



ANNUAL REPORT

LETTER FROM PRESIDENT

Devin Hutchings, CPAN President

Dear friends,

In 2021, CPAN continued to fight for the right to recover—in the Legislature, in the courts, and in the public sphere.

It was a difficult year for all of us—our pleas to lawmakers continued to fall on deaf ears, and the 45% cut in care for catastrophic injuries that went into effect last July has been devastating to the provider community. By October 2021, a study conducted by the nonprofit public health institute MPHI found that 1,548 no-fault patients had been discharged by their previous providers and 3,049 Michigan jobs had been eliminated. By now, those numbers are no doubt much higher.

Too many of us have had to say goodbye to coworkers who were let go and patients who we could no longer afford to care for. That said, I am immensely proud of the way our community continues to come together to fight this injustice. We continue to make progress and we won't stop until a fix is secured.

In the Legislature, CPAN continues its efforts to achieve a narrow and technical fix that will benefit providers, survivors and their families. Meanwhile, we continue to push the state Department of Insurance and Financial Services to crack down on auto insurance companies and their record profits.

We remained active in the legal system, where the case of Ellen M. Andary, Philip Krueger, & Eisenhower Center, v. USAA Casualty Insurance Company and Citizens Insurance Company of America seeks to declare portions of Michigan's new auto insurance law as unconstitutional. We are hopeful that the Court of Appeals will issue a decision on this case soon.

The right to recover became a major story in the media this year, with more than 600 pieces chronicling the heartbreaking stories of survivors who have lost their care and rallying new advocates to our cause. Our education efforts also included round tables, advocacy sessions, seminars and other events to help providers and survivors navigate our new reality.

2022 looks to be a defining year for our industry and for our coalition. We can't slow down now—our community of survivors needs us more than ever. Thank you for your tireless work and support.





LEGISLATIVE UPDATE

Kevin McKinney, Legislative Coordinator

Efforts to achieve a narrow auto no-fault legislative fix for providers, survivors and families continues but no clear political path to achieve the critical changes has emerged. Despite the unbelievable, comprehensive, and expansive earned media coverage on the tragedy being suffered by families and providers, House and Senate leadership continued to resist having an honest and open discussion. While this has not strictly been a partisan issue, with many bills having bipartisan support and introduction, Republican leadership has not been willing to buck the auto insurance companies to make changes. House and Senate Democrats have been open and public about needed changes. The Governor has meekly signaled a willingness to support changes but has not expended any political capital to move the issue forward. Additionally, her well-timed call for the MCCA to refund the surplus in the fund amounting to \$400 per auto dampened the resolve of some legislators to fight and instead take credit for the refunds, which could politically negate the support to address the unsustainable fee schedules. Additionally, the Administration, through the Department of Insurance and Financial Services (DIFS) continues to deny the need for such changes.

Efforts by Rep. Ryan Berman (R-Union Lake and Majority Vice Chair of the House Insurance Committee) with the introduction of HB 4992 has offered an alternative to previous fee schedule proposals. HB 5698, introduced by Rep. Phil Green (R-Millington), along with fifty-seven cosponsors, has increased the pressure in the House to seek changes. It is expected that the Senate will introduce not only the HB 5698 bill in the upper chamber but also HB 5498 from Rep. Julie Rogers (D-Kalamazoo) modifying the utilization review process; HB 5499 (Rep. Lori Stone, D-Warren) removing the weekly hour restrictions to family provided attendant care; and HB 5500 (Rep. Robert Bezotte, R-Howell) which would define non-medical services to exempt them from the existing fee schedule. These key proposals were introduced last fall and need to be part of any legislative fix. Despite efforts to find a narrow legislative fix and the fact there is more than enough votes to pass such measures in both chambers, the House and Senate Leadership continue to stonewall serious public discussion on the various policy alternatives.

Earlier this past year, through the extraordinary efforts by Rep. Julie Brixie (D-Meridian Township), more than 70 current and former legislators signed on to support a motion by the plaintiff attorneys calling for the Michigan Supreme Court to immediately take up the Andary lawsuit as well as support an amicus brief. While the Michigan Supreme Court ultimately did not expedite the review of the Andary lawsuit and left it for the Court of Appeals to review, it was a very strong statement by the Legislature to the public and the Administration that it was not the intent to have these restrictions and changes be applied to those that had been injured prior to the effective date of the new law.

Finally, there have been continued efforts to push for more robust efforts by DIFS to look at the premium filings by auto insurers as they have enjoyed two straight years of record profits. Such a call-out by both CPAN as well as legislators has not caused a measurable difference in the department's regulatory stance, at the detriment of consumers.

CPAN will be working alongside other stakeholders as the upcoming legislative campaigns begin to take shape right after the filing deadline to support those candidates that are committed to making the necessary changes. An infrastructure is being built to coordinate the substantial number of volunteers needed to make a difference. More information to come in the coming weeks.

In 2021, CPAN remained actively involved in the *Andary* case. As discussed in the 2020 Legal Update, the case of *Ellen M. Andary, Philip Krueger, & Eisenhower Center, v. USAA Casualty Insurance Company and Citizens Insurance Company of America* is a lawsuit filed in 2019 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.

In 2021, Plaintiffs in the *Andary* lawsuit filed an appeal with the Michigan Court of Appeals. Given the significance of the issues in this case and that fact that these reforms were scheduled to go into effect on July 1, 2021, Plaintiffs also filed a "bypass application" with the Supreme Court, asking this Court to take the case directly from the trial court without the Court of Appeals first hearing it. CPAN filed an amicus brief in support of Plaintiff's bypass application, arguing that it was urgent that the Supreme Court take the case to prevent devastation to patients and providers come July 1, 2021.

Unfortunately, the Supreme Court ultimately denied Plaintiff's bypass application and this case is now making its way through the Court of Appeals. Plaintiffs also filed a Motion for Expedited Consideration in the Court of Appeals, asking the Court to expedite the processing of this case given the pressing nature of the issues. Unfortunately, this was also denied, and the Court of Appeals is processing this case in the regular course of action.

Like in the trial court, CPAN filed an amicus brief in support of Plaintiffs in the Court of Appeals. CPAN's brief primarily focused on how the retroactive application of the attendant care and fee schedule limitations to patients who were injured prior to the reforms is prohibited under Michigan common law and is an unconstitutional impairment of contracts. The brief also argues against future application of the attendant care and 55% fee schedule provisions based on equal protection. In arguing these items, CPAN focused on the data and statistics that show the devastating nature these fee schedules and attendant care limitations have had on patients and providers since their implementation in July 2021.

All briefs in the *Andary* case were filed in August 2021. Currently, we are waiting on the Court of Appeals to schedule oral argument. We anticipate that this will be scheduled within the next few months. After oral argument, the Court of Appeals will issue a decision on this case. Regardless of the

Court of Appeals' decision, the case will likely be appealed to the Michigan Supreme Court by the losing party.

While we all eagerly await the Court of Appeals' decision in the *Andary* case, many patients and providers across the State of Michigan are experiencing the devastating effects of the attendant care and fee schedule limitations that went into effect on July 1, 2021. Many patients cannot get the lifesaving care they need, and many providers cannot stay in business under the harsh 55% non-Medicare fee schedule. Accordingly, there have been several lawsuits filed in trial courts across Michigan on behalf of individual patients and providers. Fortunately, these many trial courts have been ruling in favor of patients and providers and issuing preliminary injunctions, holding that the insurers must continue paying at the pre-July 2021 rates while the case is being litigated. CPAN is currently aware of three trial judges that have entered injunctions preventing the insurers from enforcing the attendant care and fee schedule provisions against plaintiffs who purchased policies and were injured before the enactment of these amendments. These decisions occurred in *Phelps v Auto Club Group Ins Co d/b/a AAA of Michigan*, Kent County Circuit Court, Docket No. 21-08830-NF; *Cools v Home-Owners Ins Co*, Wayne County Circuit Court, Docket No. 21-009996-NF; and *Maxwell v American Casualty Co of Reading, Pennsylvania*, Wayne County Circuit Court, Docket No. 21-016914-NF.

Furthermore, CPAN is aware of at least one trial court holding that the 55% non-Medicare fee schedule cannot be applied retroactively to a patient who was injured prior to the effective date of the 2019 amendments, and thus, the defendant insurance company had to continue reimbursing plaintiff's attendant care services at the same rate it was reimbursing these services prior to the effective date of the amendments. This is the exact issue that is currently being litigated in *Andary*. This ruling occurred in the case of *Melrose v Nationwide Mutual Insurance Company*, Genesee County Circuit Court Docket Number 19-113455-NF.

While it is fortunate that many trial courts have been ruling in favor of patients and providers, these are only trial court decisions and, therefore, do not have any precedential effect on any other cases. Patients and providers wishing to seek similar rulings must file their own lawsuits. Unfortunately, there is no guarantee that the judge each patient and provider draw in their own individual cases will decide their cases the same way as the others. CPAN is hopeful that the Court of Appeals will issue a decision on the *Andary* case soon, and that this decision will be published so it will be binding on all trial courts, thus providing a definitive answer and guidance for all of the patients and providers currently suffering under the new limitations.

RECAP OF YEAR'S ACTIVITIES:



To prepare members to engage with the lawmakers, CPAN's first session, held on January 20, 2021, was dedicated to advocacy. **Advocacy: Make Your Voice Heard**, had 96 attendees and was designed to help members overcome the barriers of effective grassroots advocacy by demystifying the legislative process, and learning how to tell their stories with concise, persuasive messages to legislators and members of the media.

2.26.21 Attendant Care Under the New Michigan Auto No-fault Law – 172 people attended this educational session, which discussed attendant care limits, the fee schedule, accreditation requirements, Utilization Review Rules, and the difference between attendant care and replacement services, and transportation. Additionally, the panel of attorneys and healthcare professionals shared the importance of accurate and detailed documentation.

CPAN hosted three sessions of the **No-Fault Provider Survival Course** between July and September. This course was designed to help providers understand the 2019 changes to Michigan Auto No-Fault Law, and assist them in navigating the new rules and requirements imposed by the law. Members of CPAN's General Counsel, George, Tom, and Steve Sinas, along with Katie Tucker, examined how these changes have altered and limited the scope and extent of the PIP allowable expense benefits. Additionally, the new law formed significant changes regarding tort liability claims. These changes have caused filing claims to be overly complicated with important rules and requirements that must be followed in order to protect the legal rights of crash victims and impact the providers rendering their care. 142 attendees participated over the three sessions.

CPAN conducted two virtual Town Halls for survivors and family members titled **Understanding Your Rights: What Now, What Next?** A total of 162 people attended the two meetings held on July 28 and September 9. These sessions were offered to help auto crash survivors and their families better understand their rights under the Michigan no-fault insurance law. Katie Tucker and Steve Sinas, CPAN General Counsel Associates, addressed a wide variety of topics and concerns important to those who have been injured and their families, including the rights of no-fault insured, payments to medical providers, and limits on attendant care payments to friends and families providing care.

On October 21, the Michigan Medical Billers Association (MMBA) and CPAN co-hosted a seminar – **What Every Medical Biller and Financial Officer Should Know About the Amended Michigan No-Fault Act** and follow up Q & A session on December 16. 106 people attended the first session, and 79 participated in the Q & A session. Attendees received information and resources to equip their organizations and businesses to develop and implement strategies to get bills paid and received tips on how and when to appeal.

84 people attended a virtual **CPAN Member Round Table** on November 11. Participants heard updates from members of the CPAN legal team, which included Steve Sinas and Katie Tucker, legislative coordinator Kevin McKinney, members of our PR team at Moonsail North, and Admin Director Martha Levandowski. Participants were also given the opportunity to ask questions of the panelists and exchange ideas with other attendees.

MEMBERSHIP

1051 Members – 94% retention level

The July 2021 implementation of PA 21 and 22 have negatively impacted CPAN Member organizations. As reported in the recently published MPHI Provider Survey Phase I, as of Oct. 20, 2021, 21 businesses had closed and more had discharged clients covered by auto no-fault. Many of these businesses were CPAN members, and unfortunately members were lost at Pewter thru Platinum Levels. However, CPAN has been able to form deeper connections with survivors and families through our Take Action website, providing educational sessions and resources on topics like Attendant Care and holding Town Halls. Over one hundred new members joined the coalition at the Survivor Voices Rising level.

MEMBERSHIP BY CATEGORY

Survivor Voices Rising: 100 (up from 2020)



Membership declined in every category but Survivor Voices Rising (\$25)
(20.14% decline in membership revenue from 2020 and 61.42% decline since 2019)

FINANCIALS

For the second year in a row, CPAN ended the year in the red. The decline in organization memberships had a significant impact on CPAN's budget, with a 20.14% reduction in membership revenue since 2020 and more than 61.42% decline from 2019. COVID-19 forced CPAN to cancel fundraising events, which typically contribute as much as \$135,000 to operating income. In efforts to cut operational costs, including eliminating intern positions, reducing office space, and cutting expenses across the board, CPAN was able to reduce expenses by more than 22% from 2020.

Due to this year's conservative budget, efforts this year will focus on recruiting organizations and non-CPAN members that are involved in Michigan's no-fault system of care. Through CPAN's work on legal challenges, to our ongoing advocacy in Lansing and commitment to public education about Michigan's auto no-fault law, we are hopeful for continued support of these efforts.

EXPENSES BY CATEGORY

\$94,830	Professional Management
\$73,983	Public Awareness/Advertising
\$48,000	Legal Consulting
\$44,278	Operations/CPA
\$41,640	Legislative Consulting
\$30,000	Other Consulting & Research
\$27,680	Amicus Briefs
\$13,917	Meetings/Programs & Events

Decrease in expenditures from 2020 to 2021 -22.094%

EXPENSES BY CATEGORY

\$288,854	\$44,718	\$508	\$463	\$250	\$3,200
Membership, Donations, & Contributions	Program Income	Interest Income	Publications Income	Event & Fundraising Income	Other income

Revenue \$337,993 less expenses \$374,328 = (\$36,335)



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