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Auto Insurance Policy Unit
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Financial Services
Commission of Ontario

June 27, 2008

Mr. Willy Handler
Senior Manager
Automobile Insurance Policy Unit
Financial Services Commission of Ontario
5160 Yonge Street, 15th Floor
Box 85
Toronto, ON
M2N 6L9

LOG # AI-D-033806

Dear Mr. Handler,

On behalf of the Board of Directors of the [REDACTED] thank you for the opportunity to make a submission for input on the upcoming review of auto insurance in Ontario.

The [REDACTED] is a registered charity that has been working to "enhance the lives on Ontarians living with the effects of acquired brain injury through education, awareness and support" since 1986. We offer no "hard rehabilitation services" to people with acquired brain injury, so we cannot benefit or be hurt by changes to auto insurance in Ontario. Therefore, we share with the Government the goal of affordable, cost-effective auto insurance that offers adequate protection to consumers.

As part of our "support" to Ontarians who have experienced brain injury, we offer a toll-free help-line that takes about 250-300 calls per month from both "survivors" and family members. Many of these calls are from and about people who have been injured in auto crashes. As a result we have an abundance of opportunities to hear the consumer's perspectives on auto insurance. It is fair to say that, in spite of the regulations and guidelines, there is still a great deal of variability in how consumers perceive their insurer when a claim is made. Some companies are particularly attentive to the needs of the consumers, while others seem to spend as much time and money denying treatment plan as it would take to implement it. There are still reports of delays in services, and repeated assessments for the same treatment plan. The greatest problems continue to arise from the fact that many adjusters just have no idea what brain injury is all about. If their client looks healthy, he is healthy. They seemingly have no concept of the cognitive, emotional and behavioural consequences of Brain Injury. This is especially true in the case of mild to moderate brain injury.


In our submission (attached), we address this need for training for adjusters who are dealing with brain injury as well as three other concerns that we would like to put before those who are undertaking the review.

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Once again, thank you for this opportunity

Yours truly,

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Issues for the Submission on the Auto Insurance Review

1. Affordability and Accessibility

Callers to our toll-free help-line still report that they are subjected to multiple assessments for the same treatment. This excess of assessments would appear to be an attempt to find an assessor who is willing to deny that a prescribed treatment as both reasonable and necessary. With these multiple assessments and the accompanying delays, many injured people seek help from the publicly funded system such as emergency departments at their local hospital. Not only does the excessive number of assessments cause a great deal of anxiety and inconvenience for the injured person and his/her family, it has also added considerably to the cost. Money spent on unnecessary assessments is money that could better be spent on treatment.


RECOMMENDATION: That the insurer be limited to a maximum of two assessments per treatment plan. Ideally, these assessments should be done by qualified Health Care Professionals who works at arm's length from the insurer and are paid by an independent agency other than the insurer.

2. Consumer Protection

Currently, it would appear that training for insurance adjusters is at best variable among the competing insurance companies. It becomes evident that some adjusters are making health care decisions and denying treatment plans without any specific training or knowledge of the conditions that the injured party has suffered. The result is that reasonable and necessary treatment is frequently delayed or denied with the result that the injured persons wind up in the Emergency Rooms of their local hospitals.

A related problem is the frequent turnover of adjusters on a particular file. There are reports of injured persons who have had as many as 6 adjusters in the space of a year and a half. The result is that the adjusters are repeatedly starting from scratch, learning the new file, challenging findings, and ordering new assessments. Not only is the practice frustrating for the injured person, it causes delays and adds to the cost. In some cases the injured person just gives up the claim and goes to the nearest Emergency Room for treatment of their symptoms.

RECOMMENDATION: That all adjusters have some basic Health Care training and that Insurers be required to have specialized adjusters to adjudicate serious injury cases such as Brain Injury and Spinal Cord Injury. These specialized Adjusters and employees who are functioning as Registered Health Care Professionals or Case Managers should have to be certified in a course designed to educate them about the nature of both the impairments and the treatments necessary to address them. In addition, there should be in place a regulation that curbs the practice of frequently changing adjusters.



3. Statutory Accident Benefits

In theory, the SABS are the backbone of the no-fault insurance concept because they outline the parameters of what an injured person might expect from his insurer in the event that he/she is injured. While we know that disputes over what may be reasonable and necessary are far from rare in the real world, the concept of the SABS remains an essential framework to guarantee that the needs of the injured person will be addressed in a just and timely fashion.

At a recent two day summit on auto insurance legislation, there was a great deal of talk about the necessity of providing greater compensation for "the innocent victims" of car crashes by making more money available to Tort cases by reducing the amount available in the SABS. As a consumer advocacy organization, [REDACTED] is opposed to any such changes for two reasons. First we know that the current SABS, specifically, the med-rehab portion is inadequate to meet the needs of many injured persons and their families who will require lifelong treatment or support. Secondly, the specter of injured persons waiting for treatment or support while lawyers argue can only add to both the delay and the cost. It would also mean that many injured persons who are not receiving treatment are going to seek assistance through the Emergency Room of their nearest hospital.

A secondary issue in this discussion about the monies available through the SABS versus monies available through Tort is the distinction between "innocent Crash victims" and "at fault drivers". Clearly, both categories are a reality, but I would suggest that the current legislation allows the issue of fault to be adequately addressed through Tort claims. To suggest that Tort claims should be increased at the expense of the SABS is to fail to recognize that a serious injury, particularly Brain Injury, does not happen to individuals. It happens to families. To, somehow, consider reducing the benefits available to "at fault drivers" through the SABS in order to increase compensation to "innocent victims" would further penalize not only a person whose life has been shattered, but would do irreparable damage to the injured person's spouse and children.

Finally, I would point out that reducing the amount of money available through the SABS and redeploying that money to make it available through tort would certainly mean that there would be increased lawyers' fees. Money spent on legal fees is money that cannot be spent on treatment.

RECOMMENDATION: That any move to erode the compensation available through the SABS be turned down, and that the dollar amounts stated in the SABS be increased to reflect inflationary trends since the last review.

[REDACTED]

4. Other Issues

I recently had the privilege of sitting on an expert panel to consider a better way of determining Catastrophic Brain Injury other than the Glasgow Coma Scale (GCS) which is widely known to be a highly ineffective tool for prognosis. The fact that it was never intended to forecast functional outcome after Brain Injury, combined with the fact that its use is either totally or partially limited in situations where the injured party has been drinking or using drugs or is intubated makes the search for new determinants justified. This panel, representing medical and scientific personnel from a wide range of disciplines was funded jointly by the Ontario Neurotrauma Foundation and the Insurance Bureau of Canada. The panel met for a full day to discuss the shortcomings of the GCS and suggest alternative tools or procedures. Then a highly qualified team was sent away to do a Literature search to determine the efficacy of the various methods suggested. Two months later, the panel was reconvened and presented with an overview of the findings of the Literature search. After considerable deliberation a series of recommendations were made. I and my colleagues on the panel believe that the recommendations reflect the most current scientific knowledge and would, indeed, provide a more reliable prognosis for long term functional outcomes than the current reliance on the GCS. We further believe that these recommendations would provide better outcomes for a broader range of injured persons because they would facilitate more timely interventions without significant increased cost.

Unfortunately, I am not at liberty to share those recommendations with you because the Insurance Bureau of Canada wants the findings kept out of the Public Domain until after July 14th 2008 which, coincidentally, is the deadline for these submissions. I would, however, alert you to the fact that the final paper made the point that the recommendations should be taken as a whole. In fact, if someone were to 'cherry pick' from among the recommendations grave injustices could occur that could result in untold misery for injured persons and increased costs for the Public Health Care System.

RECOMMENDATION: If there is a move to change the method of determining the catastrophic designation in cases of Brain Injury the Review Panel should demand to see the document entitled "Evidence Based Classification of Brain Impairment: Application To Catastrophic Impairment Classification – Results of a Consensus Panel."

