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$2 Million Catastrophic Impairment Default Benefit Limit Consultation

Submitted by the Ontario Rehab Alliance
Via email to: AutoInsurance@Ontario.ca
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About the ORA**:** The ORA represents primarily small to medium sized healthcare businesses that collectively employ upwards of 4000 healthcare providers including Regulated Health Professionals from all disciplines, social workers, personal support and rehabilitation support workers. We are the primary providers of rehabilitation to Ontarians seriously injured in automobile accidents. Most of our members work throughout the healthcare system, giving us a wide-angle view. We are the only association focused primarily on the interests and issues of health providers in the auto sector.

Our member companies operate in home, community and clinic settings. As health professionals we have a strong duty of care to our clients, as business owners we have a responsibility to keep the business viable for ourselves, our staff, and the clients who depend on us.

On behalf of its members, the ORA advocates for motor vehicle accident victims, adequate insurance benefits, and fair treatment of those injured. We help members to navigate the claims system with timely information bulletins on new requirements and issues, and with resources to support daily operations.

Implementation Details and Options

Note: The ORA has focused its response of the consultation questions where we have expertise to contribute. We have responded to the others with 'no comment'.

4. What potential benefits or implementation challenges should the government consider regarding the proposed approach?

Potential Benefits

It is a certainty that the increase to $2mil will have a tremendously positive impact on those who are catastrophically injured, enabling them to achieve the highest quality of life post-accident. In doing so, it will also lessen the pressure on publicly funded health care (family physicians, emergency rooms) and social services. The higher benefit level will mitigate the negative impact that such injuries have on spouses and family members, helping to preserve these all-important relationships.

We believe that it is important to recognize that $2 million is necessary, and that the $1 mil limit currently in place has proven woefully inadequate. The costs that CAT claimants incur are not picked up by any other funding mechanism. Examples include home and vehicle modifications, prostheses, and life-long attendant care needs. Each of these costs can be in the range of hundreds of thousands, so that even the $2 mil benefit level may be consumed. This is exactly the population that the CAT benefit is designed for.

Implementation Challenges

The option to reduce the $2 mil default benefit to $1mil and thereby achieve premium cost reduction presents huge challenges. There are few, if any, alternate sources of insurance for the degree of med-rehab support required to treat catastrophic injuries and the average consumer is generally not well informed about the provisions of any other insurance they might have. They may well think that their workplace extended health plan includes such coverage when it does not. Similarly, long-term disability benefits are rarely understood and, depending on the plan, may not cover the costs on injuries sustained; nor do they cover the costs of injuries sustained by others in the vehicle.

This 'buy down' possibility is deeply worrying for a number of reasons.

Historically, few consumers buy-up accident benefits, and this same phenomena will play out in reverse, with most choosing the cheapest rather than the wisest policy.

Most drivers do not consider it likely that they will be in an accident that leaves someone seriously, let alone catastrophically injured. They don't know they that they need this coverage, until they do.

Insurance brokers and agents do not themselves understand the cost of serious and catastrophic injuries and are therefore not able to properly dissuade those deciding to "buy down".

Implementation will need to somehow mitigate all the above in order to ensure that the $2 mil does properly function as 'default'.

5. *What potential implementation costs should government consider regarding the proposed approach? Who will bear those costs? For example:*

a) *Impacts to average premium for consumers*

Without historic data, which can only be supplied by insurers on the cost differential of the $1mil and $2mil, it is not possible to speculate on the implementation costs might be. We can more easily imagine what the impacts of the 2016 benefit reduction have been, and that will continue to play out. Without access to appropriate care, those with catastrophic injuries will be compounding the hallway medicine stresses on our healthcare system and social services.

If implementation can ensure that most people keep the $2 mil default, then the implementation costs of education of all stakeholders is minimized. Eliminating the buy-down option will certainly minimize the implementation costs associated with having to educate insurance sellers and consumers.

Further, we believe that there are a number of cost savings that may arise from other auto reform initiatives (fewer IMEs, fewer disputes) that can offset any new costs.

b) *Impacts to administrative costs for insurance industry stakeholders*

No comment.

c) Other?

No comment.

6. What measures could be considered that would avoid unnecessary disputes and/or litigation costs?

Regardless of the benefit level in place, the current process for determination of CAT designation is problematic and should be reviewed and the issues addressed.

These include:

- Length of time (often 2-3yrs) for CAT determination to be made
- The 30-day vegetative clause should be removed. If someone is vegetative for more than "x" hours (e.g. 24/48) then they should have access to cat benefits.
- Establish a committee to review how the new cat definition is meeting needs.
- Likelihood that those who will be deemed CAT will exhaust the $65,000 med-rehab benefit long before they are awarded CAT level benefits and be without desperately needed treatment and supports during this period.
- It is vital to collect data that will show how often the 65k is exhausted and the injured person is later deemed CAT. Anecdotally, we see a lot of these cases, but policy makers should become aware of the frequency with which this occurs.
- The waiting period between exhausted benefits and CAT determination makes those in that group more difficult to treat as they are not getting the right treatment at the right time. This often contributes to increased mental health sequelae due to increased financial pressures, frustration with lack of improvement, and ongoing assessments to meet CAT criteria, which further complicates the recovery process
- Likelihood that those who will be deemed CAT will exhaust the $65,000 med-rehab benefit long before they are awarded CAT level benefits and be without desperately needed treatment and supports during this period.

7. Should MVACF claims be subject to the $2 million default benefit limit?

Absolutely. Pedestrians, cyclists and the uninsured hurt by uninsured drivers will require the same level of med-rehab support.

8. What additional changes could the government consider to achieve and/or support the stated policy objectives? What are the risks, opportunities, and costs associated with these other approaches?

Reconsider offering the 'buy down' option. If implemented, establish measures to ensure insurers are mandated to develop and deliver educational resources for consumers

Implement mechanisms to speed up CAT determination, such as the ability to submit a CAT application when there is a clear med-rehab need to do so as opposed to the arbitrary timelines of 9 months or 1 year. This aligns with the Care, Not Cash approach.

Supporting Implementation: Consumer Choice and Awareness

9. What current practices, materials, and tools are used to help consumers understand auto insurance, including the catastrophic impairment benefit? Which approaches or tools are the most effective and why?

For the most part, the consumers we meet in the course of our work are already seriously or catastrophically injured. Rarely did they have any understanding of the potential for such injuries before they occurred. In our industry, it is the common experience that we, as consumers, have to educate --- and almost persuade ---- our brokers and insurance agents in order to buy up the optional benefits we need. When we inquire of family and friends who we have encouraged to also buy-up they report similar experiences. Consequently, we have little faith that there are currently practices, materials and tools in place to help insurers understand auto insurance and accident benefits. Our association has developed resources to support broker and insurer education which we'd be happy to share more widely. We also provide some general information the public and our clients: https://www.ontariorehaballiance.com/changes-to-accident-benefits/

It is vital that insurer and consumer education includes information about the costs incurred. As mentioned previously, this should include home and vehicle modifications, prosthetics, and life-long attendant care.

10. What should the insurance industry (i.e. insurers, agents, brokers) do, that they aren't currently doing, to support consumer awareness and informed decision making? What other opportunities exist to enhance consumer awareness / education?

This is an expensive and uphill battle when CAT represents only 1% of claims and when insurers have an obligation to ensure they are providing consumers with the information they need to make sound decisions. To have any hope of doing so, insurers themselves must be better informed so that they can then inform consumers. Accident benefits and serious and catastrophic injuries are complex matters. In fairness, it may be asking too much of most insurers to do this well. The costs of healthcare are not well understood by most Canadians. OHIP is managed in such a way that most have no idea what their healthcare costs; only in the auto insurance sector are some of these costs visible. Without any context for understanding or comparing MVA healthcare and rehab costs, insurers and consumers alike will be prone to seeing the real costs as inflated.

Addressing this issue in the MVA sector should come second to addressing it more widely, and helping Ontarians better understand the costs of healthcare through a similar degree of transparency with the costs of OHIP, WSIB, etc.

11. *How do (and/or should) sellers of insurance determine what amount of catastrophic impairment benefit limit to recommend to clients?*

As indicated above, the $2mil benefit limit should be mandated for all. Otherwise, how would the conversation between a broker and a consumer go, practically? We envision something like this:

> Broker: *So your premium will be $150/month, but if you want to save $20 per month you can choose to reduce your cat benefits from 2M to 1M*.
>
> Consumer: *Do you think I will need it? Is it worth the savings? What would you do?*
>
> What can the broker possibly say next that is ethical?
>
> *Nah, you probably won't need it – only 1-2% of people are catastrophic.*
>
> *But if you are, then yes definitely you will likely need the 2M instead of the 1M – for home modifications that can cost 0.5million, for specialized equipment like prosthetics that can cost 20-30k and need to be replaced every 5 years, for years of treatment to improve and then treatment to maintain your function.*

We understand that some Ontario Auto Insurance brokers and agents have been subject to errors and omissions lawsuits from consumers that cite a failure to provide or to advise of necessary coverage. It seems likely that the proposed buy-down option to lower Catastrophic AB will increase their exposure to such suits in future.

12. *What do (and/or should) sellers of insurance do when a consumer does not accept the recommended option?*

As above

13. *What, if any, other insurance products (e.g. long-term disability insurance) could help address gaps in catastrophic impairment coverage?*

Please refer to our reply to #4, above. Further, it is always going to be more cost effective for the consumer to add to the auto insurance product then trying to fill gaps with other coverages.

a) *Do sellers of insurance recommend and/or sell these other products to consumers?*

No comment.

<u>Additional Comments</u>

14. *Please share any additional comments or suggestions you may have to inform the proposed $2 million catastrophic impairment default benefit limit.*

No comment.