



# ANNUAL REPORT 2020

Protecting Michigan's Auto Insurance Promise



## FROM THE PRESIDENT'S DESK...



Friends,

Like most of us, I'm pleased to finally see 2020 in our rear-view mirror. Here's to a happy, healthy and successful 2021—for our patients, for our families, for our businesses, and for our coalition.

Obviously, the COVID-19 pandemic affected our plans last year, from fundraising opportunities to community outreach and education efforts. That said, I'm enormously proud of what we were able to accomplish, given the challenges we all faced.

Last year saw the continued implementation of Michigan's new auto insurance law—and the adverse impact it created on consumers and families, accident victims, and health care providers. As always, CPAN was on the front lines, holding dozens of events—many of them virtually—with lawmakers, insurance agents, consumer protection organizations and others, where we worked to educate them on the importance of maintaining unlimited lifetime Personal Injury Protection benefits.

We also took the fight to the courts, where CPAN filed an amicus brief in support of the *Andary et al v. USAA Casualty Insurance Company et al* lawsuit, which challenges the constitutionality of key provisions of the new law. That battle continues, and we expect to launch additional legal challenges into the future to protect providers, consumers and victims.

On that note, CPAN officially expanded our mission in 2020, codifying that we are “the consumer advocate for auto insurance policy holders, 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.”

Finally, I'd like to thank you for your support as I stepped into the role of CPAN president in 2020. They were enormous shoes to fill—for over 10 years, John Cornack led this coalition with unparalleled heart and thoughtfulness. We wish him the very best in his new adventures.

I have no doubt that we can do big things in 2021—as long as we stay unified and press on together to affect positive change. As always, thank you for your passion, your empathy, and your leadership.

Sincerely,

Devin Hutchings, CPAN President

# CPAN's Expanded Mission

**CPAN is the consumer advocate for auto insurance policy holders, 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.**

In early spring the CPAN Board of Directors conducted a professionally facilitated strategic planning exercise held virtually over the course of several days. During these sessions, the board determined goals, priorities, and strategies for achieving those goals. As a result of this work, CPAN has a new and expanded mission and identified five key desired outcomes. These are that:

- 1) Every Michigan citizen has access to lifetime/unlimited personal injury protections coverage.
- 2) The public understands their choices under the new law and the risks from purchasing anything less than lifetime/unlimited coverage, which would leave them and their families without access to quality care in their time of critical need.
- 3) Those injured from motor vehicle crashes have access to quality medical and rehabilitation care and protections from economic hardship, financial ruin,

and diminished quality of life from such injuries.

4) Michigan drivers are charged fair and affordable rates with full access to quality care when injured in an auto-related crash.

5) Court interpretations assure a level playing field among the insurance companies, consumers, injury victims and providers.



## On Guard for Consumers



**SHOP YOUR POLICY**

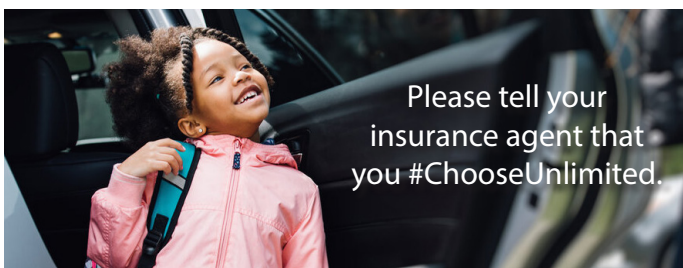
**#ChooseUnlimited:**

**Our new consumer protection campaign**

We were excited to retool our Shop Your Policy campaign in 2020, with a new focus on why it's important to #ChooseUnlimited auto insurance coverage. The campaign features a new website, consumer tips, videos, and informational pages about the new law.

As a coalition of rehabilitation providers, consumer advocates and others who work with individuals who have suffered life-altering injuries, we have seen firsthand how auto injuries can change the lives of entire families. That's why it's so important to encourage all drivers to #ChooseUnlimited.

Find out more about the campaign at [shopyourpolicymi.com](http://shopyourpolicymi.com).



Please tell your insurance agent that you #ChooseUnlimited.



**PANIC: Taking action to protect Michigan families**

In early 2020, a new group, Parents Against Auto No-fault Chaos (PANIC), was formed by concerned parents and family members who care for loved ones who were injured in auto crashes. These families have experienced the long-term and devastating impacts that auto injuries have, not only for the crash survivors, but the entire family.

The goal of PANIC is to share with friends, neighbors, and families the true importance of no-fault benefits—and how they've helped both survivors and their families firsthand. Choosing unlimited/lifetime PIP coverage is the only option that will guarantee the least risk in the event of a crash resulting in catastrophic injuries. Other activities of PANIC may include interacting with members of the legislature, speaking engagements, and serving as town hall panelists.

Thanks to all the advocates who have joined and supported PANIC. We look forward to all they will accomplish in 2021! For more information about the group visit the CPAN website and click on Get Involved.

# 2020 Legislative Update | Kevin A. McKinney, CPAN Legislative Coordinator



Somewhat by design given the political realities, but more attributed to the COVID-19 pandemic which significantly impacted Michigan's legislative session, there was not any remarkable legislative progress in 2020 on auto no-fault reform.

CPAN supported the work of some of its provider members, including MBIPC, to pursue the technical fix to the current fee schedule for the post-acute rehab providers. Two bills provided this technical fix, HB 5858 and SB 1233, which had impressive bipartisan co-sponsorship. While there was some initial hope that the issue could be address during the lame duck session, most of the legislative efforts during lame duck continued to focus on addressing the pandemic as well as getting caught up in the highly contentious and partisanship rhetoric around the November General Presidential Election results.

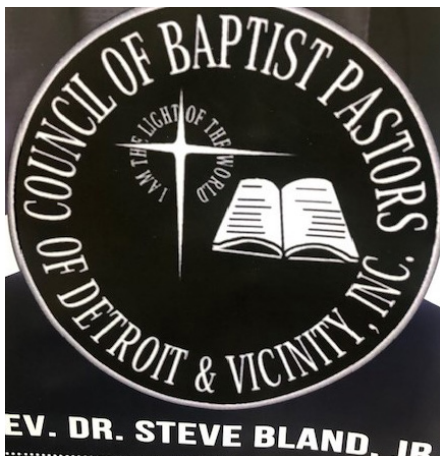
CPAN continued to work with its members on the proposed Utilization Review Rules, providing both written and oral comments on the draft rule set during the Department of Insurance and Financial Services' (DIFS) public hearing. Given the final set of draft rules that were submitted to the Joint Committee on Administrative Rules (JCAR), CPAN raised several concerns and held several conversations with the JCAR Chair as well as the Senate Majority Leader's policy and legal staff. Among the number of concerns identified was the conflicting language in PA 21 which established a direct cause of action while the rules contained conflicting language that was confusing at best as to the process and rights of providers. While recognizing the alleged conflict, ultimately JCAR did not take any further action in part due to the interrupted legislative session and the statutory

timeframe in which JCAR can act on proposed administrative rules. CPAN's General Counsel has had some promising follow up conversations with DIFS which might lead to some additional clarity by the department.

Finally, we continue to work with legislators that are committed to working on additional reforms to address some of the unintended consequences of PA 21 and to provide more rate relief to drivers through more restrictive regulations on the insurance industry. These proposals will likely find their way into the legislature later in 2021. CPAN continues to closely monitor the regulatory activity of DIFS to make sure it is doing everything within its statutory authority to reduce auto insurance premiums for drivers and to protect consumers. CPAN will continue to fulfill its mission of being the consumer advocate and watchdog over the auto insurers.



*CPAN briefing to members of the Democratic Caucus and their staff March 2020*



## 2020 Legal Update | Stephen H. Sinas, Member CPAN General Counsel



As part of its efforts to protect consumers and auto accident victims, CPAN took to the courts in 2020, filing an amicus brief in support of *Ellen M. Andary, Philip Krueger, & Eisenhower Center, v. USAA Casualty Insurance Company and Citizens Insurance Company*

*of America*—a lawsuit which seeks to declare portions of Michigan’s new auto insurance law as unconstitutional.

The lawsuit addresses a number of issues regarding the 2019 reforms, but especially the constitutionality of the non-Medicare 55% rate of reimbursement to providers who do not provide services payable under Medicare, and the constitutionality of the significant limitations placed on the right of survivors to receive reimbursement for in-home attendant care services provided by family members or friends.

CPAN’s amicus brief addressed how that these provisions are unconstitutional. The brief explains how the non-Medicare 55% rate of reimbursement unconstitutionally discriminates against providers who deliver services not payable under Medicare because it disproportionately reduces payments to those providers in comparison to the rate of reimbursement to providers who provide services payable under Medicare. The brief further explains how the attendant care limits also arbitrarily limit payment when the care provider is someone the patient may have previously established relationship versus someone who is a stranger. Moreover, CPAN’s brief also focused on how even these provisions are upheld as constitutional, the application of these new rules to people injured in a crash prior to the 2019 reforms would be an unconstitutional

infringement upon the private contracts of insurance through which these accident victims were entitled to receive all reasonable charges for reasonably necessary services, products, and accommodations for their care, recovery, or rehabilitation, without regard to any government-imposed fee schedule, or family provided attendant care limitations.

CPAN joined several organizations—including the Michigan Brain Injury Provider Council, the Brain Injury Association of Michigan, the Michigan State Medical Society, the Michigan Osteopathic Association, and the Michigan Association of Chiropractors—in filing amicus curiae briefs with the court, showing the broad and devastating impact the new law will have on all aspects of healthcare in Michigan.

While the lawsuit continues to move through the legal system, CPAN anticipates fighting additional legal challenges in the coming year, to ensure that consumers get a fair shake, businesses have the opportunity to thrive, and accident victims receive the care they need to recover.

Regarding other notable no-fault appellate decisions, perhaps the most significant no-fault appellate case decided within the last year was the Court of Appeals published decision in the case of *Spectrum Health Hospital v. Farm Bureau General Insurance Company*. In this decision, the Court of Appeals held that “evidence regarding third-party payments”—i.e., payments made by payers other than no-fault insurers (e.g., private health insurers, Medicare, Medicaid, and workers’ compensation)—“*may be relevant and admissible for purposes of assessing reasonableness [of a provider’s charges] under §3107(1)(a) and §3157.*” In so holding, this opinion marks a dramatic departure from a long line of appellate authority in which many had interpreted to preclude the admissibility of evidence regarding payments by third-party payers on the

basis that such payments were not relevant to the issue of what constitutes a “reasonable charge” under the No-Fault Act. This decision has emboldened insurers to dispute payments of providers charges on the basis that the insurers can now argue that a provider’s acceptance of reduced reimbursement rates under Medicaid, Medicare, or private health insurance, indicates that those rates also constitute a



reasonable charge under §3107(1)(a). This is a major concern for medical providers and their right to get paid under the No-Fault Act. Furthermore, it is important to understand that the fee regulations set forth in the 2019 no-fault reforms that go into effect on July 2, 2021 seeks to reduce provider payments by implementing a maximum amount that providers could be paid under the Michigan No-Fault Act. The reforms, however, do not guarantee that providers have the right to be paid the maximum amounts. Presumably, the language under MCL 500.3157, *“is not eligible for payment or reimbursement under this chapter for more than the following...”*; insurers are still free to argue that a lesser payment than the maximum amount set forth in the reforms may be warranted as a reasonable charge under §3107(1)(a). The Spectrum case is especially problematic now because it provides insurers with the ability to support arguments it should pay less than the maximum payment amounts set for the 2019 reforms by being able to bring in evidence of providers accepting reduced reimbursement rates from other forms of insurance. This will likely create ongoing litigation between insurers and providers over the amount providers should be paid, despite that the 2019 reforms intended to curb such litigation. There is an Application for

Leave pending for this case to be heard by the Michigan Supreme Court. CPAN is filing an amicus brief in support of that application. We hope that the Supreme Court will accept this case. If so, CPAN will advocate as strongly as it can to fix the horrible problems created by the Court of Appeals decision in Spectrum.

We continue to hope the Michigan Legislature considers changes and fixes to the problems that will arise from the 2019 reforms. There is no doubt, however, many critically important issues regarding the Michigan No-Fault Law will be decided through the litigation of no-fault cases in Michigan’s appellate courts. Accordingly, it’s vital for CPAN to continue advocating strongly and powerfully as it can for rights of patients and providers and that CPAN members are committed through dues and contributions to support these efforts.



## CPAN Takes on the Role of Insurance Industry Watchdog


### Looking Out for Michigan Auto Insurance Consumers

Through the research of CPAN consultant and nationally recognized insurance expert, Douglas Heller, CPAN issued a letter to DIFS Director Anita Fox and subsequent press release bring attention to the fact that the initial review of public filings by auto insurance companies under the new law indicated that Michigan

consumers would not see substantial savings in their auto insurance premiums.

Traffic statistics in the first quarter of 2020 showed that because of the pandemic, miles driven on Michigan roads were dramatically down and, in turn, accident claims. In response, many insurers offered credits or rebates to auto insurance policy holders. CPAN issued a press release commending DIFS for requiring insurers to issue refunds and urged the department provide transparency for the explanations insurers provided to ensure they are giving back enough money and not sitting on a windfall.

In the late summer of 2020, CPAN became a member of the very well-respected Consumer Federation of America (CFA), an association of non-profit consumer organizations established in 1968 to advance the consumer interest through research, advocacy, and education. In November 2020, CPAN co-signed a letter, along with 16 other nationally recognized organizations including Consumer Reports and Center for Economic Justice, to the National Association of Insurance Commissioners (NAIC) Committee on Race and Insurance. The letter urged the committee to focus “significant resources on solutions to systemic racism in insurance.”



\*\*FOR IMMEDIATE RELEASE\*\*

**CPAN calls on DIFS to hold Progressive accountable and ensure that consumers receive appropriate auto insurance premium refunds**

*Insurance giant saw windfall of \$800 million at height of the pandemic*

LANSING, Mich.—(Aug. 26, 2020)—Noting that auto insurance giant Progressive saw a windfall of \$800 million in increased profit while the pandemic raged in Michigan, CPAN today called on the Department of Insurance and Financial Services (DIFS) to ensure that the excess premiums charged by Progressive are returned to its customers.

In a letter to DIFS Director Anita Fox, coauthored by CPAN President John Cornack and national insurance expert Douglas Heller, CPAN outlined its review of actuarial documentation filed by Progressive Insurance—Michigan’s second largest insurer—with DIFS, as well as the company’s financial statements, in which it announced incredible profit increases.

Progressive refunded consumers 20 percent of their premiums in April and May due to reduced driving and fewer claims filed during the pandemic. However, even after taking that refund into account, Progressive saw its after-tax net income increase over the second quarter of 2019 by more than \$800 million to \$1.79 billion, an 83 percent increase. Those profits continued to balloon into July, when Progressive saw a 111 percent increase in net income compared to July 2019.

“We appreciate that DIFS and Director Fox have undertaken efforts to provide Michigan consumers with full and fair refunds on their auto insurance premiums,” Cornack said. “But from our review, it’s clear that Progressive shorted its customers while raking in enormous profits during the height of the pandemic. We’re calling on DIFS to hold Progressive accountable and ensure that consumers received appropriate premium credits.”

The letter outlined three main reasons for why Progressive’s refund was insufficient.

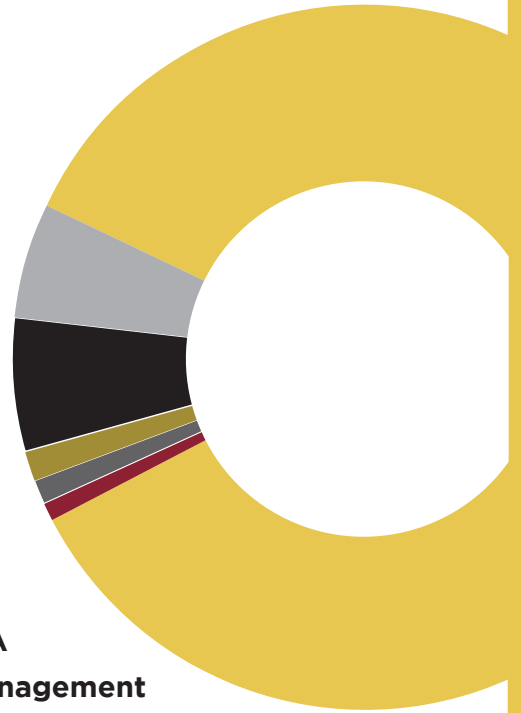
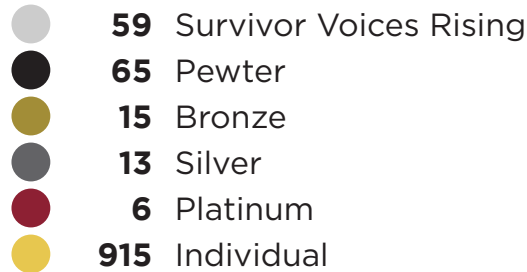
- Progressive failed to document the full scope of the loss reduction during the pandemic or sufficiently justify the alleged offsets to its premium credits. Progressive relied on comparisons between March 2020 and March 2019 as well as between March 2020 and February 2020 when calculating the refund. Given that Governor Whitmer’s stay-at-home order was issued on March 23, with only one week left in the month, March was not representative

# CPAN

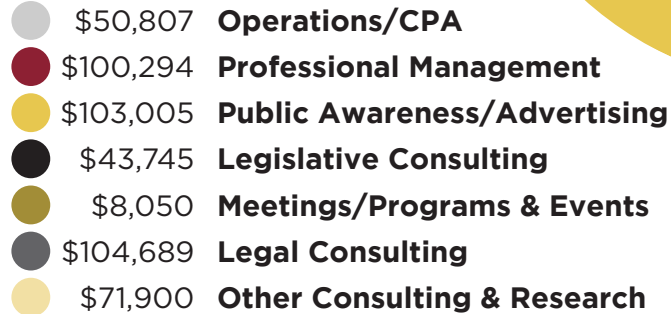
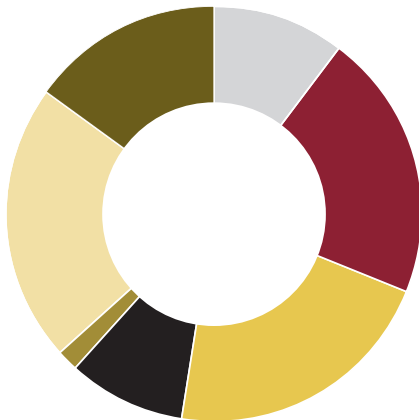


**90%** retention rate for membership.

## MEMBERSHIP BY CATEGORY

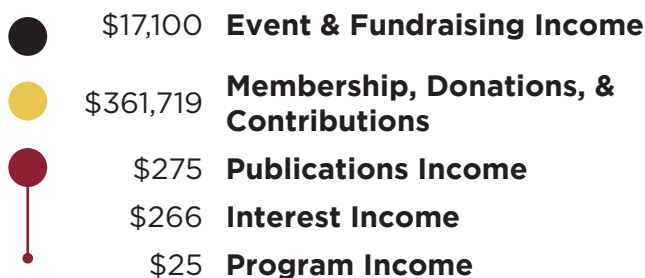


## EXPENSES BY CATEGORY

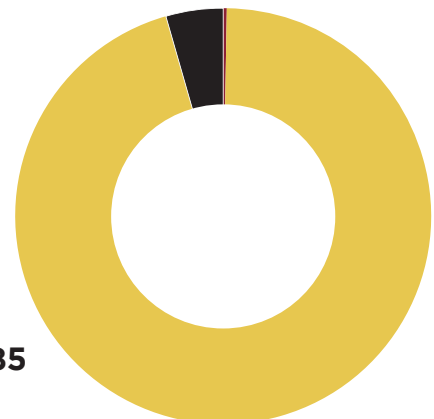


Total Expenses **\$482,490**

## REVENUE BY CATEGORY



Total Revenue **\$379,385**



Revenue \$379,385 less expenses \$482,490 = **-\$103,105**

# 2020 MEMBERSHIP and FINANCIAL INFORMATION



Although the number of members did not change significantly in 2020, there was significant decline in membership revenues over 2019. Membership, contributions, and donations declined by nearly \$318,000 from

2019 to 2020 resulting in considerable restrictions on the organization's operations and initiatives.

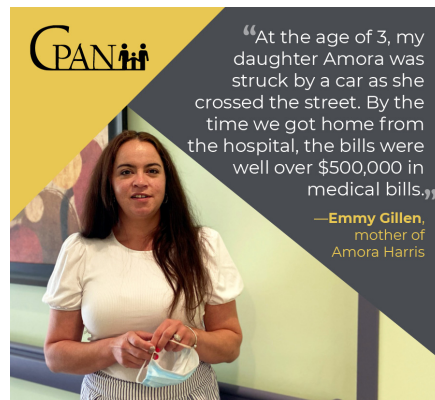
Member retention fell from 95% in 2019 to 90% in 2020. Some of this was the result of consolidations of several provider organizations, other factors were the hard-hit impact of COVID-19 on many CPAN member associations who were unable to hold revenue generating conferences and programming causing them to cut expenses including funds allocated to support CPAN.

The word unprecedented we all would agree, was used a record number of times in 2020 and this was true for CPAN and our no-fault community. Between the July 1 effective date of PA-21, the new

auto insurance law, and businesses and lives being dramatically impacted by COVID-19, our coalition experienced unprecedented affects.

We were unable to hold our annual fall gala fundraiser, any fee-based programming, and the 9th annual Survive and Thrive Art Sale and Reception, although held virtually, didn't generate the same level of funds as those in previous years with an in-person event. Revenue for non-member contributions fell from \$114,178 in 2019 to just \$17,400 in 2020. Anticipating this reduction in revenue early in 2020, CPAN was able to cut meeting and event expenses and made cuts in operations, however, ended the year with \$103,105 budget deficit.

The CPAN Budget for 2021 is conservative and hopefully, the outlook for this year will be brighter allowing CPAN members to gather in late summer for *Survive & Thrive* and in the fall, on Saturday October 9th, at our annual fall fundraising gala being planned at the Impression 5 Science Center.





## BY THE NUMBERS

A look at CPAN's 2020 events, activities, education sessions, social media and web presence, and media impact.

Events: **26**

Member Roundtables: **4**

Communications Confab Gatherings: **3**

Insurance Agent Education Sessions: **5**

Town halls: **4 in-person, 4 virtual**

Virtual Engagements: **Over 920**

Social Media Total Impressions across Facebook and Twitter: **426,249**

Total Engagement on Facebook and Twitter: **30,011** (number of times users engaged with posts)

ShopYourPolicyMI.com website: **14,165 total pageviews and 10,422 visits**

CPAN.us website: **23,198 pageviews and 10,261 visits**

Overall 2020 CPAN Media Impact: CPAN earned a combined reach of **176M** through our media efforts

Our commitment is to protect the lives of Michigan drivers and families, and we'll fight for that, no matter the cost. But we can't do this without you. We will always rely on your support—around funding, advocacy, and mobilization. It's more important than ever that you take up this fight in your own community.



### JOIN

Become a member of CPAN or increase your membership level



### CONTRIBUTE

Make a donation or attend a fundraising event



### ENGAGE

Connect with us on social media or spark conversations to inform those around you

We need **YOU** in this fight.

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