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**FAIR submission to the Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices**

Thank you for the opportunity to speak to the issue of unfair or deceptive acts or practices in Ontario's auto insurance industry. FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of Ontario's MVA (Motor Vehicle Accident) survivors who have struggled with access to recovery resources under the current auto insurance system.

Consumer protection should be a basic underpinning of auto insurance since the product itself is a promise of coverage when you need it. Unfortunately that has not been the case since most regulations have been designed to protect insurer profits at the cost of consumer health and recovery and the taxpayers who pay when insurers don't.

It is deeply disturbing to see "the government has passed amendments that permit the CEO of FSRA, on application by a person or entity, to exempt persons or entities from requirements under the Act that are prescribed by regulation, and specify the conditions to which the exemption is subject, should the CEO be of the opinion that doing so would not be prejudicial to the public interest". This would undermine the intent in this new principals-based regulation to protect consumers since such new 'rules' would be so easily manipulated at the whim of a single person. This 'new power' to influence auto insurance or to "exempt persons or entities from requirements under the Act" introduces a new element of distrust by placing so much power in the hands of the CEO and it gives a perception of possible corruption and influence that will work against consumers.

It is unclear why the wording is changing from 'regulation' to 'rules' or why a principle-based rule would be any more effective than the current regime. The current regulation has failed injured consumers and by extension the taxpayers who are paying for Ontario's court system to continually redefine what coverage really means. This overuse of our courts is, in and of itself, an abuse and an unfair act by insurers trying to escape accountability.

By FSRA's own definition this new UDAP rule "would require less prescriptive oversight resources, while generating improved outcomes for consumers; principles based regulation, however, does not entail giving up the ability to enforce." How can less oversight resources improve consumer outcomes? There's already a clear trail of broken contract agreements by Ontario insurers and the dedicated statutory benefits (SABs) hearings system, LAT AABS, is overrun with unpaid car crash survivors looking for recovery resources they were promised but their insurer failed to deliver. There's nothing here to speak to what that ability to enforce means. Does it mean fines or other meaningful sanctions for those who

act without principals? We cannot find that answer here. It's worth noting that the Stakeholder Advisory Committee members who recommended that the UDAP be reviewed (page 5) are all insurance companies or affiliates and there are no consumer representatives on that committee.

If the intent is "to improve the identification, deterrence and sanctioning of misconduct to better protect the public interest", then we must ask where are the sanctions? The offences are only vaguely articulated and the costs/sanctions/deterrence for insurers (and others listed as subject to this UDAP rule) is absent. This reads like a free pass for insurers without the accompanying possible outcomes or disincentives for poor behavior included in the UDAP Rule.

Consumers need certainty and they need to know what is and is not acceptable behavior in clear and concise language. They need timely response to their complaints and they need to be updated on the progression of those complaints as it works through the system. There needs to be greater clarity here and greater transparency. Our last inquiry into the volume of complaints under consideration at FSRA was in excess of 800 cases and that alone is a testament to the overwhelming discontent with this product by consumers. It speaks to insurers' failure to live up to consumer expectations and existing legislation. The volume of complaints tells the story about the lack of understanding by consumers AND insurers about what is, and what is not acceptable behavior. Creating more uncertainty with an absence of detail about what happens when unclear or murky expectations aren't met is not an improvement for consumers.

We see no upside to the alignment with CCIR / CISRO FTC Guidance (1) provisions in respect to misrepresentation and/or unfair claims practices when that guidance suffers from the same lack of follow-through or sanctions information as this proposed UDAP rule does.

***1. Are there any parts of the Proposed Rule that are too general or require further detail, including for the purposes of clarity or closing possible gaps?***

Consumers need to know exactly what is and is not acceptable insurer behavior when it applies to:

- **Response time to claim notification needs to be made clear** because initial response from insurers has grown significantly longer in recent years. Consumers have no idea what to expect or what is acceptable. Consumers need to know and insurers ought to inform.

- **Information insurers provide them with immediately following a claim** needs to be better explained as do any timelines associated with establishing and maintaining that claim including filing for a hearing. These are details that should be consistent across the board and are perhaps best supplied by FSRA on their website. Claimants need to know exactly what information they should be getting from their insurer and when it is required in order to know whether they truly are being fairly treated during the claims process.

- **Clear concise rules about insurer medical examinations.** Claimants will often have to attend multiple medical exams and they need to know how many will be required. They need to know what the timing of those examinations should be, the extent of the examinations and the risks

of attending those medical examinations. A recent decision at the CPSO has made it clear that they take little interest in these Third Party examinations when it was stated: **"The College does not regulate the quality control of third-party IME for the province of Ontario and the insurance industry."** ICR Committee #1111896, Sept 1, 2020 (2) This does not inspire confidence that the examiner will be qualified and experienced in a particular specialization that is relevant to the claimant's injury by education, training and experience. Insurers must be made responsible for ascertaining the integrity and expertise of their choice of medical experts and treatment providers and there must be sanctions when they fail to do so.

- **There are far too many questions surrounding cancelled medical appointments** that are driving up the cost of insurance and it is often a problem created by the assessment firms hired by insurers. There is a serious lack of transparency around the relationship between insurers and their experts and/or their service providers that needs to be addressed and that starts with understanding expectations. The failure to protect the interests of some of the most vulnerable patients in Ontario ought to have consequences beyond 'take us to court if you disagree with a medical report' stance insurers have taken.

- **Insurers have increasingly failed to be reliable when it comes to paying out** on their obligations when it comes to SABs recovery resources. Consumers expect a penalty will be applied when this happens. Insurers should also be accountable when their denial of claim is not consistent with legislation and there is a failure to provide adequate information about the denial to the claimant. These are issues that lead to court cases and significant expenses for claimants but even worse is the delayed treatment leading to poorer recoveries.

- **UDAP complaints ought to have some sort of timeline** associated with informing complainants about the progression of their complaint. This should be done at regular intervals because the complaints we are aware of are in the system for well over a year and consumers have no way to know where they stand or how long they must wait to hear back about a UDAP issue. We would hope there would be a way to designate 'larger picture' complaints that center on public interest from individual or more focused complaints. These are distinctly different and the outcome expected by the complainants is different as well. There is a lack of transparency about how the complaints are handled that doesn't tell us which insurers are being complained about and why. This is a missing piece or part of protecting consumers who want to know which insurer would best serve them.

***2. Are there any implementation considerations, such as transition issues or the coming into force date of the Proposed Rule, that interested parties would like to bring to FSRA's attention?***

We think there should be a second look at this implementation in regard to the inclusion of what the sanctions and deterrence will be and how that would be applied. In other words – what will enforcement look like? There's a lot of detail missing and that deserves a second look.

***3. FSRA has drafted the Proposed Rule to ensure that the intent of existing consumer protection provisions is preserved where no substantive policy change is being proposed. FSRA has deliberately erred on the side of maintaining consumer protections even where they may be redundant given other***

***aspects of the Proposed Rule. An example includes provisions related to non-compliance with the Statutory Accident Benefits Schedule in section 5 (Unfair Claims Practices) given the contents of section 3 (Non-Compliance with Law). Are there sections of the Proposed Rule that are redundant and can be removed without compromising consumer protection?***

We see the need for more detail, not less. There should be consideration to preserving some of the regulation under s. 5 of Reg 7/00 in the new UDAP rules. Entitlement hinges on quality medical information and insurers have not given any reason to trust that they will not stay on the same path of mis-information and/or medical file manipulations to support claim denials. There must be accountability since recovery resources and quality of life are at stake.

***4. Are there any other issues or amendments to the Proposed Rule that FSRA should consider as it proceeds to its intended second stage of work in this area?***

The question needs to be asked – is the new UDAP about reduced regulatory burden or about consumer protection because the two, while not mutually exclusive, are likely not achieved by reducing regulatory oversight.

FAIR supports robust oversight of Ontario's auto insurers and their affiliated partners to ensure consumer confidence through UDAP rules that protect consumers from unscrupulous behavior. Information and education in a transparent system is key to ensuring consumer confidence. We support innovation and flexibility but that too must come with oversight.

Thank you for the opportunity to be heard and we are always available for further discussion about this important issue.

***FAIR Association of Victims for Accident Insurance Reform***

(1) Canadian Council of Insurance Regulators ("CCIR") and the Canadian Insurance Services Regulatory Organizations ("CISRO") Guidance https://www.ccir-ccrra.org/Documents/View/3450

(2) FAIR letter to Minister of Health regarding CPSO oversight failure http://www.fairassociation.ca/wp-content/uploads/2020/10/Auto-insurance-and-CPSO-failure-to-protect-patients-letter-to-Minister-Elliot-Oct-22-2020.pdf