insurance medical claim rose more than 225 percent, said the study.

Laura Appel, vice president for federal policy and advocacy with the Michigan Health and Hospital Association, makes a good point when she says that auto insurers cannot guarantee premiums will go down.

"They have been asked in hearings about the 20 percent premium reduction and never promised rates would go down," Appel said. "They said the average would go down."

Kuhnmuench points out that auto insurers can't collectively promise to lower premiums because that would be "collusion" and could spark the imagination of government antitrust lawyers.

"Competition will work in Michigan to lower premiums," he said.

Appel counters that another one of the problems with medical fee schedules is that some hospitals, especially trauma centers and sole-provider hospitals, could receive

higher numbers of accident victims than others and be disproportionately affected by the lower reimbursements.

"Fee schedules are determined by understanding with relative certainty the different volumes and services you will be providing," Appel said. "But there is no predictability with auto accidents."

Kuhnmuench responds by saying the same could be said about workers' compensation claims - who knows when a worker will be injured on the job?

"The workers' compensation fee schedule is a real quiet success," Kuhnmuench said. "There is a fee schedule for each procedure. They are adjusted on a rotating basis every year, adding and deleting procedures."

But Vitale explains that, in real life, Beaumont loses money on workers' compensation claims because reimbursement is below costs.

Adding a medical fee schedule would further cut into slim hospital profit margins, he said.

The Michigan Health and Hospital Association say that average hospital profit margins on patient care services are below zero. Nationally, hospital profit margins are about 5 percent.

"We are very concerned and very opposed to the bill," Vitale said. "It would hurt the health care system, the patient population and those insured."

Looking on the positive side, Saylor said a fee schedule could give physicians greater certainty that insurers would pay their bills. On the negative, she said doctors would still receive lower reimbursements.

"Right now insurers pay reasonable and customary charges that are always less than what physicians charge," Saylor said.

Ari Adler, press secretary for Republican House Speaker James "Jase" Bolger, R-Marshall, said no-fault auto reform legislation will be introduced. The bills will be similar to House Bills 6094 and 6095 that were introduced last year.

"The insurance industry wants it done," Adler said. "There is a significant difference in paid charges to providers compared with other types of insurance – Medicare, Medicaid and Blue Cross."

Besides the medical fee schedule, Kuhnmuench said two other key provisions are included in bills to give consumers choice and help drive down auto premiums.

First, auto insurers would pay a tax to create a statewide fraud bureau that would provide local law enforcement and prosecutors with funding to go after auto fraud rings and unethical providers.

Sen. Virgil Smith, D-Detroit, last week introduced S296 to expand the Auto Theft Prevention Authority to include insurance fraud.

"We don't have any centralized way to monitor fraud like auto theft," Kuhnmuench said. "We report all incidents of fraud, generate revenue from assessments to insurance companies and direct money to communities where fraud is occurring."

Appel said the hospital association supports creating a fraud bureau and could support that bill. But including it in a fee schedule bill would be a non-starter.

"There is a lot of evidence that more attention to fraud is beneficial," she said. "We would like prosecutors to go after people illegally providing care who are not licensed and are committing fraud."

Another key component to the bill would allow consumers to choose one of five levels of personal injury protection coverage - $50,000, $100,000, $200,000, $400,000 and unlimited.

Hune introduced Senate Bill 293 to provide for different levels of PIP coverage and S295 to require providers to bill insurers within 90 days of treatment.

Because medical coverage could be reduced under S293, one option for those in auto accidents seeking to recover unpaid medical costs could be to file a lawsuit, said Mary Catherine Rentz, an attorney representing insurers with Plunkett Cooney in Bloomfield Hills.

"If the act stays the way it is there could be (legal) exposure for medical payments over $50,000 or the coverage limits," Rentz said. "Somebody could be sued. Insurance companies are trading one problem for another."

Under the bill, Michigan's minimum coverage level would be $50,000, the same as New York. The other 12 states with no-fault insurance have lower minimums, including Minnesota at $40,000, North Dakota at $30,000, New Jersey at $15,000 and Florida at $10,000.

Kuhnmuench said 94 percent of claims are less than $50,000 with an average claim of $3,966. Only 0.5 percent of claims exceed $400,000.

Claims exceeding $480,000 are covered by reinsurance provided by the Michigan Catastrophic Claims Association, which is paid by policy assessments. In July, the MCCA threshold will increase to $500,000.

"We expect to have a debate this year, but (legislators) realize this ignites opposition from the medical community," Kuhnmuench said.

There are several other issues involved in changing the state no-fault law that I will just briefly mention for discussion purposes.

One would be the effect of the bill on the MCCA. Should that system be modified?

Another would be the effect of the bill on the legal system with more lawsuits being filed, crowding an already busy docket.

Legislators must balance the financial hardship placed on providers with the possibility that Michigan's high auto insurance rates could be lowered.

I pay double the state's average insurance rate because I choose to live in Detroit. I am told there are many drivers in Detroit who do not have insurance, primarily because of the high rates.

Would this bill lower rates enough so they would choose to be covered?

Another issue is what happens to the people seriously injured in a car accident, who 1) don't have health insurance, Medicaid or Medicare, and 2) select a lower coverage level, say $50,000?

If it is true that approximately 6 percent of claims in Michigan are above $50,000, who pays for their medical claims if they are above $50,000? Will there be more medical bankruptcies? More charity care for hospitals and doctors?

Sticky questions.

What do you think should be done to reduce auto rates in Michigan?