

[Current Date]

Delivered electronically
Financial Services Regulatory Authority of Ontario
25 Sheppard Ave W, Suite 100
Toronto, ON M2N 6S6

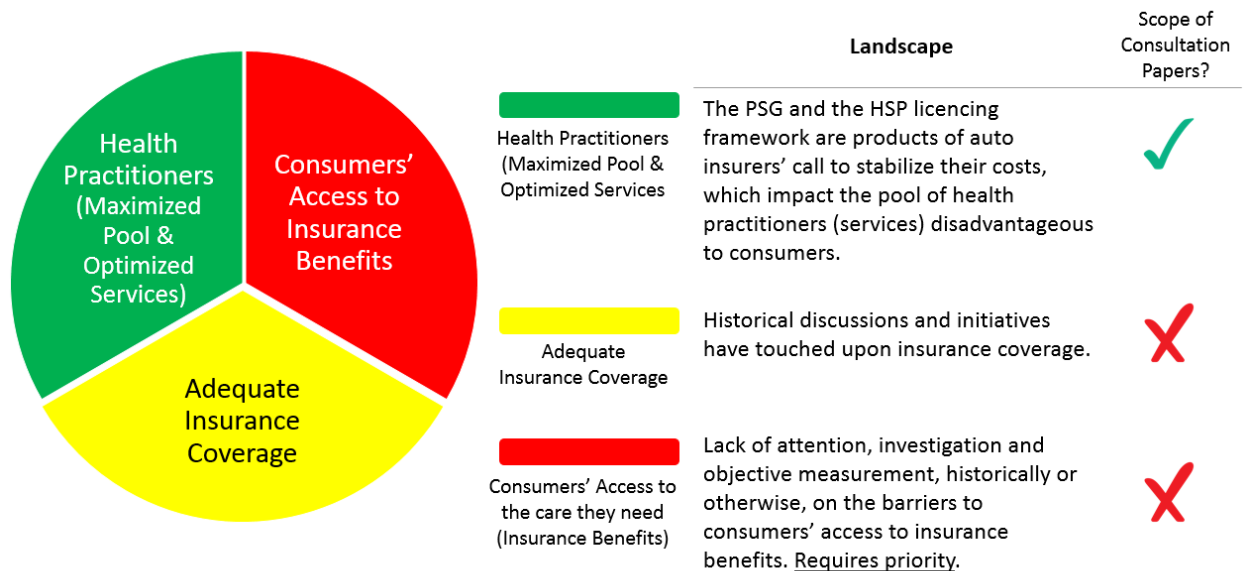
Re: Comments on the Health Service Provider Guidelines and Frameworks Review

Dear [Recipient's Name],

The Consumer Advisory Panel (CAP) of the Financial Services Regulatory Authority of Ontario (FSRA) welcomes the opportunity to provide feedback on the proposed updates to the Health Claims for Auto Insurance (HCAI) System, Statutory Accident Benefits Schedule (SABS) Guidelines, and Health Service Provider (HSP) Framework. We appreciate FSRA’s focus on making the auto insurance system more efficient and consumer-friendly, ensuring timely care for accident victims.

This review comes at a critical time as consumers face challenges in accessing affordable, quality care. Our comments focus on balancing administrative efficiency with consumer protection, ensuring fair compensation for providers, and delivering the desired consumer outcome: *consumers injured from auto accidents receive the care they need*.

Three pillars comprise the foundation to achieve the desired consumer outcome: (i) Access to health practitioners/services, (ii) Adequate Insurance and (iii) Consumers’ access to the care they need, which is tantamount to access to insurance benefits.



Icons made by authors from www.flaticon.com (meaicon, Valeria)

While we appreciate FSRA's initiative of reviewing the health service provider guidelines and frameworks to support the government auto insurance reforms, CAP encourages the government and the FSRA to expand the focus of the auto reforms and include the two pillars not addressed in the consultation papers.

Key Recommendations:

1. Expand the focus of the auto reforms to prioritize addressing the *barriers to consumers' access to the care they need (insurance benefits) and adequacy of insurance coverage*. The details are described in subsequent sections.
 2. Establish consumer outcome KPIs and metrics and build objective measurements of desired consumer outcomes, such as decreasing trends for claim denials and claim processing (approval/denial) times, improved claimant satisfaction rates and decreasing cost download to taxpayer-funded services. These metrics will help ensure accountability.
 3. Establish strategic, consistent and more effective engagement with consumers and healthcare providers.
-

I. Tackle Barriers to Consumers' Access to the Care They Need

As an observation, the FSRA consultation papers are lacking on addressing the barriers to consumers' access to the care they need to recover from an auto accident.

CAP recommends a hard look at the barriers experienced by consumers injured from auto accidents in accessing the care they need. These barriers are in the realm of the claim handling process, including dispute litigations under section 280 of the Insurance Act.

CAP proposes a combination of

- (i) licencing auto claim adjusters,
- (ii) putting in place a non-insurer-agent body,
- (iii) FSRA providing the guidelines for interpretations and operations of the SABS under section 268.3(1) of the Insurance Act will achieve more fair and improved access to the care needed by consumers injured from auto accidents and
- (iv) review and rationalize the effects of governing health practitioners outside the regulatory health colleges via the HSP Licencing Framework and the PSG against consumer outcomes.

A. Introduce licencing of claim adjusters including the employees of the insurers

The lack of review on the accountability of claim adjusters, who have no credentials for diagnosis and treatments, creates a landscape where the claim adjusters are diagnosing the injuries of claimants and disregarding the diagnosis of licenced health practitioners for purposes of denying payments for medical treatments prescribed by health practitioners to the patient-claimants to recover from injuries sustained from the auto accident. It is a prevalent frustration of consumers and their health practitioners, leading to unfair barriers to consumers' access to the care they need.

Recommendation: CAP proposes an initiative to review and investigate the licencing of auto claim adjusters and insurers to employ only licenced claim adjusters.

B. Transfer the Claim Handling Process from the Insurers to a Neutral/Non-insurer-agent Body

The bias or appearance of bias is clear based on the employment relationship between the unlicensed adjuster and the insurer.

Recommendation: CAP proposes an initiative to review and investigate the transfer of the Claim Handling process to a neutral/non-insurer-agent body.

C. In-depth Investigation, Regular/Pro-Active Audit/Review of Claim Handling Process

The questionable levels of medical treatment payments received by consumers and the disturbing low and declining success rates of claimants at the Licence Appeal Tribunal expose a real issue on the barriers to consumers' access to the care they need. It requires immediate attention.

Recommendation: FSRA to pursue an in-depth investigation of its members' claim handling processes, developing into a regular/proactive regulatory audit of the claim handling process and continuously integrating with initiatives to improve consumers' access to the care they need to recover from an auto accident.

D. Review/Rationalize the effects of governing health practitioners via the HSP Licencing Framework and the PSG against consumer outcomes

Since its implementation in 2014, Ontario's Health Service Provider (HSP) licensing framework, overseen by the FSRA, has sparked significant debate. Originally designed to combat fraud in auto insurance billing, it has since morphed into an unnecessary and costly regulatory burden that does not effectively serve its purpose. This framework creates challenges for healthcare providers and consumers alike, often leading to reduced access to rehabilitation services as many professionals opt out due to compliance pressures.

Consequently, the diminishing number of licensed providers results in longer recovery times for patients and a higher risk of long-term disabilities. It is imperative to reconsider the necessity of the HSP licensing system and redirect resources towards enhancing patient care.

The Professional Services Guidelines (PSG) established in 2003 led by auto insurers to stabilize their costs, in hindsight, overlooked the impact on consumer outcomes. There is now sufficient history to investigate how it negatively affects consumers' choice of healthcare provider/service to recover from injuries caused by auto accidents.

Recommendation: CAP recommends a holistic review of the HSP Licensing Framework and the PSG and their objectives in light of the desired consumer outcomes, including reconsidering their transfer to regulatory health colleges.

E. Review Increase in 3rd Party Liability Coverage

The minimum third-party insurance limits set in 1980 are no longer sufficient to protect consumers and policyholders. Currently, the minimum limit of \$200,000 places individuals at risk, exposing them to severe financial liability in the event of an accident.

Victims of accidents often incur expenses in the multiples of millions of dollars for care and rehabilitation. Without adequate insurance coverage, costs that exceed policy limits are borne personally by the at-fault driver, thereby shifting the financial burden onto society as a whole. In the current economic landscape, it is not sustainable.

Recommendation: Engage in a review initiative to increase third-party liability coverage, balancing the incremental cost to consumer taxpayers and the overall protection to drivers and accident victims, capping premium increases as a safeguard against unmanageable premium hikes.

F. Review the language

Sometimes, the labels used by the industry disadvantage consumers who become more vulnerable after injuries from auto accidents.

Recommendation: Encourage adoption of more consumer-centric labels.

1. Relabel “non-catastrophic injury” with “non-minor injury”. Using non-catastrophic to describe a non-minor injury dilutes the severe effects of the injury to the consumer.
2. The claim amount submitted for insurers to pay should not be relabelled as a proposed amount or an estimate in systems relevant to consumers' access to their benefits (the care they need), such as the HCAI system.

II. Health Claims for Auto Insurance (HCAI) System Review

The HCAI system facilitates the exchange of information between insurers and health service providers (HSPs) to process claims under the SABS. FSRA's review aims to improve efficiency, reduce paperwork, and make the system more transparent and consumer focused.

A. Increase the Number of Forms Transmitted Through HCAI

Currently, only a few forms—such as the OCF-18 (Treatment Plan) and OCF-21 (Invoice)—are submitted electronically through HCAI. Expanding the system to include other key forms, such as the OCF-6 (Expenses Claim Form) and OCF-19 (Application for Catastrophic Impairment), would reduce administrative delays and speed up claims decisions.

Recommendation: CAP supports expanding the range of forms transmitted through HCAI and recommends giving consumers the ability to track the status of their claims in real-time. This transparency would empower consumers to monitor the progress of their claims and identify potential issues early.

B. Simplify and Revise Forms

Many forms used within the HCAI system are complex, outdated, and burdensome for providers and insurers, leading to errors and delays in claims processing.

Recommendation: CAP recommends engaging with both health care providers and consumers when revising forms. Simplifying forms and reducing redundancy will decrease processing times and ensure consumers receive timely access to care.

C. Use Data to Improve Consumers' Access to the Care They Need and Fraud Prevention

Improving data initiatives in HCAI can help address the barriers to consumers' access to needed treatments to recover from auto accidents, prevent fraudulent billing and increase transparency.

Recommendation: CAP supports FSRA's focus on data-related initiatives. We encourage FSRA to enhance data collection, analytics and reporting to detect issues in claim handling/denials and fraudulent claims while minimizing delays for legitimate claims. This will protect consumers from the negative impact of not receiving the care they need caused by claim denials or fraud without hindering their access to care.

Enhance the HCDB Standard Report as below.

1. Add the following data in every report¹
 - (i) Claim Count or Number of Claims
 - (ii) Actual or Submitted Claim Amount
 - (iii) Submitted Claim Amount Denied by Insurer
 - (iv) The duration between claim submission and insurer approval/denial
 - (v) Insurer Initiated Examination Frequency and Amount
2. Report trends on the above. Report the top (10-20) insurers with the highest figures for the above data.
3. In every report, add the capability to drill down to the insurer or include reports broken down per insurer.
4. Create the Claimants by Medical and Rehabilitation Expense Range reports for all accident years, not just 2013 and 2017.

The proposed enhancements will better equip consumers when choosing insurers and advance FSRA's ability to identify, investigate and address potential issues in the claim-handling process, including fraud, which will contribute to desired consumer outcomes.

D. HCAI Modernization

Technology modernization is a big-ticket expense and a lengthy initiative that requires foresight to achieve optimum utility and minimize obsolescence.

Recommendation: CAP recommends the following:

1. Adopt open API for third-party integration.
 2. Allow HCAI system access to claimants to view and track the status of their claims. Obtain feedback from claimants on claim denial (approval) and any opportune times.
 3. Engage health care providers during discussions on HCAI functionality enhancements and consumers or CAP Auto Working Group on claimants' access.
-

¹ The potential exception is the Claimants by Medical and Rehabilitation Expense Class report.

III. Statutory Accident Benefits Schedule (SABS) Guidelines Review

The SABS Guidelines determine the care and benefits available to individuals injured in auto accidents. FSRA's consultation papers are updates on professional services fees and attendant care rates.

A. Professional Services Guideline (PSG) Review

The comments in this subsection is subject to recommendation under section I-D above.

FSRA presents four options for updating the fees paid to health care providers.

- 1. Index the Maximum Hourly Rates (Option A):** CAP supports indexing hourly rates to inflation to ensure provider compensation remains fair over time. This approach will keep services accessible while preventing providers from being under-compensated.
Recommendation: CAP recommends regular reviews of these rates to balance provider compensation with affordability for consumers, preventing premium hikes.
- 2. Flat Rate Fees (Option B):** While flat fees simplify billing, they may not adequately compensate providers for more complex care.
Recommendation: CAP suggests using flat fees only for predictable services while maintaining flexibility for more intensive care, ensuring consumers with severe injuries receive appropriate treatment.
- 3. Market-Determined Rates (Option C):** Allowing the market to set rates could lead to inconsistencies and delays in care.
Recommendation: CAP advises against this option, as it risks creating unpredictability in care access and increasing disputes.
- 4. Maintain Current Rates (Option D):** Keeping existing rates without adjustments risks under-compensating providers, leading to reduced availability of care.
Recommendation: CAP recommends against maintaining the status quo. Regular rate reviews are essential to ensure fair compensation for providers and sustained access to services for consumers.

B. Attendant Care Hourly Rate Guideline (ACHRG) Review

The comments in this subsection is subject to recommendation under section I-D above.

The ACHRG sets rates for attendant care services provided to auto accident victims. These rates have not kept pace with inflation, limiting access to care.

Recommendation: CAP supports indexing rates to inflation but urges FSRA to monitor the impact on premiums. Additionally, we recommend that FSRA consider regional differences in care costs to ensure consumers in rural or underserved areas are not disadvantaged.

C. Clarifying Rate Adjustments: Indexing vs. Stability

The comments in this subsection is subject to recommendation under section I-D above.

In reviewing FSRA's rate adjustment options we note a potential inconsistency in the guidance. On the one hand, indexing rates to inflation ensures that compensation remains fair. On the other hand, maintaining stability through fixed or limited rate adjustments protects consumers from frequent premium increases. CAP suggests balancing these approaches.

Recommendation: FSRA should allow indexed rate adjustments tied to inflation or claims costs but limit the frequency of such changes. CAP proposes to review rates biennially, ensuring that compensation keeps pace with inflation while giving consumers predictable premiums. This balanced approach protects both providers and consumers.

D. Minor Injury Guideline (MIG) Review

The Minor Injury Guideline Cap (MIG Cap) should be increased and indexed to inflation to better serve consumers and ensure they receive adequate funding for necessary treatments. By adjusting the cap in accordance with inflation, it will help individuals access essential care without undue financial burden. This proactive approach not only supports the health and well-being of consumers but also reduces reliance on the public healthcare system, ultimately leading to more sustainable healthcare outcomes for all. Investing in the MIG Cap is a crucial step toward promoting equitable access to treatment and improving overall patient satisfaction.

Consumers injured from auto accidents who need more medical treatments corresponding to those defined under the MIG but have exhausted the MIG Cap are left untreated without a path to recovery because insurers keep these consumers stuck at the MIG Cap, refusing payments for consumers' medical treatments.

Recommendation: CAP proposes the following:

1. Increase the MIG Cap in Ontario as offered by the community of health practitioners.
2. Institute the MIG Cap only not to require the insurer's approval of medical treatment payment before a consumer receives the medical treatment. Remove the type of

medical treatment classified under the MIG as a condition for refusing to pay for the medical treatment. Develop a clear guideline using plain language.

E. SABS Guidelines, 268.3(1) of the Insurance Act

Consumers are naive to legalese language. The no-fault auto insurance regime promises consumers a better consequence if met by an unfortunate auto accident, such that court litigation would be least likely as it would seem that the insured and the insurer should not be in litigation against each other after an injury from an auto accident. It is an abysmal customer outcome based on the overwhelming litigation between the insured and their insurers and the insured's low and declining success rates at the Licence Appeal Tribunal.

Recommendation: FSRA, using its jurisdiction under section 268.3(1) of the Insurance Act, should create guidelines on the interpretation and operation of the various sections of the SABS and intertwine the UDAP Rules. Some of the contentious areas to address are below.

- (i) Provide a plain language description of “medical and any other reasons” and an explanation of how it should be used by insurers to deny claims/benefits or to subject claimants to an insurer’s examination (IE/IME).
 - (ii) Clarify section 64(1) and the insurer’s notice obligation, specifically on the insurer’s preference between section 38 or 39 of the SABS.
-

IV. Health Service Provider (HSP) Framework Review

The HSP Framework governs how health care providers operate within the auto insurance system, focusing on compliance, billing, and collaboration with regulatory bodies. FSRA’s proposals to modernize licensing and improve oversight are positive steps toward greater efficiency.

A. Modernize Licensing Processes

FSRA’s plan to introduce new licensing software and automate tasks will reduce administrative burdens for providers.

Recommendation: CAP supports these improvements but emphasizes the importance of a user-friendly interface and cybersecurity protections. Smaller providers may require additional training to adapt to new technologies without disruption to care delivery.

B. Introduce a Data-Driven Supervisory Tool

FSRA's proposal to use data analytics and risk ratings to identify non-compliant providers is a welcome step toward improving oversight.

Recommendation: CAP encourages FSRA to ensure transparency in how providers are assessed and to communicate clearly with both providers and consumers about any compliance issues.

C. Strengthen Collaboration with Regulatory Health Colleges (RHCs)

Improving communication and data sharing between FSRA and RHCs will enhance fraud prevention and provider accountability.

Recommendation: CAP recommends that FSRA establish formal agreements with RHCs to streamline oversight and ensure that consumers receive care from qualified providers.

V. Conclusion

The Consumer Advisory Panel appreciates FSRA's comprehensive review of the Health Service Provider Guidelines and Frameworks. The proposed changes have the potential to improve the efficiency, transparency, and fairness of Ontario's auto insurance system. However, achieving the right balance between administrative efficiency, fair compensation, and consumer protection is essential.

We encourage FSRA to continue engaging with consumers and providers throughout the implementation process to ensure that all stakeholders benefit from these reforms. CAP remains committed to working with FSRA's Auto Insurance Working Group to support the development of a consumer-focused insurance system.

Thank you for considering our recommendations. We look forward to further collaboration.

Sincerely,

Consumer Advisory Panel

Financial Services Regulatory Authority of Ontario