



November 26, 2024

Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West  
Suite 100  
Toronto, ON  
M2N 6S6

VIA EMAIL TO:  
*contactcentre@fsrao.ca* &  
Website Upload

Dear Sir/Madam:

**RE: CDL Response to Financial Services Regulatory Authority of Ontario (FSRA) – *Statutory Accident Benefits Schedule – effective September 1, 2010 (SABS) Guidelines Review***

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Thank you for the further invitation to participate in the FSRA SABS Guideline Review consultation process. Canadian Defence Lawyers (CDL) welcomes the opportunity to participate as a stakeholder organization. CDL is the only national organization representing the interests of civil defence lawyers.

The following are CDL's responses to the questions posed by FSRA regarding Professional Services Guideline (PSG) Rates, Attendant Care Hourly Rate Guideline (ACHRG), and Minor Injury Guideline (MIG) Rates located at pages 14, 23, and 30, respectively, in the FSRA Consultation SABS Guidelines Review, September 2024:

**Professional Services Guideline (PSG)**

**1. If PSG rates are indexed (Option A), what should they be indexed to and why?**

If PSG rates are indexed as in Option A, to the maximum hourly rates, consumers will more rapidly exhaust their limits for treatment, particularly since the collective limit for non-Catastrophic claims is \$65,000 and there is a cap of \$2,000 per assessment under section 25(5) of the SABS.<sup>1</sup> As a result, CDL recommends consideration of the current statutory limits in tandem with an increase as in Option A, particularly if the cumulative increase of the PSG is being considered to

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<sup>1</sup> [https://www.canlii.org/en/on/laws/regu/o-reg-34-10/latest/o-reg-34-10.html#PART\\_IV\\_PAYMENT\\_OF\\_OTHER\\_EXPENSES\\_76218:~:text=\(5\)%20Despite,19%2C%20s.%204.](https://www.canlii.org/en/on/laws/regu/o-reg-34-10/latest/o-reg-34-10.html#PART_IV_PAYMENT_OF_OTHER_EXPENSES_76218:~:text=(5)%20Despite,19%2C%20s.%204.)

the range of 20-25% indexed to CPI as proposed and PSG is only available to non-catastrophic and catastrophic consumers.

CDL agrees with an optional indexation benefit, which indexes benefits to inflation, but again, only if in tandem there is consideration of the “bigger picture” regarding the section 25(5) limits per assessment and non-Catastrophic limits of \$65,000.

**2. If PSG are moved to flat rates (Option B), how should those flat rates be determined and why?**

CDL requests further detail regarding what rate would be imposed in respect of the “flat fee” under Option B. At this time, CDL is not in a position to agree with flat fees under Option B because Option B lacks clarity as to what flat fee rate would be considered by Stakeholders and/or implemented. CDL received a response from FSRA by email on November 21, 2024, in respect of the proposed flat fee, and FSRA requested that CDL respond hypothetically to a proposal for a “flat fee.” This does not provide sufficient detail to allow CDL to adequately comment on same. As such, CDL would like to have the further opportunity to address Option B, once further information is provided as to the actual flat rate that the Stakeholders are being asked to consider as it is a challenge to provide a response to an option for a flat fee rate without knowledge of the actual rate being considered.

Regardless, any option to increase rates should only be considered for non-Catastrophic claims and not Catastrophic claims. In respect of Catastrophic claims, which are more unpredictable and complex, flat rate fees would not be suitable considering the possible extra time and expertise required. Therefore, Option B ought to be reviewed with a consideration of the “bigger picture” regarding the limit per assessment and non-Catastrophic limits of \$65,000.

**3. Should rate increases (Option A or Option B) be staggered incrementally over a few years, or should it take place at once?**

A staggered incremental approach regarding Option A and B ought to be applied particularly if more time is required for the Legislature to consider the *SABS* limits, particularly in respect of non-Catastrophic claims, with any consideration of increase to the PSG.

**4. Should FSRA review fees regularly, and if so, at what frequency (i.e. annually, biennially etc.)?**

Yes, FSRA should review fees regularly at a frequency of not less than every 5 years, but as often as biennially. However, FSRA ought to consider exceptions to this timeline suggested should there be any significant legislative amendments to the *SABS* that would have a direct effect on any consideration of increases in the future.

**5. For Option C how often should insurers/HSPs meet to review/set maximum rates?**

CDL does not agree with permitting insurers and HSPs to negotiate maximum fees and rates. Should FSRA opt to step back from regulating the maximum fees or rates, then this would likely cause a possible increase in litigation in respect of such rates going forward. This would in turn, result in further strain to the adjudicative system. There is risk that a consumer's access to essential treatment could be delayed as result of negotiations.

**6. Are there other options/considerations related to rates/fees that should be considered for the PSG?**

As above, any major changes to the rates and fees for PSG would need to be done in conjunction with consideration of the current statutory limits for non-Catastrophic claims, cost of assessments under section 25(5) of the *SABS*, and limits for optional benefits.

**7. Do you have any evidence that consumers are having difficulty obtaining the HSP care they need due to the existing PSG rates?**

CDL defers to industry stakeholders as it does not, at present, collect evidence on such issues.

**8. What are the key implementation considerations that must be taken into account for each option (i.e. timing, updates to billing systems, etc.)?**

In respect of Option A and B, the following key implementation considerations must be taken into account:

- Review of limits for section 25(5) of the *SABS* regarding assessments.
- Review of non-Catastrophic combined limits for medical/rehabilitation benefits, which also includes attendant care.
- Timing of implementation of any considered increase would need to be considered in respect of the application of O. Reg. 383/24.
- Advance warning to consumers, insurers, and HSPs would need to be considered for the parties to adjust their billing systems.
- If Option A is selected by FSRA, then the information to be circulated to consumers, insurers, and other stakeholders must make clear which indexation rate applies if there is any dispute over treatment.
- Standardized, pre-approved, clear information must be forwarded to each insurer, and broker from FSRA.

**9. How can FSRA help to ensure that any changes to the PSGs are communicated to HSPs, insurers, consumers and other stakeholders?**

Dissemination of information regarding any changes to the PSG is critical. CDL would recommend a pre-approved summary of standardized information to be sent to the necessary parties, including consumers, to avoid any mixed messages, and the proper alerts to be sent to relevant professional associations representing the HSPs, if applicable. FSRA should also consider dissemination of any changes via social media.

**10. Are there other considerations which have been missed that should be taken into account as part of the PSG review?**

Maintaining the existing hourly rates (Option D) may not be feasible since an increase in rates has not been reviewed in over 4 years (last review was 2019), and in consideration of inflation.

In respect of the proposed increased rate options (Option A and B) regarding PSG, CDL is concerned about the increased rate options in the absence of consideration of the legislated maximum limits for assessments and non-catastrophic combined medical and rehabilitation benefits and attendant care benefits. If the limits are not addressed, in tandem with any increase, then there is a realistic concern that consumers' limits will be exhausted more rapidly than at present. There is also a further concern of how any increase to the PSG would affect the rate payers, being the insurers, as this could have the opposite effect of increased premiums. Ultimately, the party who suffers will undoubtedly be the consumer should rates be increased, even if implemented incrementally, without consideration of the legislated limits. As a result, if the consumer exhausts their limits, the offset would need to be accommodated elsewhere.

In addition, consideration ought to be provided as to adding other HSPs in respect of PSG rates, such as psychotherapists and social workers, as a broader range of disciplines ought to be considered.

**Attendant Care Hourly Rate Guideline (ACHRG)**

**1. How should Level 1 and 3 (Option B) attendant care rates be indexed?**

In respect of Option B, attendant care rates for Level 1 and Level 3 ought to be indexed at the maximum hourly rate (16.7% - CPI 2023). However, as noted above with respect to PSG rates, this will lead to consumers exhausting their limits more quickly. As a result, CDL recommends consideration of the collective limit for medical and rehabilitation and attendant care non-Catastrophic claims, which currently is \$65,000 and there is a cap of \$3,000/month for non-catastrophic and \$6,000/month for catastrophic claims under section 19(3) of the SABS.<sup>2</sup>

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<sup>2</sup> [https://www.canlii.org/en/on/laws/regu/o-reg-34-10/latest/o-reg-34-10.html#:~:text=\(3\)%20The%20amount,result%20of%20the%20accident.](https://www.canlii.org/en/on/laws/regu/o-reg-34-10/latest/o-reg-34-10.html#:~:text=(3)%20The%20amount,result%20of%20the%20accident.)

The WSIB rates ought not be applied or considered since the WSIB is funded by employers, and Ontario's Automobile regime is funded by consumers who purchase insurance. The rates offered by the WSIB are higher than the CPI indexation for 2023 and would result in an even quicker burn rate of attendant care without consideration of the statutory limits that apply.

Consideration should be given to the current statutory limits in tandem with an increase as in Option B, particularly if the cumulative increase of the Level 1 and Level 3 rates results in a quicker burn rate of attendant care than at present with the current rates.

CDL agrees with Option B, which would bring the rates up to the 2023 levels, but again only if in tandem there is consideration of the "bigger picture" regarding the section 19(3) limits maximum for non-Catastrophic and Catastrophic claims, and non-Catastrophic limits of \$65,000.

**2. Should Level 1 and 3 rate increases (Option B) be staggered incrementally over a few years, or should it take place at once?**

Level 1 and 3 rates increases, if implemented, under Option B should be staggered over a few years; particularly if more time is required for the Legislature to change the *SABS* limits, particularly in respect of non-Catastrophic claims, with any consideration of increases to the ACHRG.

**3. Should FSRA review the rates of all three Levels regularly, and if so, at what frequency (i.e. annually, biennially etc.)? Other Considerations**

Yes, FSRA should review fees regularly at a frequency of not less than every 5 years, but as often as biennially. However, FSRA ought to consider exceptions to this timeline suggested should there be any significant legislative amendments to the *SABS* that would have a direct effect on any consideration of increases in the future.

**4. Are there other options/considerations related to rates/fees that should be considered for the ACHRG?**

As discussed above, any major changes to the rates and fees for ACHRG would need to be done in conjunction with consideration as to the current statutory limits for non-Catastrophic claims and catastrophic claims, in particular, the monthly maximum limits under section 19(3) of the *SABS* and limits for optional benefits.

**5. Do you have any evidence that consumers are having difficulty in obtaining the attendant care they need (Level 1-routine personal care and Level 3-complex health/care)?**

CDL defers to industry stakeholders as it does not, at present, collect evidence on such issues.

**6. What are the key implementation considerations that should be taken into account for each option (i.e. timing, updates to billing systems etc.)?**

In respect of Option B, the following key implementation considerations ought to be taken into account:

- Review of limits for section 19(3) of the *SABS* regarding at minimum non-catastrophic, and also catastrophic limits.
- Review of non-Catastrophic combined limits for medical/rehabilitation benefits, which also includes attendant care.
- Timing of implementation of any considered increase would need to be considered in respect of the application of O. Reg. 383/24.
- Advance warning to consumers, insurers and HSPs such as PSWs, OTs and RNs, would need to be considered for the parties to adjust their billing systems; and
- Standardized, pre-approved, clear information must be forwarded to each insurer, and broker from FSRA.

**7. How can FSRA help to ensure that any changes to the ACHRGs are communicated to HSPs, insurers, consumers and other stakeholders?**

As with the PSG rates, dissemination of information regarding any changes to the ACHRG is critical. CDL would recommend a pre-approved summary of standardized information to be sent to the necessary parties including consumers to avoid any mixed messages, and the proper alerts to be sent to relevant professional associations representing the HSPs, if applicable. FSRA should also consider dissemination of any changes via social media.

**8. Are there other considerations which have been missed that should be taken into account as part of the ACHRG review?**

Maintaining the existing maximum hourly rates (Option C) may not be feasible since an increase in rates has not been reviewed in over 5 years (last review was 2018), and in consideration of inflation.

In respect of the proposed increased rate options under Option B for Levels 1 and 3 only, CDL is concerned about increased rate options without consideration of the legislated maximum limits for assessments and non-catastrophic combined medical and rehabilitation benefits and attendant care benefits. If the limits are not addressed, in tandem with any increase, then there is a realistic concern that consumers' limits will be exhausted earlier than at present. There is also a further concern of how any increase to the ACHRG would affect the rate payers, being the insurers, as this again could have the opposite effect of increased premium. Ultimately, the party who suffers will undoubtedly be the consumer should rates be increased, even if implemented incrementally, without consideration of the legislated limits. As a result, if the consumer exhausts their limits, the offset would need to be accommodated elsewhere.

## **Minor Injury Guideline (MIG)**

### **1. If MIG rates are indexed (Option A), what should they be indexed to and why?**

CDL does not recommend indexing the MIG rates. As noted in the Consultation Paper, a majority of consumers with minor injuries do not use up the \$3,500 limits. Further, the rates in the fee schedule are generous compared to other systems (such as the WSIB). The intention of the MIG fee structure was to cover the services of a variety of HSPs.

CDL agrees with Option B, maintaining the fees.

However, if MIG rates are indexed as in Option A, which CDL does not recommend, then HSPs ought to be paid at market rates. Again, any rate increase, particularly with respect to the MIG rates, consideration ought to be made in tandem with the current statutory limit of \$3,500 total for all MIG claimants. The increase in rates without consideration of the statutory limit would very likely result in more rapid consumption of the MIG limits, increased disputes, and litigation in respect of who would qualify for MIG versus non-catastrophic claims, to the detriment of consumers and insurers. Further, it may result in fewer treatments for some consumers.

### **2. Should rate increases (Option A) be staggered incrementally over a few years, or should it take place at once?**

Again, CDL does not agree with Option A as proposed, but if MIG rates are indexed, then the rates should be staggered over one to two years, particularly if more time is required for the Legislature to consider the impact on the *SABS* limits.

### **3. Is the existing block fee structure/amounts for pre-approved MIG treatment appropriate? Why or why not?**

Yes, the current existing block fee structure and amount of \$2,200 for pre-approved MIG treatment is appropriate for the time being unless a review of the statutory limit of \$3,500 is anticipated.

### **4. Should FSRA review MIG rates regularly, and if so, at what frequency (i.e. annually, biennially etc.)?**

Yes, as with PGS and ACHRG rates, FSRA should review fees regularly at a frequency of not less than every 5 years, but as often as biennially. However, FSRA ought to consider exceptions to this timeline suggested should there be any significant legislative amendments to the *SABS* that would have a direct effect on any consideration of increases in the future.

**5. Are there other options/considerations related to rates/fees that should be considered for the MIG?**

There are no other options to consider at this time.

**6. Do you have any evidence that consumers are having difficulty obtaining the HSP care they need due to the existing MIG rates?**

CDL defers to industry stakeholders as it does not, at present, collect evidence on such issues.

**7. What are the key implementation considerations that must be taken into account for each option (i.e. timing, updates to billing systems, etc.)?**

In respect of Option A, if it is to be implemented, then the following key implementation considerations ought to be taken into account:

- Review of limits for section 18(1) of the *SABS*.
- Timing of implementation of any considered increase would need to be considered in respect of the application of O. Reg. 383/24.
- Advance warning to consumers, insurers and HSPs, would need to be considered for the parties to adjust their billing systems; and
- Standardized, pre-approved, clear information must be forwarded to each insurer, and broker from FSRA.

**8. How can FSRA help to ensure that any changes to the MIG rates are communicated to HSPs, insurers, consumers and other stakeholders?**

Although CDL recommends maintaining status quo, if any changes to the MIG rates are implemented, then as with the PSG and ACHRG rates, dissemination of information regarding any changes to the MIG is critical if FSRA does implement changes to the MIG rates under the Fee Schedule. CDL would recommend a pre-approved summary of standardized information to be sent to the necessary parties including consumers to avoid any mixed messages, and the proper alerts to be sent to relevant professional associations representing the HSPs, as applicable. FSRA should also consider dissemination of any changes via social media.

**9. Are there other considerations which have been missed that should be taken into account as part of the MIG review?**

During FSRA's Auto Reform Webinar on November 4, 2024, and Legal Services Meeting on November 6, 2024, the stakeholders were informed that a majority of consumers do not meet the threshold of \$3,500, but yet that the MIG is the most common level that consumers utilize when their claims are initiated. If few exceed the \$3,500 limit, then this is an indication that rates ought not change at this time given that it would likely only benefit a few consumers. However,



this is contingent upon whether consideration is anticipated for a review of the statutory limit of \$3,500.

### **Additional Concerns and Considerations**

CDL understands that the purpose and desired outcome for both the Government and FSRA, is to ensure that those injured in auto accidents continue to receive the care they need and that HSPs are compensated appropriately for their services. However, CDL is concerned that it would be impractical and counter to the purpose and desired outcome of all parties to consider any proposed increase in PSG, ACHRG and MIG rates without consideration of the O. Reg. 383/24 of the *Insurance Act*, R.S.O. 1990, c. I.8, which comes into force and effect July 1, 2026.

O. Reg. 383/24 unfortunately does not account for monetary inflation, and should maximum options be instituted by FSRA for PSG, ACHRG and MIG, then this would have a direct effect on the exhaustion of the MIG limits and non-Catastrophic limits at a rapid rate. There would be no benefit if, for example, there is an increase in HSP rates, but the treatment is cut or reduced as a result. Further review of the Automobile Insurance Regime is required in tandem with any increases to the rates in question.

CDL is further concerned in respect of an increase in litigation without cost consequences, particularly in respect of MIG cases. At present, a majority of the cases that proceed to a hearing before the License Appeal Tribunal (LAT) are MIG related.<sup>3</sup> It is expected that with the implementation of O. Reg. 383/24, there will likely be an increase in Broker negligence claims. As such, attention ought also to be directed to appropriate Broker training and consideration of relaying the proper information to consumers with a standardized message or presentation pre-approved summary of standardized and clear information to be sent to consumers.

CDL welcomes any questions and the opportunity to provide further contributions to FSRA and the Ministry of Finance.

Yours very truly,



Lisa c. Pool  
President, 2024-25  
Canadian Defence Lawyers (CDL)

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<sup>3</sup> <https://tribunalsontario.ca/en/key-performance-indicators/lat-key-performance-indicators/>

**The Canadian Defence Lawyer's Subcommittee on FSRA - SABS Guideline Reform:**

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