



Financial Services  
Commission  
of Ontario



Commission des  
services financiers  
de l'Ontario

# Service Providers

2016/2017 Market Conduct Compliance:

Examination Results

Date: May 2017



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## Executive summary

### Introduction

The Financial Services Commission of Ontario (FSCO) is a regulatory agency established by the Financial Services Commission of Ontario Act, 1997 and accountable to the Minister of Finance. FSCO oversees insurance, pension plans, mortgage brokering, credit unions and caisses populaires, co-operative corporations, loan and trust companies in Ontario, and health service providers (service providers).

A regulated service provider is defined as a business that provides specific goods or services (“listed expenses”) to statutory accident benefits claimants, and submits invoices on behalf of the claimants through the Health Claims for Auto Insurance (HCAI) system.

FSCO began licensing service providers on December 1, 2014 in order to address increasing costs of auto insurance claims due to fraudulent activity in the sector. FSCO oversees approximately 4,500 licenced service providers and continues to receive and process new applications daily.

At the time of this report, and since the licensing system began, FSCO had conducted a total of 788 on-site examinations of service providers, which is equivalent to about 17 per cent of the total service provider population. These examinations help FSCO determine whether service providers are following the law. If unlawful practices are found, FSCO takes action to protect consumers and combat fraud.

This report summarizes FSCO’s findings and resulting enforcement actions from the 200 on-site examinations conducted during fiscal year, April 1, 2016 – March 31, 2017. It also sets out FSCO’s expectations for licenced service providers as the sector evolves, in terms of becoming more accountable and compliant with the legislation and regulations designed to protect consumers.

### Summary of findings

The most common contraventions of the Insurance Act and its regulations were consistent with the previous year’s findings:

- Ontario claims forms (OCFs) not signed by the regulated health care provider and/or the patient
- No written or established policies and procedures in place for the service provider’s billing and business practices
- Patient ID not verified by the service provider
- Business changes not communicated to FSCO in a timely manner, as required by law
- Regulated health care professional roster in HCAI outdated/inaccurate

The findings did show some improvement: the overall compliance rate doubled to over 30 per cent in 2016/17, which is up from 15 per cent in the previous year.

However, FSCO still considers this compliance rate to be unacceptable. In comparison, the other sectors regulated by FSCO generally maintain compliance levels of over 90 per cent. FSCO's target industry compliance rate is 100 per cent.

In order to address this gap, FSCO took a stricter approach to its examinations in 2016/17. The details of this are discussed further in the next section of this report.

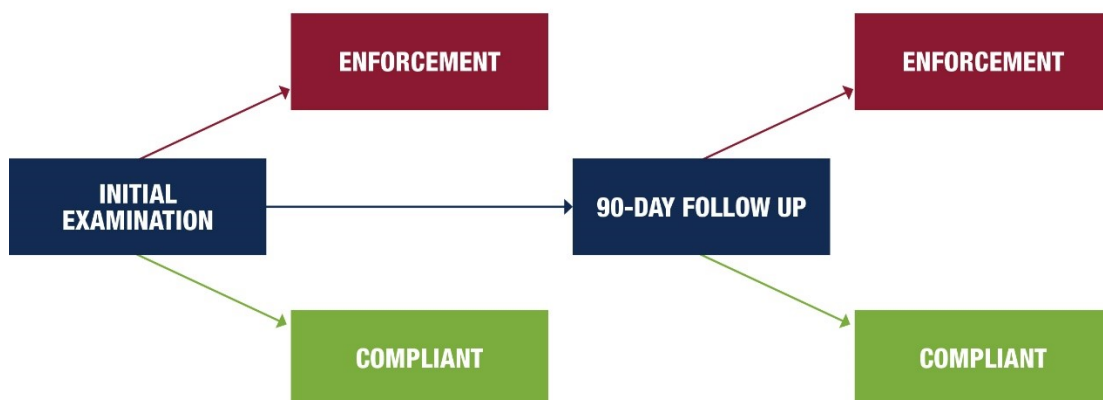
### Examination methodology

In its first year of on-site examinations, FSCO took a more educational approach in order to ensure service providers were aware of their obligations under the Act.

In comparison, for its 2016/17 examinations, FSCO continued to take an educational approach, but has also begun progressively moving towards a more traditional enforcement approach. For example, in 2016/17, FSCO introduced follow-up visits for those service providers with non-compliant findings. Instead of just sending a letter identifying non-compliant findings as it had done in the previous year, FSCO returned within 90 days to conduct a re-assessment. The follow-up visits were effective in all 51 cases, resulting in 100 per cent compliance in correcting examination findings.

In both examination years, wherever FSCO found unlawful practices that it considers to have the potential to be particularly harmful to the public – such as false or misleading billing – it took immediate enforcement action.

Diagram 1: Examination methodology



Before conducting on-site examinations, FSCO conducts pre-work to ensure it has a thorough understanding of the sector as a whole, as well as the individual service providers it plans to visit. FSCO does this by gathering information from its licensing records and public registry, which provides



information on service provider facilities, licence status and conditions. Information is also gathered from Regulatory Colleges.

FSCO also uses information gathered from the annual information return (AIR), which all licensed service providers must complete and submit to FSCO each year. The information in the AIR helps FSCO identify which service providers it considers to be high risk for non-compliance. FSCO then focuses on those higher-risk service providers for its on-site examinations.

FSCO examiners bring this background information to on-site exams, where they look to verify the accuracy and completeness of the information. They also perform walk-throughs of the facilities they visit in order to ensure business is being conducted appropriately, and that the physical space is suitable for the services being offered. Statutory Accident Benefits Schedule (SABS) files are also reviewed for compliance.

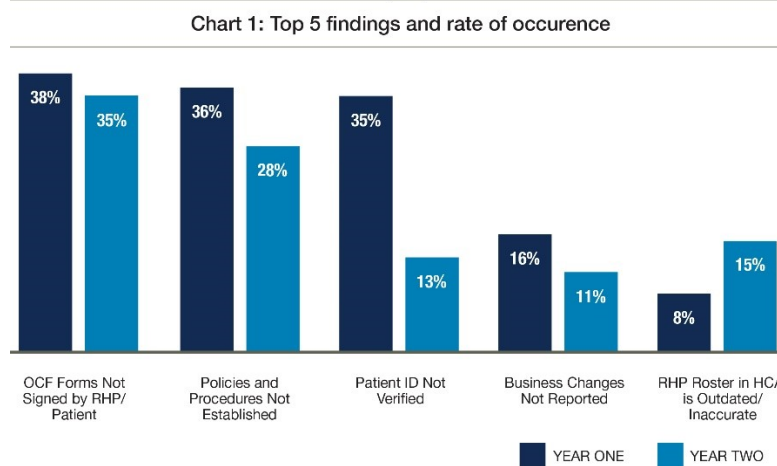
FSCO examiners perform procedures including but not limited to:

- Interviewing service provider staff to assess employee understanding of stated procedures;
- Analyzing the patient referral process and any relationships (contractual or otherwise) between other parties to assess any direct or indirect referrals;
- Analyzing the patient intake and discharge process for weaknesses or gaps that can lead to contraventions;
- Canvassing neighbouring related businesses to validate any referral relationships; and
- Reconciling the hourly rates set out in the Professional Services Guideline with the variety of ways that service providers bill.

Staff interviews are an important step for assessing the overall suitability of the principle representative (PR), who is expected to provide appropriate supervision. The PR must ensure that procedures and standards of practice are not only in place, but that they are understood, followed and available to all staff.

## Detailed findings

The top five areas of non-compliance have remained consistent for the past two years, although the level of compliance has generally increased. Four of the top five findings have shown improvement year-over-year. However, the occurrence of regulated health professionals (RHPs) that have outdated or inaccurate rosters in HCAI has increased. A detailed breakdown of each finding, along with the requirements or best practices and the possible resulting enforcement, are shown below in Chart 1.



**Note: Chart 1 details the percentage of examinations where these findings occurred**

## 1. OCF-18 and OCF-23 forms not signed by the regulated health professional (RHP) and/or patient

OCFs signed by the claimant prior to being completed, or submitted without a claimant signature, create an opportunity for a service provider to facilitate fraud, either directly or indirectly. In order to help prevent fraud, the *only* compliant practice for the submission of the OCF-18 and OCF-23 is to complete the form, obtain the client signature, and then submit the form. If the service provider needs additional time to complete a form, they can delay the claimant's signature until a subsequent visit, but then must ensure the form is completed and signed before it is submitted.

Service providers should review [Ontario Regulation 34/10](#) sections 38 and 40, which detail the requirements for the completion of the OCF-18 and OCF-23 forms.

### Enforcement

A contravention of these sections can range from an administrative monetary penalty (AMP) to the suspension or revocation of a licence.

## 2. Policies and procedures not established

Section 17 of [Ontario Regulation 90/14](#) requires policies and procedures that are designed to avoid the submission of misleading information to an insurer and to prevent the business from facilitating such activities by others.

Policies and procedures set out the service provider's business practice standards, promoting consistency and compliant practices. Development and periodic review of procedures provides an opportunity for the business to ensure all practices meet regulatory requirements and guidelines. Communication of policies and procedures to all staff and providers involved in SABS billings also helps the business avoid facilitating or carrying out non-compliant practices.



Service providers should seek to understand all aspects of [Ontario Regulation 90/14](#) and create specific policies and procedures that address each aspect of the regulation. FSCO encourages industry-based solutions with respect to compliance and best practices. Numerous industry associations have created tools and made information available to their members to help them comply with the regulation.

### **Enforcement**

FSCO may consider a general AMP of up to \$25,000.

### **3. Patient ID not verified**

Under section 5 of [Ontario Regulation 90/14](#), the service provider has a duty to verify the identity of SABS claimants. The service provider must verify that goods and services are being provided to the person who was involved in the motor vehicle accident.

During an on-site examination, the service provider is responsible for demonstrating that the process was followed (e.g., through a checkbox on intake and visit forms confirming that ID was verified).

FSCO expects service providers to have procedures in place to take reasonable steps to verify claimant ID, and be able to demonstrate that the process was followed, in order to avoid a finding of non-compliance.

### **Enforcement**

FSCO may consider a general AMP of up to \$25,000.

### **4. Business changes not reported**

Section 20 of [Ontario Regulation 90/14](#) stipulates that a licensed service provider shall provide updated information to the Superintendent within five business days after a business change occurs. Examples of such business changes include a change in location or mailing address, a director or partnership change, or change in contact information.

Without correct contact and business information, FSCO cannot carry out its regulatory duties effectively.

### **Enforcement**

FSCO may consider a summary AMP of \$250.



## 5. RHP roster in HCAI is outdated/inaccurate

It is of great concern that the RHP rosters contained in HCAI for a high proportion of entities is either outdated or inaccurate. Misuse of credentials for the purposes of false billing continues to be widespread issue.

Clinics and practitioners need to ensure that only current authorized RHPs are active on a provider roster and that those who are no longer employed or working with the clinic have been end-dated on HCAI. Protecting credentials is the responsibility of both the service provider and the RHP. For further information on service providers' responsibilities regarding their HCAI roster, please view the [FSCO Superintendent's Guideline No. 01/15 HCAI Guideline](#).

### Enforcement

FSCO may consider a general AMP of up to \$25,000. If however, the outdated or inaccurate roster was also used to falsely bill under a regulated health professional's credentials, FSCO may consider a general AMP of up to \$200,000 for businesses and a maximum of \$100,000 for individuals and/or the suspension or revocation of a licence.

### Escalations and enforcement

FSCO is committed to consumer protection. Where there is evidence of non-compliance, FSCO will escalate the matter and take a closer look. FSCO will consider the circumstances and wherever warranted, will pursue regulatory action.

Regulatory action can range from imposing an AMP to licence suspension or revocation, and can include a combination of enforcement actions. FSCO's regulatory decisions are based on the specific facts and circumstances of each case.

In the 2016/17 on-site examinations, there were several reasons for taking enforcement action. The most significant was due to billing practices that were false and/or misleading. The second was findings that questioned the ongoing suitability of the service provider to hold a license. A finding on suitability means that the supervision of the entity and its billing practices lack the requisite understanding of the regulations and responsibilities, and that the entity has multiple violations of the regulatory requirements. FSCO's enforcement activities, once finalized, are posted on FSCO's [website](#).

The chart below shows the findings that gave rise to escalation, and therefore potential enforcement action, as a result of the 2016/17 exams. Enforcement actions are not listed in the chart as actions were still pending at the time this report was produced.





**Chart 2 – Service provider escalations**

<b>Reason for Escalation</b>	<b>Number of Escalations</b>
False/misleading billing	6
Suitability	2
OCF-18s submitted without approval from RHP	1
Unresponsive entity	1
Failure to disclose suspension	1
<b>Total</b>	<b>11</b>

### **Conclusion and next steps**

Service providers are reminded that 2017/18 marks the third full year of the service provider licensing regime. Going forward, where contraventions of the Insurance Act are found, FSCO will consider the circumstances and where warranted, take enforcement action.

It should be noted that the licensed service provider industry is responsible for the resulting costs from FSCO's investigations and enforcement actions. Therefore, by following the law and protecting the consumers they serve, service providers have the ability to influence the regulatory fees they pay.

Licensed service providers are expected to understand and comply with the standards of practice prescribed in [Regulation 90/14](#) under the Insurance Act. FSCO encourages licensed service providers to visit the [Service Provider pages](#) on FSCO's website in order to learn more about their legal obligations.

FSCO also encourages the use of industry-based best practices with respect to compliance solutions. The service provider sector has numerous industry member organizations, which provide information and tools that providers can access and use to achieve better compliance. Licensed service providers should contact their industry associations for further information.