

OTLA Submission to the Financial Services Regulatory Authority of Ontario (FSRA)

*Health Claims for Auto Insurance (HCAI) System
Review, September 2024*

November 29, 2024

The Ontario Trial Lawyers Association (OTLA) appreciates the opportunity to provide comment to the Financial Services Regulatory Authority of Ontario (FSRA) on their consultation paper Health Claims for Auto Insurance (HCAI) System Review.

OTLA was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others while, at the same time, advocating aggressively for safety initiatives.

OTLA frequently comments on legislative matters and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

INTRODUCTION

OTLA is an organization of trial lawyers that represent plaintiffs injured in motor vehicle accidents. Through our practice, we directly encounter the effect that serious accidents have on the injured victims and their families. Through our practice, we have seen how inefficiencies in the HCAI system have led to delayed treatment for insured Ontarians and the hardship and suffering this has created.

OTLA commends FSRA for consulting with stakeholders on how the HCAI system can be improved. We encourage changes to the HCAI system that increases access to treatment and treatment providers, rather than restricts same, and changes designed to increase efficiencies and modernizes the system.

In response to the questions asked within the consultation paper OTLA provides the following responses:

1. Which initiative(s) should be prioritized? Why?

From the initiatives provided, OTLA supports Initiative B: Prioritize Revising Forms.

OTLA encourages efforts to simplify forms, increase the use of plain language, make the forms more easily understood, simplify questions, increase user friendliness, improve flexibility and reduce barriers to innovation. Given the OCF forms have not been updated in over 10 years, OTLA agrees that a review of these forms is necessary.

The review of the forms should be done in consultation with Health Service Providers (HSPs) and stakeholders. Draft forms should be provided for review and comment before any new version of the forms should be implemented. Consideration to amending the gender identification options on any forms should be undertaken to modernize forms. Creating efficient forms that are not time consuming to complete should be a priority. Further, privacy rights of consumers should be a paramount consideration. Any revisions to the existing forms should not require greater medical information, or supporting documentation, to be disclosed on HCAI. Insurers have entitlement under the *Statutory Accident Benefits Schedule (SABS)* to seek medical records and further medical information outside of the HCAI system. Given that the HCAI data is shared with the Insurance Bureau of Canada (IBC) for statistical data tracking it is important that consumers' privacy rights are respected.

2. Are there any significant benefits/drawbacks, including potential stakeholder impacts, missing from the analysis set out above that should be included?

OTLA is concerned with any initiatives designed to make the use of HCAI more burdensome for licensees and non-licensees.

The most common and frequent complaints from injured persons and their treatment providers are that HCAI is too cumbersome, too slow and pays far below market rates for services. We acknowledge that rates are being dealt with in another FSRA consultation paper.

Currently, if treatment providers wish to invoice insurers directly, they must be registered through HCAI and be licensed providers. These requirements prevent many injured persons from accessing timely treatment and care, particularly in rural and northern areas, and particularly for certain services, including psychologists, massage therapists and personal support workers. Where no HCAI licensed treatment provider exists, the injured person is required to pay for the treatment up front and seek reimbursement from their insurer through the use of an OCF-21 or other means. Insurers rarely accept OCF-21's without some level of additional medical paperwork, and any such submission often needs to be accompanied by some to be accepted. Two realities show why such persons often go without treatment. First, most injured persons simply cannot afford to pay for their treatment up front and cannot wait for reimbursement while their lengthy tort case works its way through the courts. Second, the process of seeking reimbursement for treatment provided by a non-HCAI treatment provider is, as noted, so lengthy and cumbersome that most injured persons in these circumstances simply forego treatment, or if they have the resources to pay for it, forego reimbursement.

OTLA does not see how the above problem has been addressed in any of the initiatives provided in the consultation paper. Some of the initiatives suggested may in fact increase the above problem. For this reason, OTLA does not support adding any further forms to the HCAI system.

The OCF-3 and OCF-19 are often submitted to insurers directly by treating physicians, either a family doctor, a treating surgeon, etc. It is unreasonable to expect such providers to register with HCAI or, in any way, be required to submit forms through HCAI. The consultation paper acknowledges that this may be a drawback to some initiatives suggested. OTLA stresses that such a requirement would lead to further delay or worse, no submission of the form (and thus no treatment to the injured person) at all.

OTLA further recommends that FSRA consider ways to reduce the administrative efforts required by HSPs. HSPs expend uncompensated time and effort to submit HCAI forms. Over the last decade, the ability of a treatment provider to get compensated for administrative-type work (gathering information and filling out complicated forms, submitting said forms, etc.) has decreased significantly and, in many ways, all but disappeared. The complexity of this work (because of the HCAI system), however, has only increased. The result is obvious. Treatment providers spend far too much uncompensated time providing insurers with significant details about an injured person's treatment when that time could be better spent treating the injured person. Contrast this with a regular health benefits provider through one's employment, for example, where a person receives treatment, submits the invoice to their insurer online, with little to no administrative work necessary, and the invoice is paid to the limits of the applicable policy within a few days. FSRA

should therefore prioritize the streamlining of its processes so that treatment providers can focus on treating injured persons and should avoid adding further complexities to its system via the addition of further forms and billings through HCAI.

For the above reason, OTLA does not support any revision of the HCAI system which would increase the amount of time required to submit forms, increase the length of forms, or increase the amount of treatment or medical information required to submit forms.

When HCAI-registered treatment providers invoice insurers, insurers are often late with payments (beyond the 30-day deadline). In this scenario, there is no recourse for the treatment provider and no penalty against the insurer. Even if the late payment is only a few days, late payments for invoices cause financial havoc for treatment providers and disincentivize them from providing accident benefits treatment for injured persons. In contrast, if a treatment provider provides the insurer with mistaken information or is similarly late by a day or two with certain information on behalf of an injured person, the treatment or service is often denied outright, or, alternatively, brand new forms and treatments plans are requested before the treatment or service can be approved. This causes needless and unnecessary delay.

OTLA notes that the consultation paper does not address the above problem or focus on timelines for the insurer to respond to invoices. OTLA encourages FSRA to take steps to ensure that insurers are responding to and paying invoices in a timely way and that there are consequences for failing to do so. All of the problems listed above create points of friction and conflict between an injured person, their treatment provider and the insurance company. These points of friction and conflict increase the stress, and thus decrease the efficiencies of treatment, to an injured person. The goal of treatment is to improve the condition of injured persons. However, the delays, complexities and disputes caused by the HCAI system frustrate that goal. By streamlining its processes, FSRA will reduce the points of friction and conflict, and therefore reduce the number of disputes (with the consequent requirement of lawyers) between injured persons and their insurance companies, whether informally or through the License Appeal Tribunal.

OTLA therefore recommends that FSRA prioritize the following:

- focusing on the efficient delivery of treatment to injured persons, and
- streamlining its processes.

Lastly, OTLA does not support any initiative that requires a new form for payment of attendant care invoices, or that provides greater details regarding billing for attendant care. Any suggestion of a new standardized attendant care billing system raises several concerns. First, not all attendant care is provided by a HSP or PSW. Family members can provide services and often these expenses that are incurred are detailed on an OCF-6. This would require a consumer to be able to submit this form on HCAI. With respect to PSWs, pursuant to FSRA's own Guideline, the Form 1 rates are used to calculate a monthly amount payable for attendant care. If a new payment form is created, any new form to be submitted through HCAI regarding attendant care should be in keeping with the Guideline and should not require specificity of what exact tasks were fulfilled for exact amounts of minutes per Form 1. Currently, the ability of injured Ontarians to obtain needed assistance through a PSW has been all but eradicated by the current practices of the insurance industry. FSRA should not enable this improper denial of invoices or implement any new forms

that would further prevent or discourage PSWs in providing attendant care and receiving fair payment for same.

3. Are there any considerations which have been missed as part of the analysis set out above that should be included?

While OTLA has provided some examples of further considerations to be made in answer to question 2, OTLA wishes to highlight the importance of consumer protection and privacy.

OTLA discourages any changes to HCAI which increase the amount of personal information or medical information being provided through the system.

4. What are the key implementation considerations that must be taken into account for each initiative (i.e., timing, communication, education, etc.)?

5. How can FSRA help to ensure that prioritized initiatives / changes are communicated to HSPs, insurers, and other stakeholders?

In answer to questions 4 and 5, OTLA recommends that any proposed changes be set out in a clearly worded document to stakeholders and that any suggested new forms are provided to HSPs and stakeholders *prior* to their approval and implementation. The current consultation does not provide specific examples of changes and is vague on what may be implemented under each proposed initiative. Specific changes and actual forms should be provided to stakeholders. Feedback should be obtained from stakeholders and their recommendations and comments considered prior to any approval and implementation of new forms or changes to the HCAI system.

Once changes are implemented, OTLA recommends that FSRA hold educational webinars for stakeholders and HSPs on the use of any new HCAI system.

6. Are there any other opportunities for administrative and cost efficiencies that FSRA should consider to make the HCAI system more modern and efficient that are not included in the list of initiatives above?

OTLA recommends that consumers and their legal representatives be given limited access to the HCAI system. Consumers and their legal representatives should be able to see what is being invoiced and charged against their policy limits. This will increase the efficiency and accuracy of billing and assist with identifying billing irregularities. This in fact can be a cost savings to insurers.

Specifically, consumers and their legal representatives should be able to access the following information on HCAI:

- The forms submitted through HCAI including invoices;
- The insurers response to forms;
- Whether an invoice has been paid or approved;
- The total amount of benefits paid out to any given date including a detailed breakdown of which invoices were paid, and from which provider, to reach the total; and
- Outstanding invoices that have not yet been responded to or paid by the insurer.

Further providing consumers and their legal representees with limited access to HCAI aligns with the objects set out for FSRA under section 3 (2) of the *Financial Services Regulatory Authority of Ontario Act, 2016*, as noted in the consultation paper and particularly:

- Contribute to public confidence in the regulated sectors
- Promote transparency and disclosure of information by the regulated sectors
- Deter deceptive or fraudulent conduct, practices and activities by the regulated sectors
- Promote high standards of business conduct
- Protect the rights and interests of consumers

Further providing access to HCAI to consumers and their legal representatives would fit with the objective of increasing efficiencies and modernization. Legal representatives would no longer have to make requests of insurance adjusters for information, resulting in a savings of time and expense for the insurance industry, lawyers and consumers.

CONCLUSION

OTLA appreciates the opportunity to provide feedback on the consultation paper regarding the HCAI system. OTLA encourages efforts to simplify forms, increase the use of plain language, make the forms more easily understood, simplify questions, increase user friendliness, improve flexibility and reduce barriers to innovation. Given the OCF forms have not been updated in over 10 years, OTLA agrees that a review of these forms is necessary as set out in Initiative B.

We remind FSRA of the importance of consumer privacy and discourage any broadening of information required on forms or any requirement to share further medical information through the HCAI system. We discourage any changes to HCAI which will result in a further reduction in the ability of consumers to obtain needed treatment and services in their communities. We discourage any changes which increase administrative burdens on HSPs, so that the focus can remain on the delivering services to the injured. Lastly, OTLA encourages FSRA to provide consumers and their legal representatives with access to HCAI. This would increase the efficiencies in the SABS system as a whole and meet with the objects set for FSRA through the *Financial Services Regulatory Authority of Ontario Act, 2016*.