

Presentation  
To  
Standing Committee on General Government  
Regarding  
Auto Insurance  
By  
Ontario Chiropractic Association  
May 1, 2013

Contact: Dr. Bob Haig, CEO  
Ontario Chiropractic Association  
200-20 Victoria St.  
Toronto, ON  
M5C 2N8  
416 860 0070  
[rdhaig@chiropractic.on.ca](mailto:rdhaig@chiropractic.on.ca)

Good afternoon,

I'd like to start by thanking you for the opportunity to discuss auto insurance in the province. The Ontario Chiropractic Association and its members appreciate the opportunity to share our views on this subject.

Ontario chiropractors provide care to a wide variety of motor vehicle accident patients and so, we recognize the importance of rigorously regulating motor vehicle insurance and combating fraud. We appreciate the government's efforts to do so.

As experts in musculoskeletal injuries, Doctors of Chiropractic are primary care practitioners with the duty and authority under the Regulated Health Professions Act and the Chiropractic Act to diagnose. Their practice focus is musculoskeletal, much of which is neck related. They are extremely well trained practitioners for the management of most auto accident-related soft tissue injuries, which are the majority of claims.

Over the course of our presentation we will address three specific areas where our members have identified challenges with current regulations. I will then offer our recommendations.

**These issues are:**

1. The \$3,500 hard cap on benefits for patients with what are defined as "Minor Injuries";
2. The nature of the assessment process for determining claimant entitlement;
3. And finally, the administrative burden and additional layer of regulation proposed on an already highly regulated health profession.

Following my presentation, I look forward to answering any questions you may have about the issues raised and our recommendations for how to address them.

**1. HARD CAPS ON BENEFITS**

There is a \$3,500 hard cap on benefits for motor vehicle accident patients with Minor Injuries, \$2,200 of which is pre-approved in the Minor Injuries Guideline.

The Minor Injury definition and the provision for those with minor injuries to participate in the MIG, was one of the most significant features of the 2010 auto insurance reforms.

We are supportive of a pre-approved set of services and the MIG framework. We are also fully supportive of the Minor Injury definition. However, after utilizing the MIG for more than two years, our members have identified a number of issues.

The majority of injuries treated by chiropractors are minor injuries as defined in regulation. And in a majority of those cases, the funds available are sufficient.

However, there are some patients for whom the absolute hard cap of \$3,500 is insufficient to cover their required treatment. Some patients have multiple injuries and diagnoses that impact recovery; sometimes what appear to be simple conditions turn out to be more complicated than anticipated. In such cases, recovery is a longer and more expensive process.

In fact, the most recent and authoritative scientific evidence, from *the Bone and Joint Decade 2000-2010 Task Force on Neck Pain and its Associated Disorders*, indicates that most people with neck pain will not have full resolution and that a small number can be expected to go on to have chronic problems.

In its current form, the guideline is not flexible enough to deal with these patients who do not recover within the usual time frame; we feel the guideline must be able to accommodate these patients' needs. These individuals have purchased insurance and have a right to expect access to the care they require as a result of an accident.

**We Therefore Recommend:**

- That the Statute Accident Benefits Schedule be amended to provide for medical and rehabilitation benefits beyond the current Minor Injury cap of \$3,500 when that is required.

**2. ASSESSMENTS**

There are times when a dispute arises between a claimant and an insurer on the nature and extent of an injury and the benefits to which the claimant is entitled, including whether or not the patient's injuries are Minor Injuries.

The Statutory Accident Benefits Schedule (SABS) requires that an insurer who declines to approve a treatment plan must provide "medical reasons" for doing so. Despite this requirement, chiropractors in Ontario continue to identify circumstances where a patient's claim is denied, but no medical reason is provided. It appears that in some cases denials are made by claims adjudication staff without any medical or health care expertise or input at all. This was clearly not the intent of the legislation.

Further, in those cases where a third party assessment is completed it is rarely completed by a peer—that is, another chiropractor.

Past iterations of the SABS have determined patient entitlement in different ways. In the 1980s, entitlement was at the discretion of the insurer's medical advisor. This was clearly inappropriate and the legislation swung toward putting much greater reliance on the opinion of the treating practitioner. This was also problematic, and from there it shifted to a system of neutral assessors.

The 2010 iteration, under which we now operate, puts the decision back in the hands of the insurer appointed medical professional. The pendulum has swung too far back.

Past regulations have supported peer evaluation to assess the reasonableness of treatment plans; when a question of whether or not a chiropractic treatment plan was reasonable for a particular patient, the insurer would ask a qualified, independent, third party chiropractor.

We would strongly recommend that this principle be reinstated. Reinstating a process that utilizes the peer to peer assessor model will ensure a level of clinical rigor and fairness for claimants such that they can receive the care they need, but not more than they need.

A second issue with respect to assessments and assessors is that there are no standards for the quality of the assessments or the qualifications of the assessors. There should be. Claimants should be entitled to expert assessments by a trained and qualified assessor.

**We Therefore Recommend:**

- That the Statutory Accident Benefits Schedule be amended to include the principle of peer assessment to determine the reasonableness and necessity of a treatment plan.
- That criteria and qualifications for assessors and the quality of assessments be established in consultation with experts from the professions involved.

### **3. DEALING WITH FRAUD**

The OCA supports both efforts to reduce fraud in the system and the recommendations of the Anti-Fraud Task Force.

However, our members have identified a number of challenges with anti-fraud regulations over the last 2 years.

#### **Statutory Declarations**

*Section 46.2 of SABS—the Duty of the Provider to Provide Information*—and its use of Ontario Regulation 194/11 which sets out a provider's obligation to provide information, is being abused. Requests from insurers are often unnecessarily complex and demanding, both in terms of the quantity and the type of information they require providers to submit. These requests have also given rise to privacy concerns.

OCA members are concerned that many of these additional requirements are particularly onerous to small clinics, impacting access to care.

As an example, an OCA member recently forwarded us a Statutory Declaration that he was asked to complete and sign. It was 76 questions over 18 pages and included, as an example, *"Detail any equipment used, provide the serial number and model #, last inspection date, and when purchased"*. This is significantly more than is reasonably required.

Ultimately our view is that while rigorous anti-fraud regulation is important, there needs to be a balance between such efforts and fair access to reasonable and necessary care.

#### **Licensing of Clinics and Practitioners**

The Task Force also made recommendations on licensing clinics, and the Minister of Finance yesterday announced the government's intention to:

*"Give the Financial Services Commission of Ontario the authority to license and oversee health clinics and practitioners who invoice auto insurers."*

This is an important principle which we fully support. However, there is a very significant difference between individual Regulated Health Professionals and rehabilitation clinics that are not owned by regulated health professionals. A regulated health professional's entire practice, including their business practice, is already regulated by their legislated regulatory college.

The Government's proposal will create an added layer of regulation where highly effective regulation already exists. There is the potential for this to be expensive, complicated, and an unnecessary burden. The higher administrative costs would eventually be passed onto consumers, whether those consumers are drivers or taxpayers.

This potential burden is eased, without compromising anti-fraud measures, if a streamlined, simplified approach is used in circumstances where the clinic is owned and controlled by a regulated health professional. Most facilities are, in fact, individual practitioners, most of whom are small business owners.

Willie Handler and Associates in their report on this issue recommended a tiered approach to licensure and we strongly urge the adoption of a tiered model.

An enhanced registration process through Health Claims for Auto Insurance (HCAI) would probably be sufficient for Regulated Health Professionals such as chiropractors.

**We Therefore Recommend:**

- That requirements to provide information be reasonable and not be an unnecessary burden for patients and providers.
- Regulated Health Professionals should have a streamlined licensing process because they are already regulated. For clinics owned by non-regulated Health Professionals, a full, detailed licensing process is needed.
- That the present HCAI system be enhanced to include a more detailed registration process for Regulated Health Professionals.

Again, I would like to reiterate that the OCA and its members greatly appreciate being able to present our views on these issues. We firmly believe that these consultations are crucial to continuing improvements in the regulation of auto insurance in the province, and we appreciate government's active engagement with stakeholders.

Thank you very much.