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To: Governor Thomas H. Kean
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Attached is the Executive Summary of a recently completed U. S. Transportation Report on No-Fault Auto Insurance Experiences in the United States. The report was requested by Congressman Jim Florio.

The key conclusions of this report are:

1. Significantly more motor vehicle accident victims receive auto insurance compensation in no-fault States than in other States.
2. In general, accident victims in no-fault States have access to a greater amount of money from auto insurance than victims in traditional States.
3. Although no-fault States, on average, have higher total insurance premiums than traditional States, this seems to be due to the inclusion in the average of no-fault States with laws that are out of balance.
4. "Balance" in no-fault systems seems to be closely linked to the presence of an exclusively verbal or a high medical-expense dollar threshold.
5. Compensation payments under no-fault insurance are made far more swiftly than under traditional auto insurance.
6. No-fault insurance systems pay a greater percentage of premium income to injured claimants than do traditional liability systems.
7. State auto insurance laws which provide high no-fault benefits would appear to better facilitate the rehabilitation of seriously injured motor vehicle accident victims than traditional laws, although the lack of good data on rehabilitation experience under traditional laws precludes a good quantitative estimate of the difference.
8. No-fault has led to reductions in the number of lawsuits and, thus, to significant savings in court and other public legal costs paid by the taxpayer.
9. Typical auto insurance benefits in both no-fault and traditional States fall short of the needs of catastrophically injured victims.

10. The percentage by which the cost of payments to accident victims in no-fault States exceeds the cost of such payments in traditional auto insurance States has increased from 1976 to 1983.
11. No-fault auto insurance laws do not lead to more accidents.

This is more ammunition to use. We now have the U. S. Department of Transportation, Ralph Nader's affiliate group, and Consumers Report all supporting a no-fault verbal threshold.



K.D.M.

EXECUTIVE SUMMARY

No-fault auto insurance is a form of insurance that provides compensation to virtually all personal-injury victims of motor vehicle accidents.

Traditional liability auto insurance is a form of insurance that provides compensation to victims of motor vehicle accidents only if they can prove that some other person or persons were at fault in causing the motor vehicle accidents in which they were injured.

Today, no-fault auto insurance exists only as a part of a "mixed" compensation system, that is, a system that contains both no-fault and traditional insurance. This mix varies in each of the 24 jurisdictions which today have some form and degree of no-fault auto insurance.

This study examines the performance of the no-fault systems in these jurisdictions and compares them with each other and with the auto insurance systems in the States that are exclusively traditional.

Dimensions of the Problem:

In 1982, 1,269,000 people suffered motor-vehicle-accident-related injuries for which they were taken to a medical facility. Of this number, 156,000 were seriously injured and 43,945 died. One-third of all motor vehicle accident victims were 15 to 24 years of age, and more than an additional one-fifth were 25 to 34 years of age. A large number of these youthful victims did not have a comprehensive health insurance plan or more than the minimum required amount of auto insurance.

Personal injury auto insurance is the major single source, although not the only source, from which motor vehicle accident victims recover compensation for the losses they suffer as a result of motor vehicle accidents. Society gives recognition to its importance by the fact that every State requires or strongly encourages the purchase of auto insurance through compulsory or financial responsibility laws.

Categories of Personal Injury Auto Insurance:

Personal injury auto insurance can be divided into traditional liability auto insurance and no-fault auto insurance. No-fault can in turn be divided into no-lawsuit no-fault and add-on no-fault.

No-lawsuit is the form of no-fault under which a motor vehicle accident victim can always receive no-fault benefits but cannot always bring a lawsuit against the person whose fault caused the accident and injury, on the ground that lawsuits are unnecessary in some cases, where victims have a right to no-fault benefits. The term "no-lawsuit" is not totally accurate because each of the States that today restricts lawsuits by recipients of no-fault benefits does allow some such lawsuits under certain circumstances. The term is nevertheless appropriate because it emphasizes the primary distinguishing feature of this category: lawsuit restriction in exchange for assured no-fault benefits.

Add-on is the particular form of no-fault that does not restrict a victim's right to bring a lawsuit against any other person believed to be at fault, while at the same time providing assured no-fault benefits to that victim. Under

add-on auto insurance, lawsuits and no-fault benefits are both always allowed. In the States that have this kind of auto insurance, the right to recover no-fault benefits is always a supplement to, rather than a substitute for, the traditional right to sue the wrongdoer.

The auto insurance which is sold exclusively in the other 28 States and which is sold in addition to no-fault in all of the no-fault jurisdictions is called traditional or liability auto insurance. Traditional auto insurance consists primarily of bodily injury liability insurance (BI). BI liability is insurance that protects a policyholder against the obligation to defend and pay damages to an accident victim who is injured through the negligence of that policyholder. It applies only to accidents where there is both a wrongdoer/policyholder and an accident victim, which means that it does not provide compensation to the victims of the approximately two-fifths of injury accidents which involve only a single car.

Background of this Report:

In 1977, the U.S. Department of Transportation published a report entitled "State No-Fault Automobile Insurance Experience 1971-1977," that summarized the available data and evaluated experience under no-fault personal injury auto insurance laws in the States in which such laws were in effect at that time.

In 1983, the Secretary of Transportation was asked by Chairman James J. Florio of the House Subcommittee on Commerce, Transportation, and Tourism to update the 1977 report. An updated report was needed because the data available in 1977 were limited and the full impact of no-fault auto insurance was not yet known. Since 1977 additional data have become available, and there have been significant changes with respect to a number of the auto insurance laws that were then in effect.

Terminology Used in this Report:

Technical legal and insurance terms that are not generally understood are not used in this report, to the extent possible. Where such use is unavoidable, the term is defined before it is first used. Terms that are used in the conclusions are defined here:

A first-party insurance coverage is one in which the insurance company (the second party) pays its own policyholder (the first party) when the event occurs that the insurance covers. A third-party insurance coverage is one in which the insurance company (the second party) on behalf of its own policyholder (the first party) pays a person not named or specifically described in the policy (the third party) who sustains damage for which the first party is legally responsible. Health insurance, which pays the policyholder for his or her medical expense, and fire insurance, which pays the policyholder for damages by fire to his or her residence, are examples of first-party insurance. Workers' compensation insurance, which pays an employee of the policyholder (the employer) for work-related injuries, is an example of third-party insurance. The term PIP insurance means personal injury protection insurance, the name generally given to the form of first-party insurance that is no-fault personal injury auto insurance. The term PIP benefits means benefits under PIP insurance.

The term lawsuit means a lawsuit in tort. A tort is a civil (as opposed to a criminal) wrong, other than a breach of contract, for which a court will award

damages or other legal relief to the injured party, if that party brings a lawsuit. Damages (or their equivalent) are often paid to a claimant who does not obtain a court award or who may not bring a lawsuit, on the basis of a settlement of that person's tort claim based on the action a court would probably take if there was a lawsuit and court award. The term collateral source rule means a legal doctrine under which a defendant is prohibited from introducing evidence that the claimant has already recovered compensation from another source for an item of loss claimed as damages.

The term threshold means the kind or level of injury that must have been sustained by a motor vehicle accident victim, or the dollars of medical expense such a victim must have incurred after the accident, in order for that victim to be allowed to bring a lawsuit in a no-lawsuit no-fault State.

The term balance refers generally to the trade-off between the savings from restrictions on lawsuits and the added costs of providing new no-fault benefits. More specifically, to have "balance" in a no-lawsuit system, the system must have effective restrictions on lawsuits such that the savings generated by limiting lawsuits and thus constraining third-party damages will "pay for" the cost of first-party benefits. To have balance in an "add-on" system, where there are no restrictions on lawsuits, the average amount of the third-party payments must be lower than the average amount of the third-party payments in traditional States by such an amount that the "savings" will equal the cost of first-party no-fault payments.

Conclusions of this Report:

The following general conclusions about no-fault auto insurance are made on the basis of over a dozen years of experience in two dozen jurisdictions.

1. Significantly more motor vehicle accident victims receive auto insurance compensation in no-fault States than in other States. No-fault auto insurance, whether of the no-lawsuit or add-on type, compensates many more personal injury victims of motor vehicle accidents than does traditional or liability auto insurance. Almost twice as many victims per hundred insured cars receive PIP benefits in no-fault States as receive BI liability payments in traditional States. The paid claim frequency (number of claims paid per 100 insured cars) averages 1.8 for PIP insurance in 22 no-fault States compared to only 0.9 for BI liability insurance in 28 traditional States.

2. In general, accident victims in no-fault States have access to a greater amount of money from auto insurance than victims in traditional States. The average amount of compensation available for payment to a personal injury victim in a no-fault auto insurance State is greater than that in a traditional State. Although some no-fault States, particularly the add-on States, provide only relatively modest amounts of no-fault benefits, those amounts are sufficiently large to ensure more adequate medical treatment, on the average, than in traditional States. No-fault States require or permit insurance providing an average of \$15,000 of medical costs for each victim. (This average does not include Michigan and New Jersey, both of which offer unlimited medical and rehabilitation benefits. Their inclusion would, obviously, raise this figure significantly.) Since both no-fault States and traditional States require approximately the same amount of liability insurance coverage (an average of \$18,000 for one individual), no-fault

States, on average, offer nearly double the total potential recovery available in the traditional States.

3. Although no-fault States, on average, have higher total insurance premiums than traditional States, this seems to be due to the inclusion in the average of no-fault States with laws that are out of balance. From 1976 to 1983, the average auto insurance premium in the average traditional State rose 50%. During the same period, the average auto insurance premium rose (a) 54% in the average no-fault State with a law that is in balance, and (b) 126% in the average no-fault State with a law that is not in balance.

4. "Balance" in no-fault systems seems to be closely linked to the presence of an exclusively verbal or a high medical-expense dollar threshold. Some systems which provide no-fault benefits to all motor vehicle accident victims do so at a cost which is more or less equal to (or less than) the savings which are produced in those systems by having a threshold. In fact, the appropriateness of the threshold is likely to be the principal factor in determining whether a system is in balance.

All of the States which permit recovery of third-party benefits only upon satisfaction of a verbal threshold are in balance. Three out of four of the States which permit recovery of third-party benefits upon satisfaction of a high-dollar threshold (\$1,000 or more in medical expenses) are in balance. Three out of eight of the States which permit recovery of third-party benefits upon satisfaction of a low-dollar threshold (less than \$1,000 in medical expenses) are in balance. Only one out of the three States that have no threshold at all is in balance. Both of the States that repealed their no-lawsuit no-fault auto insurance laws (Nevada and Pennsylvania) had laws that were not in balance.

5. Compensation payments under no-fault insurance are made far more swiftly than under traditional auto insurance. According to one study, no-fault claimants received 33% of the benefits they would ever receive within 30 days of the date on which they notified an insurance company of their accident and injury; by contrast, traditional claimants received only 8.3% of the benefits they would ultimately receive within 30 days of notification. One year after notification, the PIP claimants had received 95.5% of the money they would ever receive; by contrast, the BI liability claimants had received only 51.7% of the money they would ever receive.

6. No-fault insurance systems pay a greater percentage of premium income to injured claimants than do traditional liability systems. For each premium dollar collected under the average no-fault system, claimants received a higher proportion in personal injury benefits than did claimants under the average traditional system. An analysis found that out of each personal injury premium dollar the average no-fault State returned 50.2 cents in personal benefits to claimants whereas the average traditional State returned 43.2 cents. One of the highest rates, 55.1 cents, was reached by the State of Michigan, the State which provides the greatest amount of no-fault benefits to accident victims and which puts the strongest restrictions on lawsuits and third-party benefit recoveries.

7. State auto insurance laws which provide high no-fault benefits would appear to better facilitate the rehabilitation of seriously injured motor vehicle accident victims than traditional laws, although the lack of good data on

rehabilitation experience under traditional laws precludes a good quantitative estimate of the difference. Under the former, payments can be made quickly to all motor vehicle accident victims, which facilitates rehabilitation because it is generally more effective if introduced soon after a traumatic event. The absence, under no-fault insurance, of controversy about entitlement to recovery enables a victim to concentrate, on personal restoration, energies that might be misdirected to retribution via a lawsuit under the traditional system. Moreover, auto insurance funded rehabilitation is available to single-car accident victims under no-fault but not under the traditional system because the latter does not recognize their claims.

No-fault laws which provide high PIP benefit levels are particularly helpful in facilitating rehabilitation because rehabilitation treatment is expensive. While larger awards may be intermittently made under traditional insurance, the average amount generally available under traditional insurance is less than the average amount generally available in a no-fault State.

8. No-fault has led to reductions in the number of lawsuits and, thus, to significant savings in court and other public legal costs paid by the taxpayer. The evidence is clear that each no-fault auto insurance statute has led to some reduction in the number of motor vehicle accident lawsuits. According to Chief Justice Warren Burger, each jury trial tort case costs the taxpayer approximately \$8,300 in court and other public costs. While the precise level of savings in each State is not known, nevertheless, the amount of savings for public entities is substantial.

9. Typical auto insurance benefits in both no-fault and traditional States fall short of the needs of catastrophically injured victims. The amount of auto insurance compensation available, in most no-fault and all traditional States, is not sufficient to meet all the economic-loss needs of the average catastrophically injured victim of a motor vehicle accident. A 1982 study, based upon review of 410 motor vehicle accident victims with economic losses expected to exceed \$100,000, found that the average projected total medical and rehabilitation costs for each would be \$408,700.

Each year, approximately 20,000 people receive severe to critical injuries in motor vehicle accidents. Only the no-fault laws of Michigan and New Jersey, which provide for unlimited medical benefits, meet the medical needs of all of these victims. Of the rest, New York's law, which provides for \$50,000 maximum total PIP benefits, the District of Columbia's law, which provides for \$100,000 in medical and rehabilitation benefits, and Colorado's law, which provides for \$50,000 in medical and rehabilitation benefits and will provide for \$100,000 after January 1, 1985, come the closest to meeting this need. None of the traditional auto insurance States provides anywhere near the needed amount of insurance for the most seriously injured victims. In the most generous traditional State, the required or strongly encouraged amount payable to any one accident victim under BI liability insurance is \$25,000. Although many motorists and the corporate self-insurers that operate commercial vehicles can pay larger amounts or carry high limits liability insurance coverage, there is no assurance that the average seriously injured victim will be struck by such a motorist or vehicle.

10. The percentage by which the cost of payments to accident victims in no-fault States exceeds the cost of such payments in traditional auto insurance States has increased from 1976 to 1983. In 1976, \$2,897 was paid per 100 insured

cars to claimants in traditional States compared to \$4,445 (or 54% more) in no-lawsuit no-fault States. In 1983, \$4,843 was paid to claimants in traditional States compared with \$8,679 (or 79% more) in no-lawsuit no-fault States. The increase, from 54% more to 79% more, was accompanied by an equivalent increase in the percentage by which payments to claimants in add-on no-fault States exceeded payments to claimants in traditional States. These increases in the additional cost of payments to claimants in no-fault States over those to claimants in traditional States suggest that the legislatures in no-fault States may wish to consider new ways to reduce costs, such as repealing the collateral source rule and/or putting a ceiling on the amount of pain and suffering damages that an accident victim can receive if that victim was also eligible to receive no-fault benefits.

II. No-fault auto insurance laws do not lead to more accidents. More than 10 years of motoring and accident experience in about two dozen States indicate that the highway fatality and injury rates in no-fault States exhibit no significant difference from those in traditional States.