OPA Executive Summary Jan 22, 2024

Addressing Psychological Impairments Without Altering the Existing SABS: A Blueprint for Equitable Access to Benefits

The Ontario Psychological Association (OPA) represents psychological health practitioners who provide assessment, treatment and rehabilitation as well as Insurer Examinations (IEs). Our members have a comprehensive and evidence-informed perspective on the Statutory Accident Benefits Schedule (SABS). We are particularly focused on the need to correct insurers' unfair denial of benefits for accident victims with psychological impairments including MTBI/Concussion. (For the purposes of this discussion, the terms "injury" and "injuries" have the same meaning as "impairment" and "impairments" respectively as used in the SABS. The term psychological disorder is also used interchangeably with psychological injury and psychological impairment).

The 2023 Budget describes fairness as a key objective for fixing auto insurance. The Budget also stated:

> *The government is taking action to make auto insurance more affordable. The government will continue to make progress on previous commitments, including cracking down on fraud and abuse and considering options to provide more choice, reduce disputes and improve health access and outcomes for people.*

This executive summary and the accompanying submission first focus on:

- Fairness, particularly regarding fair access for accident victims with psychological impairments; and
- reducing disputes and improving health care access.

We describe current problems, and provide solutions to make the auto insurance system work better to achieve the government's goals **without changing the current SABS**. We also provide recommendations and solutions **within the current SABS** to address the government's other goals: Choice; Control cost, and Crack down on organized crime, auto theft, and fraud. The accompany document provides background information.

FAIR ACCESS TO BENEFITS FOR ACCIDENT VICTIMS WITH PSYCHOLOGICAL IMPAIRMENTS

The OPA supports government initiatives to determine fair and transparent risk rating and premium determination. However, this is only a part of providing fairness for consumers. Fairness requires fixing unfair and discriminatory insurer denials of benefits for accident victims, especially for those with psychological impairments. Accident victims with psychological impairments are entitled to fair consideration of their applications for care. However, insurers often fail consumers with discriminatory and unfair denials.

CURRENT BARRIERS FACED BY ACCIDENT VICTIMS WITH PSYCHOLOGICAL DISORDERS:

1. Lack of effective monitoring, supervision, and enforcement to ensure fair claims processing by insurers

The SABS is a first party accident benefits system to provide timely access to care. Accident victims with psychological impairments are vulnerable consumers and dependent upon their insurer to fairly consider their applications for care. There is not sufficient enforcement of this insurer obligation. When the insurer fails to meet their obligations and unfairly denies a benefit, the denial must be addressed by the individual accident victim through the complaint or dispute resolution processes, while access to treatment is put on hold. This process is often not timely or realistic for accident victims whose psychological impairments make these processes even more challenging.

2. Insurers' lack of knowledge regarding psychological impairments

Psychological impairments are not minor injuries. Insurers' unfair denials of applications demonstrate a lack of knowledge regarding psychological impairments and mistakenly view them as less serious than physical disorders.

3. Discriminatory attitudes, beliefs and behaviours toward accident victims with psychological impairments

The lack of accurate knowledge regarding psychological impairments allows decision making to be based on stereotypes that reflect stigma and discrimination. Too often, accident victims with psychological impairments are unfairly presumed to be exaggerating or malingering. This results in barriers as well as excessive and unfair denials.

Accident victims with psychological impairments are unfairly required to provide "compelling evidence" of a psychological impairment when applying for approval for an assessment to plan treatment. The determination of "compelling evidence" of a psychological impairment often requires the completion of the very assessment that the insurer is denying.

4. The minor injury definition and the minor injury guideline (MIG) are misused to unfairly deny care for accident victims with psychological impairments

The current minor injury definition and the MIG are not the problem and do not need to be changed. The definition and guideline are clear, internally coherent, and are being successfully applied to the majority of accident victims. The SABS state, *"minor injury" means one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury; ("blessure légère").*

There is clinical consistency in the types of treatments and MIG providers required; intensity; duration; and the onset and recovery course of these injuries. The inclusion of "clinically associated sequelae" supports addressing issues that are incidental to treating the minor physical injury, and these issues are assumed also to be minor and not disorders.

In spite of the clarity of the minor injury definition and the MIG description, they are frequently misused to unfairly deny applications for accident victims with psychological impairments. The insurer denials incorrectly state, "the diagnosis indicates a minor injury and care is limited to the MIG".

The solution to is to stop the insurers' unfair denials due to misuse of the minor injury definition and the MIG, not to amend the definition or the MIG as has been proposed by some stakeholders. Any changes, even if intended to provide clarification, would create complexity, confusion, and disputes. Such changes are not necessary. Any blurring of the distinction between minor injuries and psychological impairments suggested in some proposals is scientifically wrong, false, and misleading. Explicitly adding "psychosocial issues" to the minor injury definition, or adding "treatment by a psychologist" to the MIG would be misused to unfairly reinforce the false assertion that psychological impairments are minor injuries and are to be treated within the MIG.

5. Specific problems associated with denial of initial assessments to plan care

Accident victims with psychological impairments face unfair additional barriers, delays, and denials to their applications for initial assessment to plan treatment. To complete the OCF 18 application for funding of a proposed assessment, the treating psychologist of the patient's choice must complete a "pre-assessment" to gather clinical information from the patient. Applications should be presumed to be reasonable and necessary unless the insurer has a specific "medical or other reason" to the contrary. Without this assessment, no treatment can be proposed. An insurer's denial of funding for an assessment, is defacto, denial of treatment.

The obligation of insurers to fairly consider applications for assessment is reinforced in LAT decisions. In spite of the rigorous up-front application process and the LAT's confirmation of the expectation for fair and reasonable insurer decision making, there continue to be frequent, unfair insurer denials of assessments to plan treatment for patients with psychological impairments. At best, the unfair insurer denials delay care, create disputes, and add costs to the process. The unfair insurer denials often entirely derail access to care needed for the recovery process.

6. Fairness precludes allowing an option to reduce premiums in exchange for agreement to be restricted to the Insurer's PPN

A patient's choice of treating psychologist at time of injury is critical for effective recovery from psychological impairments, and this freedom to choose is allowed in the SABS. Assessment and treatment of psychological impairments requires the patient to disclose and explore highly sensitive and distressing thoughts, feelings and behaviours. Patients must trust their treating psychologist to be open to this process. In addition, accident victims must trust their treating health professionals to submit applications for further treatment, disability certificates, and applications for other benefits. They must trust that their treating health professionals can focus fairly on their needs and not be conflicted about maintaining their status as a preferred provider.

The differences between the current situation where in insurers offer voluntary utilization of their PPN and a restricted or locked- in model are profound. The SABS, section 46, describes the requirements for consumer protection when insurers offer voluntary use of their PPNs to injured claimants. Proposals to allow the insurer to offer the option of a reduced premium in exchange for agreement to be restricted to the insurer's Preferred Provider Network (PPN) are completely incompatible with this foundational need for trust. The inherent conflict of interest between the treating health professional's obligation for the welfare of the patient and their self interest in maintaining their status as a preferred provider, undermines necessary trust in the treatment relationship.

PPNs are actually unnecessary. It is important to acknowledge that the licensing of health professionals who are able to bill the auto insurer already provides a FSRA vetted network of health professionals.

SOLUTIONS:

1. Effective FSRA supervision of insurers' "policy servicing"

FSRA has recently announced the Automobile Insurance Supervision Plan 2023-2025. The monitoring and enforcement described in the supervision plan are essential to changing insurer behaviour to make the SABS work more effectively. (Reference: Automobile Insurance Supervision Plan 2023-2025)

The supervision plan has potential to make a significant difference to identify and remediate systemic issues that harm accident victims. As part of this plan, FSRA should:

- Require insurers to confirm their claims adjusters have basic knowledge of psychological impairments to review these applications fairly
- FSRA must issue Guidance that a denial which relies on the unfair assertion that the psychological impairment is a minor injury, fails to include a proper "medical or other reason". The Guidance must clarify that this unfair insurer claims handling practice does not meet the obligation to provide a proper and timely response. The services may be provided until a response that includes the specific medical or other reason is provided.

2. Do not allow an option to reduce premiums by agreeing to be restricted to the Insurer's PPN

Maintain the current system which allows insurers to offer use to their PPN at time of injury and protect the injured person's right to choose alternative providers who are not in the insurer's PPN with no negative consequences.

REDUCE DISPUTES, IMPROVE HEALTH ACCESS AND OUTCOMES FOR ALL ACCIDENT VICTIMS

CURRENT BARRIERS TO HEALTH ACCESS WHICH CAUSE DISPUTES AND INTERFERE WITH OUTCOMES:

1. Insurers' review process lacks communication and transparency

Insurers do not give the accident victim or the proposing health professional a reasonable opportunity to respond to any questions when they review an OCF 18. Instead, they deny the benefit. This creates an adversarial atmosphere, adds disputes and costs, as well as delaying and harming recovery outcomes.

2. Insurer denials do not include "medical or other reasons" and lack an explanation of why a benefit is "not reasonable and necessary"

Many insurer denials do not include specific "medical or other reasons" and lack a specific explanation of why a benefit is not reasonable and necessary. This failure to provide transparency and the reason for the denial causes disputes, delays access, and harms recovery. Decisions issued by the Licence Appeal

Tribunal (LAT) document this failure and the need for insurers to provide clear and sufficient reasons and information for denial of an application.

3. Insurers' adding criteria to "reasonable and necessary"

Some insurers add their own criteria to reasonable and necessary, change the requirement to "essential", or demand "compelling evidence" for the proposed services. Criteria that outline what is included and excluded from reasonable and necessary medical and rehabilitation benefits are already included in the SABS. Further defining reasonable and necessary would actually create further complexity, generating disputes regarding the interpretation of any new terms.

4. Lack of fairness and transparency in "partial approvals"

Insurers deny or reduce specific items in an assessment or treatment application without providing specific reasons. These are often defacto denials of services but are misleadingly described as "partial approvals".

SOLUTIONS:

1. FSRA should immediately initiate a multi stakeholder process to improve communication as well as to update the OCF 18

Insurers have commented that they do not have sufficient information to make informed decisions and therefore request additional information or require an IE. To address this proactively, a working group of insurers who review applications, psychologists and other health professionals who submit applications should be convened to report within six months. The group should produce recommendations, including updates to the OCF 18, to improve communication to provide a basis for fair decision making.

2. Enforce the insurer's obligation to provide a specific medical or other reason to claim services on an OCF 18 are not reasonable and necessary

FSRA guidance should enforce insurers' obligations to provide specific and complete medical or other reasons for any denied services on a treatment plan within the ten day timelines of the SABS. FSRA should also confirm the accident victim can proceed with the proposed services until a complete response is provided.

3. FSRA should direct HCAI to produce more robust reports, better utilizing the wealth of available information.

More comprehensive and accessible reports are needed to provide relevant data including patterns of insurer denials. Extensive information is currently entered into HCAI regarding every application and every insurer response. More specific data reports regarding patterns of insurer denials is required to identify questionable insurer and/or provider practices for further analysis. FSRA should provide guidance to address repeated systemic issues.

CHOICE

Insurers' have proposed "choice" or "optional" coverages at the time of the purchase to allow individual consumers to reduce their insurance costs. Any additional options at this time would add complexity and confusion, as well as create disputes, with no assurance of a significant positive impact on costs and premiums.

The most harmful and problematic of the options which were proposed would be to allow an option to be restricted to the insurer's PPN for health care in exchange for premium reduction. It would be exceptionally harmful to the recovery of accident victims with psychological impairments and this option should not be allowed.

PROBLEMS:

1. Increased optionality would not save costs. It would unfairly transfer costs to the most vulnerable, who can least afford it

Pooled risk requires that the pool of insureds includes both those with high and low risk of use of the benefit. If those with lowest risk of needing a benefit opt out of the benefit, for example income replacement, then those who are most vulnerable, (both most likely to need the benefit and least likely to be able to afford it) are faced with increased costs for the benefit.

2. Transfer of costs to public health and welfare

If consumers do not have sufficient auto insurance coverage to provide necessary care and other benefits such as income replacement, these needs and costs do not disappear. The overall burden is transferred to public funding sources.

3. Consumers' ability to make well informed decisions regarding current choices must be improved.

The consumer's response panel documented the failure to provide required information including ownership of a brokerage firm. The failure to be provided information regarding the benefits and costs of optional CAT coverage is well documented

SOLUTIONS:

1. Do not allow an option to offer a reduced premium in exchange for an agreement to be restricted to the insurer's PPN for health care.

Maintain the current system which allows insurers to offer use to their PPN at time of injury and protect the injured person's right to choose alternative providers who are not in the insurer's PPN with no negative consequences.

2. FSRA must enforce sellers' obligations for disclosure to customers.

FSRA's commitment to enforce this obligation is described FSRA Automobile Insurance Supervision Plan 2023-2025

3. The Auto insurance product must not be made more complex

It is essential that the standard insurance policy not be reduced or made more complex. Any options introduced should be to enhance the current policy amounts.

COST CONTROL

The cost of auto insurance premiums is an ongoing focus of attention. Given the relatively small and decreasing percentage of costs of med/rehab benefits, even removing these benefits entirely would not create significant savings. The large and growing costs due to organized crime, auto theft and auto body repair must be controlled.

PROBLEM:

Proposals to reduce accident benefits would harm those who are injured, by further reducing and restricting access to care. This conflicts with the goal of improving health access and outcomes. Reducing benefits and restricting access would also transfer costs to public health and welfare systems.

SOLUTIONS:

Cost Control requires addressing the high and rapidly increasing costs of organized crime, auto theft, auto body damage including: towing, storage, rental, and repair.

Many of the cost controls that have been put in place for health providers are absent from the auto body damage sector including: FSRA fee schedules; FSRA licensing; use of HCAI for direct payment, etc. This announced provincial licensing of towing facilities seems to be a step

CRACK DOWN ON ORGANIZED CRIME, AUTO THEFT, AND FRAUD

Cost control requires addressing organized crime, auto theft and fraud.

PROBLEM:

The current explosion of organized crime and auto theft is documented in insurance publications and the general media. This creates both a public hazard, for example in staged accidents and car jacking, and untenable costs.

SOLUTIONS:

We fully support the government's initiatives which have led to more effective utilization of data to identify fraud and crime and utilization of multi-jurisdictional anti-crime initiatives. Recent media coverage shows the extent and cost of car theft and beginnings of success at identification and recovery. This enforcement may may also deter other bad actors.