Response to:

Review of Ontario Regulation 237/13 (Industry-wide Rate Reduction Target), made under the Automobile Insurance Rate Stabilization Act, 2003

Submitted by:

FAIR

Fair Association of Victims for Accident Insurance Reform
579A Lakeshore Rd. E, P.O. Box 39522
Mississauga, ON, L5G 4S6
http://www.fairassociation.ca/

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FAIR Association of Victims for Accident Insurance Reform is a not-for-profit consumer organization whose members are accident victims, their supporters and consumers who have an interest in Ontario's insurance system. Our perspective is one of an end user of Ontario's insurance product and we represent those most affected by ongoing changes to coverage, Ontario's accident victims. We appreciate the opportunity to bring the concerns of Ontario's consumers and auto accident victims to your attention.

Consumers in Ontario deserve a break on their auto insurance premiums costs. You would be hard pressed to find someone to disagree on that. So far it has been the injured driver who has paid much of the price for Ontario's insurers lobbying efforts to increase their profits. This isn't just about high premiums; it is about what we are getting when we are injured and try to access what we paid for. Little is said about what the coverage is worth as it continues to be gutted as it was in 2010.

FAIR supports many of the Anti-Fraud Task Force recommendations to cut fraud out of our auto insurance scheme in Ontario. FAIR does not support the re-defining of catastrophic impairment in a way that will make it all but impossible for seriously injured accident victims to access necessary treatment. Nor do we support imposing a $500 fine on injured claimants who fail to submit to an insurer assessment. Insurer assessments or IMEs are without adequate oversight and until rogue assessors are purged from the system and patient safety put first, we see this fine as an injustice.

The war on Fraud should not cause harm to those innocent and legitimate accident victims who will inevitably bear the costs of being labelled a fraudster with delayed treatment and benefits. If there are cuts to be made to accommodate lower premiums, they should not be made at the expense of those who are most in need.

Coverage was slashed in 2010 when our government bent to the wishes of the industry and capped the amount available to most injured accident victims at $3,500. What was proposed as a minor injury guideline has captured 80% of accident victim claims, many of whom are seriously injured. Compounding this problem is the fact that adjusters now have the power to essentially practice medicine by rejecting the diagnosis and treatment plans of attending physicians. This has harmed thousands of claimants who have been unable to access timely treatment and whose lives are irreparably damaged by their insurer's denial or delay of their claim by deflating or minimizing their injuries.

Ontario now has the lowest premium payout in Canada. We also have an unprecedented number of accident victims waiting for hearings in Ontario's courts; there are currently 10,510 cases pending at the FSCO Arbitration Unit. The problem at the core of the mediation backlog has merely shifted to a new venue – one more expensive than the last. Accident victims are still left without timely treatment and without funds for basic living at a very critical point, probably the worst point, in their lives.

http://www.fsco.gov.on.ca/en/drs/Pages/mediation-backlog-initiatives.aspx

http://www.torontosun.com/2013/09/20/car-insurance-cuts

Ontario's insurance companies, whose profits have skyrocketed on the backs of Ontario's injured drivers whom they call fraudsters, have not been held to account for their own deceptive and questionable business practices. Insurers who are delaying and denying legitimate claims by manipulating victim's medical files and deflating claims are contributing to the high costs of claims handling and to the backlog of pending cases in Ontario's court systems.

Instead of cleaning up the shoddy insurer assessments and purging the insurers rogue assessors from the system, FSCO made recommendations to pursue criminal charges against dishonest treatment providers but not against dishonest insurer assessors. FSCO tells us that administrative penalties, AMPS, and an attestation of 'all is well' will be a sufficient way of regulating the insurer assessors. Why a double standard? Is a dishonest assessor any less dangerous or harmful than a dishonest treatment provider? Why not charge both parties with fraud?

When our government is legislating these changes to policy and coverage why is the accident victim so rarely of the greatest consideration? It is the responsibility of the government to look to the interests of Ontario's citizens over the interests of big business, a responsibility made more important by the vulnerability of this group.

Changes in legislation like this are opportunities to clean up the system and to look critically at the causes of the problems that initiate the need for changes in the first place. It isn't just about premiums; it's about what we are getting for our money when we actually have to use the product. For half of Ontario's injured claimants, Ontario's insurance coverage just isn't working.

Going forward in considering what needs to be done to cut the cost of premiums we would ask that you consider the following:

1. Now that Ontario has the lowest coverage, it stands to follow that Ontario's insurers now have the highest profits they've seen in many years, by some reports they have made over $2 Billion in 2012 alone and profits have been on an upward trend in 2013.

2. Increased insurer profits have been achieved by slashing benefits, not by streamlining or by addressing the insurers fraudulent use of bogus IMEs and poor claims handling practices, but solely on the backs of Ontario's disabled and injured with increased denials of legitimate claims and lower payouts to those in need.

3. Increased lobbying on the part of Ontario's insurers to push through changes to the current definition of Catastrophic Impairment will lead to even greater profits for insurers and higher costs to taxpayers who ultimately must pick up the tab through our social systems for the needs of injured drivers who are abandoned by their insurers.

4. Changes to coverage lead to challenges in courts and translate into delayed treatment and benefits to accident victims. The 2010 cuts to coverage have increased the amount of cases pending in our courts while jurisprudence is 'worked out' to legally define the changes. Something to consider when changing coverage, there are years of claims denials that follow – advantage to the insurers and not those injured on our roadways. A definite disadvantage to the taxpayers who must pay what insurers will not and who also

bear the costs of increased court cases. The real costs of mediation and arbitration are borne by the taxpayers in Ontario – the fees charged to insurers in no way cover the costs to keep the system going.

5. In 2012 about half of all injured accident victims were unable to access the accident benefits that were promised to them in their insurance policy.
6. There were over 28,000 applications for mediation in 2012. Most of these accident victims were turned down on the basis of an independent medical examination (IME). Many of Ontario's IME reports are flawed, inaccurate or bogus documents prepared by pro-insurer assessors whose alliance is to the insurer who pays them. IMEs are now of such poor quality that Ontario's triers-of-fact call them useless. An injustice to the accident victims but a bonus to the insurer who commissions them in order to deny a claim. This costly issue was not addressed in the Anti-Fraud Task Force consultation process and the likely intended consequence of higher legal costs for injured plaintiffs also only works for Ontario's insurers; claimants facing bankruptcy are more likely to settle.

Consumers look to our legislators and our government to ensure that we are covered appropriately and that we are charged fairly for that coverage. We are mandated to purchase the product and it follows that there is an expectation that the insurance we buy is a quality product that can be counted on when required.

Cracking down on fraud or cutting costs does not mean that cracking the backs of the vulnerable and cognitively impaired citizens is the right thing to do. The interests of big business (profit, profit, profit) should not surpass those interests of the most injured and disabled among us or our society as a whole. Allowing further cuts to benefits to support the cuts to premiums will only shift the responsibilities and costs to our society and to the taxpayers. Surely accident victims deserve better treatment than to be abandoned by those who are supposed to be looking out for them in a time of need - first by the insurer who fails to live up to the promise of coverage and then by the government who fails to act to protect their interests.

Thank you for the opportunity to express our concerns about what the premium rate drop means to consumers, the drivers who use the product when they are injured on our roadways.

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