Ontario Rehab Alliance
51 Sophia Street
Peterborough ON
K9H 1C9
www.ontariorehaballiance.com
Toll Free: 866-475-2844
Toronto: 647-317-7244

PRESENTATION TO THE STANDING COMMITTEE ON FINANCE & ECONOMIC AFFAIRS

PRE-BUDGET HEARINGS – MARCH 22, 2013

Presenters: Nick Gurevich, President

Laurie Davis, Executive Director

The Ontario Rehab Alliance formed in 2009. We are a non-profit association representing more than 90 service provider organizations employing more than 3500 professionals. It is these health care professionals who are the primary providers of health and rehabilitative services to Ontarians who are injured in automobile accidents.

INTRODUCTION

Auto insurance is complex, but the Alliance understands it to be comprised of three facets, or pillars:

- **Premiums**
  Consumers want and deserve reasonably priced insurance
- **Profit**
  Insurers are entitled to make a reasonable profit or return on investment
- **Protection**
  Accident victims must be properly protected by the insurance they purchase – which is in fact the premise of any insurance scheme.

KEY MESSAGE

Subsequent to the changes of September 2010 these three pillars have been out of balance: the last reform concentrated on ensuring profitability of the insurance companies by reducing the coverage and benefits offered to victims. The result was exactly that: insurer profitability has hit record levels while protection of the victims has been reduced to the second poorest in Canada, with no relief in the cost of premiums paid by consumers. We believe there is more to fixing the system than merely changing the cost base of insurance companies. While we believe that premiums can and should be lowered, we believe that changes to address the serious protection deficits in our system today can be accomplished while still maintaining profitability.

BACKGROUND

The changes of 2010, which dramatically reduced benefits, followed the last, mandated 5 year review of auto insurance and were intended to respond to threatened profitability and the presumed impact of fraudulent practices. The changes were not discrete nor focused on health provider business practices but were across-the- board systemic changes to the benefit system with significant impact on the ability of many of those injured to properly recover and return to their pre-accident levels of function.

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SUMMARY OF IMPACTS

MINOR INJURY GUIDELINE

A minor injury guideline (MIG) which limits benefits to $3500 – the lowest in Canada- was put in place. Eighty per cent of all accident injuries fall into this minor injury category.

Most providers agree that a MIG can work well, but the current guideline is flawed because there is no clear path out of it for those who are relegated to it inappropriately. Further, though the guideline has specific language that acknowledges the impact of pre-existing conditions on treatment and recovery, and indicates that such circumstances should exclude those individuals, we hear many stories from providers about accident victims being unable to access the benefits they paid for when their recovery requires more extensive treatment.

Here are but two of the many stories:

- A 72 year old Leukemia patient, hit by a transport truck, has been experiencing severe anxiety since the accident. He should have been excluded from the MIG on two counts – the impact of his leukemia as a pre-existing condition and from the purely psychological aspect of the anxiety.

- A 52 year old municipal worker with Parkinson's has been trying to continue to work following his accident. The medical examiner hired by the insurer insisted that Parkinson's does not affect his recovery from his injuries. Parkinson's is a neuromuscular condition. How could this disease not affect his healing time and other muscular injuries, if he already has issues associated with neuromuscular functioning? No scientific literature was provided to support this finding by the assessor.

SERIOUS INJURIES

Coverage for those with serious non-catastrophic injuries was reduced from more than $100,000, to $50,000 in benefits.

As a result, it is estimated that potentially thousands of people with serious injuries are exhausting their benefits in six months to a year- well before they have had a chance to recover. Without ongoing support, these individuals will not improve, and in fact are likely to deteriorate, and may lose any chance of returning to work. Some may eventually be deemed catastrophic but will experience a gap in coverage of several years before the catastrophic determination is made.

Here is but one such example:

- Pre-injury, a 17 year old honours student worked part time in the family business, was an accomplished musician and played competitive soccer. Nine months ago she was hit by a bus and sustained a brain injury. As a result she has constant headaches, dizziness, fatigue, concentration and memory problems and depression. With therapy and tutoring, she has been able to graduate from high school and is now part way through her first year of university. However, she must spend all of her time on her studies, and is no longer engaged in any social or leisure activities. Her funding just ran out. Without support she is not expected to pass her courses.

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CATASTROPHIC IMPAIRMENT

The Financial Service Commission of Ontario (FSCO) and the Ministry of Finance are now also actively looking at changes to the definition of Catastrophic impairment that could cut in half the number of victims who are currently able to access this higher level of treatment.

This group makes up only approximately 600 victims per year, but these are the most severely impaired suffering from spinal cord injuries, paralysis, severe brain injuries and amputations. The recommendation which FSCO presented to the Ministry of Finance is on a collision course with the promise made in the last budget: to make the new definition of Catastrophic injury "medically based". We say this because there is an overwhelming consensus in the healthcare community that FSCO's recommendations are flawed and inconsistent with medical literature, the World Health Organization and current best practice guidelines.

CONSUMER EDUCATION

Under the guise of "consumer choice" the 2010 change introduced optional benefits wherein consumers could 'buy up' to restore their previous medical-rehabilitation benefit levels. But there was little to no consumer education offered about the insufficiency of the new basic benefits package. This resulted in only 1.4% of consumers making this choice, with most of the rest having no understanding about the impact of this on their coverage.

ACCESS AND EQUITY

Not only has the quantum of benefits has been reduced but the barriers to access benefits have increased.

Cancellation of the mandatory Insurer Examination has resulted in a concentration of disproportionate and arbitrary power in the hands of adjusters with no prior medical training or ability to make a proper medical decision. The result is that half of all applications for healthcare services for the seriously injured are denied.

The regulatory burden on victims and healthcare providers to comply with the regulations is at record high levels with serious consequences for non-compliance. There are no meaningful consequences for insurers who don't comply with their regulatory obligations or retain services of unqualified healthcare professionals. In fact some insurer - hired assessors have such a poor reputation for bias (as supported by numerous decisions handed down by court judges and arbitrators) that FSCO's last industry 5-year review recommended a review of this system. However, this item remains as one of the very few not addressed to date.

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RECOMMENDATIONS

The sufficiency of the $50,000 coverage cap for serious non-Catastrophic injuries, and $36,000 for attendant care benefits must be examined not only in the context of actual costs to provide healthcare in 2013 and beyond, but also in relation to what is offered by our public system. Many compare auto insurance benefit systems between various provinces. This is misleading because most other provinces offer publicly funded healthcare services which are more comprehensive than those now offered in Ontario. As a result, supplemental reliance on the benefits offered by auto insurers is less critical elsewhere.

'Optional' benefits for rehabilitation that most would consider essential for return to work and function needs to be reviewed. This is important because the auto insurance product is mandatory yet very poorly understood.

The mandatory Insurer Examination process should be reinstated following a prompt review with reference to the government's recommendations in the previous 5 –year review of Auto Insurance, and those of the Anti-Fraud Task Force's Report. Credentialing, experience standards and accountability must be imposed on the independent medical examiners hired by insurers who are now able to arbitrarily make these determinations. Stakeholders and the media have offered many useful suggestions to address the current issues of bias and low standards. These include a three-strike rule (where previously unacceptable work has been flagged by triers of fact), disclosure of annual fees paid by insurers to their medico-legal assessors, and public disclosure of "secret cautions" issued to assessors. These are just a few examples of simple solutions which will return confidence to the sector.

The fraud fighting approach should be targeted - not characterized by a 'dragnet fishing' strategy that negatively impacts all claimants and where every victim is treated as a fraud suspect.

Insurers must be held accountable, as are claimants and providers, to abide by the legislation and regulations. Those with pre-existing conditions and serious injuries must be able to access the rehabilitation they need - and have paid for.

There is currently little transparency and solid data in the auto insurance sector. The insurance industry supplies unsubstantiated numbers and in some cases FSCO accepts them as fact, without question. Such data is then used to drive policy decisions. Releasing the data gathered by FSCO's Health Claims for Auto Insurance (HCAI) system will be a start.

Changes to the Catastrophic definition in the form proposed must be stopped entirely or should conform to the consensus of the healthcare community to ensure any changes are truly medically based.

Addressing the above recommendations would merely be a start in returning protection to a system which has seen systematic erosion to the rights of the 65,000 Ontarians injured every year.