

Wednesday, August 29, 2012

Ontario Auto Insurance Anti-Fraud Task Force  
Insurance & Cooperatives Policy Unit  
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Dear Sir or Madam,

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

The Co-operators is pleased to provide our feedback on a number of recommendations in the Steering Committee's Status Update prior to submitting their final report to government in the fall of 2012.

The Co-operators Group is owned and governed by 45 member-owners, representing co-operative and like-minded organizations across the country. As one of Canada's most prominent financial services organizations we are proud to provide insurance and financial services to more than two million Canadians. We are even prouder that we provide financial security to Canadians in their communities while staying true to our co-operative values. We are not full members of the Insurance Bureau of Canada as we prefer to contribute to the policy development process directly.

In Ontario we have over 2,500 staff and employ 245 Advisors who independently own offices and contribute to job growth in their communities. We insure 446,000 clients and over 404,261 vehicles specifically.

Our philosophy regarding the delivery of our insurance products is based on the following fundamental guiding principles:

- **Security:** At its most basic level, insurance provides peace of mind. Consumers should have adequate coverage that ensures an appropriate measure of financial protection.
- **Affordability:** Insurance must be affordable.
- **Availability:** Insurance consumers have the right to expect reasonable access to a variety of providers who can meet their coverage needs.
- **Simplicity:** Insurance consumers have a right to understand the product they are purchasing and the benefits to which they are entitled.

Below are our comments on the potential recommendations based on the information provided in the Steering Committee Status Update.

## Licensing & Regulation of Health Clinics

While the Task Force has recognized that implementing a licensing and regulation regime is both appropriate and necessary for health clinics treating auto insurance claimants, it has not concluded on a specific model. Whichever model is implemented, a large focus must be on the ownership and operation of clinics, and we further agree with the Steering Committee that the established regime needs to meet four standing objectives and operational characteristics which include *transparency, accountability, verification, and sanctions*.

### Transparency

Similar to the Steering Committee's position, we do not believe ownership of a clinic should be restricted to Regulated Health Professionals (RHP). If there are proper controls and sanctions in effect then violations can be administered appropriately. Any changes in status would require notification to the board and subsequent approval. Examples of changes would include (but not be limited to) change in medical director, ownership, RHP's working in the clinic or on behalf of the clinic, change of address, change of name, change or expansion of services provided, and fees charged.

Moreover, a registration list of all RHP's working within the clinic should be readily available upon request which would include college affiliations, registration number, affiliations with other clinics, and any sanctions imposed upon the individual.

Conflict of interest must be identified and proclaimed from the onset of patient care and throughout as it arises. The notification can be made on the treatment and assessment form each client is required to sign prior to submission to an insurer. Conflict of interest, Section 46 of the Statutory Accident Benefits Schedule (SABS), would need to be expanded to reflect other parties involved, not just the insurer.

We also believe that annual or biannual reviews of clinics should be conducted by the regime established to licence clinics and should include a published report of results which are widely available on websites.

Clinics should also have a publicly visible notice of how to report unregistered clinics and/or fraud (similar to Crime Stoppers) and notice of reward if it leads to arrests or conviction of insurance fraud. The license should also be made visible at all times to the public, along with name of medical clinic director, any conditions placed on the facility, and any suspension notices.

If the decision is made to have assessment providers disclose schedule of fees, The Co-operators believes this must apply no matter who the funding sources are to the request. False reporting should be considered an Unfair and Deceptive Acts and Practices (UDAP).

### **Accountability**

The Co-operators agrees with the Steering Committee that a regime needs to be put in place which would be in charge of investigating matters of clinical judgement or quality of care. This should not only be limited to clinics as other services may not “technically” operate out of a clinic such as Social Workers, Occupational Therapists, Behavioural Therapists, etc...

Consideration needs to be given as to whether this is a new regime or an expansion of the Ministry of Health. We believe the new regime needs to be an independent body that regulates health care beyond the public sector.

We also believe this new regime:

- Should register and licence services under the Health Act;
- Comprise of practitioners who have expertise to determine the qualifications of competent practitioners (a formal request for information process may be required);
- Review, approve or deny applications for licensing of clinics who wish to work within the auto insurance sector. Every application needs to have an Insurance Fraud Notice that must be signed by all owners, controlling members, and RHP’s;
- Should have a stipulation that any RHP who is aware (or ought to be aware) that the clinic is unlicensed or committing insurance fraud must report or otherwise face monetary penalties and/or suspension;
- Monitor providers to make sure they comply with set standards and regulations under a Code of Ethics and/or under the regulatory Colleges or other affiliations;
- Must have an agreement of collaboration with the Colleges. RHP’s must be registered with their appropriate Colleges and ultimately responsible for all billing under their registration number; and
- Have costs covered by the licencing fees and annual membership fees. If fees are not paid to the regime, the clinic should automatically lose the rights to utilize Health Claims for Auto Insurance (HCAI).

### **Verification**

The Co-operators believes there should be background screening of anyone involved with the ownership and operation of a clinic. This background screening must provide evidence that they have financial ability to operate a clinic. We also recommend a renewal process every two years whereas the facility would be required to reapply for a license.

## Sanctions

We believe sanctions are important and that the new regime should have the authority to discipline, suspend, or terminate a licensee for violations to the standards and must be able to enforce quickly and fairly. There would also need to be a streamlined appeal process in place to assist in resolution of complaints made regarding improper behaviour.

The Co-operators recommends the following:

- The new regime should have the ability to implement unannounced visits to ensure compliance and should have the ability to execute emergency suspensions if signs required to be public are not evidenced;
- There should be public announcements of any suspensions on a website designated for the purposes of auto insurance;
- Any sanctions put in place by the regime needs to be substantial enough that it is a deterrent factor; and
- Expansion of UDAP to state that billing privileges in HCAI will be suspended if submissions are made without the knowledge and signature of both the client and the RHP.

## Regulation of the Towing Industry

We support a consumer education/protection initiative that would include information about personal rights and responsibilities, as well as existing protection from potentially Unfair and Deceptive Acts and Practices (UDAP). An example could be the use of informative billboards in high risk areas.

We support provincial regulation of the towing industry using the Designated Administrative Authority model (DAA).

The DAA would administer:

- Requiring statutory declarations that the operator had no involvement in the actual collision, and did not provide any referral for a fee to a body shop or medical rehabilitation clinic;
- Registration and licensing requirements;
- Mandatory, designated secure drop-off locations;
- Rate and fee structures; and
- A dispute/complaint resolution process.

## Enhanced Authorities for the Financial Services Commission of Ontario (FSCO)

We support the recommendations contained in the report allowing FSCO to obtain information and to investigate and sanction unfair or deceptive acts that in many cases mirror the provisions of the Mortgage Brokers, Lenders and Administrations Act.

In particular we believe that the return of the provisions that require the disclosure of conflicts of interest on the part of providers of health care goods and services and legal service providers will provide for greater accountability.

## Establishment of a Dedicated Fraud Investigation Unit

The Co-operators does not oppose the concept of FSCO taking a more active role in investigating and prosecuting insurance fraud related offences under its legislation. However, these actions, and the other initiatives the industry is undertaking such as working with claim data to identify organized and pre-mediated fraud, will not realize their full potential without dedicated resources for criminal prosecution of insurance fraud related offences. We support Insurance Bureau of Canada's recommendation to establish a dedicated prosecutorial unit within the Ministry of the Attorney General that would focus on insurance fraud.

## Tightened Controls on Delivery of Accident Benefits

The Co-operators agrees with the Steering Committee and supports confirmation of attendance at treatment by our clients. This can be implemented by having clients sign the invoices prior to Health Claims for Auto Insurance (HCAI) submission. It would be required by regulations that the signed invoices be kept by the clinic and be made readily available upon request, either at time of audit or unannounced visit to the clinic. This request should not require a signed authorization from the client to validate their attendance. Under Section 46.2 an insurer is authorized to request specific documents should there be any concerns. This would assist in obtaining the information directly from the clinic.

We also support the confirmation of receipt of Goods and Services. Similar to the recommendations above, we do have the authority under Sec 46.2 to request specific documents if there are concerns. Moreover, there should be a provision that for the purposes of validating the attendance and receipt of goods and services the insurer should have unobstructed access to the clients despite legal representation.

The Steering Committee recommended that an insurer be allowed to request a second Examination under Oath should new circumstances arise in the claim that would necessitate such a request. We agree that this must be in good faith and any abuse could be considered under Unfair and Deceptive Acts and Practices (UDAP).

We support the recommendation to have a client pay an insurer \$500 for missing an Independent Examination (IE) without reasonable cause. This would at the very least partially cover the cost of the missed IE appointment and reduce unnecessary expenses. However, we suggest that this be implemented in accordance with Section 52 of the Statutory Accident Benefits Schedule (SABS) whereby an insurer can deduct from on-going benefits. The deduction could be applicable on any category of benefit that is being paid under the claim, not just to a weekly indemnity benefit.

As noted by the Steering Committee, the current SABS does not include a direct reference to the *Cost of Goods Guideline*. We agree that for enforceability and as a technical matter, the inclusion of the Goods and Services Guideline into the SABS.

We support that requesting clients to sign blank or incomplete claims forms should be included under UDAP. This would be applicable to both clinic and insurer and should have sanctions

imposed reflective of the severity of the matter. If it becomes mandatory for clients to sign invoices prior to HCAI submission this may reduce the exaggeration and fraudulently billing that occurs after the treatment and assessment plan forms have been completed.

The Co-operators also believes in the necessity of transparency for all involved and measures taken to reduce abuse in the insurance system. If it is made mandatory for clients to sign invoices then they are made aware of claims associated costs and can identify potential fraud and abuse at the onset and prior to submission to the insurer.

We do not believe it is necessary to itemize benefit statements as a requirement; however we do support the consumer education piece of how to report suspicious activity. From a business perspective the creation of itemized benefit statements is costly and would require significant time and labour on a manual basis for each insurer to create such a statement on every file. By having the clients sign the invoices and be more involved in their own expenses, it can reduce costs overall and potentially premiums.

### **Health Claims for Auto Insurance (HCAI)**

We support the on-going evolution of HCAI as an effective tool to combat fraud. We acknowledge the significant gains made over the past year specifically with the business-to-business reports.

We believe there is further expansion that can be done within HCAI and would seek opportunity to comment on other opportunities.

We support that FSCO have the authority to implement the recommendations in the recent HCAI billing guideline. Abuse of HCAI billing should have sanctions such as suspension of use and fines imposed.

### **Privacy and Civil Immunity**

Bill C-12 is proposed to amend federal privacy legislation (PIPEDA). It is noted as being significant in facilitating broad industry participation in fraud detection initiatives. We recommend the province provide Ministerial support, to the extent possible, in advancing this consideration. A formal show of support of both this bill, and of industry fraud detection initiatives involving claim data, with the Privacy Commissioner of Canada should be considered.

Section 446 of Ontario's *Insurance Act* is not broad enough to provide appropriate civil immunity when insurance representatives need to co-ordinate with law enforcement. Notwithstanding current and proposed amendments to privacy legislation, provision of claim file information to police poses a risk to insurers. We agree with the recommendation to broaden the scope of Section 446.

In their submission, we also note IBC's reference to Bill 41, Reducing Automobile Insurance Premiums by Eliminating Fraud Act, 2012, introduced by Member of Provincial Parliament Amrit Mangat, which includes "whistle blowing" protection. We recommend support of this Bill.

## Learning Moments and Website

Consumer education at critical moments is a sensible suggestion and The Co-operators supports the establishment of a website to accomplish this purpose.

An authoritative website will provide users with a trustworthy and unbiased source for this type of information. The Task Force should be sure to leverage the value and authority of a government of Ontario URL, as opposed to some kind of vanity URL (For example [www.caraccidentontario.com](http://www.caraccidentontario.com)). A government based URL will have more authority with search engines and should display the Task Force's information ahead of other sites. A government based URL will also have more authority with users, as a government site does not have a stereotype of a "hidden agenda".

When creating this type of site, the Task Force should also consider the importance of making the site "mobile friendly" (built to display properly on mobile devices). Searches for this type of information will typically take place from the side of the road so creating content that loads quickly and displays well on a mobile device is critical.

## Mandatory Disclosure by Insurance Companies

Mandatory disclosure of complaint handling processes would enhance consumer education and facilitate earlier and more effective resolution of disputes. The mandatory disclosure of preferred providers and the selection process for choosing those vendors would be difficult to keep current and provide limited value to an average consumer when making the purchase decision. It could lead to increased litigation with plaintiff's lawyers looking to use this information to limit the utility of independent medical examinations.

At The Co-operators we are committed to working with government and supporting our clients by offering products that enhance security, are affordable, available and simple to understand. The work of the Anti-Fraud Task Force will help put money back into the pockets of Ontarians and empower them with knowledge. We believe our comments and concerns above will help set that direction.

We welcome further discussion should you require any further information or clarification,. Please do not hesitate to contact me directly at 519-767-3055 or [frank\\_bomben@cooperators.ca](mailto:frank_bomben@cooperators.ca).

Sincerely,



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