



THE WAWANESA MUTUAL INSURANCE COMPANY

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August 11, 2021

Financial Services Regulatory Authority of Ontario  
Auto Insurance Sector  
5160 Yonge Street, 16<sup>th</sup> Floor  
Toronto, Ontario  
M2N 6L9

**RE: Proposed Rule (2020-002) Unfair or Deceptive Act or Practices (UDAP): Notice of Changes and Request for Further Comment**

The Wawanesa Mutual Insurance Company (“Wawanesa”) appreciates the opportunity to provide comments in response to the changes made by the Financial Services Regulatory Authority of Ontario (“FSRA”) to *Proposed Rule 2020-002- Unfair or Deceptive Acts or Practices*.

Wawanesa supports FSRA’s staged approach to creating a principles-based rule that is aligned to CCIR’s Fair Treatment of Customer principles, as well as its subsequent changes clarifying consumer outcomes in the application of UDAP principles and further alignment with existing fair treatment of customers guidance.

Wawanesa is generally supportive of the submissions made by the Insurance Bureau of Canada related to this consultation, with two exceptions relating to affiliated insurers and use of incentives:

**1. Affiliated Insurers**

We support FSRA’s decision to maintain the current requirement that an insurer provide the lowest available rate to a consumer across all their affiliated underwriting companies as part of the Proposed Rule. As identified in our previous submissions on this consultation, the requirement for an insurer to provide the lowest available rate to a consumer across all its affiliated underwriting companies is a provision that protects consumers.

We recommend that the expanded language in s.10(2) of the Proposed Rule, which contemplates both the recency of newly affiliated insurers and the methods of distribution in providing the lowest available rates, be removed. We strongly believe consumers may not realize there are different affiliated insurers within one company that carry different pricing and rating regimes. Automobile is a compulsory product and consumers are not educated in the many options available by insurers to differentiate in insurer pricing. Insurers must ensure that we are thinking about consumers first and foremost and operating in a transparent and fair manner.



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## 2. Incentives

FSRA has amended sections 7(1)(i)-(iv) of Proposed Rule to support the position that offering an incentive as an inducement on a sale of a product which provides Life or Accident and Sickness coverage ("Life/A&S Coverage") is an UDAP.

While we understand and support the underlying objective of this amendment to the Proposed Rule, we also strongly believe that the amendment does not account for circumstances where two insurers, such as a provider of Life/A&S Coverage and a provider of property and casualty insurance coverage may collaborate to offer products to each other's respective customers. There can be economies of scale, and potential reductions in underwriting risk associated with such arrangements. If insurers are permitted to pass on those savings to customers through a cross-selling arrangement, where those customers make a free and informed choice to purchase products from both insurers, we submit that benefits consumers. This would not be materially different from the savings opportunities which consumers may have in circumstances where they have purchased multiples of certain types of insurance products from one insurer.

We note that FSRA has concluded that further stakeholder input and discussions are required to fully assess and address potential consumer risks associated with incentives in the Life/A&S Coverage context. However, under the current language in 7(1)(v) insurers would not have the ability to pass on premium savings to consumers in cross-selling arrangements as we have described. Further, it is not clear how long a review of this issue within the life and health insurer sector would take, and in the interim, consumers would be unable to take advantage of the potential savings associated with such a cross-selling model. Therefore, we believe it would be appropriate to specifically exempt cross-selling arrangements under the Proposed Rule.

Further, we specifically support the Insurance Bureau of Canada's recommendations on those sections of the Proposed Rule relating to fraudulent or abusive conduct related to goods and services to a claimant and prohibited conduct in automobile insurance quotations, applications and renewals:

## 3. Exemption of lawyers and paralegals from provisions specifying "Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant"

Section 2(1) of the Proposed Rule includes an exemption for lawyers and paralegals from its list of practices identified as unfair or deceptive.

This list of unfair or deceptive practices includes having Statutory Accident Benefit (SABS) claimants sign blank claims forms and attesting to receipt of goods and services before they have been delivered, as outlined in section 6(4).

We understand that legal professionals are exempted from UDAP provisions as it is the responsibility of the Law Society of Ontario to regulate the conduct of its members.



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Whether or not these practices are initiated by lawyers or other professionals engaged in the medical rehabilitation environment, these practices cannot be advanced without the participation by claimants.

We support the Insurance Bureau of Canada's recommendation that the Proposed Rule include a provision whereby consumers should be held individually accountable when signing blank forms and should not be attesting to goods and services before such goods and services have been delivered, which provision will be enforceable by FSRA.

#### **4. Prohibited Conduct in automobile insurance quotations, applications or renewals**

Section. 9(1)(i) of the Proposed Rule includes a provision which would make it a UDAP for insurers, brokers and agents to vary their formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker, or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance.

We submit that the wording of this section is somewhat subjective and may cause unintended consequences that prohibit an insurer's ability to appropriately service its customers. Broadly interpreted, this provision may prohibit insurers from engaging in sound business practices, such requesting further underwriting information on complex risk profiles or using fraud detection tools at the point of sale, which could result in a contravention of the Proposed Rule.

While we appreciate that the intent of this provision is to protect consumers first and foremost, this provision appears to be an addition to the take-all-comers rule currently under review, rather than a rewrite of the existing UDAP provisions and consumer outcomes focused on in this consultation.

Given the possibility of unintended consequences and the scope of this consultation, we support the Insurance Bureau of Canada's recommendation that section 9(1)(i) be removed from the proposed Rule until a full study and consultation has been carried out on the take-all-comers rule's public policy objectives.

We appreciate the opportunity to provide this submission on the Proposed Rule and look forward to further participation in the consultation process.

Yours truly,

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