Financial Services Regulatory Authority of Ontario
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VIA EMAIL TO:
contactcentre@fsrao.ca &
Website Upload

Dear Sir/Madam:

RE: MLST Response to Financial Services Regulatory Authority of Ontario (FSRA) – Guidelines Review

Overview

The Medico-Legal Society of Toronto ("MLST") was founded in 1950 by doctors and lawyers to promote medical, legal and scientific knowledge, cooperation and understanding between the professions in the interest of justice and the best interests of patients and clients. MLST is pleased to provide feedback on the proposed initiatives by FSRA to reform several auto initiatives to advance the Ontario government's commitment to improve the provincial auto insurance system.

To support FRSA's goals of reviewing the rates for healthcare providers under the Professional Services Guideline, Attendant Care Hourly Rates Guideline and the Minor Injury Guideline, MLST is pleased to provide the below commentary and recommendations. MLST has also included its recommendations regarding reforms of the healthcare service provider framework and the health claims for auto insurance system.

MLST's Recommendations

Professional Services Guideline

The Professional Services Guideline (PSG) establishes the maximum expenses payable by automobile insurers under the *Statutory Accident Benefits Schedule* ("Schedule") for services provided by healthcare professionals listed in the PSG. While not prohibited from paying above any maximum hourly rate outlined in the PSG, automobile insurers are not liable to pay expenses rendered by healthcare professionals that exceed the maximum hourly rates outlined in the PSG.

The maximum hourly rates outlined in the PSG have not been amended since 2014 even though some healthcare providers through their respective professional organizations have established standardized fee schedules according to market rate and variables such as experience, education, specialized skillsets, and type of service provided. With no amendments to the maximum hourly rates in 10 years, the rates outlined in the PSG continue to fall well below market rate for healthcare service providers. This has led to many experienced healthcare providers refusing to provide care and assessments to motor vehicle accident claimants, resulting in inadequate care being provided by healthcare providers who charge lower fees. Lower fees are often correlated with less training, experience, and ultimately impact evidence-informed treatment to claimants. Overall lower quality care leads to injured claimants receiving less benefits from the provided treatments, resulting in a perpetual cycle of slower or inadequate recovery, increased cost of claims, and ongoing treatment plans.

In reviewing the PSG, FSRA has confirmed that it is guided by the goals of maintaining the care that customers receive and the continued availability of services to ensure that injured persons receive the care they require and that health care providers are compensated appropriately. With these goals in mind, the MLST proposes that the maximum hourly rates outlined in the PSG be increased to the current market rates for the respective healthcare providers, to encourage experienced healthcare providers to participate in providing care and assessments to persons injured in motor vehicle accidents. FSRA should review the maximum hourly rates annually to ensure that the maximum rates are in line with current market rates charged by the respective healthcare providers.

By increasing the PSG rates immediately to reflect market rates, claimants are more likely to access a wider range of healthcare providers, as these professionals would be adequately compensated for their services. This would reduce wait times and improve continuity of care for the claimants. Increased PSG rates would attract more experienced and specialized professionals willing to provide services, thereby improving the quality of care that claimants receive. This would positively impact recovery outcomes for those involved in motor vehicle accidents and would act as a cost-savings to the insurer. When claimants have better access to timely and appropriate care, they will likely recover faster and require less prolonged treatment. This would result in reduced costs for insurers over time, as they might need to pay for fewer extended rehabilitation services. Moreover, with an increase in the maximum hourly rates, claimants might not need to cover additional costs out-of-pocket to access the services they need, making the process less financially burdensome to the claimants.

Indexing PSG rates to reflect market rates immediately will also minimize disputes between insurers and healthcare service providers regarding service fees. Indexing to market rates will help streamline the claims process, making it smoother and reducing administrative costs for insurers. With fewer disputes over service fees, claims could be resolved faster, helping insurers reduce delays in processing and closing claims more quickly. Fewer disputes over service fees would also reduce the trauma to the claimants that is experienced when having

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to negotiate fees/rates. Importantly, this efficiency can lower operational costs. By supporting higher PSG rates, FSRA would be upholding their values of consumer protection. Insurers would also demonstrate a commitment to fair treatment and quality care for claimants, which would enhance insurers' reputation in the public eye and potentially lead to greater policyholder loyalty. These proposed changes are critical in creating a more equitable and efficient insurance system, benefiting both claimants and insurers by aligning the cost of professional services with market realities and improving access to high-quality care.

To ensure any changes to the PSG rates are communicated to healthcare service providers, insurers/adjusters, consumers and other stakeholders, FSRA should employ a variety of mandatory knowledge dissemination efforts which include but are not limited to publishing the new policy, designing mandatory learning modules for adjusters, and requiring healthcare providers outline new policies on the Treatment and Assessments Plans (OCF-18s) when they submit on Health Claims for Auto Insurance (HCAI).

Staggering the increase in the maximum hourly rates would not address the issue that the current rates have fallen significantly below current market rates. Staggering the increase in rates also would not address the issue that many of the injured claimants are receiving treatment from inexperienced practitioners, thereby reducing the benefits of the treatments provided, and increasing the number of treatment plans submitted to insurers for ongoing treatments.

MLST does not support the use of flat fees for the maximum rates because most treatment is usually provided in one hour block sessions; therefore, the hourly rate effectively operates as a flat fee.

Not prescribing any rates is also not recommended and would likely function to increase disputes and administrative burdens, including discrepancies among insurers and adjusters within the same company. This would create undue hardship and unpredictability for the healthcare providers and the claimants. For example, denials or partial approvals of treatment plans being made in an inconsistent manner would result in a high level of delay in the provision of treatment due to disputes between the claimant, healthcare provider and the insurance company. Delays in the provision of services has a negative impact on health outcomes, likely precipitating a protracted recovery, and ultimately, increased costs to the insurer. It is MLST's opinion that not prescribing rates is a suboptimal approach where there might be bidding wars between healthcare providers, and deals made where the interest of a business supersedes that of the claimant, where ultimately healthcare providers who get the most volume agree to lower fees, and likely provide poor-quality work and treatment efforts. This is already taking place and should not be encouraged.

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Maintaining the status quo with respect to the PSG rates is also not recommended. Currently, the maximum hourly rates are insufficient, problematic, do not allow claimants to receive optimal care, and carry ongoing deleterious impacts to both the claimant and insurer. As the hourly rates are significantly below market rates, treatment plans are often exhausted by case management in the case of catastrophically impaired claimants, which then leaves little room for treatment to be facilitated under the treatment plan. The lack of treatment results in a perpetual cycle of diminished alleviation of symptoms and/or further exacerbation of symptoms and increased functional impairment. MLST rejects the notion that an increase in the maximum hourly rates will lead to reduced access to care. On the contrary, by increasing the maximum hourly rates to the current market value, access to quality care will increase, as more experienced healthcare professionals will be involved in the provision of care, which benefits the injured claimants. Further, the argument that any significant increase to PSG rates may result in an increase to auto premiums is not a financial burden that healthcare providers are responsible for. Maintaining the current rates contradicts FSRA's goal of ensuring that health care providers are compensated appropriately for the care they provide to motor vehicle accident victims.

When considering amendments to the maximum hourly rates, FSRA should also consider mileage expenses outside of the hourly rates for healthcare professionals who spend considerable time travelling to provide care to members of the community.

The PSG should also be expanded to include all registered health professionals including but not limited to social workers, psychotherapists, in addition to Occupational Therapist Assistants, and Physiotherapist Assistants. There should also be a clear differentiation between qualifications within the context of practice credentials such as social workers (i.e., Master's-level training), to safeguard clients and uphold standards. Including all registered health professionals would:

- improve timely access to care across Ontario, reducing delays and improving outcomes for the injured claimants;
- improve access to multidisciplinary treatment teams across the province, a care model used in other systems in Ontario (including the WSIB). Lead clinicians (those with more training/experience) could better oversee local teams, thereby reducing delays and improving outcomes, while also saving the insurer money;
- reduce the administrative burden and therefore costs to insurers and clinicians. When some registered healthcare professionals are excluded from the PSG, the system is burdened administratively with unnecessary disputes between insurers and registered healthcare providers seeking clarity around recommended services, services already provided, and fees, which further discourages effective and efficient models or care.

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FSRA would benefit from adopting a similar approach to the Ontario Chiropractic Association, which developed a Fee Schedule in September 2022 which is indexed to align with general inflation. The recommended fees for each service provided by the Chiropractor are based on many features including but not limited to:

- Time requirements to prepare for and deliver the service;
- Education and training requirements;
- Intensity of cognitive and physical work required to deliver the service;
- Level of skill required to deliver the service;
- Level of risk associated with delivering the service; and
- Costs associated with the provision of the service.[1]

Where the fee schedule provided a range, factors that should be considered in establishing the fee include the practitioner's experience and qualifications, impact of location on the cost of providing the service, and complexity of care.

To improve the efficacy of treatment and reduce overall costs, the industry should focus on improving access to experienced licensed healthcare providers who are paid fair market value wages for their involvement and oversight. Many for-profit organizations who provide care have, for example, experienced Occupational Therapists part of a team that can include occupational therapy assistants, kinesiologists, rehabilitation support workers, and personal support works who cost less. Experienced psychologists oversee psychotherapists (when appropriate), and experienced physiotherapists also work closely with colleagues such as physiotherapist assistants and kinesiologists. By omitting access to fair wages, good and experienced healthcare providers will be unwilling to engage in treating motor vehicle accident claimants. Likewise, by omitting many of these registered healthcare providers from the PSG, it is often too difficult to include other qualified providers in this kind of model. However, any increase to the PSG cannot be considered in isolation and must be considered in conjunction with the statutory limits in mind regarding section 25(5) of the *Schedule* regarding cost of assessments and the non-catastrophic limit for medical and rehabilitation benefits and attendant care benefits combined. Both are inextricably tied together. Should rates be increased before any consideration is given to the statutory limits for such benefits, then this would result in a quicker burn out of treatment and assessment care for claimants.

Attendant Care

The administration of attendant care is usually provided by Personal Support Workers ("PSW") in accordance with the recommended amount of assistance outlined in the Assessment of Attendant Care Needs Form 1. There are 3 levels of attendant care, differentiated by the complexity of the care. Level 1 attendant care is for routine personal care assistance; level 2 is for basic supervisory functions; and level 3 is for complex healthcare and hygiene functions.

[1] Ontario Chiropractic Association Recommended Service Codes and Fee Schedule, dated September 2022.

The maximum rates used to calculate the monthly attendant care benefits are outlined in the Superintendent's Guideline No. 01/18, which states that the maximum hourly rate for Level 1 is $14.90; the maximum hourly rate for Level 2 is $14.00; and the maximum hourly rate for Level 3 is $21.11. But, as of November 15, 2024, the average hourly pay for a PSW in Ontario is $28.14. However, this rate is not what businesses who contract PSWs charge, as that rate is in the approximate range of $38 to $45 per hour. Therefore, the current rates mandated by the Form 1 for attendant care assistance are well below the market rate for PSWs. The maximum rates outlined in the Form 1 are also well below the rates allowed for PSWs providing attendant care assistance in the WSIB forum. For example, WSIB's rates for PSWs providing general attendant care to handle basic supervision are 16.55 per hour; $21.70 per hour for personal attendant care assistance to handle routine personal care; and $31.97 per hour for skilled attendant care to handle complex health care and hygiene.[2] However, MLST acknowledges that adopting market value rates would result in an acceleration of the burn rate for attendant care benefits. While FSRA has stipulated that statutory limits are outside the scope of this current reform, MLST urges equal consideration regarding the limits for the combined attendant care/medical/rehabilitation benefits.

MLST proposes that the maximum hourly rates for attendant care assistance for Level 1 and Level 3 be increased immediately to reflect the current market rates for PSW, due to the complexity of care provided in these levels. The rates for Level 2 should be increased based on minimum wage and indexed yearly to the Consumer Price Index as this level addresses basic supervisory functions including assistance with cleaning and transferring from assistive/mobility devices. Overall, the maximum rates should be reviewed annually to ensure they remain in line with market rates.

The maximum rates for all levels should not be indexed for all levels because the businesses who facilitate these services already are unable to support the existing rates. Therefore, the focus should be on increasing the rates relating to more complex care to the appropriate market rates and Consumer Price Index as discussed above.
Maintaining the current rates as outlined in the Form 1 is not recommended as doing so would not address the issues claimants currently face where the companies providing such assistance are already struggling to support the current hourly rates. Likewise, businesses have no choice but to engage in poor business practices when they continue to charge market rates, thus reducing services to a fraction of the time recommended, when one considers the average hourly rate for PSWs in Ontario.

Similar to prior comments, to ensure any changes to the attendant care benefits hourly rates are communicated to healthcare service providers, insurers/adjusters, consumers and other stakeholders, FSRA should employ a variety of mandatory knowledge dissemination efforts which include but are not limited to publishing the new policy and designing mandatory learning modules for adjusters and service providers.

[2] https://www.wsib.ca/en/operational-policy-manual/table-rates.

For accidents that took place after June 1, 2016, the policy limits for attendant care is combined with that of medical and rehabilitation benefits for a maximum of $65,000. This policy change already reduced access to attendant care benefits. Therefore, the increase in rates for attendant care assistance cannot be discussed in isolation from the policy limits of these benefits.

Minor Injury Guideline

Currently, injured claimants who sustain what are classified as minor injuries and impairments, are subjected to the Minor Injury Guideline ("MIG"). The injuries that fall within the MIG include sprains, strains, whiplash, and acute concussion/mild traumatic brain injury. The fee for the first four-week block of treatment after the initial treatment visit is $775.00 for treatment. The fee for the second four-week block of treatment is $500. The final third four-week block of treatment is $225. Additional funds are available to provide supplementary services to support restoration of functioning, including but not limited to supportive interventions and assistance devices. Overall, claimants subjected to the MIG have a limit of $3,500 for treatment.

The main issue with the MIG from a clinical sense, is that while it classifies impairments, it does not consider impairment intervention complexity. Some claimants present with simple WAD 2 complaints, but others present with multiple site impairments which often require more time, more intervention and in some cases, multiple providers.

When subjected to the MIG, the simple and complex cases are billed at the same cost over the same block time frame. The result is that complex cases are often not provided with the acute time frame care that is required because of costing issues resulting in deferral of intervention which ultimately prolongs recovery through treatment delay. This then means that many claimants do not receive the appropriate care for their injuries and impairments when subjected to the MIG.

Given that the MIG limit of $3,500 has not been indexed since its inception, this limit has not kept up with the market rates of healthcare service providers and has not considered the amount and length of time claimants require for adequate treatment for their minor injuries and impairments. Therefore, the current MIG rates should be reviewed to ensure they allow for adequate treatment of claimants and payment for the respective service providers.

Health Service Provider (HSP) Framework Review

It is not FSRA's role to act as a regulatory body for healthcare providers. Licensed healthcare providers already have their own regulatory colleges which complete audits and require healthcare providers to engage in annual learning modules and professional development on an annual basis. Therefore, through their regulatory colleges, there are rigid systems in place

to protect the public with respect to the care provided by licensed healthcare providers. Having FSRA regulate health care providers is redundant, inappropriate, costly, and an unnecessary administrative burden. It is also highly likely that healthcare providers would not consent to sharing their information with FSRA. FSRA's stance that collaboration with registered healthcare providers would decrease fraudulent billing practice is gravely flawed. If FSRA consulted with registered healthcare providers, it would be clear that a bigger issue is the nearly 10-year gap of unaltered rates which undervalues professional goods and services. Therefore, MLST does not support FSRA's licensing regime.

Health Claims for Auto Insurance (HCAI) System Review

Health Claims for Auto Insurance (HCAI) is an electronic system for transmitting auto insurance claim forms between insurers and health care facilities in Ontario. HCAI provides a mandatory platform for health care facilities to submit Treatment and Assessment plans (OCF 18s), Treatment Confirmation Forms (OCF 23s), and their associated invoices, as well as Assessment of Attendant Care Needs Forms (the Form 1) to auto insurers for review and adjudication.

To reduce costs and become more administratively efficient, the industry would benefit from FSRA focusing its efforts on reducing the administrative burden of completing these forms for registered healthcare providers and clinics, and for insurers reviewing them. The required forms are burdensome and time consuming to complete (for example, an OCF-18 can take an hour depending on services requested), many providers refuse to use HCAI and, therefore, refuse to accept claimants injured from motor vehicle accidents. As a result, this refusal reduces the public's access to care from accident-related injuries.

Priority should be given to increasing the effectiveness and user-friendliness of the required forms. For example, Form 1s should be revised to auto populate subtotals and totals to reduce administrative burden and calculation errors. This change would enable effective use of time and reduce administrative costs. Form 1s should also be revised to optimize where "comfort, care, and security" is stationed on the form, as minutes are almost always allocated incorrectly because the industry does not have a clear consensus on where to allocate minutes for comfort, care, and security outside of the bedroom environment. More specifically, the reference to "comfort, care, and security" in the bedroom environment on a Form 1 often relates specifically to Level 2 care because this is where nighttime supervision and hands-on assistance are most required. However, this does not mean comfort, care, and security are limited to Level 2 care or the bedroom environment as they most certainly apply to other necessary comfort-related roles in Levels 1 and 3.

It would be beneficial for all parties if all forms were revised to emphasize relaying essential information in the current system in an efficient manner (e.g. the use of auto populate; drop down menus where applicable). A review should be conducted with representatives from

FSRA, insurance companies, individual registered healthcare providers, and health care clinics to ensure proposed changes encourage efficiencies for all who use these forms.

HCAI would also benefit from creating a pathway for healthcare providers who perform assessments for independent examination companies to monitor what is being billed in their name on HCAI. By encouraging this practice, it would reduce fraud in the system, thereby reducing costs for insurers.

To ensure that changes are communicated to healthcare providers, insurers and stakeholders, FSRA should publish the changes on the HCAI database, and deploy information bulletins to service providers and adjusters. A standard and clear bulletin would need to be created to avoid multiple different versions of information.

Conclusion

MLST appreciates the opportunity to provide its feedback to FSRA and looks forward to ongoing cooperation with FSRA on its anticipated reforms.

Sincerely,

Andrea R. Lim
President, 2024-25
Medico-Legal Society of Toronto (MLST)

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