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February 14, 2019

Financial Services Regulatory Authority
130 Adelaide Street West, Suite 800
Toronto, ON M5H 3P5

RE: FSRA Priorities and Budget Consultation Document

Thank you for the opportunity to provide comment on the proposed 2019/2020 Priorities and Budget document issued on January 21, 2019.

As background, AssessMed is an independent medical evaluation company operating Canada-wide in 8 provinces, with headquarters in Ontario. AssessMed has been offering comprehensive, objective, evidence-based medical evaluations since 1991, guided by our mission statement: "To consistently provide the highest quality, evidence-based, credible and defensible third-party medical reports that are unbiased without compromise and reflective of the strict professional values of our assessment team." Our evaluations recommend treatment options, but do not specify facilities, clinics or doctors. We are the only national provider of medical assessment services that, in Ontario, routinely completes 50% of assessments for defense counsel and 50% for plaintiff's counsel.

On a personal note, I have worked in the auto insurance sector for nearly my entire career. Over these nearly 30 years, I have worked on all sides of the auto insurance file, starting as a telephone adjuster to leading an auto insurance fraud sting project to leading independent medical assessment companies (including creating the business model of having a medical assessment company office mirror a medical clinic). As an industry veteran, and as an Ontario driver, I am passionate about the auto insurance file and want to see a government finally fix this system for the benefit of Ontario consumers.

With this perspective in mind, our recommendations are made with respect to the core regulatory function of auto/insurance products, being led by Tim Bzowey. Specifically, there are 3 recommendations:

- 1) Structure this core regulatory function to effectively oversee the industry and ensure FSRA staff reflect the broad interests in this regulatory area;
- 2) While FSRA must be empowered to lead the day-to-day functioning of this core regulatory function, there is still an important role for government to play;

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3) Assessment is a critical element to treatment and benefits, as well as shaping system costs. FSRA should establish the regulatory infrastructure for an independent-run process to: reduce the number of assessments; increase their quality; and make them less contentious.

1) Structure this core regulatory function to effectively oversee the industry and ensure FSRA staff reflect the broad interests in this regulatory area.

Auto and other insurance products are grouped together in this core regulatory function. Particularly since Ontario drivers are required to have auto insurance, making the product a quasi-governmental one, auto insurance operates differently (at least from a political and policy perspective) from other, non-mandatory types of insurance. As a result, we recommend that there be a position of Superintendent, Auto Insurance created that is the lead staff person for all auto insurance issues (and serves to complement the skill-set of the EVP, who has broad responsibility for all insurance product categories).

As with the other FSRA executives already in place, the Superintendent of Auto Insurance must be an individual with deep experience and knowledge of the auto insurance sector who can effectively navigate the interests and positions of the various stakeholders and issues, acting as the government's gatekeeper in this area. In terms of sector experience and knowledge, it is important to keep in mind that there are a number of stakeholders in the auto insurance sector (at a minimum, insurance companies, consumers, trial lawyers, insurance brokers, medical assessors and various health professionals). As such, it is important that the sector experience amongst FSRA staff reflects experience with several or all stakeholders within this sector. At present, experience appears to be heavily skewed toward a background in insurance. It is important that other perspectives are amongst the industry advisors, as well as the backgrounds of senior FSRA staff in this core regulatory function.

Within FSRA, under the guidance of the Superintendent of Auto Insurance, establish the four pillars necessary to ensure a fair auto insurance regime:

- Fraud Division
- Standards and Auditing Branch
- Medical Advisory Committee
- Legal Department

2) While FSRA must be empowered to lead the day-to-day functioning of this core regulatory function, there is still an important role for government to play.

Ultimately, the goal with strong regulatory oversight by FSRA (under the guidance of a Superintendent of Auto Insurance) is to depoliticize the day-to-day operations of auto insurance. Matters of legislation and regulation should be referred to Cabinet for deliberation and decisions. Matters short of this should remain within the purview of the Superintendent. Putting in place this

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regulatory oversight will lead to more balanced and informed decisions being made on a file that affects all Ontarians – and ultimately is beneficial for the consumer. This staffing structure ensures accountability of all stakeholders.

Even with this strong regulatory oversight, though, there is still an important role for the government to play. As indicated above, matters of legislation and regulation should be decided by Cabinet. It is also important for the government to recognize that FSRA is an agency of the Government of Ontario. FSRA needs its independence to function properly. But even with independence, FSRA still needs to be accountable to the government and the government needs to ensure FSRA is discharging its obligations appropriately. In recent years, too often we have seen government agencies grow in size and scope without a formal expansion of mandate, with negative implications for the provincial budget and regulatory burden. Governmental oversight is important to ensure this doesn't happen with FSRA.

3) Assessment is a critical element to treatment and benefits, as well as shaping system costs. FSRA should establish the regulatory infrastructure for an independent-run process to: reduce the number of assessments; increase their quality; and make them less contentious.

Frequently, including in the 2017 Marshall report, the contentious and dueling medical assessments of insurers and lawyers are identified as the key driver increasing system costs.

We agree there should be fewer assessments in the settlement of auto insurance claims. Not only will reducing the number of assessments bring down the system cost, more importantly it will greatly improve the accident victims' experience.

In today's auto insurance system, even for common or more minor injuries, an accident victim could be subjected to 18 – 24 assessments. This current structure adds significant cost, as well as immense mental anguish and frustration for the consumer.

We strongly caution, though, against simple solutions to contain costs in this area, like the limit to the number of experts allowed in court cases being introduced in BC. Assessment is critical to establishing injury – a qualified professional examining an accident victim and making a professional determination of extent of injury and what treatment is needed to get the victim back to their normal activities. With the right infrastructure in place, an accident victim could go through one set of quality, non-biased or contentious assessments on which all parties can rely and come to agreement on benefits coverage, rather than the dueling medical assessments that form the basis of lawsuits today.

Ultimately, the key to bringing down the number of assessments and in turn system costs is ensuring there are high-quality medical assessments which are free of any duress or bias. A reform that simply puts a cap on the number of assessments does not address the root problem. We recommend instituting an independent-run process in the area of assessment that takes the contentiousness out of this area of auto insurance. While any party should be able to request an assessment, they should not also be permitted to choose who performs the assessment. At the same time, whoever performs the assessment should do so without knowing who has made the

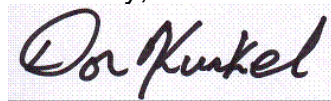
request. Turning the medical assessment process into a 'double-blind' system, as exists for medical research, is a much-required reform.

Off-the-shelf (and in use) technology exists to create an independent referral portal system. FSRA, through the Superintendent of Auto Insurance, should establish a roster of prequalified and recognized assessment centres – Independent Injury Assessment Centres (IIACs) – located across the province, which are neither beholden to plaintiffs nor defendants when assessing injured victims.

A number of credible assessment companies exist today; the ramp-up time to establish such a roster of qualified assessment vendors, through a government-run RFP process, would be minimal. At the same time, through charging a fee for requesting an assessment, the portal can be set up on a cost-recovery basis.

Thank you again for the opportunity to provide comment on the proposed budget and priorities. We would be pleased to provide more information about any of the above.

Sincerely,

A handwritten signature in black ink, reading "Don Kunkel", enclosed in a rectangular box with a light gray background.

Donald A.J. Kunkel
President
AssessMed Inc.