

Ontario Psychological Association Submission to the Ministry of Finance on Reform of the FSCO Dispute Resolution System, September 20, 2013

The Auto Insurance Task Force of the Ontario Psychological Association, (OPA) was established in 1989. We appreciate the opportunity to provide some initial perspectives regarding the auto insurance dispute resolution system. As the questions and issues being addressed are further defined, we would welcome the opportunity to provide further input.

We note that Ontario Minister of Finance Charles Sousa has appointed the Honourable J. Douglas Cunningham, former Associate Chief Justice of the Ontario Superior Court of Justice, to conduct the review of Ontario's dispute resolution system and that Mr. Cunningham is seeking stakeholder perspectives on the Ontario auto insurance dispute resolution system.

Within the auto insurance system, psychologists provide psychological interventions including assessments and treatment to individuals injured in motor vehicle accidents. Patient populations involve a number of conditions resulting from auto accidents including: psychological disorders; brain injuries and cognitive impairments; chronic pain; adaptation to functional limitations, etc. Psychologists are involved both as treatment providers, who submit treatment plans and other benefit applications on behalf of their patients, and as Insurer Examiners conducting third party examinations to provide opinions to insurers regarding these applications. Thus, psychologists are keenly aware of the present working and challenges of the dispute resolution system.

We believe that the dispute resolution component must be viewed within the broader context of the entire system. We will share a few preliminary observations and would welcome questions and opportunity for further input.

Med/Rehab Disputes

We will first address disputes regarding provision of medical/rehabilitation services. We firmly believe there is greater opportunity for dispute prevention.

The following are some examples:

- Implement licensing of health facilities (both treatment providers and IE examiners). This may create a less adversarial atmosphere and eliminate clinics/providers who engage in fraudulent and/or unsound business practices;
- Reinforce an expectation of adherence to evidence based clinical guidelines (where applicable) when proposing or reviewing treatment applications. This should make it more evident which proposals require further review vs. routine approval;
- Reinforce an expectation that the adjuster will provide clearer explanation when denying treatment application vs. simply asserting that the proposal is "not reasonable and necessary";
- Reinforce an expectation that an adjuster will obtain an appropriate and current clinical opinion prior to determining that proposed services are not "reasonable and necessary"; (e.g. not rely on an Insurer Examination that is over a year old to comment on the patient's current condition, not rely on a insurer physical examination to comment on a patient's psychological status.);
- Reinstate Guidelines for Insurer Examinations to foster more credible reviews.

Insurer Examiner Qualifications and Practice

- Regarding selection of experts:

It is only reasonable that the Insurer Examiner be of the same discipline as the proposer so that they are credibly informed re: diagnostic considerations; treatment options and variables to be considered; likely durations; complicating factors; professional fees; etc. Excessive reliance on physicians has not only reduced the credibility of the Insurer Examinations with associated increased disputes, it appears to have contributed to a shortage of experts with associated delays and may have increased costs.

- Regarding methodology employed in Insurer Examinations:
Insurer Examinations should be expected to follow evidenced based methodology, where applicable, and consensus based assessment guidelines. Quality of assessments of disability pre and post 104 weeks and catastrophic impairment are highly variable and this causes unnecessary and costly disputes. There are methodological standards for these assessments and associated requirements for training and mentoring of assessors and quality control of assessment reports. Review of thousands of such reports and review of hundreds of arbitrations highlights the critical importance of sound method in producing credible reports and opinion. The absence of IE Guidelines and absence of a consensus process for training and mentoring assessors since the demise of the DAC System has been one factor in this quality problem. We would like to share ideas for improving the entire process of Insurer Examination, IE Company Quality Control, Adjuster Review, and Mediation/Arbitration of disputes when there is an IE.
- Regarding reduction of bias and increasing credibility:
Experts utilized to conduct Insurer Examinations must have appropriate education, training and experience including current provision of the goods and services which are being reviewed. The health professional regulatory colleges should be involved to investigate and intervene where there are indications of bias with linkages to the licensing system.

The Importance of a Timely Resolution of Disputes

We are under the impression that the previous backlog in the system actually contributed to additional disputes:

- Timely dispute resolution provides decisions which serve as “benchmarks” for all parties and creates a common set of expectations.
- Timely arbitration decisions also provide “corrective feedback” to adjusters and health professionals who are unlikely to repeat behaviours that have been criticized.
- Lack of timely dispute resolution may have contributed to insurer denials since there was no timely recourse for the insured person.

Specialized Mediation and Arbitration

We are aware of the broad range of issues that are addressed through dispute resolution, often in the same case.

- When there is a single issue, would it be helpful to have specialized mediation and arbitration for that issue?
- We have noticed that there are a significant number of arbitrations regarding what appear to be procedural issues, such as if a lawyer can withdraw from a case. We are unclear if these need to be addressed in this same manner as disputes over the nature of the insured person’s injuries or access to benefits.

Thank you for the opportunity to provide input into the review of the dispute resolution system. We would welcome an opportunity for further involvement

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