March 4, 2021

Financial Services Regulatory Authority of Ontario

Re: Proposed UDAP Rule

To Whom It May Concern,

First, TPAAC (Third Party Administrators Association of Canada) would like to applaud FSRA for seeking input on the UDAP Rule and developing principles-based regulation.

Specifically, our comments will focus on the proposed introduction of rebating which has been outlined as:

"In addition to strengthened protection, consumers will benefit from FSRA's proposed changes intended to encourage innovation, competition and choice. For example, the new rule would allow insurers to offer their customers incentives including rebates or rewards that meet certain criteria.

Subject to meeting certain fair treatment standards outlined in the proposed rule, examples include (but are not limited to):

- An insurer could offer their customer a rebate on their auto policy premium for good driving behaviour
- An insurer could provide a consumer with a paid-for/subsidized plumbing inspection to help mitigate the risk of water damage-related losses
- An insurer could reward a consumer with a gift card for behavior that reduces insured risk

Note: These new possibilities are additional to discounts on premiums that auto insurers can already offer to reward good driving behavior to customers that are enrolled in Usage-Based Insurance Programs."

Although the description above and the examples provided focus on the property and casualty sector, on February 2, 2021 FSRA confirmed that the rebating will apply to all sectors in the "Questions and Responses" section of the website.

We have a number of concerns with this proposed rule change and the negative customer repercussions if it were applied to the Life/Health sector, and specifically employee benefits plans, as follows:

- Group insurance plans, and more specifically the health and dental benefits, are largely funded on a cash-flow basis. Insurance exists but primarily for stop loss (high cost claims) and travel insurance. If insurers were allowed to offer rebates on these benefits, this would likely lead to under-funding of these benefit lines with the outcome being large increases at renewal. Now, you might argue that insurers can under-fund plans today simply by discounting their marketing rates and this does happen. However, we can see rebating would be less transparent in our opinion even though FSRA has a requirement of transparency. The net result would be for more opportunity for insurers to “buy business” leading to rate instability and challenges for those employers (customers) to maintain their benefits plans.
- Under most group insurance programs the employer cost shares the premium with their employees. A 50/50 arrangement is common. In these situations, rebating could create a fairness issue. If the rebate is provided to the employer as the policyholder, what obligation would they have to credit the employee for their 50%?
- Most employee benefits have tax implications which can also vary by province (e.g. RST/PST is applied to group insurance in Ontario). The use of rebating would complicate the administrative world of employers and likely will lead to errors and negative outcomes as a result.
- Short term and long term disability benefits have very specific tax consequences as related to the premium paid. It is common for employees (plan members) to pay 100% of the premium related to these benefits which leads to any benefits being paid to the employee on a tax-free basis. If the insurer is allowed to rebate any portion of these premiums, what happens to the tax status of benefits received?

Once again, we’d like to thank FSRA for seeking input on these important issues and proposed rule changes. TPAAC and our members would be open to additional discussions with FSRA as the regulations are developed.

Yours Truly,

Mike McClenahan
President