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The regulation should also require the company to ensure that the claimant is advised, when the appointment is confirmed, of the cancellation fee and the steps necessary to avoid having it levied.

## Detection

This section sets out our recommendations to address fraud detection. They are focused in seven areas:

- industry initiatives to identify suspicious claims
- making HCAI a more effective fraud detection tool
- licensing and regulation of health clinics and assessment providers
- making it easier for individuals to report suspected fraud
- enhancing FSCO's ability to get information
- changes to regulations governing insurer/claimant relations
- improving collision reporting forms

### Industry initiatives to identify suspicious claims

#### Recommendations

9. Insurers should move aggressively to establish an organization that would pool and analyse claims data in order to identify potential cases of organized or premeditated fraud.
10. The Government of Ontario should urge the Government of Canada to move quickly to secure passage of amendments to the *Personal Information Protection and Electronic Documents Act* that are now before the House of Commons in Bill C-12. The goal should be to remove any undue limitations on the ability of insurers to pool claims information to combat fraud.
11. The Financial Services Commission of Ontario should amend the forms consumers use to apply for auto insurance and accident benefits to make it clear to them that insurers may pool and analyse such information to detect fraudulent activity.

In our Status Update we reported that the insurance industry planned an industry-wide initiative to use highly sophisticated data analysis tools to identify suspected fraudsters that target multiple insurers. We understand that substantial progress is being made on developing a new, not-for-profit entity that would allow for the pooling of claims data and the analysis of that data to identify suspected cases of organized or premeditated fraud. Such cases would then be followed up for investigation by insurance companies and by the Insurance Bureau of Canada's (IBC) Investigative Services Division (ISD), working as appropriate with FSCO and law enforcement authorities.

This initiative has evolved from the proof-of-concept exercises that were undertaken by a group of insurance companies representing about 65 per cent of the Ontario auto insurance market. These were referred to in the Overview section where we described the role these exercises played in the research undertaken by KPMG.

We believe that the successful launch of this new entity is critical to assist the detection of organized and premeditated fraud and we support its timely creation. We also urge the industry to include as much claims data as possible, as the ability to identify suspicious activity is enhanced greatly by increasing the number of cases that can be examined. We have had specific representations from the Associated Canadian Car Rental Operators who would like to be sure that claims against their insurers are also included in the exercise.

We understand that some companies feel that the current privacy regime inhibits their ability to share such information to the extent that would be desirable. We believe that it would be helpful, and in the public interest, to provide greater assurance that pooling of claims information for such purposes would be permitted under the applicable privacy legislation. That legislation is the *Personal Information and Electronic Documents Act* (PIPEDA) which is federal legislation that governs personal information generally and came into effect in stages, from 2001 to 2004 as well as the *Personal Health Information Protection Act, 2004* (PHIPA), which is Ontario legislation governing personal health information.<sup>25</sup> PIPEDA is administered by the federal Office of the Privacy Commissioner of Canada whereas PHIPA is administered by the Ontario Office of the Information and Privacy Commissioner.

In September 2011, the Government of Canada introduced amendments to PIPEDA, in the form of Bill C-12, which would facilitate the detection of fraud. In particular,

“Subsection 7(3) of PIPEDA already permits organizations to voluntarily disclose to a government institution personal information without consent when an organization has reasonable grounds to believe that a contravention of the laws of Canada, a province or a foreign country is being, has been, or is about to be committed. Bill C-12 would allow disclosure without consent to organizations in general, presumably including other companies, if necessary to investigate a breach of an agreement or a contravention of laws (as above), or to ‘prevent, detect or suppress’ fraud. In the case of fraud, the bill further permits disclosure without consent of an individual’s personal information when notifying the individual could be reasonably expected to frustrate attempts to deal with fraud [clause 6(9)].”<sup>26</sup>

Our understanding is that enactment of these provisions would provide the certainty that would be desirable to make this initiative to detect organized and premeditated fraud as effective as possible.

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<sup>25</sup> Section 4 of PHIPA broadly defines “personal health information” to include information about an identifiable individual’s health status, health care, and eligibility for and receipt of payments for health care.

<sup>26</sup> [http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?ls=c12&Parl=41&Ses=1&source=library\\_prb&Language=E](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c12&Parl=41&Ses=1&source=library_prb&Language=E)

We therefore urge the Government of Ontario to make appropriate representations to the Government of Canada to move quickly to secure the passage of Bill C-12.

In addition, we have explored whether other mechanisms, under the direct control of the Government of Ontario, might be available to achieve the greater certainty we feel is desirable. We have concluded that a more limited and focused approach to auto insurance fraud detection in Ontario could be achieved by amending the consent provisions on the application form for auto insurance benefits to provide for the pooling of relevant information related to auto insurance claims for the purposes of preventing, detecting or suppressing fraud. The application for an auto insurance policy should also be amended to notify consumers that they will be asked for consent to allow for the pooling of relevant information if they do make a claim for accident benefits under their policy.

We recommend that the Superintendent of FSCO move to make such amendments, after consultation with the Ontario Privacy Commissioner to ensure that the purposes of the amendments can be achieved in a way that is most protective of individual privacy. We have developed an illustrative example of consent language that we believe would strike an appropriate balance, and we provide it in Appendix 5 for further consideration.

## **Making Health Claims for Auto Insurance a more effective fraud detection tool**

### **Recommendation**

12. The government and industry should take advantage of the unique nature of Health Claims for Auto Insurance and its potential use as an anti-fraud tool by building on existing initiatives and by exploring other potential opportunities.

Health Claims for Auto Insurance (HCAI) is an electronic system used to send auto insurance claim forms between insurers and healthcare facilities in Ontario. HCAI's original purpose was to be a transactional database, but its anti-fraud potential has been recognized by many different groups, including health care practitioners, the insurance industry and government.

We created an HCAI Anti-Fraud Working Group to bring these groups together to consider ways that HCAI might be used to combat fraud. The recommendations in this section are based on opportunities identified by the Working Group. The implementation of these recommendations will require additional resources and funding, as well as further collaboration between HCAI, health care practitioners, the insurance industry and the government.

### ***Building on existing initiatives***

In the Status Update we discussed two ongoing HCAI initiatives:

- the Professional Credential Tracker (PCT); and
- business-to-business statements.

#### *Professional Credential Tracker*

The PCT is a pilot program to help health care practitioners prevent their identities from being stolen by fraudulent health care facilities. Practitioners who use the PCT can see which facilities use their professional credentials to bill insurers and can report any suspicious activity to their health regulatory colleges.

We are recommending the continuation of the PCT pilot project with the objective of gradually moving to full adoption by all regulated health practitioners. Eventually, regulated health practitioners should be able to check the use of their credentials themselves at any time. A self-service solution could be a Personal Identification Number, as discussed in our Status Update or another method of secure entry into the PCT for individual providers.

A full, self-service version of the PCT would give practitioners information about:

- who has their credentials;
- when those credentials have been used;
- for what purpose the credentials were used; and
- how practitioners should report suspicious activity involving their credentials.



Once the full, self-service version of the PCT is developed and fully adopted, additional features should be considered. Those features could include:

- regular mandatory practitioner reviews of the use of their credentials; and
- a method for a practitioner to electronically request removal from the roster of a specific health care clinic.

We have been extremely encouraged by the work done on credential tracking by HCAI and the interest shown in the tool by health practitioners. We are hopeful that this good work and cooperation can continue.

#### *Business-to-business statements*

HCAI business-to-business statements summarize monthly invoicing activity between an insurer and health care provider. The statements allow insurers and health care facilities to identify irregularities in their monthly invoicing.

We support the use of business-to-business statements by health care clinics and insurers as a means of identifying any suspicious billing activity. Insurers should incorporate the business-to-business statements into their business processes to provide greater certainty when their Chief Executive Officers attest to the adequacy of their cost, fraud and abuse controls.<sup>27</sup> The statements should also be used to support our recommended regulatory regime for clinics that treat and assess auto insurance claimants.

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<sup>27</sup> In October, 2011 the Superintendent of FSCO began requiring the Chief Executive Officers (CEOs) of auto insurance companies to attest, personally and annually, that the SABS cost controls they have in place, including those to address fraud and abuse, are effective, reviewed on a regular basis and ensure that legitimate claimants are treated fairly and in accordance with the law. If the CEO of a company provides false attestation, the CEO can be personally liable for a fine of up to \$100,000. Subsequent offences can lead to fines of up to \$200,000.

### ***Other potential opportunities***

HCAI is a relatively new tool in the auto insurance system. We support the government's commitment in the *2011 Ontario Budget* to work with industry to find more anti-fraud uses for HCAI. A process of continuous improvement should be in place to fulfil this commitment, and the HCAI Working Group has identified specific opportunities to enhance HCAI's anti-fraud capabilities that should be considered as part of that process.

*1. Review and enhance the data currently sent to HCAI for opportunities to facilitate automated reports and other data analysis projects*

HCAI contains a vast amount of information that can be used to analyze trends in the auto insurance system. The analysis of data could be expanded so that trends that might indicate fraudulent behaviour could be better understood.

The government should also consider expanding the type of information that insurers must submit to HCAI to include all medical and rehabilitation expenses.

*2. Streamline how HCAI processes transactions*

HCAI should complete the transition from manual, paper-based forms to electronic transactions. Doing so will allow for simple and consistent processing within HCAI and prevent potential abuse of the system.

3. *Explore opportunities for interaction with the regulatory model for clinics that treat and assess auto insurance claimants*

The Overview section of this report briefly identified how limiting access to HCAI should be used as an enforcement tool in the regulation of clinics operating in the auto insurance system. There may be further opportunities for interaction between HCAI and the regulatory regime for clinics to:

- require greater information from clinics registered with HCAI about the practitioners they employ. HCAI could be used to check whether the services invoiced match the qualifications of the provider that billed them;
- explore how HCAI could receive electronic information regarding a clinic's registered practitioner roster and individual practitioner credential information from regulatory colleges; and
- use the business-to-business statements to verify the accuracy of a clinic's billing activity.

4. *Explore additional data collection opportunities*

The value of HCAI could be further enhanced with additional data not currently funneled through the system. Information about claimant-submitted expenses outside of medical and rehabilitation benefits, such as income replacement benefits, could create a better understanding of auto insurance cost trends.

Expanded data collection should be pursued based on four objectives:

- give policymakers a complete picture of costs related to Statutory Accident Benefits with a breakdown of distinct medical and rehabilitation costs by individual health care practitioner;
- facilitate immediate analysis of the effect of regulatory changes;
- increase the value of publicly available reports that identify the cost of Statutory Accident Benefits treatment and assessment plans; and
- provide a basis for meaningful comparisons of treatment duration and costs for similar conditions; this could be particularly useful in an environment where evidence-based treatment protocols for minor injuries are available.

## Regulation of health clinics and assessment providers

### Recommendation

13. The government should require the licensing of health clinics that treat and assess auto insurance claimants and empower the Financial Services Commission of Ontario to regulate their business practices.

In our Status Update we reported our conclusion that a licensing and regulation regime for the business practices of health clinics treating auto insurance claimants is appropriate and necessary. Although the Update did not outline a specific model it did point to four objectives that a licensing/regulatory regime should achieve:

- transparency in ownership, assessment costs and conflicts of interest;
- accountability for practitioners and clinics;
- assessment of market conduct and business practices by a regulator; and
- sanctions for fraudulent behaviour.

The first two objectives of the regulatory model, transparency and accountability, will enhance fraud detection in the auto insurance system. Assessment of market conduct and sanctions for fraudulent behaviour will support more effective investigation and enforcement.

Our recommendations regarding the regulation of business practices used by clinics that treat and assess auto insurance claimants are informed by the work of Willie Handler and Associates,<sup>28</sup> an advisory firm with considerable expertise on Ontario's auto insurance system. We have also benefited from the positive and constructive input received from interested parties in response to the Status Update.

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<sup>28</sup> The Final Report from Willie Handler and Associates is available online at <http://www.fin.gov.on.ca/en/autoinsurance/reg-health.html>

### ***Features the regulatory model should include***

Although most health professionals are regulated, the facilities in which they work are not. As well, the health regulatory colleges' mandates typically cover public protection and quality of service, rather than the business practices of the clinics that employ health professionals.

Health clinics treating and assessing auto insurance claimants range from sole practitioners to publicly traded companies, from public hospitals to private offices, from regulated professionals to unlicensed providers. Information about these service providers is limited to the number of facilities that have registered with Health Claims for Auto Insurance (HCAI) and the number of providers working in the facilities. We believe more information and more oversight is necessary.<sup>29</sup>

A review of approaches to licensing and regulating the business practices of health clinics treating auto insurance claimants in other jurisdictions shows that many are struggling with the same issues. It is important for Ontario to be proactive in this area and avoid becoming a safe haven for fraudulent clinics.

Our recommendation is centred on the objectives of transparency, accountability, assessment and sanctions set out in the Status Update. At its core, this regulatory model aimed at enhancing fraud detection would:

- license health clinics that treat auto insurance claimants and health clinics that conduct independent medical examinations of claimants;
- take a risk-based approach to regulation of business practices by providing different types of licences based on a clinic's size and scope of practice;

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<sup>29</sup> As we noted in our Interim Report last December, the use of HCAI to bill insurance companies became mandatory in Ontario in February, 2011. At that time, the number of registered facilities was 5,501. By September, 2011, it had increased 37 per cent to 7,545. As of September, 2012, there were 9,037 registered facilities.

- make the ownership, cost of services and potential for conflicts of interest within licensed clinics more transparent and allow the regulator to ensure that owners are likely to conduct a clinic's business practices with integrity; and
- regulate the business practices of licensed clinics to deter fraud, and require that licensed clinics designate a regulated health professional who would be accountable for the business operations of a health clinic when a health clinic owner is not a regulated health professional.

The Financial Services Commission of Ontario (FSCO) is the organization best-positioned to implement and oversee the regulatory regime we are recommending. FSCO should be assisted in its responsibilities by an advisory committee consisting of participants in the auto insurance system with an interest in the regulation of health clinics.

The remainder of this section provides further details regarding the regulatory model we are recommending in the areas of transparency, accountability and implementation.

### ***Transparency***

Little is known about clinics that treat and assess auto insurance claimants in Ontario. The first step in ensuring a clinic is operating honestly would be to gather information about a clinic's ownership, staff and operations through a licensing process. More information will allow FSCO to determine that the owners are suitable to operate a clinic in the auto insurance system and audit the business practices of the clinic against the information provided at the time of licensing.

The licensing regime will recognize different types of clinics and will require different information depending upon the type. In general, the information requested of an applicant will fall into one of five categories:

- facility
- ownership
- designated regulated health professional

- professional staff
- attestations signed by the owners and the designated professional<sup>30</sup>

The information submitted by a clinic will allow FSCO to make sure that the clinic will be operated with integrity by its owners and its designated health professional. This information should include confirmation that neither the owners nor the designated professional has a criminal or serious *Provincial Offences Act* conviction.

Part of our recommendation to increase clinic transparency is to mandate that clinics disclose real or potential conflicts of interest to FSCO and to claimants. In the Status Update we raised for consideration whether individuals that have conflicts should be allowed to own clinics. We have concluded that restricting ownership is not necessary or desirable, if there are strong conflict of interest disclosure provisions in the legislation. Failure to disclose conflicts of interest could result in the suspension or revocation of a clinic's licence.

Finally, we noted in the Status Update that we were considering additional transparency requirements for clinics conducting independent medical examinations. We have had representations to us that suggest that this industry is consolidating, and a practice seems to be arising of charging different insurers different prices for similar assessments. We have also heard that consolidation is leading to higher margins and, within the existing cap, the amounts available to assessors are declining. We are concerned that these trends, if widespread, can affect the effectiveness and trustworthiness of independent assessments. We do not believe that the government should be regulating corporate structure, profit margins, or specific fees. But we do believe that greater transparency will help the market work better and that is why we recommend that clinics providing independent medical examinations should be required to disclose the schedule of fees paid to regulated health professionals for providing such assessments.

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<sup>30</sup> The information that will be required under each category is elaborated on further in Appendix 6.

## ***Accountability***

In order to deter fraud, the regulatory model should have a clear accountability focus. A designated regulated health professional that is onsite at the clinic at least three days a week should be responsible for the integrity of its business practices. This designated professional could be the owner of the clinic or another individual in a clinic where the owner is not a regulated health professional.

The designated professional will be responsible for ensuring and periodically attesting that the clinic's business practices are in line with standards developed by FSCO. Appendix 6 contains twelve business practice standards we are proposing based on the Willie Handler and Associates report. Where the designated professional is not the owner of the clinic, but an employee, that individual should be empowered to ascertain from other employees of the clinic any information necessary to permit the designated health professional to sign the attestation. For example, one of the business standards relating to assessments is that the assessor be qualified and assessing within his or her scope of practice. We are not asking the designated health professional to make clinical judgements about these issues, but to take what steps are necessary to satisfy himself or herself that they are being observed, including receiving attestations from others.

## ***Implementation***

### *Types of licences*

There are many different types of professionals and facilities operating in the auto insurance sector. The report by Willie Handler and Associates indicated that the majority of professionals in the auto insurance system are regulated health professionals, however there are professionals transitioning to regulated status and unregulated providers in the system as well. Clinics and facilities in the auto insurance system can range from sole practices with one type of professional to multi-disciplinary facilities that employ many types of regulated and unregulated individuals.



The regulatory model should licence all clinics and facilities submitting invoices through the HCAI system. Vendors who provide medical and rehabilitation goods and services that are excluded from the HCAI system, such as assistive devices or vehicle and home modifications, should be required to register with HCAI and be licensed through FSCO.

We noted in the Status Update that we were mindful of the need to strike a balance so that the regulatory model we recommend does not overburden sole practitioners, small clinics and those clinics whose major activity is not in the area of auto insurance. A single health professional that only submits a handful of invoices in a year should not require the same type of oversight as a clinic billing insurers for \$1 million every month.

With this in mind we are proposing three types of licences:

- Facility Licence

Clinics and sole practitioners that have billed more than \$200,000 over the past year (based on HCAI data) would require a Facility Licence. We expect applicants for Facility Licences to be multi-disciplinary treatment and assessment clinics.

- General Licence

Sole practitioners that are regulated health professionals and facilities that have low billing volumes would apply for a General Licence. The billing threshold for a General Licence should be less than \$200,000 in annual invoices through HCAI. The application process for a General Licence should be much simpler than the process for applying for a Facility Licence or Restricted Licence.

- Restricted Licence

Unregulated providers who are not employed by a facility with a Facility Licence or General Licence should require a Restricted Licence. A Restricted Licence should include some of the requirements for other licence types but would also restrict the types of goods and services that a licensee could provide to auto insurance claimants.

Facilities with a Restricted Licence will employ only unregulated providers. This would make it challenging for those facilities to designate a regulated health professional to be responsible for business practices. Clinics with Restricted Licences should therefore be required to name a “designated contact” within the facility instead of a designated regulated health professional to be accountable for business practices.

### *Responsible organization*

The Financial Services Commission of Ontario has broad experience in this area and is already responsible for overseeing the market conduct of insurance companies, insurance agents, independent adjusters and mortgage brokers. In the past, FSCO also had regulatory responsibility for paralegals in the auto insurance system before oversight was transferred to the Law Society of Upper Canada.

In assuming these roles, FSCO will face challenges, but we believe from our conversations with senior FSCO officials that they can meet them and perform effectively. In the Status Update, we recognized the need for the government to make sure that hiring constraints do not prevent FSCO from acquiring the necessary staff and expertise it requires to carry out its new responsibilities. We continue to regard this as critical and reiterate that recommendation in this Final Report.

The Superintendent of FSCO should establish an advisory body, consisting of interested participants in the auto insurance system, to assist FSCO with its new regulatory responsibilities in this area. The advisory body could provide FSCO with advice on licensing requirements, business practice standards, licence application processes, disciplinary processes and audit functions.

### *Role of the Health Regulatory Colleges*

Health regulatory colleges are an important part of Ontario’s auto insurance system. The colleges focus their resources on issues related to patient care and safety, which are critical for claimants being treated by regulated health professionals. Our recommended regulatory model has a clear focus on the business practices of health clinics and not the standards of practice for individual professionals.

Communication between the colleges and FSCO is necessary to ensure that this split responsibility is effective and does not result in regulatory gaps or resource duplication. Regulatory colleges should inform FSCO of changes in the status of their members and any disciplinary action taken and FSCO should inform the necessary regulatory college when a facility that employs one of their members is being investigated by FSCO. FSCO should also ensure that any information it receives in its role as a business practices regulator regarding inadequate patient care or standards of practices is forwarded to the appropriate regulatory college.

## **Making it easier for individuals to report suspected fraud**

### **Recommendations**

14. The Financial Services Commission of Ontario (FSCO) should create an “Auto Insurance Fraud Information Hotline” to promote and facilitate the flow of information about suspicious activity in the auto insurance system. FSCO should report on the follow-up of information submitted.
15. The government should introduce legislative protection prohibiting reprisal or retribution against individuals who, in good faith, provide information about suspected fraud.

One of the objectives of our consumer engagement and education strategy is to inform individuals about potential fraud situations and encourage them to provide information to appropriate investigative authorities where they feel this is warranted. As we noted earlier, the majority of Ontarians do not know where to report insurance fraud observed in a health clinic treating auto insurance claimants. We believe that the system should be simplified and made transparent for those wishing to make such reports.

We did note in our Status Update that the Insurance Board of Canada (IBC) was working with the Ontario Association of Crime Stoppers to develop a partnership that would assist in the reporting of potential auto insurance fraud. We encourage such a partnership but we believe that more is required.

We recommend that the government provide a legislative framework that prohibits any reprisal or retaliation for the provision of information about suspected auto insurance fraud, where such information is provided in good faith. One way in which this might be done is to make reprisals or retaliations in such situations an unfair or deceptive act or practice (UDAP).

We also recommend that FSCO create an “Auto Insurance Fraud Information Hotline”. This Hotline would be available to receive information about auto insurance fraud or the commission of a UDAP. The information may be submitted anonymously or not.

The Superintendent should ensure that the Hotline is staffed in a way that allows FSCO to:

- engage in a triage process in relation to information received about suspected fraud, the possible commission of a UDAP or any act of reprisal by forwarding the information to the appropriate parties, such as FSCO investigators, an insurance company, a professional college, a regulatory body or any other person or institution as may be appropriate;
- follow up any action initiated because of a call or e-mail and respond appropriately; and
- report semi-annually to the public regarding the number and nature of the calls and e-mails made to the Hotline and the outcome of those contacts.

FSCO’s Auto Insurance Fraud Information Hotline should be visible to the public. Information on how to reach the Hotline should be well-known in the industry and easily accessible for the public on FSCO’s website, as well as the dedicated website that we are recommending as part of our consumer engagement and education strategy.

## Enhancing FSCO's ability to get information

### Recommendation

16. The government should amend the *Insurance Act* to enhance the Financial Services Commission of Ontario's powers to obtain additional information to better conduct investigation and enforcement.

The Financial Services Commission of Ontario (FSCO) is well-positioned to assist in the detection of auto insurance fraud, and enhanced authorities would increase its effectiveness. We note that most of the existing authorities in the *Insurance Act* were drafted many years ago and more recent statutes in other areas (for example, the regulation of mortgage brokers) contain provisions that would be beneficial to detect auto insurance fraud. Our assessment of the extent and scope of fraud also suggests that FSCO needs the ability to secure more information from a greater range of actors in the auto insurance marketplace if it is to be effective in detecting fraud.

The government has taken important steps to enhance and modernize FSCO's authorities through the provision of legislative authority to levy administrative monetary penalties. This process of legislative modernization needs to be extended to FSCO's ability to get information (discussed here) and to pursue investigations and enforce penalties (discussed in the Investigation and Enforcement section of this report).

We therefore recommend that the scope of information that the Superintendent can request be broadened.

Sections 29 to 32 of the act provide important information-gathering powers. The duty to furnish information in section 31 is limited to licensees, officers and agents of an insurer, and other persons "engaged in the business of insurance". It is arguable that this language not only leaves out other persons who were formerly or never licensed, but also leaves out persons who have relevant information.

The scope of conducting “inquiries” under section 29 is even narrower than section 31 by allowing inquiries to be directed only to insurers. The authorities provided to FSCO in these sections should be enhanced and made consistent.

Current legislation makes many references to persons “engaged in the business of insurance”. Under some interpretations, this language can be read to include only entities and individuals who are licensed or who provide insurance services. We believe that the net should be wider rather than narrower, and it would seem appropriate to clarify the language to provide greater certainty about the persons FSCO can obtain information from, examine, and sanction for unfair or deceptive acts or practices.

Appendix 7 contains a list of our proposed changes in this area.

## **Changes to regulations governing insurer/claimant relations**

### **Recommendations**

17. The government should amend rules so that claimants play a more active role in helping to detect and prevent fraud. Specifically it should:
  - a. require claimants to confirm attendance at treatment facilities and receipt of goods and services billed to insurers; and
  - b. require insurers to itemize the list of invoices they have received when they provide a benefit statement to a claimant every two months.
18. Insurers should have the ability to examine a claimant under oath, where this is necessary to determine which insurer should be responsible for coverage, without prejudice to the right for an examination under oath that now exists.

Well-informed claimants are one of the best ways to detect auto insurance fraud as soon as it occurs. Our consumer engagement and education strategy, outlined in the Prevention section, will inform consumers about Ontario’s auto insurance system, but we have also considered opportunities for further regulatory changes that would make it easier for claimants to detect fraudulent schemes.









## Investigation and Enforcement

This section sets out our recommendations to address fraud investigation and enforcement. They are focused in seven areas:

- enhancing FSCO's ability to investigate and impose sanctions for unfair or deceptive acts or practices (UDAPs)
- oversight and audit of regulated clinics
- sanctioning regulated clinics for improper business practices
- information sharing among fraud investigators
- joint-force police collaboration
- early assignment and continuity of Crown counsel
- changes to SABS and UDAPs to increase the range of sanctions

### Enhancing FSCO's ability to investigate and impose sanctions for UDAPs

#### Recommendation

20. The government should amend the *Insurance Act* to enhance the Financial Services Commission of Ontario's powers to investigate and sanction unfair or deceptive acts or practices.

We have reviewed the acts and practices that are currently defined in Ontario Regulation 7/00 as "unfair or deceptive", as well as the powers and authorities of the Superintendent to investigate them and impose appropriate sanctions under the *Insurance Act*.

A number of acts and omissions are currently defined as unfair or deceptive acts or practices (UDAPs) when committed by persons who provide goods or services that are payable, directly or indirectly, out of the proceeds of insurance. This includes health care practitioners, tow truck operators, vehicle storage service providers and collision repair service providers.



## Oversight and audit of regulated clinics

### Recommendation

21. The government should give the Financial Services Commission of Ontario the authority to oversee and audit the business and billing practices of health clinics and individual practitioners who invoice auto insurers.

In the Detection section, we set out the regime we are recommending to regulate the business practices of clinics that treat and assess auto insurance claimants. In order for this regime to be successful, it must provide for a designated health professional (either the owner or an employee of the clinic if the owner is not a regulated health professional) to attest to the integrity of the clinic's business practices, and allow for auditing of the clinic's business practices to verify that attestation. The business-practice standards for which we are recommending attestations be required at least annually are set out in Appendix 6. The nature of the attestation will require the accountable individual to make inquiries and secure information that permits the attestation to be made. Attestations may be subject to audit and where attestations are found not to accord with the facts sanctions may be imposed.

We recommend that there be a requirement to attest at least annually, through filing an electronic Annual Information Return (AIR), with regard to the integrity of the business practices and their consistency with the standards established by FSCO. There should also, in general, be requirements to attest quarterly to the accuracy of the clinic's billings to auto insurers. The business-to-business statements introduced recently by HCAI and highlighted in our Status Update and this report can help clinics verify the accuracy of their billing activity for the attestation process.



































The Law Society's Professional Regulation Division puts out a Quarterly Report regarding complaints the Law Society receives and how those complaints are addressed. In order to build on the transparency provided by the Quarterly Report, the Professional Regulation Division should begin identifying the number of complaints they have received about suspected auto insurance fraud in its reporting. The Law Society should also continue to monitor allegations of auto insurance fraud and communicate its findings.

We also examined the regulation that defines acts as unfair or deceptive in the auto insurance system (UDAP). The current UDAP exempts lawyers and paralegals from FSCO oversight. While that exemption is understandable in light of the Law Society's responsibilities, we believe that it would be useful to clarify that the exemption does not apply to lawyers and paralegals when they are not acting in a legal capacity but acting as business persons in such endeavours.

## **Regulated Health Profession Colleges**

### **Recommendations**

37. Health regulatory colleges with members that regularly work with auto insurance claimants should enhance their understanding of the consequences associated with auto insurance fraud and ensure that complaints of fraud are investigated and lead to disciplinary action where appropriate.
38. Health regulatory colleges should work together to develop professional standards, guidelines and best practices to improve the quality of independent medical assessments of auto insurance claimants conducted by their members.

















Recommendation	Page
16. The government should amend the <i>Insurance Act</i> to enhance the Financial Services Commission of Ontario's powers to obtain additional information to better conduct investigation and enforcement.	61, 117 (Appendix 7)
17. The government should amend rules so that claimants play a more active role in helping to detect and prevent fraud. Specifically it should: <ul style="list-style-type: none"> <li>a. Require claimants to confirm attendance at treatment facilities and receipt of goods and services billed to insurers; and</li> <li>b. Require insurers to itemize the list of invoices they have received when they provide a benefit statement to a claimant every two months.</li> </ul>	62
18. Insurers should have the ability to examine a claimant under oath, where this is necessary to determine which insurer should be responsible for coverage, without prejudice to the right for an examination under oath that now exists.	62
19. The Ministry of Transportation should continue its work on the Electronic Collision System project and continue to engage stakeholders, including the insurance industry, regarding the system's development.	64
<b>INVESTIGATION AND ENFORCEMENT</b>	
20. The government should amend the <i>Insurance Act</i> to enhance the Financial Services Commission of Ontario's powers to investigate and sanction unfair or deceptive acts or practices.	66, 118 (Appendix 8)
21. The government should give the Financial Services Commission of Ontario the authority to oversee and audit the business and billing practices of health clinics and individual practitioners who invoice auto insurers.	68, 112 (Appendix 6)



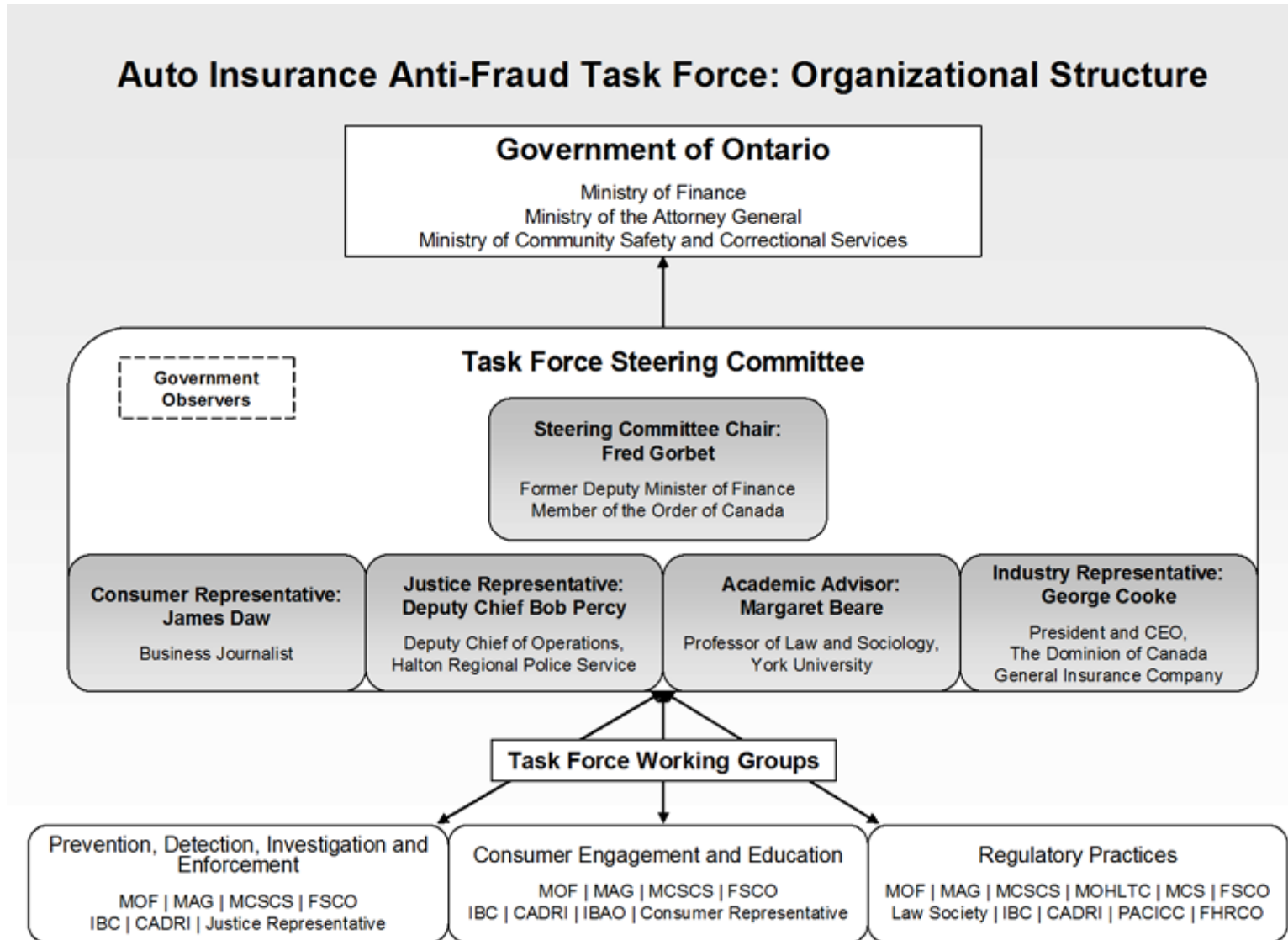


Recommendation	Page
33. The Minister of Finance should, at an appropriate time, commission an independent review of how well Financial Services Commission of Ontario is carrying out its new responsibilities.	79
34. The Law Society of Upper Canada should engage with the Financial Services Commission of Ontario and continue to stay informed and be responsive to issues related to lawyers and paralegals practicing in the auto insurance system.	81
35. Auto insurance system participants with concerns regarding the conduct of a lawyer or paralegal should report their concerns to the Law Society of Upper Canada.	81
36. The government should clarify the exemption for lawyers and paralegals in the unfair or deceptive acts or practices regulation so that it applies to lawyers and paralegals only when they are acting in a legal capacity.	81
37. Health regulatory colleges with members that regularly work with auto insurance claimants should enhance their understanding of the consequences associated with auto insurance fraud and ensure that complaints of fraud are investigated and lead to disciplinary action where appropriate.	84
38. Health regulatory colleges should work together to develop professional standards, guidelines and best practices to improve the quality of independent medical assessments of auto insurance claimants conducted by their members.	84





## Appendix 1: Auto Insurance Anti-Fraud Task Force structure



## Appendix 2: Individuals and Groups who Made Representations to the Task Force

### List of Interested Parties Making Representations to the Task Force (July, 2011 to July, 2012)

Stakeholder	Level of Presentation Working Group, Steering Committee or Both
Able Translations	Working Group
Accident Support Services International	Working Group
Alliance of Medical and Rehabilitation Providers	Working Group
Andrew Shaul, Psychologist	Steering Committee
Associated Canadian Car Rental Operators	Steering Committee
Canadian Association of Special Investigation Units	Steering Committee
Canadian Life and Health Insurance Association	Steering Committee
Canadian Society of Medical Evaluators	Steering Committee
City of Toronto (Licensing and Enforcement)	Working Group
Coalition Representing Regulated Health Professionals in Auto Insurance Reform	Steering Committee
Dr. John Clifford	Steering Committee
Federation of Health Regulatory Colleges of Ontario	Working Group
Health Claims for Auto Insurance	Steering Committee
Insurance Brokers Association of Ontario	Working Group
Insurance Bureau of Canada	Both
Insurance Fraud Group	Both
Law Society of Upper Canada	Working Group
Lawrence Gold, Vehicle Storage Expert	Working Group
Michael Seaton, Digital Marketing Expert	Working Group
National Insurance Crime Bureau	Both
Ontario Association of Crime Stoppers	Working Group
Ontario Bar Association	Working Group
Ontario Provincial Police Anti-Rackets Branch	Both
Ontario Trial Lawyers Association	Working Group
Police Panel (Peel, Hamilton, York Region)	Working Group
Provincial Towing Association of Ontario	Working Group
RBC Insurance	Working Group

<b>Stakeholder</b>	<b>Level of Presentation</b> Working Group, Steering Committee or Both
Robin Ingle, Ingle Insurance	Working Group
State Farm Insurance	Both
The Dominion	Both
Workplace Safety and Insurance Board	Steering Committee

**List of Parties who Made Representations to the Task Force  
(August, 2012 to October, 2012)**

<b>Met with the Steering Committee</b>
Alliance of Community Medical and Rehabilitation Providers <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/propos1.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/propos1.pdf</a>
Associated Canadian Car Rental Operators <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/2012.08.16_Steering_Committee_status_update_comment.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/2012.08.16_Steering_Committee_status_update_comment.pdf</a>
Canadian Automobile Association of South Central Ontario
Canadian Life and Health Insurance Association <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/CLHIA_Submission_Regarding_Steering_Committee_Status_Update_(ID%2069064).pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/CLHIA_Submission_Regarding_Steering_Committee_Status_Update_(ID%2069064).pdf</a>
Collision Industry Information Alliance <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/Anti_Fraud_Task_Force_report_August_2012_copy_for_presentation-1.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/Anti_Fraud_Task_Force_report_August_2012_copy_for_presentation-1.pdf</a>
Council of Private Investigators – Ontario <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/Status_Report_Response_August_17_2012.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/Status_Report_Response_August_17_2012.pdf</a>
Fair Association of Victims for Accident Insurance Reform <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud_Task_Force_FAIR_final_submission_Aug_27_12.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud_Task_Force_FAIR_final_submission_Aug_27_12.pdf</a>
JP Towing Services
Law Society of Upper Canada <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/Gorbet,Fred.AutoAnti-Fraud.082312.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/Gorbet,Fred.AutoAnti-Fraud.082312.pdf</a>
Ontario Bar Association <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/OBA-July_2012_presentation_to_OAAT_(2)_updated.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/OBA-July_2012_presentation_to_OAAT_(2)_updated.pdf</a>
Ontario Psychological Association <a href="http://www.fin.gov.on.ca/en/autoinsurance/submissions/OPA_Response_anti-fraud_report_SENT_Aug_17_12.pdf">http://www.fin.gov.on.ca/en/autoinsurance/submissions/OPA_Response_anti-fraud_report_SENT_Aug_17_12.pdf</a>

## Met with the Steering Committee

Ontario Trial Lawyers Association

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/OTLA's\\_Response\\_to\\_the\\_Anti-Fraud\\_Task\\_Force\\_Status\\_Update.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/OTLA's_Response_to_the_Anti-Fraud_Task_Force_Status_Update.pdf)

Provincial Towing Association of Ontario

<http://www.fin.gov.on.ca/en/autoinsurance/submissions/Submission-ProvincialTowingAssocOnt.pdf>

Sue Collings

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/Anti-Fraud\\_Task\\_Force\\_Input\\_en.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/Anti-Fraud_Task_Force_Input_en.pdf)

The Advocates' Society

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/Submissions\\_to\\_Anti-Fraud\\_TF\\_re\\_Expansion\\_of\\_UDAP\\_to\\_Apply\\_to\\_Lawyers\\_FINAL.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/Submissions_to_Anti-Fraud_TF_re_Expansion_of_UDAP_to_Apply_to_Lawyers_FINAL.pdf)

## Made a Submission Electronically

Allstate Canada Group

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/ACG\\_Submission\\_to\\_Steering\\_Ctee\\_Anti\\_Fraud\\_Task\\_Force.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/ACG_Submission_to_Steering_Ctee_Anti_Fraud_Task_Force.pdf)

Aviva

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/Sharp\\_MFD@avivacanada%20com\\_20121018\\_100621.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/Sharp_MFD@avivacanada%20com_20121018_100621.pdf)

Canadian Society of Medical Evaluators

<http://www.fin.gov.on.ca/en/autoinsurance/submissions/CSME20AUG12AFSubmission.pdf>

Ontario Association of Crime Stoppers

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/OACS\\_Submission\\_to\\_the\\_Steering\\_Committee\\_on\\_Anti-Fraud.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/OACS_Submission_to_the_Steering_Committee_on_Anti-Fraud.pdf)

Insurance Bureau of Canada

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud\\_Task\\_Force\\_Submission.ATTACH.170812.FINAL.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud_Task_Force_Submission.ATTACH.170812.FINAL.pdf)

State Farm Insurance

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/StateFarm\\_Response\\_to\\_Status\\_Update.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/StateFarm_Response_to_Status_Update.pdf)

The Co-operators Group Limited

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/The\\_Co-operators\\_Submission\\_Task%20Force%20\\_Final\\_29Aug2012.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/The_Co-operators_Submission_Task%20Force%20_Final_29Aug2012.pdf)

TD Insurance

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/TDI\\_Submission\\_to\\_the\\_Anti-Fraud\\_Task\\_Force\\_Steering\\_Committee\\_Status\\_Update\\_Aug\\_2012.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/TDI_Submission_to_the_Anti-Fraud_Task_Force_Steering_Committee_Status_Update_Aug_2012.pdf)

## Appendix 3: Recent Anti-Fraud Initiatives in Selected Other Jurisdictions

Other jurisdictions with auto insurance systems similar to Ontario's have taken action to crack down on auto insurance fraud. The timeline below is limited to steps taken by New York, Florida and the United Kingdom (UK) in 2012.

**January, 2012:** The City of London Police announces the launch of the Insurance Fraud Enforcement Department, a police unit dedicated to combating insurance fraud. The unit is funded by the UK's insurance industry and consists of a team of 34 detectives and financial investigators that target both organized and opportunistic insurance fraud, including auto insurance fraud.<sup>38</sup>

**February, 2012:** Law enforcement officials in New York announce charges against 36 defendants for an organized scheme to defraud auto insurers of over \$279 million.<sup>39</sup>

**May, 2012:** New York State introduces regulatory reforms to address loopholes in its no-fault auto insurance system and prevent health care practitioners from being paid for services that were not actually provided to claimants.<sup>40</sup>

Florida introduces legislation that targets auto insurance fraud by introducing strict requirements for health clinic ownership and strengthening billing practices in the auto insurance system.<sup>41</sup>

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<sup>38</sup> <http://www.cityoflondon.police.uk/CityPolice/Media/News/IFEDlaunchestoday3012012.htm>

<sup>39</sup> <http://www.fbi.gov/newyork/press-releases/2012/manhattan-u.s.-attorney-announces-charges-against-36-individuals-for-participating-in-279-million-health-care-fraud-scheme>

<sup>40</sup> <http://www.dfs.ny.gov/about/press/pr1205011.htm>

<sup>41</sup> [http://www.myfloridacfo.com/fraud/Annual%20Report/Aug2012\\_PIPReport.pdf](http://www.myfloridacfo.com/fraud/Annual%20Report/Aug2012_PIPReport.pdf)

**July, 2012:** The Florida Highway Patrol partners with the Florida Division of Insurance Fraud and the National Insurance Crime Bureau to combat staged collisions by raising public awareness and providing specific training to law enforcement officers.<sup>42</sup>

**September, 2012:** The UK insurance industry announces the creation of an Insurance Fraud Register containing details of persons who have committed insurance fraud. The Insurance Fraud Register builds on the industry's existing use of data sharing and analytical software to combat insurance fraud.<sup>43</sup>

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<sup>42</sup> <http://www.myfloridacfo.com/fraud/press/HSMVPR073112.pdf>

<sup>43</sup> <http://www.theifr.org.uk/en/>

## Appendix 4: Learning Moments Matrix

Learning Moment	Objective	Potential Delivery Mechanism
<b>Learning about Driving and Insurance</b>	<ul style="list-style-type: none"> <li>· Ensure new drivers are aware of the consequences of fraud and how they can protect themselves from being used in an organized scheme</li> <li>· Reach new drivers and the school-age population with messages about the consequences of fraud and how they can protect themselves from being used in an organized scheme</li> <li>· Teach new drivers about the fundamentals of Ontario’s auto insurance system</li> </ul>	<ul style="list-style-type: none"> <li>· Ministry of Transportation Driver’s Handbook</li> <li>· Beginner driver education courses</li> <li>· Enhancing existing learning modules on auto insurance developed for classroom lessons</li> <li>· Career education days involving insurance industry organizations</li> <li>· Financial literacy programs including insurance-related content</li> <li>· Printed materials distributed at public events through government service delivery partners</li> </ul>
<b>Renewing a Driver’s Licence or Vehicle Registration</b>	<ul style="list-style-type: none"> <li>· Ensure new drivers and vehicle owners are aware of the consequences of fraud and how they can protect themselves from being used in an organized scheme</li> </ul>	<ul style="list-style-type: none"> <li>· Licence and registration renewals</li> <li>· Printed materials provided at vehicle dealership, maintenance and repair facilities</li> </ul>
<b>Purchasing or Renewal of a Policy</b>	<ul style="list-style-type: none"> <li>· Engage consumers on the subject of fraud when they are reviewing their coverage levels and premiums</li> </ul>	<ul style="list-style-type: none"> <li>· Printed materials provided to policyholders by insurers, brokers and agents upon time of policy purchase or renewal</li> <li>· Small “what to do if in an collision” pamphlet to be kept in the insured vehicle sent to policyholders</li> </ul>

<b>Learning Moment</b>	<b>Objective</b>	<b>Potential Delivery Mechanism</b>
<b>Having a Vehicle Towed</b>	<ul style="list-style-type: none"> <li>· Inform claimants regarding potential fraud schemes directly after a collision has occurred</li> </ul>	<ul style="list-style-type: none"> <li>· Printed materials distributed to collision victims by tow truck drivers</li> <li>· Awareness posters around entrances to CRCs and other areas tow trucks may take damaged vehicles</li> <li>· Hotline for consumers to call with concerns about their towing service printed on all towing invoices</li> </ul>
<b>Visiting a Collision Reporting Centre (CRC)</b>	<ul style="list-style-type: none"> <li>· Help ensure collision victims are aware of fraud possibilities that exist around time of collision</li> <li>· Spread messages on specific types of organized fraud schemes collision victims should avoid</li> <li>· Engage collision victims as a valuable source of accurate information about a collision that can help prevent fraud</li> </ul>	<ul style="list-style-type: none"> <li>· Printed materials for collision victims</li> <li>· Anti-fraud posters and videos</li> <li>· Further training for CRC staff that work directly with collision victims</li> </ul>



<b>Learning Moment</b>	<b>Objective</b>	<b>Potential Delivery Mechanism</b>
<b>Making an Auto Insurance Claim</b>	<ul style="list-style-type: none"> <li>· Provide claimants with information that can help them detect fraud and protect their benefits</li> <li>· Inform claimants about what they should do when they become aware of suspicious activity involving their claim</li> <li>· Ensure brokers and insurance company staff are equipped to discuss fraud issues with policyholders</li> </ul>	<ul style="list-style-type: none"> <li>· Benefit statement (itemized information, advice on what to do if suspicious activity is detected)</li> <li>· Additional anti-fraud messaging in claims welcome packages</li> <li>· More substantive anti-fraud warnings on claims forms</li> <li>· Better training for auto insurance adjusters regarding specific fraud issues</li> <li>· Anti-fraud information, professional development courses or seminars for insurance brokers</li> </ul>
<b>Receiving Medical Treatment</b>	<ul style="list-style-type: none"> <li>· Help people become more aware of the types of scams that could occur when they are receiving medical or rehabilitation treatment</li> <li>· Promote better education of providers on fraud to help them answer questions from patients</li> </ul>	<ul style="list-style-type: none"> <li>· More substantive anti-fraud warnings on claims forms</li> <li>· Printed materials made available to claimants through health care practitioners and clinics</li> </ul>
<b>Tips Hotline</b>	<ul style="list-style-type: none"> <li>· Provide an anonymous tips hotline</li> <li>· Resolve the issue of individuals not knowing where to report suspicious behaviour related to an auto insurance claim</li> </ul>	<ul style="list-style-type: none"> <li>· Partnership between IBC and Crime Stoppers on tips hotline</li> </ul>

<b>Learning Moment</b>	<b>Objective</b>	<b>Potential Delivery Mechanism</b>
<b>News and Public Interest Events</b>	<ul style="list-style-type: none"> <li>· Take advantage of publicized events (such as road safety crackdowns) that can be linked to auto insurance fraud</li> </ul>	<ul style="list-style-type: none"> <li>· News releases and social media campaigns from insurance industry and government organizations</li> <li>· Public Safety Announcements created for television viewers</li> </ul>
<b>Exposure to Multimedia Campaign</b>	<ul style="list-style-type: none"> <li>· Create widespread awareness of auto insurance fraud and its costs</li> </ul>	<p>Month long campaign possibly involving:</p> <ul style="list-style-type: none"> <li>· Targeted newspaper advertisements</li> <li>· Subway advertisements</li> <li>· Television or radio commercials</li> </ul>

## **Appendix 5: Illustrative Consent Language for Auto Insurance Application and Claim Forms**

This Appendix contains current wording and an illustrative set of changes to the Ontario Application for Auto Insurance and the Ontario Application for Accident Benefits to provide for the pooling of relevant information for the purposes for preventing, detecting, or suppressing fraud. We have illustrated the changes we are proposing by:

- highlighting new language
- ~~striking through language to be deleted~~

We offer these suggestions as a basis for further consideration by FSCO.

### **Ontario Application for Auto Insurance (OAF 1)**

#### *Section 11*

*Declaration of Applicant — Read this section carefully before you sign.*

#### **I understand that to qualify for a driver's licence, drivers:**

- must not suffer from any mental, emotional, nervous or physical disability that significantly interferes with the driver's ability to safely drive an automobile of the class they are licensed for;
- must not be addicted to alcohol or a drug to the extent that it significantly interferes with the driver's ability to safely drive an automobile; and
- must notify the Ministry of Transportation immediately if the driver becomes physically or mentally disabled to the extent that it might interfere with the driver's ability to safely drive an automobile.

#### **To the best of my knowledge,**

- all listed drivers are qualified and hold a driver's licence, and
- the details in Sections 1 to 6 and 9 are correct.









## Appendix 6: Licensing and Regulation of Health Clinics

In our report we made many references to specific provisions that would promote transparency, accountability and sanctions in the regulatory model we are recommending for health clinics that treat and assess auto insurance claimants.

This appendix provides greater detail on those provisions. The final report of Willie Handler and Associates, which is also publicly available, provides a greater level of detail regarding the basis of our proposal for interested parties.<sup>44</sup>

### Transparency: Required Information

#### *Facility Information*

- Corporate or legal name of facility
- Facility's physical address and mailing address, email address, telephone numbers and other contact information
- Facility's hours of operations
- Overview of services to be provided (important for Restricted Licence applicants)
- Fee schedule for services to be provided
- Aggregate amount of billings to auto insurers over the past 12 months including other facilities under common ownership
- Floor plan of the facility showing the location and size of waiting area, location and size of treatment/examination rooms and location and type of diagnostic and therapy equipment (Facility Licence only)

#### *Ownership Information*

- Ownership structure (sole proprietor, partnership, incorporation)
- Articles of incorporation (where applicable)
- Identity of all owners
- Police background checks for owners covering all jurisdictions lived in over the previous five years

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<sup>44</sup> The report is available online at <http://www.fin.gov.on.ca/en/autoinsurance/reg-health.html>



- List of related companies through common shareholder ownership
- Disclosure of all conflicts of interests in relation to other business interests of owners and their family members as it relates to insurance, health care and legal/paralegal representation

*Designated Regulated Professional (or Designated Contact for Restricted Licence applications) Information*

- Name and contact information of designated regulated professional (or designated contact)
- College registration number
- Hours that the designated regulated professional or designated contact is on site
- List of all college disciplinary action taken against designated regulated professional since their college licence was issued
- Police background checks for designated regulated professional or designated contact covering all jurisdictions lived in over the previous five years

*Professional Staff Information*

- Name and contact information of each professional staff member
- College registration number
- List of other FSCO-licensed facilities that each professional staff member is employed with
- List of all college disciplinary action taken against professional staff since their college licence was issued
- Indicate professional staff that conduct insurer examinations indicating number years of applicable clinical experience (must have five years minimum)

*Attestations Signed by Clinic Owners and the Designated Regulated Professional or Designated Contact*

- Owners attests to the accuracy of the information in the application
- Owners agree to provide FSCO with additional information once application has been reviewed as a requirement to be licensed
- Owners agree to provide FSCO with supplement that may be requested after licence has been issued and to update FSCO within 30 days of any changes to the information in the application
- Owners agree to cooperate with compliance audits or investigations of the facility by a FSCO investigator, law enforcement officer or any other person authorized by FSCO to enforce compliance
- Owner attests to comply with all business practice standards set out by FSCO
- Designated regulated professional or designated contact attests to the accuracy of the information in the application
- Designated regulated professional or designated contact attests to having unrestricted access to the facility's financial information
- Designated regulated professional or designated contact agrees to cooperate with compliance audits or investigations of the facility by a FSCO investigator, law enforcement officer or any other person authorized by FSCO to enforce compliance
- Designated regulated professional attests that professional staff conducting independent examinations are working within their scope of practice, have a minimum of five years applicable clinical experience and are providing opinions that are not subject to undue influence
- Designated regulated professional or designated contact agree to complete quarterly HCAI billing attestations regarding accuracy and appropriateness of bills submitted through HCAI

### **Accountability: Business Practice Standards**

1. No owner, designated regulated professional, or designated contact shall have a criminal or serious *Provincial Offences Act* conviction in the five years prior to submitting a licence application.
2. Facility owners must disclose to FSCO all conflicts of interest in relation to other business interests of the owners and their family members as it relates to insurance, health care and legal/paralegal representation.
3. A facility with a Facility Licence or a General Licence shall identify a designated regulated professional who will be accountable for the operations of the facility. A facility with a Restricted Licence shall identify a designated contact who will be accountable for the operations of the facility. The designated regulated professional or designated contact must be onsite at least three days per week.
4. If the facility conducts independent examinations, all professional staff conducting the examinations shall have at least five years of applicable clinical experience and the designated regulated professional shall attest that the assessors work within their scope of practice.
5. A facility shall cooperate with compliance audits or investigations by a FSCO investigator, law enforcement officer or any other person authorized by FSCO to enforce compliance.
6. A facility shall not accept, solicit, demand or pay a referral fee in respect of a person claiming benefits under the SABS.
7. A facility shall not intentionally submit duplicate treatment and assessment requests in respect of a claimant or duplicate invoices to an insurer.
8. A facility shall not intentionally invoice for goods and services that have not been provided to a claimant or that have not been approved by the insurer.
9. A facility shall cooperate with an insurer's request to verify an invoice.
10. A facility shall only bill once for each Treatment and Assessment Plan (OCF-18) or no more frequently than once every thirty days.
11. A facility shall file all fees with FSCO and shall not invoice for amounts that unreasonably exceed amounts charged by others for similar goods and services.
12. A facility shall comply with all applicable Canadian laws and regulations, Superintendent's Guidelines and HCAI Terms and Conditions.

## **Sanctions: Examples of Non-Compliance**

- An application that contains false or missing information
- Failure to meet the business practice standards established by FSCO
- Failure to allow for inspection of facility for compliance by a FSCO investigator, law enforcement officer or any other person authorized by FSCO to enforce compliance
- The conviction of an owner or designated regulated professional or designated contact for fraud related to the operation of the facility
- The facility's designated regulated professional has been disciplined by their health regulatory college
- Failure to notify FSCO in writing of a change in a designated regulated professional or designated contact within thirty days
- Failure to notify FSCO of a substantive change in licence application information within thirty days

## Appendix 7: Proposals to Increase FSCO’s Authority to Obtain Information

FSCO investigators cannot easily obtain information and investigate certain persons involved in the insurance sector, such as formerly licensed persons, health care and assessment providers, and other business persons providing services to insurance claimants.

Proposed Changes to <i>Insurance Act</i>	References
Expand the scope/type of person from whom information can be requested and obtained by FSCO.	Similar to provisions contained in the Ontario <i>Mortgage Brokers, Lenders and Administrators Act, 2006</i> and Alberta insurance legislation.
Expand the type of information that can be sought by FSCO.	Similar to provisions contained in the <i>Mortgage Brokers, Lenders and Administrators Act, 2006</i> .
Allow FSCO to specify the format and timeline for delivery of information.	Similar to provisions contained in the <i>Mortgage Brokers, Lenders and Administrators Act, 2006</i> .
Establish an expeditious process to resolve disputes about information requests.	Similar to provisions contained in Alberta insurance legislation.

## Appendix 8: Enhanced Investigation and Enforcement Authorities for FSCO

### Proposals to increase FSCO’s power to investigate and enforce provisions under the *Insurance Act*

Over the many years since the *Insurance Act* was first introduced many aspects of the insurance business have changed. To keep pace with these changes, such as the growing role of technology in the insurance system, it is necessary to clarify and update some of the language in the *Insurance Act* so that FSCO can deploy twenty-first century investigation tools in a twenty-first century business context.

Proposed Changes to <i>Insurance Act</i>	References
Provide authority for a person to enter into a binding compliance undertaking with the Superintendent, a practice often used in enforcement matters.	Similar to provisions contained in Alberta insurance legislation.
Expand the list of things that FSCO can examine during an investigation from “money or things” to, for example, all money, valuables, documents and records relevant to the investigation.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> , the <i>Real Estate and Business Brokers Act, 2002</i> and other regulatory acts.
Allow FSCO to make use of a data storage/retrieval system that is being used by those being investigated to produce information for the investigation.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .
Clarify that FSCO can take other forms of information besides paper documents (such as computer disks, hard drives, equipment) to obtain information during an investigation.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .

<b>Proposed Changes to <i>Insurance Act</i></b>	<b>References</b>
Expand the duty to assist by a person being investigated to include things like answering questions as well as providing documents.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .
Require FSCO investigators to provide evidence of his or her authority to conduct the examination, on request.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .
Provide authority to authorize persons with special, expert or professional knowledge to accompany and assist the person executing a warrant.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .
Update warrant provisions more generally to reflect the standards and practices of investigations undertaken by FSCO to investigate mortgage brokers.	Similar to provisions contained in the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> .

### **Proposals to increase FSCO’s power to investigate and sanction unfair or deceptive acts or practices**

FSCO investigators do not have adequate authority to investigate all the parties involved in the insurance sector (besides licensed insurers, agents and adjusters), such as formerly licensed persons, health care and assessment providers, and other business persons who may be involved in providing services to insurance claimants.

These proposed provisions could be considered to enhance FSCO’s powers to investigate and sanction actions that constitute a UDAP, as well as update and clarify investigative and enforcement standards so that FSCO can be better equipped in a 21st-century business environment.

<b>Proposed Changes to <i>Insurance Act</i></b>	<b>References</b>
<p>Expand the scope of persons who can be investigated by FSCO regarding UDAPs to include unlicensed persons (such as formerly licensed persons).</p>	<p>Similar to provisions contained in the <i>Mortgage Brokers, Lenders and Administrators Act, 2006</i>.</p>
<p>Expand the type of persons who can be investigated by FSCO regarding UDAPs to include not only those engaged in providing insurance but also those with a close connection to insurance business (such as health care providers).</p>	<p>Similar to provisions contained in the <i>Mortgage Brokers, Lenders and Administrators Act, 2006</i>.</p>



## Appendix 9: Glossary of Terms

Acronym	Full Name and Description
AA	<p>Administrative Authority</p> <p><i>Administers a set of regulatory requirements on behalf of the government as a not-for-profit, private organization.</i></p>
CADRI	<p>Canadian Association of Direct Relationship Insurers</p> <p><i>Represents insurance companies who offer automobile, home and commercial insurance products to Canadians on a direct basis.</i></p> <p><a href="http://www.cadri.com/">http://www.cadri.com/</a></p>
CLHIA	<p>Canadian Life and Health Insurance Association</p> <p><i>Represents life and health insurance companies operating in Canada.</i></p> <p><a href="http://www.clhia.ca/">http://www.clhia.ca/</a></p>
CRA	<p>Canada Revenue Agency</p> <p><i>Administers tax laws for the Government of Canada and for most provinces and territories, as well as various social and economic benefit and incentive programs delivered through the tax system.</i></p> <p><a href="http://www.cra-arc.gc.ca/">http://www.cra-arc.gc.ca/</a></p>
FHRCO	<p>Federation of Health Regulatory Colleges of Ontario</p> <p><i>Represents 21 health regulatory colleges that regulate health professionals in Ontario.</i></p> <p><a href="http://www.regulatedhealthprofessions.on.ca">http://www.regulatedhealthprofessions.on.ca</a></p>
FSCO	<p>Financial Services Commission of Ontario</p> <p><i>A regulatory agency of the Ministry of Finance that regulates insurance, pension plans, loan and trust companies, credit unions, caisses populaires, mortgage brokering, and co-operative corporations in Ontario</i></p> <p><a href="http://www.fSCO.gov.on.ca">http://www.fSCO.gov.on.ca</a></p>

Acronym	Full Name and Description
GISA	<p>General Insurance Statistical Agency</p> <p><i>Provides governance, accountability and oversight of the mandated statistical plans of participating provinces and territories.</i></p> <p><a href="http://www.gisa.ca/">http://www.gisa.ca/</a></p>
HCAI	<p>Health Claims for Auto Insurance</p> <p><i>Transmits specific Ontario auto insurance health claims forms to auto insurance companies to obtain approval for payment.</i></p>
IBAO	<p>Insurance Brokers Association of Ontario</p> <p><i>Represents insurance brokers in Ontario.</i></p> <p><a href="http://www.ibao.org/">http://www.ibao.org/</a></p>
IBC	<p>Insurance Bureau of Canada</p> <p><i>Represents private home, car and business insurers.</i></p> <p><a href="http://www.abc.ca/">http://www.abc.ca/</a></p>
Law Society	<p>Law Society of Upper Canada</p> <p><i>Regulates Ontario's legal profession to ensure a competent and ethical bar.</i></p> <p><a href="http://www.lsuc.on.ca/">http://www.lsuc.on.ca/</a></p>
MAG	<p>Ministry of the Attorney General</p> <p><i>Responsible for the oversight of Ontario's justice system.</i></p> <p><a href="http://www.attorneygeneral.jus.gov.on.ca/">http://www.attorneygeneral.jus.gov.on.ca/</a></p>
MCS	<p>Ministry of Consumer Services</p> <p><i>Responsible for informing Ontarians about their rights and protections as consumers and administering Ontario's Consumer Protection Act.</i></p> <p><a href="http://www.sse.gov.on.ca/mcs/en/Pages/default.aspx">http://www.sse.gov.on.ca/mcs/en/Pages/default.aspx</a></p>
MCSCS	<p>Ministry of Community Safety and Correctional Services</p> <p><i>Responsible for law enforcement services in Ontario and for ensuring that public safety systems are safe, secure, effective, efficient and accountable.</i></p> <p><a href="http://www.mcscs.jus.gov.on.ca/">http://www.mcscs.jus.gov.on.ca/</a></p>

Acronym	Full Name and Description
MOF	<p>Ministry of Finance</p> <p><i>Responsible for managing the fiscal, financial and related regulatory affairs of Ontario.</i></p> <p><a href="http://www.fin.gov.on.ca/">http://www.fin.gov.on.ca/</a></p>
MOHLTC	<p>Ministry of Health and Long-Term Care</p> <p><i>Responsible for providing health care services and administering the health care system Ontario.</i></p> <p><a href="http://www.health.gov.on.ca/">http://www.health.gov.on.ca/</a></p>
OBA	<p>Ontario Bar Association</p> <p><i>Represents lawyers in Ontario and provides representation to government on topics of current concern on behalf of its members.</i></p> <p><a href="http://www.oba.org/">http://www.oba.org/</a></p>
PACICC	<p>Property and Casualty Insurance Compensation Corporation</p> <p><i>Protects eligible policyholders from undue financial loss in the event that a member property and casualty insurance company becomes insolvent.</i></p> <p><a href="http://www.pacicc.com/">http://www.pacicc.com/</a></p>
PCT	<p>Professional Credential Tracker</p> <p><i>Helps health care practitioners prevent their identities from being stolen by fraudulent health care facilities by allowing practitioners to see which facilities are using their professional credentials to bill insurers.</i></p>
PIPEDA	<p>Personal Information Protection and Electronic Documents Act</p> <p><i>Sets out rules and requirements for when and how a private sector organization can collect, use or disclose an individual's personal information.</i></p>
RSLA	<p>Repair and Storage Liens Act</p> <p><i>Sets out the rights of repairers and storers of goods, as well as the rights of individuals whose goods have been repaired and stored.</i></p>

Acronym	Full Name and Description
SABS	<p>Statutory Accident Benefits Schedule</p> <p><i>Provides benefits for individuals injured in a motor vehicle collision, regardless of fault. Benefits include medical, rehabilitation, attendant care and income replacement.</i></p>
UDAP	<p>Unfair or Deceptive Acts or Practices Regulation</p> <p><i>Sets out unfair or deceptive acts or practices in Ontario's auto insurance system, which can be subject to review and investigation by FSCO.</i></p>
WSIB	<p>Workplace Safety and Insurance Board</p> <p><i>Provides Ontario employers with no-fault collective liability insurance and Ontario workers with loss of earnings benefits and health care coverage.</i></p> <p><a href="http://www.wsib.on.ca">http://www.wsib.on.ca</a></p>