

May Gibillini

President

Tel: (416) 364-6688 x. 2201

Fax: (647) 436-2087

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VIA EMAIL

Senior Manager
Insurance Policy Unit
Industrial and Financial Policy Branch
Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto, Ontario M7A 1Z1

Dear Sir/Madam:

Re: Request for Submissions on the Interim Report of Ontario's Automobile Insurance Dispute Resolution System

I am pleased to participate in the Ontario Automobile Insurance Dispute Resolution System Review and provide the following written submissions on the Honourable J. Douglas Cunningham's Interim Report.

My experience spans 35 years in casualty claims. In at the ground level, I have been a part of the accident benefits transformation from 1990 and have participated in the Ontario Dispute Resolution System (DRS) from its inception. Initially in the role of Casualty Claims Manager for a leading insurer, I am now the principle owner of inHEALTH, an independent adjusting firm specializing in Accident Benefits and Bodily Injury claims in Ontario.

inHEALTH brings together a team with extensive mediation and litigation experience. We have also architected a healthcare provider network that delivered treatment and peer review services to the industry. We have successfully facilitated dispute resolution on a high volume of claims and have witnessed how fractious insurer-claimant-healthcare provider-legal representative relations can create substantial difficulties in the system.

We agree with Mr. Cunningham that the overriding principle of the DRS is to promote access to timely and necessary treatment through speedy, predictable, and lower-cost adjudication. The Interim Report responds to this principle by suggesting an expedited mediation/arbitration process that triages files into arbitration streams based on the benefits in dispute and the complexity of the issues. inHEALTH proposes a model that will expedite a significant number of disputes, resulting in accelerated decision-making as well as reduced costs.

RECOMMENDATIONS: Executive Summary

In response to Mr. Cunningham's preliminary recommendations and request for comments, we suggest that the new DRS triage files earlier by creating multiple filters to stream claims not only by complexity and the benefits in dispute, but also by urgency.

We recommend that the new system:

1. Formalize the Internal Review process
2. Establish an Emergent Track in the DRS
3. Establish an expedited process for less complex claims entering the DRS
4. Provide arbitrators with access to a panel of neutral medical consultants
5. Implement a graduated fee structure

RECOMMENDATIONS

1. Formalize the Internal Review process

Mr. Cunningham recommended that Ontario auto insurers offer the claimant an opportunity to request a formal Internal Review following a benefit denial and that this be a necessary step to initiate a dispute with the new DR body. We agree that this should be mandatory, easily initiated by the claimant, and be a forum for open communication to help foster better customer service and resolve disputes. This has the potential to greatly reduce the number of claims entering the DRS.

inHEALTH suggests the following should be considered when formalizing this process:

- Easily initiated by the claimant and including direct communication between the claimant and insurer

We have witnessed cases where claimants enter the DRS to dispute their right to benefits that are not covered under their policy and/or who are not aware of the information being requested of them and their healthcare providers. To avoid these situations, we recommend that the internal review process be a forum for open communication between all parties, allowing both sides to manage their expectations and create an opportunity for resolution.

- The Internal Review team would have expertise in the *SABS*

The Internal Review team would be specially trained and experienced in the complexities of Ontario's *Statutory Accident Benefits Schedule (SABS)* and other relevant statutes. The process would also involve an element of medical management providing a forum for the healthcare provider to state their evidence and case.

- Expedite emergent cases

The Internal Review process would provide the claimant with the option to request an urgent review for cases dealing with funding for emergent treatment. All other cases could be given the suggested 30-day window.

- Mandatory Internal Review Report

A mandatory abbreviated report would document the outcome of the review process and be included in any subsequent DRS application if the issue was not resolved. This report would inform the DRS gatekeeper that the Internal Review took place, what the issues in dispute are, and any additional information that may be still required or that has been requested. This would also assist the gatekeeper in continuing to expedite those cases already identified as emergent.

2. Establish an Emergent Track in the DRS

inHEALTH agrees with Mr. Cunningham that the new DRS should incorporate more evaluation and intervention in the front end. We suggest that claimants who had an emergent Internal Review process go into an Emergent Track in the new DRS for an expedited arbitration. Insurers could also make application for this track for issues around the Minor Injury determination and incurred expenses.

Emergent cases would follow the same process as outlined by Mr. Cunningham's suggested model, but in a shorter timeline. For example, in the New Jersey no-fault system access to an arbitration hearing on emergent issues is fast-tracked within 10 days from application to decision. Our recommended timeline for Ontario would be 21 days.

3. Establish an expedited process for less complex claims entering the DRS

In keeping with our recommendation above, inHEALTH suggests establishing an expedited process for less complex claims entering the DRS. This process would be a more simplified procedure to get to a decision quicker. Decisions would be made by a Case Manager with expanded powers and authority.

- Claims entering the expedited process

A significant subset of less complex claims can be expedited through the DRS without following the proposed standard path. We would suggest that claims under \$5,000 and income replacement benefits less than 30 days be considered for the expedited process.

- Provide Case Manager with power and authority

In addition to their role as gate-keeper, it would be necessary for the Case Manager to be vested

with the requisite authority and decision-making powers within a defined threshold (outlined above).

- Case Management skill-set and experience

inHEALTH agrees with Mr. Cunningham and others in the industry that the DRS must be staffed with individuals specially trained and experienced in the complexities of the *SABS* and other relevant statutes. We do not believe Case Management need be limited to the legal realm, but must be filled by individuals who embody strong conflict resolution and can speak to the public as well as to the insurer, healthcare providers, and any legal representation involved.

4. Provide arbitrators with access to a panel of neutral medical consultants

Mr. Cunningham indicated that New Jersey allows its arbitrators to access independent medical consultants that review files and provide opinions on appropriate treatment. The value of this service is that the consultants provide neutral benchmarks and guidelines for expected treatment and recovery times.

It is our recommendation that an esteemed panel of neutral medical consultants be established to assist the arbitrators in their decision-making about treatment. Taking into consideration Mr. Cunningham's concerns about costs and neutrality, inHEALTH suggests:

- Consultants should have academic experience, be practicing in their area of expertise, and have experience creating guidelines
- To maintain neutrality the panel would operate analogous to a peer-review process when reviewing treatment and assessment recommendations, keeping the anonymity of the provider
- The panel of consultants would provide a value-add service outside of the *Rules of Civil Procedure* to assist and provide clarification at the request of the arbitrator

5. Implement a graduated fee structure

As Mr. Cunningham recognizes in his report, mandatory mediation currently resolves approximately 50% of disputes and more than 90% of arbitration files are resolved before a hearing takes place. In the new DRS model, it is reasonable to assume that the majority of disputes will be resolved at the mediation/pre-hearing stage. We would recommend that implementing a graduated fee structure wherein the claimant and insurer pay a lower fee to access the mediation/pre-hearing stage would help incent early resolution. If the dispute is not resolved, both parties would pay a higher fee to move to arbitration. If the claimant prevails at arbitration, he or she would be reimbursed their fees by the insurer.

inHEALTH concurs with Mr. Cunningham that easy accessibility to the system may be encouraging frivolous disputes. We recommend that financial risks be born more equitably between the parties

in dispute and that creating a graduated fee structure would preserve accessibility while discouraging abuse of the system. For example, the claimant would pay a \$300 fee to participate in mediation and a \$500 fee to participate in arbitration. We also envision that the expedited process would have a lower cost structure for both parties.

In Conclusion,

To achieve the stated goal of providing timely and necessary treatment through speedy, predictable, and lower-cost adjudication, we suggest triaging claims earlier to eliminate and/or expedite a significant number of disputes.

inHEALTH agrees that FSCO's regulatory and adjudicative functions should be separated. Mr. Cunningham's suggestion of a contracted service delivery model, regulated by FSCO, would allow for more flexibility in responding to varying levels of demand, including supporting emergent and expedited streams. From a price perspective, a competitive model would be a potential means through which to derive efficiency and lower costs.

I appreciate the invitation to comment on the Ontario Dispute Resolution System and should you need clarification on the above comments and recommendations, please feel free to contact me directly at 416-364-6688 x.2201.

Sincerely,

A handwritten signature in cursive script that reads "May Gibillini".

May Gibillini

President, inHEALTH
1 Yonge Street, Suite 1801
Toronto, ON M5E 1W7