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November 28, 2024

Re: Consultation on Auto Reforms (2024-011)

Submitted to: Mr. Glen Padassery, Executive Vice President, Policy and Auto/Insurance Products, Financial Services Regulatory Authority of Ontario (FSRA) via consultation submission portal

Dear Mr. Padassery,

The Ontario Physiotherapy Association (OPA) is pleased to have the opportunity to provide recommendations in response to the consultations on the Statutory Accident Benefits Schedule (SABS), the Health Claims for Auto Insurance System (HCAI), and the Health Service Provider Framework. Please see our commentary and feedback below.

EXECUTIVE SUMMARY

The Ontario Physiotherapy Association advocates on behalf of over 5500 physiotherapist members and brings forth an important perspective from clinicians and consumers on the need for auto insurance reform in Ontario. In response to the Financial Service Regulatory Authority of Ontario (FSRA)'s open consultation on the Statutory Accident Benefits Schedule (SABS), the Health Claims for Auto Insurance System (HCAI), and the Health Service Provider (HSP) Framework, the OPA offers comments and recommendations on compensation and fee structures, regulation policies, and administrative practices. Our recommendations aim to enable those injured in motor vehicle accidents to access the appropriate level and duration of care in a timely and efficient manner, while ensuring that health service providers are compensated and regulated appropriately and fairly. A brief summary of our recommendations include:

- Indexing hourly rates to account for inflation, cost of living, and market value;
- Increasing maximum thresholds on the minor injury guideline, professional services guideline, and attendant care benefits;
- Eliminating the block fee structure under the minor injury guideline and applying an hourly fee structure;
- Streamlining the HCAI system by digitizing Ontario Claims Forms, reducing redundancy of information collection, and increasing transparency;
- Eliminating dual reporting requirements for regulated health professionals;
- Expediting and streamlining licensing processes for regulated health professionals; and
- Tracking data related to fraud incidence across professions to develop a more targeted approach that does not burden providers who are compliant.

These recommendations are elaborated upon throughout this submission, and the OPA recommends that legislative implementation of these recommended changes occur **no later than July 1, 2026**, with retroactive increases to health service provider fees dating back to **July 1, 2025**.

ONTARIO PHYSIOTHERAPY ASSOCIATION

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PART 1 – STATUTORY ACCIDENT BENEFITS REVIEW

1.1 PROFESSIONAL SERVICES GUIDELINE

The OPA applauds FSRA's commitment to review the professional services guideline (PSG), as increases to fees for auto insurance-related medical and rehabilitation services are long overdue. While the implementation of the PSG in 2003 was a significant step forward in standardizing service costs and reducing administrative burdens resulting from fee negotiations between service providers and insurers, there is a need to review these fees regularly and ensure that they are fair, equitable, and reflective of the increasing market value of health service providers.

Given the challenges with physiotherapists electing to omit treatment related to auto claims from their services due to low fees, it is essential to focus on fair, appropriate, market-value compensation in this review. Failing to appropriately index rates will result in a greater proportion of physiotherapists and other health service providers choosing **not** to include auto insured services in their practice in the future. This will consequently impact consumers' ability to access the care they need when they sustain injuries from a motor vehicle accident. Below are considerations and six (6) recommendations for improving fairness in compensation within the Professional Services Guideline:

1. **Implement an initial 60-65% indexation in minimum payable health service provider fees;**
2. **Review the PSG hourly rates annually to account for inflation, cost of living, and changes in market conditions;**
3. **Collaborate with health professional Associations to be informed of ongoing increases to market rates and make regular indexes as appropriate;**
4. **Match the rates for Ontario Claims Forms for all eligible health service providers to the current physician rates;**
5. **Continue to use hourly rates as opposed to flat rates for health services;**
6. **Index the non-catastrophic threshold by 60-65% to match the PSG fee.**

Hourly Rates

Hourly rates in the professional services guideline (PSG) have fallen significantly below the current cost of living standard and current market value of physiotherapists and other health service providers, and it is imperative that FSRA account for three major factors when determining appropriate indexation of the PSG: **cost of living, cost of service provision, and physiotherapist market value.**

> ***Cost of Living.*** To account for increased cost of living, a commonly used anchor is the consumer price index (CPI). Between 2014, when the last PSG fee increase was implemented, and 2024, the CPI for 'all items' increased by 32.8%, while the CPI for 'health and personal care' increased by 27.6%, and 'services' increased by 38.9%.[1]

[1] Government of Canada, Statistics Canada, "Consumer Price Index, Annual Average, Not Seasonally Adjusted."

Therefore, to accommodate basic cost of living increases based on the CPI alone, an indexation of 35-40% would be necessary.

Cost of Service Provision. The CPI alone does not reflect the actual increases to the cost of providing health services beyond the hourly rate of the professional. The indexation of fees must account for not only inflation, but also for the increased costs to uphold licensure with the College of Physiotherapists of Ontario (CPO) and FSRA, as well as costs associated with maintaining business ownership which includes staff recruitment and retention. As such, a 35-40% increase based on the CPI would need to have an additional indexation to account for cost of business and service provision.

Market Value. As stated in the consultation brief, current hourly rates in the PSG account for 51-84% of fees charged by service providers compared to actual market rates, depending on the profession. These fees also do not account for changes in educational requirements and resulting expertise of several professions, including physiotherapy. When the PSG was developed, entry-level physiotherapist education consisted of a bachelor's degree, but in 2010, this requirement changed to a 2-year master's level degree.

In the context of the physiotherapy profession, current PSG hourly rates account for **54-66%** of current reported market rates. The OPA has recently published a physiotherapy Fee Guideline, which outlines, based on extensive market research, recommended fees for physiotherapy services.[2] The Fee Guideline recommends an hourly rate of $150.00 to $183.00 per 60 minutes, which would reflect a **55-85%** increase from the current $99.75 non-catastrophic hourly rate, and a **28-53%** increase from the current $119.92 catastrophic hourly rate. It is critical to note that the OPA Fee Guideline is based on current market data and does not yet fully account for inflation, thus the recommended catastrophic and non-catastrophic hourly rate increases are the very minimum needed to come up to the current market valuation in 2024.

To promote sustainability of the auto insurance sector and retain physiotherapists, which make up a significant number of licensed health service providers, the OPA stresses the importance of not only indexing to match inflation over the last 10 years, but also account for fair market value of the profession.

The OPA recommends an initial indexation of 60-65% to minimum payable service provider fees under the PSG. Following this initial indexation, **the OPA urges FSRA to collaborate with health professional Associations to stay current with ongoing increases to market rates and to make regular indexes as appropriate.**

It is important to focus not only on the extent of the initial indexation, but also when it will be implemented and how indexation will continue in the future to avoid returning to a position of below-market-rate fees. In recognition of the time required to implement such substantial changes

[2] Ontario Physiotherapy Association, "Ontario Physiotherapy Association Fee Guideline 2024."

to the existing professional services guideline, **the OPA recommends a legislative implementation by no later than July 1, 2026, with retroactive payments dating back to July 1, 2025**. Furthermore, **the OPA recommends a review of PSG hourly rates annually to account for inflation, cost of living, and changes in market conditions.**

Flat Rates for Ontario Claims Forms

While flat rates have historically been acceptable for activities that are consistent across all claimants, such as Ontario Claims Forms, they have not been consistent across providers. The fee for physiotherapists to complete an OCF-23 is $0.00, while a physician can bill $240.00. Similarly, the fees for an OCF-3 and OCF-18 for physiotherapists and other non-physician health service providers are both $200.00, while physicians can bill $240.00 and $255.00 respectively.[3] **The contents of a given OCF do not change based on the provider completing it**, and as such, it is important that FSRA apply a uniform fee for Ontario Claims Forms, rather than compensating based on the professional completing the forms. **The OPA recommends that FSRA match the rates for Ontario Claims Forms for all eligible health service providers to the current physician rates.**

Clinical Flat Rates

Beyond claims forms, flat rates are challenging to set for clinical services, given the significant diversity of claimant demographics, injuries, and health needs. **The OPA recommends continuing to use hourly rates as opposed to flat rates for health services** because flat rates will not account for the range, combination, and severity of injuries sustained in a motor vehicle accident, nor will they account for the diversity in treatment duration or frequency required.

Non-MIG Thresholds

To improve health care accessibility and promote optimal outcomes for those injured in motor vehicle accidents, increasing the medical and rehabilitation thresholds is essential. There are several claimants who sustain severe injuries in motor vehicle accidents and therefore fall outside of the minor injury guideline, but do not meet catastrophic injury criteria. When these individuals exhaust their medical and rehabilitation benefits, they often cannot access long-term services due to financial constraints resulting from their injury. By not increasing funding thresholds, greater pressure is placed on the public health system, which contributes to longer wait times, poorer health outcomes, and increased strain on already-limited health human resources.

The OPA acknowledges concerns related to the possibility of insurance rates increasing in Ontario if health service provider fees and thresholds increase. However, it is important to note that auto insurance rates have been increasing significantly in Ontario over several decades, despite a **decrease** in non-MIG medical and rehabilitation thresholds. In 2010, a threshold decrease of 35% was imposed for non-catastrophic claimants, from $100,000 to $65,000. Despite this decrease and the Minor Injury threshold remaining unchanged since inception in 2010, auto insurance rates for consumers have continued to increase in Ontario at an exponential pace, beyond rates in other

[3] OMA Ontario Medical Association, *Physician's Guide to Uninsured Services*.

provinces. In 2018, some auto insurance companies imposed exorbitant increases in policy premiums ranging from 25-34%, with additional increases averaging 12% between 2021 and 2023, and several more approved increases exceeding 6% for the 2024-2025 year.[4] **Appropriately indexing health service provider fees and thresholds cannot be deemed causative in the context of increasing insurance premiums, when there has been no increase in fees for several years despite continuous increases to premiums**. In fact, the Insurance Bureau of Canada recently cited auto theft as the primary cause of increasing insurance premiums in Ontario, with a 524% increase in thefts between 2018 and 2023, and an overall annual cost of $1 billion.[5]

Therefore, to promote healthcare accessibility, improve health outcomes, and retain physiotherapists in the auto sector, it is essential to avoid premature exhaustion of medical and rehabilitation benefits, which is more likely to occur with appropriate indexation of PSG fees. **The OPA recommends indexing the non-catastrophic threshold to match the PSG fee indexation of 60-65%.** This level of indexation would bring the non-MIG threshold back to the 2010 level of $100,000.

1.2 MINOR INJURY GUIDELINE

The indexation of the minor injury guideline (MIG) is long-overdue, and Ontario has fallen significantly behind other provinces in the provision of medical and rehabilitation funding. The majority of claimants fall within the MIG, and while the OPA acknowledges that the initial intent of the MIG was to enable those with the most common soft tissue injuries sustained in motor vehicle accidents to have access to immediate, pre-approved care, there are significant challenges with the system in place for both claimants and health service providers. Specific concerns are highlighted in the following domains: 1) fees and thresholds that do not account for the complexity of injuries, 2) inappropriate placement of individuals in the MIG, 3) inconsistent compensation in the block fee structure, and 4) the restrictive MIG threshold. Below are considerations and five (5) recommendations for improving the current minor injury guideline system:

1. **Audit and review of these discrepancies to inform FSRA's allocation of oversight and mitigation resources.**
2. **Eliminate the pre-approval limit and allow for the entirety of the minor injury threshold to be accessed under one treatment plan;**
3. **Eliminate the block fee structure and compensate health service providers with an hourly rate that is equal to the indexed professional services guideline rate;**
4. **Implement a minimum initial indexation of the minor injury threshold of 60-65%, with annual increases thereafter;**
5. **Should FSRA elect to maintain the current block fee structure, develop a collaborative focus group of regulated health service providers and professional Associations to support restructuring the program and determining rates**

[4] Financial Services Regulatory Authority of Ontario, "Private Passenger Automobile Insurance Rate Approvals"
[5] Insurance Bureau of Canada, "Top Five Reasons Auto Insurance Premiums Have Increased."

The Concept of Minor Injuries

The definition of "minor injury" is not synonymous with simple, cheap, or rapid recovery. While sprains, strains, whiplash associated disorders, contusions, lacerations, and subluxations are not considered 'serious and permanent impairments', complex physiological processes are involved in these injuries, and there are challenges associated with providing a limited amount of care to these individuals. For example, 90% of individuals who sustain a whiplash injury report pain in other areas of their body, while 50% develop chronic pain. In some cases, whiplash symptoms persist for more than 20 years.[6] [7] [8] Moreover, physiotherapists are rarely treating a whiplash injury, sprain, strain, or contusion in isolation – they are treating the injuries along with exacerbations and complications of pre-existing medical conditions and complex sequelae. Multimorbidity, chronic disease, polypharmacy, poor pre-accident health status, and psychological sequelae are five of the most reported complicating factors for minor injuries that impact care needs and outcomes, often resulting in prolonged symptoms and delayed recovery.[9] [10] [11] [12] [13] [14] [15] [16] [17] [18] The OPA's submission acknowledges the ever-increasing complexity of the health status of Ontarians and the robust literature illustrating complicating factors in the recovery from 'minor injuries' and promptly act on the following recommendations for amending the minor injury guideline fee structure and thresholds.

Placing Severe Injuries in the MIG

There are several instances in which an individual sustains an injury that does not meet the criteria for 'minor injury' under the SABS, such as a mild traumatic brain injury (concussion), but are still placed within the MIG. Furthermore, there are many individuals who sustain minor injuries such as whiplash, sprains, or strains who experience mental health and psychological issues because of

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[6] De Zoete, Coppieters, and Farrell, "Editorial: Whiplash-Associated Disorder—Advances in Pathophysiology, Patient Assessment and Clinical Management."
[7] Hincapié et al., "Whiplash Injury Is More Than Neck Pain: A Population-Based Study of Pain Localization After Traffic Injury."
[8] Watanabe et al., "The Long-Term Impact of Whiplash Injuries on Patient Symptoms and the Associated Degenerative Changes Detected Using MRI."
[9] Myrtveit et al., "What characterises individuals developing chronic whiplash?", May 2013.
[10] Laporte et al., "An Attempt of Early Detection of Poor Outcome After Whiplash," October 20, 2016.
[11] ICES, "ICES | the Increasing Burden and Complexity of Multimorbidity."
[12] Government of Canada, Statistics Canada, "Prevalence of Prescription and Non-Prescription Polypharmacy by Frailty and Sex Among Middle-Aged and Older Canadians." 2022.
[13] Lin et al., "Prevalence of Posttraumatic Stress Disorder Among Road Traffic Accident Survivors." January 1, 2018.
[14] Fekadu et al., "Incidence of Post-Traumatic Stress Disorder After Road Traffic Accident." July 19, 2019.
[15] Daddah et al., "Prevalence and Risk Factors of Post-Traumatic Stress Disorder in Survivors of a Cohort of Road Accident Victims in Benin: Results of a 12-Month Cross-Sectional Study." Apr 1, '22.
[16] Campbell et al., "Psychological Factors and the Development of Chronic Whiplash–Associated Disorder(S)." February 21, 2018.
[17] Buitenhuis et al., "Relationship between posttraumatic stress disorder symptoms and the course of Whiplash complaints". July 11, 2006.
[18] Sarrami et al., "Factors Predicting Outcome in Whiplash Injury: A Systematic Meta-Review of Prognostic Factors." October 13, 2016.

their motor vehicle accident, and the current MIG does not account for the complex needs of these individuals. There is significant variance and inconsistencies in adjudication practices across insurance companies, as well as variances in practices within individual companies. These discrepancies in adjudication practices impact both patients and health service providers and it is essential that adjudicators are held to a consistent standard of practice and accountability that includes appropriately placing individuals with non-minor injuries outside of the MIG. **The OPA recommends an audit and review of these discrepancies to further inform FSRA's allocation of oversight and mitigation resources**.

Pre-Approval versus Threshold

The OPA recognizes the importance of maintaining a process of pre-approval for those who fall within the MIG to not delay initiation of required medical and rehabilitation services. However, the differentiation between the minor injury guideline and the minor injury threshold creates administrative challenges and disrupts care continuity when a claimant completes 12 weeks of care under the MIG. The requirement to submit an OCF-18 after exhausting the $2200 pre-approval may cause more than four weeks' delay in care due to the review period for adjudicators to respond to treatment plans. During this time, claimants may experience regression in progress and exacerbation of symptoms, as well as anxiety and stress associated with the uncertainty of receiving necessary care. The adverse effects of disrupted care can lead to poorer outcomes and long-term sequelae of injuries. To reduce the administrative burden on health service providers, promote care continuity for claimants, and reduce the risk of long-term sequelae of their auto-related injuries, **the OPA recommends eliminating the pre-approval limit and allowing for the entirety of the minor injury funding to be accessed under one treatment plan.**

MIG Fee Schedule

As mentioned in the consultation brief, the fee schedule for the MIG has not increased since inception in 2010, and it does not compensate health service providers at or near market value. Comparing insurance programs across Ontario is not an acceptable or appropriate method of determining fair levels of compensation for health services, as a comparison cannot account for the complexity of care or of the related health system structures. Per the consumer price index (CPI), increases between 2010 and 2024 are as follows: 42.2% for 'all items,' 32.5% for 'health and personal care,' and 49.8% for 'services.'[19] However, it is important to note that the CPI does not reflect all costs associated with running a health service business such as licensing and regulation fees, supply acquisition, and support and administrative staff.

The block fees do not account for individuals with multiple injuries or those with complex pre-existing conditions that have been exacerbated by a motor vehicle injury. Furthermore, this fee structure creates inconsistencies in remuneration despite the provision of a consistent level of care. Given that clinicians are paid a single fee regardless of the number of visits provided, the amount a clinician receives for their time and sessions changes. **The block fee structure also does not allow clinicians to accommodate delayed onset, fluctuations, or exacerbations of symptoms**

[19] Government of Canada, Statistics Canada, "Consumer Price Index, Annual Average, Not Seasonally Adjusted," January 16, 2024.

caused by motor vehicle accidents throughout the care plan and assumes that care will be front-loaded and taper over time.

Although a pre-approval framework is efficient and effective for claimants to promptly receive medical and rehabilitation services after a motor vehicle accident, the block fee structure is inappropriate in this context, given the broad range of injuries and the complexity of needs faced by auto claimants. The block fee structure impedes responsive and patient-centred care plans for a high and growing number of people with complex needs and complicating factors. In addition, physiotherapists should not be compensated differently based on the type of injury sustained and the category within which a claimant falls. Whether a physiotherapist is treating an individual who sustains a fracture or a whiplash injury, their time must be valued equally. **The OPA recommends eliminating the block fee structure and compensating health service providers with an hourly rate that is equal to the indexed professional services guideline rate.**

Although adoption of an hourly rate is strongly recommended, if the block fee structure continues to be applied for the minor injury guideline, it will require significant restructuring to enable the most appropriate care for all auto claimants, as well as fair compensation for health service providers. **The OPA recommends that a collaborative focus group consisting of regulated health service providers and members of their respective professional Associations be involved in restructuring the block fee schedule and determining rate indexation**, should FSRA elect to maintain the current fee structure.

MIG Threshold

It has already been stressed that a 60-65% hourly rate indexation is the minimum required to adjust for inflation and business costs, but it does not fully reflect the market value of physiotherapists and will need to be increased regularly to account for inflation and changes in market value. As increases are implemented over several years, claimants will receive a lower quantity of care and will therefore likely experience poorer health outcomes under the current MIG threshold of $3500.00.

The minor injury thresholds summarized in **Table 1 below** clearly illustrate how Ontario has not only fallen behind but has the lowest funding threshold in the comparator group. To account for the increasing complexity of health needs and care approaches, as well as provide fair compensation to physiotherapists and other health service providers, **the minor injury threshold must be increased. The OPA strongly recommends a minimum initial indexation of the minor injury threshold of 60-65% in parallel with all other fee structures.** It is important to note that this level of indexation would still leave Ontario with one of the lowest MIG thresholds in Canada, at $5600 - $5775, and as such, **the OPA recommends annual increases based on inflation and cost of living, with additional consideration of increasing clinician rates**.

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TABLE 1 – MINOR INJURY THRESHOLDS ACROSS CANADA

PROVINCE/TERRITORY	MINOR INJURY THRESHOLD
Alberta[20]	$6061
British Columbia[21]	$5500
New Brunswick[22]	$9513.14
Newfoundland and Labrador[23]	No cap
Nova Scotia[24]	$10,400
Ontario	$3500
Prince Edward Island[25]	$9358

1.3 ATTENDANT CARE HOURLY RATE GUIDELINE

The OPA offers the following commentary and four (4) recommendations regarding the attendant care hourly rate guideline:

1. **Include physiotherapists in the list of eligible providers to complete a Form 1;**
2. **Allow for attendant care applications from those who fall within the minor injury guideline;**
3. **Increase rates for all three levels of attendant care to current market value;**
4. **Increase the thresholds for both non-catastrophic and catastrophic attendant care benefits.**

Form 1 Eligibility

Currently, only a registered nurse or occupational therapist can complete a Form 1, even though many injured claimants see a physiotherapist as their primary health service provider for their accident-related injuries. It is within the scope of practice of a physiotherapist to identify needs

[20] CAMP LLP Injury Lawyers. "Alberta Minor Injury Cap – Update 2024".
[21] "ICBC Claims Cap - Info on ICBC Caps for Those Personally Injured."
[22] "Insurance Notice: Annual Indexation | New Brunswick Financial and Consumer Services Commission"
[23] Ross, "Exceeding Limits on Minor Injuries: How a Lawyer Can Help | MacGillivray Injury Insurance Law."
[24] MDW Law, "Personal Injury 2024 'Minor' Injury Cap Update."
[25] Keefe-Hogan, "Insurance Update: Automobile Insurance Minor Injury Cap – Annual Indexation 2024."

for caregiving, environmental modifications, and support. Physiotherapists are legally authorized to determine whether a person needs time off work for specific injuries or illnesses, and as such, expanding the list of eligible health service providers who can complete a Form 1 to include physiotherapists is beneficial to the health system and will promote care continuity for the patient, thereby contributing to better care outcomes. **The OPA recommends including physiotherapists in the list of eligible providers to complete a Form 1.**

Accessing Attendant Care as a MIG Claimant

Currently, the SABS states that attendant care benefits are only available to those who fall outside of the MIG, because attendant care is not deemed necessary for those with 'minor' injuries. However, Ontario's population has become increasingly complex with higher rates of pre-existing disability and chronic disease. Furthermore, as articulated in the MIG section of this submission (see pages 6-7), injuries that fall within the MIG are often physiologically complex and are worsened by pre-existing health conditions, and some individuals would benefit greatly from attendant care. Several individuals who are placed within the MIG file appeals with the License Appeal Tribunal (LAT) and end up being withdrawn from the MIG. For example, in Co-Operators Insurance Company v. Bennett, 2024 ONSC 467[26], a claimant sustained a minor injury but had a pre-existing condition that made her symptoms worse. With no change in diagnosis, this claimant was removed from the MIG, and while the insurer attempted to deny the claimant's attendant care application due to having a 'minor' injury, they were awarded the benefits. This Ontario Divisional Court confirmed that an insurer cannot deny attendant care benefits based on minor injury status if the claimant was removed from the MIG. Recognizing the increased prevalence of pre-existing health conditions in those who sustain motor vehicle injuries, it is likely that there will be an increase in LAT disputes resulting in claimants being removed from the MIG. Given the Government of Ontario's "Right Care, Right Place, Right Time" priorities,[27] it is important to apply these principles to all aspects of health care – public and private. Regardless of diagnosis, each case is unique and requires a patient-centered approach, whereby care is not determined by a diagnostic code, rather, is determined based on the complex, multifaceted nature of an individual's symptoms. To provide appropriate levels of care to all claimants and reduce LAT disputes and unnecessary legal costs, **the OPA recommends allowing for attendant care benefit applications within the MIG.**

Attendant Care Hourly Rates

The hourly rates for all levels of the attendant care guideline are too low and do not approach market rates for these services. Extremely low fees such as these, even if indexed to minimum wage, are not sufficient to acquire or retain health service providers and contributes to a shortage of in-home services to those who need it. Since 2016, when the last index was made to the attendant care hourly rate, the Ontario consumer price index (CPI) has increased significantly in all areas. When considering an increase in fees for services, it is helpful to understand the difference in the CPI between 2016 and 2024. The CPI increase between 2016 and 2024 for health and

[26] CO-OPERATORS GENERAL INSURANCE COMPANY, HELEN L. BENNETT & LICENCE APPEAL TRIBUNAL, and Leiper, "Co-Operators Insurance Company V. Bennett."
[27] Ontario Health, "Our Work – Transforming Health Care".

personal care was 24.2% for 'health and personal care' and 33% for 'services.'[28] **The OPA recommends increasing rates for all three levels of attendant care to current market value.**

Attendant Care Thresholds

Based on principles highlighted under the professional services guideline and minor injury guideline sections, it is critical to increase the thresholds for attendant care benefits in Ontario. Indexing hourly rates for all levels of care will result in claimants receiving fewer hours of support, which will impact their outcomes. **The OPA strongly recommends increasing these thresholds**, as they will enable claimants to receive the care they need for an appropriate duration of time, which will help support them in their return to occupation and therefore reduce long-term health system costs related to post-accident disability.

PART 2 – HCAI SYSTEM REVIEW

As a system that was developed in 2001 and last updated in 2010 to accommodate changes to the SABS, there are necessary improvements to the system which are now long overdue. The OPA offers feedback that supports increased efficiency, reduction in administrative errors, and increases clarity of information, leading to better fraud detection within the HCAI system. The three main pillars discussed below are: 1) digitizing all Ontario Claims Forms (OCFs) into HCAI, 2) eliminating redundant data collection, and 3) Increasing transparency. Within this section are five (5) recommendations:

1. Digitize all Ontario Claims Forms, allowing them all to be transmissible through the HCAI system with digital signature permissions;
2. Streamline Ontario Claims Forms by eliminating duplication of data collection;
3. Eliminate the accident description and ICD codes from the OCF-3;
4. Enable claimant viewing of HCAI forms to align with PHIPA and increase reporting accuracy;
5. Enable tracking and reporting of claim submissions under each health service provider.

Digitizing Ontario Claims Forms (OCFs)

Currently, only the Form 1, assessment forms (OCF-23 and OCF-18), treatment forms (OCF-18), and invoices (OCF-21B, OCF-21C) can be submitted through the HCAI portal, despite there being fourteen (14) total OCFs, some of which are required for every single claimant. An OCF-1 (Application for Accident Benefits Form), as well as an OCF-3 (Disability Certificate) and OCF-5 (Permission to Disclose Health Information Form) are required by all claimants pursuing medical and rehabilitation services through their auto insurance policy. At bare minimum, these forms should be transmissible through the HCAI system, as they must currently be filled out on paper and are submitted through fax or mail. Furthermore, while most claimants initially fall within the MIG, several will be removed from this treatment regime due to complex injury sequelae and will pursue additional services, at which time, different OCFs will be required. Therefore, to allow for health service providers to access additional claims forms as needed and increase efficiency and timeliness in administration, all claims forms should be transmissible through HCAI.

[28] Government of Canada, Statistics Canada, "Consumer Price Index, Annual Average, Not Seasonally Adjusted," January 16, 2024.

There is also opportunity to reduce anxiety and stress from the patient perspective by digitizing OCFs, as claimants often receive the accident benefits application package, which includes all 14 OCFs. In most cases, several of these forms are not needed at the beginning of the treatment journey, and individuals often try to complete their forms independently before their initial visit with their health service provider. Patients frequently express worry that they are not completing the correct forms, and uncertainty around the indications for each form. Having these forms digitized and accessible to the health service provider and not sending the entire package to the claimant would reduce the mental and emotional burden on the patient and increase efficiency for all parties. **In summary, the OPA recommends digitizing all Ontario Claims Forms, allowing them all to be transmissible through the HCAI system.**

Eliminating Redundant Data Collection & Streamlining Ontario Claims Forms

The current Ontario Claims Forms are lengthy, onerous, and contain redundant information that increases the administrative burden on health service providers who work in the auto insurance sector. The current forms also increase stress and anxiety for claimants who have sustained physical injuries and are enduring emotional and psychological trauma from their accident. **The OPA recommends significantly streamlining Ontario Claims Forms by eliminating duplication of data collection.** There are certain pieces of data that are collected on several forms and must also be entered manually in some areas within the HCAI portal, including:

- Claim number
- Policy number
- Date of accident/loss
- Applicant information (name, address, date of birth, phone)
- Insurance company information

The above information should be identified at the time of initial communication between the claimant and their insurer, when they report injuries from their accident, and should be pre-populated into the HCAI system so it does not have to be repeatedly entered by the health service provider and claimant. Having this information pre-populated on all OCFs in the HCAI system will not only lead to increased efficiency for health service providers and reduced stress on the claimant but will also ensure that documented information is consistent across forms, leading to reduced risk of administrative burdens and errors.

In addition to the data above, there is information collected at several points throughout the intake and assessment process between a health service provider and a claimant. Specifically, the description of the accident is requested on both the OCF-1 and the OCF-3, and ICD codes are requested on both the OCF-3 and the OCF-23 or OCF-18 treatment and assessment forms. This information is not easy to pre-populate and therefore is onerous to repeatedly enter. **As such, the OPA recommends eliminating both the accident description and ICD codes from the OCF-3.**

Increasing Transparency

According to the Personal Health Information Protection Act (PHIPA), individuals have a right to

access their health documents.[29] Currently, claimants can request access to documents pertaining to their auto insurance claim, though they do not have real-time, live access. Without direct access to their documents, it is not possible for claimants to identify errors or misrepresentation of their symptoms or diagnoses. By enabling claimants to access their Ontario Claims Forms in HCAI, there is a lower chance of misrepresentation and fraud, and the overall health experience of the claimant may improve. **The OPA recommends enabling claimants viewing access to their documents in the HCAI portal, which will better align with PHIPA and increase accurate reporting.**

PART 3 – HEALTH SERVICE PROVIDER FRAMEWORK REVIEW

The OPA acknowledges that the intention behind developing the health service provider (HSP) license was to detect and minimize fraud in the auto insurance sector. However, since the initiation of this system in 2014, the impact of the health service provider framework on fraud mitigation has not been well documented or communicated. The OPA has identified concerns with the HSP framework in the context of 1) redundant regulation with regulatory Colleges, 2) lack of clarity pertaining to fraud and high-risk providers within the physiotherapy profession, and 3) system-level limitations resulting from licensing requirements. The OPA offers the following three (3) recommendations:

1. **Eliminate dual reporting requirements for regulated health professionals;**
2. **Streamline and expedite the licensing process for regulated health providers in good standing with their College;**
3. **Track data related to incidence of fraud and non-compliance across professions to develop a more targeted approach to regulation and supervision that does not burden providers and professions who are compliant.**

Redundant Regulation

Physiotherapists are regulated health providers who hold active licenses with the College of Physiotherapists of Ontario ("the College"). To obtain a license with FSRA, physiotherapists must be in good standing with the College, and part of maintaining good standing is complying with administrative requirements, such as updating names, addresses, practice locations, and criminal offenses. The regulatory requirements of both the College and FSRA run parallel, though FSRA's administrative requirements for updating information are more restrictive than those of the College. While FSRA requires changes to business or contact information to be updated within five (5) business days, the College allows a 30-day window. Furthermore, during each annual renewal period, the College, in compliance with the Regulated Health Professions Act (RHPA), collects information from registrants about any major offences that they have committed (charges) and any findings of malpractice or negligence. Registrants are required to report criminal convictions and charges under both the Criminal Code and the Health Insurance Act, including any court-imposed restrictions, or incompetence findings from other regulatory bodies within 30 days of conviction.

[29] Information and Privacy Commissioner of Ontario, "Frequently Asked Questions Personal Health Information Protection Act."

Physiotherapists and other health service providers who are compliant with their College's requirements but miss deadlines within the HSP licensing system may be flagged as fraudulent, when the issue is administrative in nature because of redundancy and duplication in regulation requirements. **The OPA recommends that FSRA eliminate dual reporting requirements for regulated health professionals.** Alternatives for health service providers in good standing with a regulatory college may include self-attestation that business information is up-to-date, or FSRA may elect to retrieve publicly available information directly from the regulatory Colleges, thereby reducing the risk of administrative errors.

Expedited Licensing for Regulated Health Service Providers

The OPA recognizes that not all health service providers working in the auto sector are regulated, and as such, licensing and oversight is necessary in these cases. However, regulated health service providers, such as physiotherapists, should not be subject to the same level of licensing processes, fees, and oversight as their non-regulated counterparts. **The OPA recommends streamlining and expediting the licensing process for regulated health providers in good standing with their College.**

Fraud versus Administrative Errors

FSRA defines fraud as "a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to in with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance." While there is publicly available data on the number of reviews conducted for administrative compliance or annual reporting issues, there is a paucity of information on the number of reports and complaints relating to fraudulent billing or treatment practices. **The OPA requested data from FSRA on the number of HSPs that are physiotherapists, and the number of non-compliance and fraud reports associated with FSRA-licensed physiotherapists, but FSRA was unable to provide this information,** which raises questions around the efficacy of allocating considerable resources to fraud mitigation.

The only accessible data on fraud incidence in the physiotherapy profession is held by the College of Physiotherapists of Ontario, which reported that **since August 2023, a – 15-month period - only seven (7) complaints related to "fraud" (all types) were brought forward. Of these 7 complaints, 3 remain under investigation, 1 caution has been issued and 3 physiotherapists are under a program of remediation.** These 7 complaints (all of which have not yet been determined as fraud and are not necessarily related to the auto sector) represent only 1.9% of the complaints received by the College. For additional perspective, of the 12,207 active physiotherapist licenses in Ontario, these 7 fraud complaints even if entirely attributed to the auto sector represent only 0.05% of the profession. It is a very small number, which leads to the observation that FSRA's focus and spending on HSP fraud is disproportionate to other areas of FSRA's work that should be addressed.

In terms of administrative compliances issues, in 2023, only 2.8% of FSRA's licensees required desk reviews, nearly half of which were the result of unsigned OCFs, incorrect HCAI codes, or untimely updates to business information. When conducting on-site reviews, FSRA identified

unsigned OCFs and failure to update business information as the primary reasons for non-compliance. Noncompliance does not meet either the definition or intent of being labelled as fraud.

The OPA acknowledges the importance of administrative compliance, however, the discrepancy between the reporting requirements of the College of Physiotherapists of Ontario and FSRA creates administrative challenges for physiotherapists. Given that most reviews reveal administrative gaps as the primary offense, the OPA emphasizes that a core feature of fraud is the intention to receive improper payment or personal gain. It is essential, for the sake of efficiency, cost, and fairness, that FSRA acknowledge the difference between wrongful and criminal deception versus unintended errors resulting from administrative burdens, which arise from restrictive timelines and redundant reporting requirements. To reduce the frequency of administrative errors and optimize tracking of fraud, several proposed solutions can be combined, including:

1. Enabling HCAI-based completion and submission of all OCFs with electronic signatures;
2. Allowing viewing of HCAI forms by claimants to verify their identity and information;
3. Allowing HSPs to view all claims submitted with their license number;
4. Collecting contact and business information from regulatory Colleges.

Defining High-Risk Health Service Providers

An additional challenge when attempting to identify, investigate, and respond to fraud is the lack of a clear, consistent definition for what constitutes a high risk HSP. FSRA has noted that there are several factors that contribute to the determination of a high risk HSP, however, this process is not clear to HSPs, claimants, or the public. Without standardized criteria for what qualifies as high-risk, it is not possible to effectively track and mitigate fraudulent behaviour. The OPA has identified additional concerns relating to data collection for the determination of a high risk HSP, such as the risk of incorrect interpretation of data collected, resulting in inappropriate determination of high-risk status.

Restricting Consumer Choice and Healthcare Accessibility

HSP licensing through FSRA restricts consumers' ability to choose their health service provider. In rural and northern communities, there is a severe lack of physiotherapists, and when an individual sustains a motor vehicle accident, they may only have access to one physiotherapist, who may not be licensed with FSRA. In some communities, the nearest town or city is several hours away, and claimants are left with no option to pursue care under their auto insurance. FSRA licensing requirements not only limit accessibility based on geography but also limit accessibility to physiotherapists and other health service providers who speak specific languages or can accommodate cultural health practices. Opportunities for FSRA to reduce restrictions for regulated health providers and claimants in rural and remote areas include:

1. **Allow for temporary licensing with FSRA to treat auto insurance claimants;**
2. **Offer reduced licensing rates for those in rural or Northern communities;**
3. **Remove the requirement for FSRA licensing for regulated health providers**

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In summary, the OPA stresses that without adequate data on the impact and effectiveness of the current HSP licensing and fraud-mitigation system, it is difficult to offer clear solutions. It is critical that FSRA recognizes the following barriers to effectively monitoring and addressing fraud before implementing a new system or series of systems:

1. There is no data on the number of fraud cases committed by health service providers across various professions;
2. There are several administrative gaps in the current licensing system and HCAI system, which leads to falsely identifying health service providers as high risk or fraudulent;
3. Redundant regulation is a major cause of administrative errors, which are flagged as fraud;
4. There is no transparency between health service providers and claimants to verify information;
5. **The specific data that will be tracked remains unclear.**

With respect to barrier #5 in the list above, it is important to note that data tracking will be ineffective until the administrative aspect of HSP licensing and HCAI are improved. Minor, unintentional errors resulting from administrative redundancy and complexity must be addressed first for any type of digital tracking system to be able to identify major outliers or significant events that may be considered fraud. If the recommendations to address administrative inefficiencies and errors are not implemented, any tracking system applied will continue to track and flag non-fraudulent behaviour and will be unable to distinguish between true fraud and administrative error.

The OPA appreciates the opportunity to offer commentary and recommendations to the 2024 auto sector consultations. For correspondence about this submission, please contact Aleksandra Nikolovski, Project Manager at OPA at anikolovski@opa.on.ca. We would be pleased to continue discussions around the points made in this submission.

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