



## The Travel Health Insurance Association of Canada

March 9, 2021

Financial Services Regulatory Authority of Ontario (FSRA)  
25 Sheppard Avenue West, Suite 100  
Toronto, ON M2N 6S6  
Via: Web Portal

**Re: THIA’s comments regarding FSRA’s first proposed insurance rule released for public consultation – the Unfair or Deceptive Acts or Practices (UDAP) Rule.**

Established in 1998, the Travel Health Insurance Association of Canada (“**THIA**”) is recognized as the leading voice of the Travel Insurance Industry in Canada, representing over 80 travel insurers, brokers, underwriters, reinsurers, emergency assistance companies, air ambulance companies and allied services in the travel insurance field.

THIA provides the following comments and observations regarding the Financial Services Regulatory Authority’s (“**FSRA**”) Proposed Rules on Unfair and Deceptive Acts or Practices under the *Insurance Act* of Ontario (the “**Proposed Rules**”).

Generally, THIA is supportive of the Proposed Rules and the points made in the commentary contained in the associated request for comment.

We agree that the Proposed Rules will bring better clarity in interpreting Unfair and Deceptive Acts or Practices as they are defined under and for the purposes of the *Insurance Act* (Ontario). We congratulate FSRA in proposing to exercise its rule making authority with a focus on consumer outcomes, consumer protection, fairness and choice and in supporting these outcomes through principles-based regulation.

That said, we think some aspects of the Proposed Rules should be reconsidered, as follows:

- Section 1(2) notes the following: in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate with that insurer’s size and type of business, and (ii) Sections 22, 25(2), 25(2.1), 25(2.2) and 25(3)(a)-(b) of the Ontario Human Rights Code are applicable in assessing whether discrimination amounts to unfair discrimination under the Proposed Rules. We do not think that the reasonability standard should vary depending on the size and type of business carried on by the insurer. There should be a level playing field for all industry participants in determining the applicability of a rule and whether a rule has been infringed regardless of the size or type of business. Consumers expect the same outcomes whether they are dealing with a small institution or a larger one. That said, we do think it makes sense that the size and type of business carried on by the insurer should factor into the assessment of consequences and penalties for infringement of the Proposed Rules.
- We note that the Proposed Rules are inconsistent in some respects with the approaches taken in other provinces of Canada to address certain matters that are within the scope of the Proposed

Rules. For example, in most of the Western provinces prohibitions against rebating and inducements have been either revoked or substantially loosened. Discrimination under human rights legislation is not part of the assessment criteria for permissible rebates or inducements in any of those provinces. We note that this country, with a population the size of California, has seventeen insurance regulators, while California has one. The differences in approach and the proliferation in divergent rules among jurisdictions come at a cost to the insurance system, which costs are ultimately born by policyholders. As such, we do wonder in respect of certain discreet parts of the Proposed Rules, such as in respect of rebating and inducements, if the benefits of harmonization may outweigh the benefits of the bespoke approach set out in the Proposed Rules. THIA supports aligning the rules relating to rebates and inducements with the rule applicable in Alberta or the comparable rule in B.C. or in Saskatchewan and Manitoba.

- As you are aware, insurers are subject to the *Human Rights Code* (the “**Code**”). Under the Code an insurer may not afford unequal treatment in delivering its products or services, if that unequal treatment is based upon a prohibited factor and is not reasonable and bona fide. As such, we wonder if an insurer could be sanctioned for a violation of the Proposed Rules and also under Human Rights legislation for the same matter. This could result in the same issue being considered and addressed in two different forums and it could result in double jeopardy for the same infringement<sup>1</sup>. We think some thought needs to be given to how FSRA will administer the Proposed Rules, should FSRA be investigating an issue before, or that could come before, the Human Rights Tribunal. We are of the view that if a complainant chooses to pursue an insurer under Human Rights legislation, FSRA should not be separately seized of and investigating the same matter.

We look forward to hearing from you soon and should you require further information from THIA or wish to meet with representatives from our association at any time, please contact Richard Ollier, President, Travel Health Insurance Association of Canada at [Richard.Ollier@allianz-assistance.ca](mailto:Richard.Ollier@allianz-assistance.ca) or [President@thiaonline.com](mailto:President@thiaonline.com).

Sincerely,

Richard Ollier  
President  
Travel Health Insurance Association of Canada

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<sup>1</sup> 1. A Human Rights Tribunal can order monetary compensation, restitution, or order a person to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Human Rights Code.