

The Coalition of Health Professional Associations in Ontario's Automobile Insurance Sector ("The Coalition") is pleased to have the opportunity to provide a submission to the Financial Services Regulatory Authority (FSRA) regarding the proposed 2021-2022 Statement of Priorities.

The Coalition represents over 40,000 front line health professionals from nine regulated professions involved in the assessment and treatment of Ontarians receiving services within the auto insurance sector. As such the regulated health professionals we represent are key stakeholders in the auto insurance system. As a Coalition we advocate for timely access to assessment and care for claimants within a sustainable, cost-effective auto insurance system for all Ontarians.

The Coalition's feedback addresses those cross-sectoral and sector-specific priorities and themes that are necessary to ensure auto claimants' access to timely, safe and necessary health care services.

## A. Principle-based Regulation

The Ontario Auto Coalition supports FSRA's desire to transition from a rules-based to a principles-based regulatory (PBR) approach. We support the notion that establishing principles that protect the interest of Ontarians while allowing for increased competition among financial services providers will better serve the public through innovation and increased choice. We also recognize that a PBR approach creates a more attractive business environment that will generate benefits including cost savings for all Ontarians.<sup>1</sup>

Likewise, we applaud the development, review and refinement of a Guidance Framework to ensure that the desired outcomes of the transition to a PBR approach are being achieved. At the same time, it is important to also acknowledge that within "*...principles-based systems there is clarity about the regulatory objectives but the process to reverse-engineer these objectives into meaningful compliance at the firm level is ambiguous... [and this] ... ambiguity leads to social costs...*"<sup>2</sup>

In considering processes to achieve the desired outcomes and avoid potential social costs, we suggest a measured and thoughtful approach. It is easy to understand how more regulatory flexibility will support insurance companies to develop new products and reduce costs. However, that flexibility should also facilitate improved support to consumers at the point-of-care following an accident -- when the consumer who purchased the insurance product becomes the consumer (and claimant) of the benefit of the insurance product. It is an unfortunate fact that historically consumers in Ontario confront an adversarial process when accessing insurance, which is reflected in the widespread – and indeed necessary use of personal injury lawyers.

**The Coalition therefore recommends that:**

- **All rules-based regulations that protect consumers' timely access to their benefits are maintained until such time as the new PBR has evolved sufficiently to ensure a 'cooperative approach' is embedded in the new system and consumers have improved access to benefits they purchased.**

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<sup>1,2</sup> Frantz, Pascal and Instefjord, Norvald, Rules vs Principles Based Financial Regulation (November 25, 2014). Available at SSRN: <https://ssrn.com/abstract=2561370> or <http://dx.doi.org/10.2139/ssrn.2561370>

## B. The Complaints Process

The Coalition supports FSRA's goal to create a complaints process that is "accessible, affordable, independent, fair, accountable, timely, and efficient," and recognizes that such a mechanism is a key element in protecting the public interest. However, FSRA's statement of priorities recommends a 120-day and 270-day reviews of complaints which the Coalition does not view as being timely. As health care professionals we have seen the impact of delays in resolving complaints on the health outcomes of claimants and on a return to pre-accident level of activity.

Likewise, the Coalition encourages FSRA to continue to recognize that protection of the public interest is inclusive of ensuring claimants continue to have access to reasonable and necessary medical and rehabilitation care along with ancillary services to which they may be entitled under the Statutory Accident Benefits Schedule. Maintaining an accessible, responsive, and accountable dispute complaints system -- together with a dispute *resolution* system -- is integral to this effort.

Coalition members' experience of the current complaints process has found it to be extraordinarily time consuming, inefficient, costly, and, most commonly, ineffective. In fact, the process in its current form has become a *deterrent* to the initiation of complaints. As a result, health professionals who are experiencing *bona fide* difficulties concerning insurer behaviour, which may adversely impact the claimants' health and recovery, have little recourse. Moreover the difficulties with the adjusting of claims during the ongoing COVID 19 pandemic (outlined by the Coalition in its submission to FSRA on July 12, 2020) have "shone a light" on the significant obstacles and challenges inherent in the complaints process in its present form.

Finally, when the Licensed Appeal Tribunal (LAT) was established, the initial goal was for claims to be settled within 6 months or less; currently the backlog has created a 17-month waiting period.

### **The Coalition, therefore, recommends that:**

- **FSRA delineate those issues that are most appropriately addressed through the complaints process (versus the dispute resolution process) with consideration to those matters that should rightly be addressed through the Unfair Deceptive Acts or Practices regulation and explain how the UDAP process can be instigated by the consumer and other stakeholders.**
- **In the spirit of consumer participation, FSRA develop accountability mechanisms that include public reporting of claims handling practices and violations.**
- **FSRA implements significant penalties to deter continuing and future claims handling violations.**
- **FSRA implements measures which address the backlog at the LAT, e.g., hire more experienced arbitrators.**
- **That a multi-stakeholder working committee to examine and revamp the current complaints process be established and that the Coalition as a key stakeholder be invited to participate as a member of the committee.**

## C. Relief to Health Care Providers (HCPs)

As the Coalition addressed in its recent submission to FSRA, COVID-19 has created extraordinary uncertainty and challenges for HCPs and clinic owners. HCPs are facing exorbitant costs to purchase Personal Protective Equipment (PPE), COVID-19 sanitizing protocols, telepractice software, retrofitting offices/clinics (e.g., installing plexiglass panels), and more. Furthermore, physical distancing restrictions severely limit the number of persons that can be treated at the same time in a clinic setting; other patients are simply uncomfortable seeing any HCP at all (or will only do so virtually). Consequently, the cost per patient seen in clinic settings is significantly increased with the additional costs being born by the regulated health professional which is not sustainable. As FSRA commits to its continued "...focus on providing relief to regulated sectors while maintaining the public interest," it is now the time, more than ever, to provide that relief.

We understand that the monies derived from the \$15-per-claimant fee paid to FSRA were directed towards the complaints process and in-person/clinic audits, yet since COVID-19, there have been no in-person/clinic audits and, by virtue of HCPs doing far less work, we assume there are far fewer complaints. Consequently, it seems to follow that per claimant fee should be reduced, if even on a temporary basis until the culmination of the COVID-19 pandemic.

Moreover, the priorities statement commits to key deliverables including the "...enhanced ability for FSRA to respond quickly to changing regulatory needs," and the need to be "...agile in order to support and adjust to change..." There could be no greater need to "adjust to change" than following the challenges presented by COVID-19. Overnight, a majority of health care clinics were advised to shut down their practices by their regulatory bodies. When HCPs were asked to open their clinics, they were forced to "respond quickly" and to be "agile" as they stared down the enormous changes required to their protocols and clinics caused by COVID-19 while simultaneously attempting to support their patients. Similarly, the Coalition is asking FSRA to be agile and respond quickly to the needs of those health care businesses which are struggling to stay open.

**The Coalition therefore is asking FSRA to consider:**

- **Reducing the per-claimant fee for licencing during 2020/21**
- **Recommending and enforcing that insurers share in the extraordinary costs related to COVID-19 such as PPE and virtual platforms.**
- **Recommending and enforcing that insurers pay for essential patient care activities such as planning, documentation, travel and consultation, which are often being arbitrarily denied and are left unpaid.**

## D. Empowering and Protecting Consumers

The Coalition supports the FSRA's cross-sectoral and auto sector-specific strategies aimed at protecting, empowering and better serving consumers. At the same time, we caution that the transition to a PBR approach, with its inherent reductions of checks and balances, necessitates extraordinary attention to the protection of claimants. In particular, the Coalition underscores that rule-making which prioritizes consumer choice for costs savings will inevitably sacrifice the consumer's access to care in the event they are injured in a collision. Moreover, the new approach requires that FSRA actively engage consumers and the Coalition and the HCPs we represent in a sustained and meaningful way.

FSRA “aims to enhance consumer choice” and “to improve consumer education and awareness by enhancing transparency, quality and comprehensibility of disclosures to consumers by FSRA and the sector.” While the Coalition supports consumer empowerment and education, we also appreciate the inherent challenges to achieving full consumer awareness with respect to a complex product such as auto insurance. Moreover, consumers may be swayed to reduce their premiums by selecting choices that may disadvantage them after a motor vehicle injury. For this reason, it is important to maintain a baseline level of benefits to protect those who may not fully understand the implications of their “choices.” A baseline level of benefits should ensure that the burden of cost for health care for a claimant outside of care needed within hospital/in-patient rehabilitation be borne by the auto insurance sector. Insufficient baseline level of benefits would lead to increased costs in the public health system or patients going without needed care reducing their capacity to return to pre-accident level of function and/or employment.

**Specifically, we recommend that:**

- **FSRA confirm that stakeholders, including consumers and HCPs, be actively engaged prior to developing point-of-sale proposals/products.**
- **Further clarification be provided from FSRA on the use of benchmarks prior to approval.**
- **Further clarity be provided around what specific methods FSRA will deploy to ensure accountability for products that do not meet the needs of consumers.**
- **FSRA’s statement include an additional core focus to protect and strengthen access to care for consumers injured in auto collisions.**

## **E. Fraud and Abuse**

The Coalition is concerned that over-arching principles to protect the public and their interests from fraud and abuse are not well articulated in FSRA’s priorities statement. Notwithstanding the fact that fraud and abuse generate a significant cost to the insurance system, the overwhelming majority of claims made are from consumers are legitimate and appropriate, and these consumers must be protected. To that end, the priorities statement should explicitly acknowledge that consumers’ insurance claims should be processed quickly, efficiently and transparently so that claimants may receive the assistance they require at the time it is needed.

The cross-sectoral priorities that focus on ‘protecting the public interest’ need to be more broadly articulated especially when it comes to fraud and abuse. It must be clear how ‘protecting the public interest’ incorporates ‘protecting the interests of the public’. In the interest of clarity and to ensure that the interest of the public and consumer are clear and protected, these principles need to be more clearly understood and articulated.

The priorities for FSRA’s regulated sectors as stated focus on improving supervision capability, enhancing/implementing regulatory framework components, or gaining a better understanding of the

consumers. Gaining a better understanding of the consumer does not necessarily imply protecting the interest of the consumer.

**The Coalition therefore recommends that:**

- **FSRA's Statement of Priorities explicitly acknowledge that consumers' insurance claims should be processed quickly, efficiently, and transparently so that claimants may receive the insurance assistance they require at the time it is needed.**
- **FSRA clarify how interests of both the public and consumers/claimants are conceptualized by FSRA and articulate more clearly how each will be safeguarded**

## **F. Data and Analytics**

As health care professionals we fully support that there should be a robust, transparent and accessible database and analytics strategy to underpin oversight of the auto insurance industry. Without data, policy decisions too often rely on unverified allegations and anecdotes rather than facts.

To that end, the Coalition and the HCPs we represent would like to be involved in the design and implementation of (both new and existing) data collection, data analysis and data reporting processes. Additionally, HCPs should have access to both data reports and databases for the purposes of conducting analyses to inform practice management and care. In addition, consumers should have access to data on claims handling practices to support informed decision-making when purchasing accident benefits.

**The Coalition therefore is requesting that FSRA:**

- **Engage the Coalition and the HCPs we represent as active participants in the development and implementation of the auto insurance data and analytics strategy.**

## **G. Participation in Policy-Making Process**

The Coalition has been a longstanding active stakeholder providing extensive resources to help Financial Services Commission of Ontario (FSCO) and now FSRA move forward initiatives and policy on behalf of Ontarians. We have been at the table in the development of HCAI, reforming SABS policies, OCF forms, participated in the development of the pre-approved framework (PAF) and the Minor Injury Guideline. We have provided advice, access to an extensive network of experts and given critical information on the front-line impacts of policies. We have pooled our resources as health professional associations to best achieve our objectives of ensuring timely access to assessment and care for claimants within a sustainable, cost-effective auto insurance system for all Ontarians. The level of engagement we have experienced with FSCO meant that policy and other outcomes that not only met the objectives of FSCO but actually worked in the field.

It is with all this in mind that we share that with the transition from FSCO to FSRA has led to a shift in the level of engagement we experience. Though FSRA priorities indicate a desire "to ensure effective and proportionate financial consumer protection efforts, it is important that all stakeholders, including

consumers, participate in the policy-making process” there is less opportunities to meaningfully participate early in the process of policy development. Our engagement has been limited to providing feedback on, what appears to be, near finalized policy.

**The Coalition therefore is requesting that FSRA:**

- **Engage the Coalition and the HCPs we represent early and allowing for more substantive participation. This will mitigate poor policy or unintended impacts that add complexity to the system or negatively impact claimants.**