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Our Auto Insurance Submission to Finance Minister Fedeli

(This newsletter is an abridged version of our February letter to Minister Fedeli and his Parliamentary Assistant, Douglas Downey.)

"We are responding to the Ministry's request for feedback in its efforts to make auto insurance more accessible and affordable.

Auto insurance in Ontario is segmented according to nine lines of coverage. Our submission focuses on the two lines which represent the largest percentage of claim costs, they being the **Statutory Accident Benefit** and **Third Party Liability-Personal Injury** lines. According to FSCO, in the 2015, 2016 and 2017 calendar years, those lines, respectively, accounted for 58.1%, 56.2% and 52.4% of auto insurance claims costs.

Our Credentials

We bring an informed perspective to the affordability and accessibility dialogue, our organization being a long standing multi-disciplinary health services provider specializing in the assessment and treatment of individuals with serious physical, psychological and cognitive impairments caused by injury and illness.

Our professional staffing complement numbers approximately eighty, covering the major health disciplines: Occupational Therapy, Physiotherapy, Nursing, Social Work, Psychotherapy, Kinesiology and Speech-Language Pathology.

Specialized practice areas include Case Management, Life Care Planning, Future Care Cost Reporting and Loss Analytics. We also have formal relationships with the Physicians and Psychologists of our **Med*Net*®** network.

"We bring an informed perspective to the affordability and accessibility dialogue…"

We are also a FSCO-licensed Provider Business whose motor vehicle injury clients over the years exceed ten thousand. Clients either self-refer or are referred by insurers, personal injury lawyers, hospital discharge

professionals, physicians, employers and workers compensation boards.

Over a thirty-year period our principals have witnessed the changes brought about by the Ontario Motorist Protection Plan (introduced in 1990), Bill 164 (automobile insurance reform implemented in 1994), Bill 59 (introduced in 1996) and Bill 198/5 (further reforms introduced in 2003). They have also operated during the DAC (Designated Assessment Centre) period, and seen the aftermath of the September 2010 and June 2016 reforms.

As active industry participants, we have attended the 2015 and 2016 CTI (Common Traffic Injury) Guideline consultations at FSCO's Yonge Street offices, during which we suggested to Finance, a specific actuarial approach to costing the Guideline's care pathways and the setting of the CTI funding levels. We were also one of the few early adopters of the IBC-developed and managed HCAI (Health Claims for Auto Insurance) system when it launched in 2007, and re-launched in 2010.

"…we note that past attempts at reform have largely been at the instigation of the insurance industry."

Our executive group includes individuals who have had auto, health and disability insurance management, and health and disability benefits consulting roles.

We also note that Ralph Palumbo, a former IBC Vice President, and Peter Karageorgos, a recent IBC commentator, have been speakers at our breakfast seminars, and that in 2017 we submitted our views about the Marshall Report to Mr. Fedeli's predecessor, Mr. Souza.

Promises Unfulfilled

What could be better aligned with the government's policy making and regulatory function than having an efficient, equitable public/private system that has low insurer entry barriers, gives insureds access to funding for the medical, rehabilitation and in-home services they require, and supports them in their return to employment, educational or domestic environments? Why then, have premiums been so high and the claiming experience for medical/rehabilitation care so uneven?

By way of partial response**,** we note that past attempts at reform have largely been at the instigation of the insurance industry, which has promised affordable premiums on at least one occasion. In 2016, for instance, the IBC declared on its web site:

"Changes that took effect on June 1, 2016 make your Ontario auto insurance premium more affordable and give you more choice."

By early January of this year, the IBC's position had evolved to the point where senior spokesperson Peter Karageorgos was quoted by The Star as saying:

"We haven't really had a government that's said, 'okay, let's take off the band-aid and fix the root cause of the problem.'"

Mr. Karageorgos did not hint at what the "root cause" might be. He did, however, go on to advocate a system "overhaul". This is perhaps the IBC's admission that the historical approach to reform has run its course. If so, we would concur, and believe that the solutions must, for perhaps the first time, depart from a better informed understanding of the challenges. It is to this understanding, and therefore the identification of feasible, sustainable solutions, that we dedicated ourselves in our submission.

Past Approaches Familiar

We thought it would be helpful to provide you with a summary listing of specific changes to date, only two of which could be said to be either fraud reducing or efficiency enhancing in intent. Although they have varied in their details, they have had a consistent cost reduction impetus:

1. **Radically reducing** benefit maximums (from $100,000 to $50,00 in 2010; then again in 2016)
2. **Shifting** the cost of former standard maximums to new optional coverages at an additional premium (2010; modified in 2016)
3. **Capping** assessment costs at $2,000
4. **Cutting back** attendant care and income replacement benefits
5. **Re-classifying** approximately 75% of injuries as "minor" and subjecting them, and the large minority of claimants who were corralled into the minor category, to a maximum that was less than 5% of the former maximum (from $100,000 to $3,500)
6. **Tightening** the qualification criteria for Catastrophic Injury benefits
7. **Eliminating** housekeeping, home maintenance and care giving benefits for all but the catastrophically injured
8. **Freezing** health provider compensation at January 2014 levels, which in real terms translates to a 10-15% reduction in insurers' costs of provider services
9. **Controlling both claims handling costs and claim experience-** to the industry's credit- by developing a centralized, rudimentary claim filing system (HCAI: launched 2007; re-launched 2009), the objective also being to reduce fraud
10. **FSCO's proposing a detailed benefit guideline for "Common Traffic Injuries"**, but without costing the Guideline's prescribed services, then shelving it

11. **Rate reduction enforcement**, which even after the "Stabilization" reforms of August 2013, has had little effect, a contention supported by our reading of the technical filing guide developed for insurers, which allows unrealistic profit and expense charges, and perpetuates claims cost-plus *(Editor: inclusive of fraudulent claims)* industry pricing behaviours. This had been alluded to by the Auditor General in his 2011 review of auto insurance regulatory oversight, and indirectly by Mr. Marshall in his report.

Reforms appear to have been one-sided, therefore, but without the achievement of the intended results, which makes Mr. Karageorgos' pleas understandable. Indeed, by their very number, Ontario's 90+ auto insurers, most of which lack the necessary scale, will be challenged to contribute to the affordability and accessibility challenge, since in our view, their focus must now be on:

- **Claims operations efficiency.** *(Editor: Some insurers have been investing in process improvement methodologies and achieving unit cost reductions as a result. All insurers should now embrace these methodologies.)*
- **Quality assurance** as it relates to claim adjudication and administration, given the disparity of adjudication decisions, and variable compliance with the regulations. That a high percentage of AB claims are not paid by the insurers themselves, but are in fact outsourced, perhaps compounds this challenge.
- **Fraud management**. Though the value of fraudulent claims is overstated, the problem will remain intractable unless the cost-plus rate filing and approval (i.e. pricing) process is reformed. We comment further later on.
- **Pricing methodology**. As alluded to earlier, systemic cost-plus pricing is irreconcilable with affordability, and is compounded by the inflated reserving, and expense and profit factors permitted in rate approvals.

"…health plans … administered by health insurers commonly levy far lower expense and profit charges on plans whose annual cash claims are as low as $1,000,000/year…"

With respect to expense and profit charges, you should know that self-insured employer-sponsored health plans (e.g. drugs, treatments by Physiotherapists and other regulated health professionals, dental, out-of-Canada medical etc.) administered by health insurers commonly levy far lower expense and profit charges on plans whose annual cash claims are as low as $1,000,000/year, and arguably, their fraud prevention methods are more

advanced than auto insurers'. *(Editor: Why? Because the plan sponsors demand it.)*

Consequences for Claimants

Why you might ask, is a health services provider delving into the murky topic of auto insurer operations? The simple answer is that the measures taken to date to reach this elusive goal of insurance affordability are illogical and counterproductive from a system management standpoint, and as a result, they are hurting injured people.

We do not want to be viewed as industry or regulator critics. Insurers have difficult jobs, as does the regulator, and our experience is that most adjusters are well-intentioned, caring people. Yet the many cut-backs, deletions and reductions have been detrimental to a significant percentage of our clients.

"…after being available for more than eight years, optional benefits are purchased by less than 5% of policyholders…"

Although most injured clients recover lost cognitive and physical function, in a large number of cases they are people who have had the world fall out from under them when they were injured in their collisions. Either because of their physical and/or cognitive impairments, or the emotional trauma they have suffered, they have been rendered voiceless and unable to advocate on their own behalf.

There are thousands of them, but you will only hear from a handful because neither they nor their families have the energy or emotional stamina to fight denials of legitimate claims, and lawyers are taking on fewer clients because the dispute resolution restrictions deter them from doing so.

Furthermore, the optional coverage that insurers have been required to offer since September 2010 as an accessibility consolation, has not been well promoted, with the result that policyholders who would have purchased it are running out of benefits. Our estimate, based on our own AB client data, is that after being available for more than eight years, fewer than 5% of policyholders have optional benefits.

Where, we ask, has all of this supposedly freed up system money gone? Claimants do not understand why a perfectly reasonable course of treatment, prepared and explained to them by a regulated health professional, and to which they have given their signed consent on the regulator's standard claim form, is denied or partially denied in 25% of cases; this, after waiting up to ten business days or longer for the adjuster's decision. (Mr. Marshall validates this statistic in his report); *(Editor: imagine OHIP being administered in such a way).*

In the interests of moving forward, we will turn the page figuratively and literally at this juncture and focus on our solutions, because we believe they have system-wide application and know that in some respects, they are common practice in other insurance sub-sectors. As such, they hold the promise of managing premium levels, while improving access for claimants.

> ***"The rate setting mechanism must change from being cost-plus-based to target-based. The current process perpetuates premium rate inflation…"***

Sustainable Solutions

We do not deny that our proposed solutions require a change in mindset; we do however, believe that they are overdue.

1. **Encourage auto makers** to make the accident avoidance features that are so common on upscale vehicles standard equipment on all new vehicles.
2. **Avoid further benefit reductions.** If they are going to be imposed, then in the interests of full disclosure, the cost shifting to OHIP and other government-funded programs should be quantified to show their financial trade-offs.
3. **Restore former benefits maximums for the catastrophically-injured** to pre-June 2016 levels. Given the restrictive qualification criteria governing claim approvals for these individuals, by definition, they have undisputed life-long medical, rehabilitation, personal care or vocational needs. Many have devastating brain injuries and some are paralyzed. Even David Marshall drew attention to the plight of these individuals in his report.
4. **The rate setting mechanism must change from being cost-plus-based to target-based.** The current process perpetuates premium rate inflation, and we dare say, acts as a disincentive to control fraudulent claims. Casualty insurers' actuaries know how to target price, so this is not a question of skill, but of will. Further, it is ludicrous to allow the same 25% expense and 5% profit charges for an insurer with 10% market share as for one with 1%.
6. **As a target pricing enabling strategy, centralize the claim processing and adjudication function in a way that makes decisions binding on insurers.** This will ensure that better consistency is achieved, claim cost projections more reliable and system-wide administrative costs lower. HCAI should be more than a claim filing engine. Marshall also proposed a centralized system; ours would be the better one because it would not burden hospitals or physicians."

Postscript: *Though it is difficult to gauge how many of our observations or recommendations were taken to heart, several of the April 10 budget provisions appear to align with many of them. Comments are welcome.*

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