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Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Re: Statutory Accident Benefits Schedule (SABS) Guidelines Reviews

Thank you for providing Insurance Bureau of Canada (IBC) with the opportunity to comment on the Statutory Accident Benefits Schedule (SABS) Guideline review. FSRA's consultation with a wide range of stakeholders will help ensure that it strikes the delicate balance between ensuring that health care providers are paid at fair rates for the valuable service that they are providing to claimants, while also ensuring that premiums for drivers, the vast majority of which do not make a claim in a given year, remain reasonable.

Between 2016, when the last round of substantial reforms were introduced, and 2023, the last year for which full-year claims data are available, average all-coverage loss costs and premiums increased by 24% and 23%, respectively. Over this time, the injury claims framework has been broadly stable. Therefore, the entire increase in claims costs, and by extension, required premiums has been due to factors beyond the government's control. For example, over this time:

- Direct Compensation Property Damage (DCPD) loss costs increased by 42%;
- Collision loss costs increased by 50%; and
- Comprehensive loss costs increased by 264%.

Based on the most recent data from Oliver Wyman as part of FSRA's Annual Review, the trend of stable injury claims costs and unstable vehicle damage claims costs is projected to continue. Oliver Wyman projects that DCPD, Collision and Comprehensive loss costs will increase by an average of 9.1%, 9.2%, and 13.6%, respectively over the next year. The injury claims framework is one of the few aspects of the auto insurance product over which the government and FSRA may exercise a degree of control over the premiums paid by consumers. A critical control mechanism relates to the fees paid to health services providers (HSP) that treat those injured in auto insurance. As FSRA consults on possible changes to fee schedules, we have several recommendations of factors that it must keep top of mind:

- FSRA has noted that the maximum coverage limits are beyond the scope of this consultation, as they should be. We have seen minimal evidence that the existing limits in the standard policy of $3,500 for minor injuries, $65,000 for non-catastrophic, and $1 million for catastrophic, are insufficient. Yet it must be acknowledged that any increase in hourly rates will exhaust these benefits sooner. The larger the increase, the sooner these benefit limits will be exhausted; and

- In 2023, based on data from the General Insurance Statistical Agency, medical & rehabilitation spending totalled over $2 billion in claims costs. The majority of this was for treatment, which is primarily comprised of wages paid to health care services providers. This large base means that even a modest increase in hourly rates can translate to sizable increases in required premiums. For example, a hypothetical, across-the-board wage increase of 10% for health services providers under the SABS would equal approximately $200 million in additional claims costs, which are often passed down to consumers. This could lead to an additional $20 to $25 per driver in loss costs, which would equate to an increase in the required premium per driver of between $28 and $35[1]. These increases would be **on top of the increases** in vehicle damage claims costs projected by Oliver Wyman.

As Ontario's insurance regulator, FSRA has the ability to take steps to help mitigate any cost increases. While FSRA does not control the auto insurance product, there are several areas where FSRA could play a leadership role in reducing costs or improving efficiency. These include:

- Working with industry and health care providers to introduce health outcome measurements for auto insurance claimants. With over $2 billion spent on medical & rehabilitation each year, consumers deserve an auto insurance system based on objective data to help determine which treatments result in the best health outcomes for those injured in automobile accidents;

- Conduct an analysis on whether additional aspects of the fee schedule, such as the payments for administrative tasks such as filling out forms, are commensurate with those paid by other insurance plans, such as WSIB; and

- Introduce additional billing codes to reflect the actual credentials and/or actual time spent delivering medical care. For example, there are frequent examples of Psychological Associates, which have fewer qualifications, billing at the full Psychologist rate. Similarly, many health care service providers, such as physical therapists and chiropractors, invoice for one hour of therapy at the permitted FSRA rate. However, very few appointments actually last for a full hour. These inaccurate billing codes ultimately lead to higher claims costs and higher required premiums for consumers.

IBC's additional feedback on the consultation is below.

SABS Review Consultation Questions

<u>Professional Services Guideline</u>

In its consultation document, FSRA has correctly pointed out that the maximum hourly rates for many health care providers have not been updated in several years. While this is true, rates under the Professional Services Guideline (PSG) are *maximum* hourly rates. In theory, the rates charged by health care providers will be set based on a competitive market, which may or may not be below the maximum permitted rate. In reality,

[1] Based on approximately 8.2 million earned vehicles, at a target loss ratio of 70%

however, the lack of incentive to 'shop around' means that actual rates charged generally are the maximum rates.

This is not to say that all fee schedules should remain static. Indeed, since 2014, the year of the last PSG rate increase, the general cost of living has increased by 28% across Canada. Some PSG rates may have fallen behind rates charged by other available insurance plans. We recommend that instead of pre-determining that all PSG rates should see the same rate of change (if any), FSRA work with industry and health care stakeholders to identify specific HSPs whose market rates have fallen behind the maximum hourly rates permitted to be charged by FSRA. Once this is done, rates should be adjusted to match the mid-point of any market range. This would strike a fair balance between health care providers who deserve to be fairly compensated for their time and expertise and the premium-paying public.

IBC's specific commentary on the questions provided are below.

1. *If PSG rates are indexed (Option A), what should they be indexed to and why?*

We recommend not setting a flat indexation rate for all fee schedules. Instead, we recommend that FSRA identify where FSRA maximum hourly rates for HSPs currently are in relation to the broader market rate, and set the rate to be the mid-point of the market range.

Once this has been done, we recommend that any increases, particularly if they are sizable (10% or greater) be implemented over a period of several years. All else equal, higher HSP rates will exhaust claimant benefit limits sooner. Introducing these changes over several years will help stabilize the expected increase in severity and help spread out any required premium increases.

2. *If PSG are moved to flat rates (Option B), how should those flat rates be determined and why?*

We recommend that FSRA continue to use hourly rates. Both health care providers and insurers are already familiar with billing through hourly rates.

3. *Should rate increases (Option A or Option B) be staggered incrementally over a few years, or should it take place at once?*

We recommend that any increases to specific health care provider fee schedules be implemented gradually. Doing so will help stagger the required premium increases that consumers will face.

4. *Should FSRA review fees regularly, and if so, at what frequency (i.e. annually, biennially etc.)?*

We recommend that FSRA undertake a fee analysis every five years. Changes to hourly rates require insurers to undertake system changes and additional employee training.

5. *For Option C how often should insurers/HSPs meet to review/set maximum rates?*

We recommend that FSRA not introduce this option. Requiring insurers and HSP to negotiate all rates will add administrative costs for both insurers and providers with no meaningful benefit to consumers. Instead, it is likely to lead to increased disputes. We recommend that FSRA continue to set maximum permitted rates.

6. *Are there other options/considerations related to rates/fees that should be considered for the PSG?*

As outlined, it is important that FSRA continue to recognize the need to strike the correct balance between fees paid to health care providers and the resulting impact on Ontario driver required premiums.

7. *Do you have any evidence that consumers are having difficulty obtaining the HSP care they need due to the existing PSG rates?*

In discussions with IBC member insurers, industry has not heard of any issues where consumers are having difficulty obtaining the HSP care they need due to existing PSG rates.

8. *What are the key implementation considerations that must be taken into account for each option (i.e. timing, updates to billing systems, etc.)?*

The most pressing consideration relates to the date that any new fee schedules would be effective and how these would apply to treatment that has been approved, but not yet incurred. We recommend that new fee schedules apply to treatment plans that are submitted after the effective date.

Insurers would need approximately three to six months from the date that any new fee schedules are announced to complete necessary training and update procedures.

9. *How can FSRA help to ensure that any changes to the PSGs are communicated to HSPs, insurers, consumers and other stakeholders?*

For any insurer communications, we recommend that FSRA communicate with IBC to inform insurers of any changes, in addition to announcements on its website.

<u>Attendant Care Hourly Rate Guideline Consultation</u>

1. *How should Level 1 and 3 (Option B) attendant care rates be indexed?*

As outlined in the consultation paper, Level 1 and Level 3 attendant care rates are either below minimum wage, below the market rate required for complex care, or both. Yet this does not by itself indicate that hourly rates should increase. As noted in the 2021 Ontario Divisional Court decision, *Malitskiy v. Unica Insurance Inc*,

The Statutory Accident Benefits Schedule reflects the continuing effort of the legislature to impose a partial no-fault regime to allow for some compensation to be paid at the outset. Over time there have been several iterations aimed at finding a balance that provides some speedy payment but, in company with, insurance rates

that are not unreasonably high. The Statutory Accident Benefits Schedule is the current scheme in place to accomplish these goals. The legislature has not adopted a full no-fault scheme. ***Where injuries are catastrophic, it is not expected that full compensation of any particular expense would necessarily be received through this preliminary regime[2].***

As noted in the decision, the legislative intention has never been for the standard auto insurance policy to cover the entire cost of hourly attendant care services. For this reason, we recommend that attendant care hourly rates not be increased to market rates, as doing so would result in claimants exhausting their benefits much sooner, claim severity to increase, and consumers to face higher required premiums. As noted in the decision, keeping premiums reasonable is a justification for why Ontario governments have not introduced full no-fault systems.

At the same time, we recognize that the increase in Personal Support Worker wages in recent years mean that claimants may be paying a greater amount out-of-pocket to supplement the wages covered by their auto insurance policy. For this reason, we support FSRA increasing Level 1 and Level 3 to the CPI Indexed Rate. This will strike a balance between claimants not bearing a higher share of out-of-pocket costs and keeping premiums reasonable for Ontario drivers.

2. *Should Level 1 and 3 rate increases (Option B) be staggered incrementally over a few years, or should it take place at once?*

Similar to any resulting PSG fee increases, we recommend that attendant care hourly rate increases be phased in over a period of several years. This will help moderate any increase in claim severity and lead to more gradual required premium adjustments.

3. *Should FSRA review the rates of all three Levels regularly, and if so, at what frequency (i.e. annually, biennially etc.)?*

We recommend that FSRA undertake a fee analysis every five years. Changes to hourly rates require insurers to undertake system changes and additional employee training.

4. *Are there other options/considerations related to rates/fees that should be considered for the ACHRG?*

None at this time.

5. *Do you have any evidence that consumers are having difficulty in obtaining the attendant care they need (Level 1-routine personal care and Level 3-complex health/care)?*

We have not seen evidence that claimants are having difficulty obtaining Level 1 or Level 3 attendant care services.

[2] *Malitskiy v. Unica Insurance Inc.*, 2021 ONSC 4603

6. *What are the key implementation considerations that should be taken into account for each option (i.e. timing, updates to billing systems etc.)?*

Similar to considerations with PSG changes, the most pressing consideration relates to the date that any new fee schedules would be effective and how these would apply to treatment that has been approved, but not yet incurred. We recommend that new fee schedules apply to treatment plans that are submitted after the effective date.

Insurers would need approximately three to six months from the date that any new fee schedules are announced to complete necessary training and update procedures.

7. *How can FSRA help to ensure that any changes to the ACHRGs are communicated to HSPs, insurers, consumers and other stakeholders?*

For any insurer communications, we recommend that FSRA communicate with IBC to inform insurers of any changes, in addition to announcements on its website.

MIG Consultation Questions

1. *If MIG rates are indexed (Option A), what should they be indexed to and why?*

As outlined in the consultation paper, the MIG provides pre-approved treatment for 12 weeks post-accident in several treatment blocks. Treatment is pre-approved to ensure that those with common sprains and strains following an automobile collision receive treatment as quickly as possible, which has been proven to lead to better health outcomes.

Pre-approval also provides the health care practitioner, most commonly physical therapists and chiropractors, with a degree of certainty in the frequency with which their services will be required. The high likelihood that the provider will be able to receive either $2,200 or $3,500, depending on the claimant's injury severity makes it inappropriate to compare the average hourly rate to that received by the same provider that may only deliver a small number of sessions to someone 'off-the-street'.

For this reason, we recommend no change to the MIG fee schedule. We have seen no evidence that the existing fee schedules are a barrier to claimants receiving treatment. Any increase in MIG rates will, all else equal, lead to an increase in claim severity, more claimants exhausting their benefits, an increase in required premiums, and likely more disputes directed to the provinces' License Appeal Tribunal.

2. *Should rate increases (Option A) be staggered incrementally over a few years, or should it take place at once?*

As outlined, we recommend that MIG rates not be increased. However, if any increases are determined to be necessary, we recommend that these be implemented over several years as to mitigate the impact on claim severity.

3. *Is the existing block fee structure/amounts for pre-approved MIG treatment appropriate? Why or why not?*

We believe that the existing block fee structure/amounts for pre-approved MIG treatment are sufficient. Based on discussions with member insurers, and as outlined in FSRA's discussion paper, the majority of claimants with injuries that qualify them for the MIG do not exhaust the $3,500 in medical & rehabilitation benefits. This suggests that the status quo continues to provide the best balance between treatment for claimants and the premium-paying public.

4. *Should FSRA review MIG rates regularly, and if so, at what frequency (i.e. annually, biennially etc.)?*

We believe that the current block fee structure/amounts are sufficient. However, this may not always be the case. We recommend that FSRA review the MIG structure every five years.

5. *Are there other options/considerations related to rates/fees that should be considered for the MIG?*

As outlined, the majority of claimants with minor injuries do not use the full $3,500 in medical & rehabilitation benefits available. Increasing the fee schedule is likely to lead to several issues, including:

- A greater number of claimants exhausting their benefits earlier compared to today;
- An increasing number of disputes being sent to the province's License Appeal Tribunal. Given that most claimants do not need care beyond the MIG, even a small share of MIG claimants going to the LAT could lead to considerable delays, or require the LAT to increase its resources; or
- Higher required premiums for consumers due to the increase in claim severity.

6. *Do you have any evidence that consumers are having difficulty obtaining the HSP care they need due to the existing MIG rates?*

We have not seen evidence that consumers are having difficulty obtaining the HSP care they need due to existing MIG rates.

7. *What are the key implementation considerations that must be taken into account for each option (i.e. timing, updates to billing systems, etc.)?*

We recommend no changes be made to the existing MIG fee schedules. For this reason, we have no further recommendations on implementation considerations.

8. *How can FSRA help to ensure that any changes to the PSGs are communicated to HSPs, insurers, consumers and other stakeholders?*

For any insurer communications, we recommend that FSRA communicate with IBC to inform insurers of any changes, in addition to announcements on its website.

9. *Are there other considerations which have been missed that should be taken into account as part of the MIG review?*

None at this time.

Once again, we appreciate FSRA providing IBC with the opportunity to comment on the Statutory Accident Benefits Schedule (SABS) Guideline review. If you have any questions, please do not hesitate to reach out

Sincerely,

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