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Mr. Fred Gorbet
Chair, Steering Committee
Ontario Auto Insurance Anti-Fraud Task Force

Subject: Auto Insurance Anti-Fraud Task Force - Status Update

State Farm welcomes the opportunity to comment on the issues raised in the Ontario Anti-Fraud Task Force – Steering Committee Status Update of July 2012.

State Farm Mutual Automobile Insurance Company was founded in 1922 and initially concentrated on meeting auto insurance needs of Illinois farmers through a mutual organization owned by its customers. State Farm's® mission is to help people manage the risks of everyday life, recover from the unexpected, and realize their dreams.

The Canadian operations of State Farm opened in 1938 in Toronto. In 90 years, State Farm has grown, one customer at a time, from a small farm mutual auto insurer to one of the world's largest financial institutions, meeting the insurance and financial services needs of millions of customers across North America.

State Farm has almost 43 million auto policies in effect in the United States and Canada. In Ontario, we insure over 850,000 auto policies, a market share of approximately 10%. Annually we handle in excess of 100,000 auto claims in Ontario.

We are the number one auto insurer in the United States with an 18% market share.

Our leadership position in the United States and Canada places State Farm in an excellent position to offer insights on auto insurance.

Our comments on the issues raised in the Status Update are as follows.

1. Regulation of Health Clinics

We support the Task Force's conclusion that a licensing and regulation regime for the auto insurance business practices of health clinics is appropriate and necessary. We also believe this regime should extend to all providers of treatment and assessments to the auto insurance industry, including independent medical assessors. We believe FSCO is best suited to implement and administer this regime.

We ask the Task Force to consider requiring that clinics be owned by regulated health professionals who are subject to oversight and licensing by a professional college. It is only by connecting ownership with the professional obligations of regulated health professionals

that true transparency and accountability will be engaged. Otherwise, the resources needed to oversee effective compliance with the overall regime will increase significantly. We are concerned by examples we have seen of lay-owned clinics focused heavily on revenue rather than providing treatment focused on the health and well-being of patients.

The overall success of this recommendation is contingent upon the government's willingness to devote appropriate resources to the oversight and enforcement of the regime.

2. Regulation of the Towing Industry

We agree with the development of a means to regulate the towing industry consistently across the province, with meaningful enforcement mechanisms, possibly under the existing umbrella of the Highway Traffic Act.

The need to eliminate "chasers" is important for public policy reasons and the use of standard referral lists by police forces would be a good starting point for this purpose.

Legislation should address the highly-prevalent solicitation and referral activities, especially within accident benefits, and those matters should also be specifically addressed in the SABS regulations.

We are in favour of an effective ban on any offer, payment or acceptance of consideration for a referral for non-towing services.

3. Enhanced Authorities for FSCO

Any proposals by the Task Force to expand the legislative provisions setting out FSCO's powers and scope of authority under the Insurance Act should be carefully calibrated to ensure that the expansions are limited to those matters necessary to enhance FSCO's ability to combat auto insurance fraud, and most importantly organized and premeditated auto insurance fraud. Expanding FSCO's powers and authority beyond those matters will not serve to address this problem, and could lead to unnecessary inefficiencies, unjustified regulatory burdens or other unintended negative consequences. In our view, the proposals in Appendices 4 and 5 go beyond what is needed to address auto insurance fraud.

4. Regulations governing relations between insurers and claimants

We support the recommended regulatory changes in the area of insurer/claimant relations except for the final item mentioned below. The full effect of these recommendations will only be achieved through supporting language within the SABS to provide insurers with recourse when a claimant fails to meet his or her obligations.

Of the recommendations presented, we believe that requiring claimants to confirm attendance at treatment facilities, and making it an unfair act to request a claimant or injured person to pre-sign a claim form that has been left blank or incomplete, have the potential to have the most positive impact.

Concerning requiring claimants to attend up to two examinations under oath upon request of the insurer, we recommend requiring attendance at up to as many examinations as are reasonably required by an insurer (as is done in some other jurisdictions).

Concerning requiring a claimant to pay an insurer \$500 for missing a medical examination, we recommend simply allowing the insurer to reduce future benefits by this amount, in order to eliminate the costs of collection and avoid non-payment.

We also recommend that FSCO require strict adherence with section 55 of the SABS regulations, which stipulates that an insured shall not commence mediation if the insurer has provided the insured with notice that it requires a medical examination under section 44, but the insured person has not complied with the SABS regulations concerning such a request. Our experience is that this provision is not being strictly followed.

Concerning making it an unfair act to request a claimant or injured person to pre-sign a claim form that has been left blank or incomplete, we believe that it would be helpful to clarify that this provision would apply to legal representatives, medical providers and others providing services to individuals seeking accident benefits, and that it would be sound to also include affixing anything other than an original signature or failing to sign a form requiring a signature.

Requiring insurers to include an itemized list of all expenses in every periodic benefit statement would place a significant reporting burden on insurers and we are skeptical that this requirement would have a meaningful impact in reducing fraud. A more suitable concept would be to have an insurer required to provide such documentation when reasonably requested by a claimant.

5. Establishment of a dedicated insurance fraud prosecution unit

Continuity of crown counsel, potentially extending to dedicated insurance fraud prosecutors, is important. We have seen a substantial increase in successful fraud prosecutions in jurisdictions where prosecutors are dedicated to prosecuting insurance fraud crimes. Whether or not it is standard practice in Ontario to have crown prosecutors dedicated to particular specializations, we encourage giving consideration to dedicating one or more prosecutors in the Greater Toronto Area to insurance fraud prosecutions for twelve to eighteen months on a pilot basis to evaluate potential benefits.

6. Privacy and civil immunity

We support expansion of section 446 of the Insurance Act as outlined in the Status Update for the purpose of enhancing fraud identification and prosecution, and we believe that insurers should be among the prescribed persons to whom disclosure could be made with the benefit of immunity. Many jurisdictions have laws in place in this area. The following is an example from the State of Illinois:

(215 ILCS 5/1022)

Sec. 1022. Immunity. No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Article, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent or

insurance-support organization; provided, however, this Section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

7. Development of a consumer engagement and education strategy

We support the three key elements of the strategy described in the Status Update. The IBC Code of Consumer Rights and Responsibilities could be a useful resource for the Working Group on Consumer Engagement and Education in developing these elements. FSCO or the IBC may be able to provide expertise or resources to maintain and manage the contemplated website. We support the minimum claims process disclosure requirements described in the Status Update, provided that insurers should not be required to disclose proprietary or competitively sensitive information for this purpose.

8. Other Considerations

While the use of HCAI is commented upon within the Status Update, the potential for HCAI to be used as a tool to analyze and detect fraud is not specifically addressed. As the primary means for providers to now make submissions to insurers, a great deal of valuable information is captured within the HCAI database, much of which could be of use in combatting insurance fraud. Finding effective ways to analyze this information would potentially lead insurers to recognize trends and anomalies in HCAI submissions which require further investigation. This analysis could possibly be done by FSCO or the investigative services division of the IBC.

We would welcome an opportunity to discuss this response or any other issues of interest to the Task Force. Please contact us if you have any questions or require further information.

Sincerely,



Ray Kearns
Canadian Risk and Compliance Director