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ORA COMMENTS RE NOTICE OF CHANGES

PROPOSED RULE 2020-002

UNFAIR OR DECEPTIVE ACTS OR PRACTICES (UDAP)

August 11, 2021

The Ontario Rehab Alliance (ORA) welcomes this opportunity to comment on the proposed changes to Rule 2020-002, Unfair or Deceptive Practices Act.

We were pleased to be able to provide initial input to the proposed rule change last fall as part of FSRA's Health Service Providers Stakeholder Advisory Committee and have reviewed the comments and FSRA's response to these in the subsequent public consultation 'the Original notice'.

We have restricted our comments and questions in this document to those aspects which we believe may require further consideration or explanation.

Section 5 Unfair Claims Practices

This section of the UDAP represents the 'centre of gravity' for insurer accountability toward the insured; the clarity of its language and intentions is therefore paramount. We commend the descriptive principles outlined in this section but seek some further clarity.

5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,

> (i) treating a claimant in an arbitrary, capricious or malicious manner,
>
> (ii) not acting in good faith,
>
> (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,

ORA comment re (iii) above: It seems self-evident that access to healthcare covered by the policy and recommended by a healthcare professional is a claimant right. Seeking to reduce the cost of the benefit payable, by denying or partially denying a good or service without providing an appropriate clinically based rationale or in contradiction with SABS and/or FSRA guidelines, should therefore be considered as inconsistent with this right and an UDAP. With the documented increase in such claims handling practices it is vital that data gathering and reporting systems (HCAI) are redesigned to enable insurers, and the regulator, to monitor this.

> (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,

(v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or

(vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

ORA comment re (vi) above: Consumer advocates, the ORA and other stakeholders have long asked for plain language requirements for insurance policies, including the explanation of benefits and, additionally, in the accidents benefits packages and claims updates sent to claimants. Does this section then reflect intended amendments to the *Insurance Act* requiring plain language when it come into force alongside this proposed rule? If not, we suggest that the words 'clear, comprehensive and accurate' should be more fully articulated and described in this rule.

Further, we suggest amending this subsection to include "reasonable", with 'reasonable' meaning consistent or aligned with guidance, eg. …*following fair, simple, accessible and reasonable claims handling practices* OR …*providing a claimant timely, clear, reasonable, comprehensive and accurate information..*

5(2) With respect to automobile insurance:,

(i) non-compliance with the Schedule, including but not limited to:,

(a) payment for goods or services not being made, or

(b) the cost of an assessment not being paid,

without reasonable cause, within the time period prescribed in the Schedule.,

ORA comment re (i) b above: Timeliness of payment and protracted insurer payment tardiness has long been a concern to health service providers. We commend the inclusion of this aspect and strongly ask that it be revised to reference 'all approved goods and services' (including not only assessment, but just as importantly, the resulting treatment). Clarification of what 'reasonable' means in this context is required; it should dovetail with the requirement in the SABS for "medical reason".

Section 6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.

ORA comment re 6(3) above: This seems unclear. For example, if a provider has sought 12 sessions and the insurer/IE has determined that 10 sessions are reasonable, then as written and interpreted literally, the two additional sessions would be considered unreasonable consideration being sought for a service and could be subject to UDAP.

Clarification is needed in the wording to reflect that it is the unreasonable cost of the proposed goods or services that is sought or paid that is subject to UDAP. Examples of the intention of 6(3) would be helpful. In a dramatic example, it would be unreasonable to add a $20,000 procurement fee for a provider to obtain a $2500 wheelchair. Clarification in the wording and examples of the intention will help prevent misunderstandings which we would expect would be an unintended consequence of this clause.

6(4) With respect to automobile insurance,

(i) a claimant signing or being asked to sign any form or any other document,

(a) in a form approved by the Chief Executive Officer, or

(b) that is specified in a guideline applicable for the purposes of the Schedule,

before the goods or services related to such a form or document have been provided and which provides verification that a good or service was provided to such claimant, or

ORA comment re 6(4)(i) b above: This makes an UDAP of the standard legislated practice – and SABS requirement - of requiring claimants to sign OCF-18s, which are the approved forms for proposing goods and services and that must be completed and signed ***before*** the goods and services are provided.

Public/Consumer Education

As stated in the original Notice of Change (highlights ours):
FSRA rulemaking on UDAP aims to advance the following Objects, as stated in the FSRA Act:

- *Regulate and generally supervise the regulated sectors;*
- *Contribute to public confidence in the regulated sectors;*
- *Deter deceptive or abusive conduct, practices and activities by the regulated sectors;*
- *Promote high standards of business conduct;*
- *Promote transparency and disclosure of information by the regulated sectors;*
- *Protect the rights and interests of consumers; and*
- *Foster strong, sustainable, competitive and innovative financial services sectors.*

Achieving the highlighted objectives requires improved consumer understanding of their rights so that they can make informed decisions at time of purchase. There is much to be done in this regard. Currently, most Ontarians and insured drivers pre-injury are under the impression that all medical services related to rehabilitation are available through OHIP. This is far from being the case. More people are purchasing their insurance on-line or through Groups (Alumni) so it is not realistic to expect that brokers will be available to every consumer to provide education. Indeed, it is not commonplace for brokers to themselves have a thorough understanding of accident benefits. Without information and understanding of their rights consumers will not be equipped to identify or report on those circumstances which may constitute and UDAP.

Implementation Context & Enforcement

The Proposed Rule will operate within the still evolving context of principles-based regulation. It is unclear what the administrative penalties will be for UDAPs. The Proposed Rule is silent on this aspect, presumably because these are addressed in the Insurance Act. Afterall, identifying an offense without a ***meaningful*** consequence is pointless.

This proposed change includes a coming into force clause to " bring the Proposed Rule into force on the date that supporting consequential amendments to the Insurance Act related to the enforcement of the Proposed Rule come into force".

These proposed changes are being made to provide a trigger for the coming into force of the Proposed Rule so that the proposed rule will come into force when unproclaimed amendments to the Insurance Act brought forward in Schedule 5 of the *Protecting the People of Ontario Act* (Budget Measures), 2021 are proclaimed into force. We have been unable to find information outlining in any detail these unproclaimed amendments, noting that they are described as "consequential" in the Notice of Change.

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Once again, the ORA would like to acknowledge our thanks for this opportunity to contribute to the consultation process. We would be pleased to provide any further clarification or information.

Respectfully submitted by,

Laurie Davis, Executive Director
Ontario Rehab Alliance