
SUBMISSION TO THE MINISTRY OF FINANCE

FRAUD & ABUSE CONSULTATION

July 8, 2021

Introduction

The Ontario Rehab Alliance (ORA) is grateful for this opportunity to respond to the consultation paper and to support development of initiatives to target fraudulent and abusive activities that unnecessarily increase auto insurance system costs.

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.

Since our inception in 2010 we have played a constructive role in multiple consultations conducted by the Ministry of Finance, FSCO and latterly, FSRA. Currently, our Executive Director is a member of FSRA's Health Service Provider Stakeholder Advisory Group.

We have spearheaded and coordinated several multi-association projects in the sector including the 2017 *FSCO Health Service Provider Licensing Survey* which included all of the Regulated Health Professional associations in the sector. Earlier this year, with the involvement of several other associations we surveyed Health Service Providers on emergent claims handling issues with negative impacts on access to treatment.

Proposed FSRA Initiative # 1. Defining Fraud & Abuse

The definition of fraud and abuse in this sector should target the quantifiable impact of activities, or failures to act, that cost consumers. This would contrast with the current regulatory practice of attending to process compliance that is often unrelated to any consumer impact.

FSRA regulation of HSPs is premised entirely on the sourcing and mitigation of fraud and abuse. The regime costs HSPs a significant amount to maintain. Yet while the costs are evident, the benefits to consumers are not. The recently released *Health Service Provider 2020-21 Market Conduct Compliance Report* offers numerous insights to support this observation, excerpted, below.

The Health Service Provider (HSP) sector consists of over 5,000 licensed Service Providers. During fiscal year 2020/21 (April 1, 2020 - March 31, 2021), FSRA ran three review programs, the key outcomes of which are summarized below.

1. Remediation Reviews of Licensed Service Providers

FSRA conducted 326 remediation reviews of licensed Service Providers with previous compliance deficiencies. The program results found that:

- 287 licensed Service Providers were compliant with the reviewed criteria,
- 18 licensed Service Providers were issued a letter of warning,
- 13 licensed Service Providers surrendered their licenses, and
- 8 licensed Service Providers were referred to FSRA's licensing compliance department for enforcement action due to not filing the Annual Information Return (AIR).

We understand the above to say that 39 (18+13+8) HSPs or less than one percent of the 5000 regulated HSPs were found to be non-compliant.

2. Compliance with Guidance, Statutory Accident Benefits Claims during the COVID-19 Outbreak

{...} The program found that 53% of respondents had implemented reasonable accommodations and were compliant with the Guidance, and 47% of respondents did not provide virtual care.

In the absence of clarifying detail this suggests that the majority were compliant; those that “did not provide virtual care” most likely include HSPs that are unable to provide effective virtual care such as registered massage therapists, chiropractors, physiotherapists, personal and rehab support workers, to name just a few.

3. Sanctioned Practitioner Reviews

Licensed Service Providers who had a sanctioned practitioner listed on their Health Claims for Auto Insurance (HCAI) roster were examined for suitability in the HSP regime and investigated for unauthorized activity in HCAI. The program found 24 licensed Service Providers with a sanctioned practitioner listed on their HCAI roster. Of these:

- 2 licensed Service Providers appeared to have billed using the credentials of a sanctioned practitioner and were referred for enforcement action;
- 1 Service Provider has entered into a settlement with FSRA, and
- 1 Service Provider remains under investigation.
- The remaining 22 licensed Service Providers removed the sanctioned practitioner from their roster as a result of FSRA’s review.

The above suggest that there were 4 cases --- out of 5000.

We hope that a refined definition of fraud and abuse will lead to a better use of regulatory time and resources than is illustrated by these examples.

Proposed FSRA Initiative # 2. Fraud & Abuse Data

Gathering useful data is essential in advance of policy or regulation redesign and development. To date, almost all the data collected in this sector has been driven by the needs of insurers. Having data collection now under the purview of the regulator is a huge advance.

Data which we believe will enable the regulator and consumers to identify insurer abuses of the system with negative consumer impacts (and leading to increased number of costly disputes) include:

- Partial approval and denial rates with ability to filter by line item, billing code, type of health provider, region, insurer, catastrophic/non-catastrophic and other demographics;
 - Of initial interest: 7.SF codes and assessment or treatment services that are in person or virtual.
- Number of times that accident benefit limits have been reached where there are still invoices outstanding against approved treatment plans;
- Number of days to payment on invoices for approved treatment plans.

Further, we enthusiastically support all regulatory initiatives that will help protect Regulated Health Professionals from misuse of their credentials/billing privileges.

FSRA Initiative #3. Fraud Management Tools

ii) Enhance the use of insurer Preferred Provider Networks (PPN), and review/update processes for potential disagreements.

We are puzzled by the inclusion of this proposed initiative as we have not seen data establishing the correlation between PPNs, fraud and abuse mitigation and cost savings. On the contrary, it is our understanding that the subsector of vehicle repair, in which the use of PPNs is widespread, accounts for a disproportionate share of rising costs.

iii) Allow insurers to exclude coverage for services provided by certain vendors, based on investigations and reasoned decisions, and review/update processes for potential disagreements.

On the face of it, this makes good sense, but only if accompanied by a rigorous and transparent accountability mechanism so that vendors are informed of investigations and decisions in a timely manner and have recourse to an appeal process.

FSRA Initiative #4. Regulator Tools

iii. Review and update / introduce FSRA investigation and enforcement tools.

We are unclear about the intersection of FSRA's market conduct mandate and activities, and the proposed investigation and enforcement of fraud and abuse.

Our association, and other HSP associations, have ongoing concerns about what appears to be a flaccid regulatory response to HSP complaints and to data demonstrating escalating, systemic patterns of claims handling practices which delay and deny insureds' access to rehabilitation.

Drill down data from FSRA's *Service Standards Results for the Fourth Quarter of 2020* are illustrative:

The number of Auto Complaints closed in this quarter was 73, broken down as follows.

Complaint Referred from	Subject of Complaint	#
Consumers	Insurance Companies	64
Minister's Offices on behalf of constituents	Insurance Companies	6
Insurance Companies	Agent Terminations	2
Insurance Agent	Insurance Company	1
Total		73

The number of HSP Complaints closed for this quarter was 6.

Complaint Referred from	Subject of Complaint	#
Consumers	HSP	2
Anonymous source	HSP	2
Insurance Companies	HSP	1
HSP	HSP	1
Total		6

FSRA's data – showing 6 complaints levied against 5000 HSPs as compared to 73 complaints relating to a much smaller number of insurers - demonstrates what we feel is disproportionate and costly regulatory attention paid to HSPs when insurer claims handling behaviour largely goes unchecked. Data from the 2021 *HSP Experience & Emergent Issues Survey* which collected data from 79 health service provider organizations, reporting the experience of hundreds of health care professionals from multiple disciplines as well as personal support and rehabilitation support providers, illustrates this:

- 42-63% of respondents reported increases in denials on planning, preparation and brokerage time, all necessary activities to support appropriate care as outlined by professional Colleges;
- 50% of all respondents experienced increase in denials of travel time.
- 32% of respondents stated that increases in travel time denials are due to insurer forcing virtual visits, despite the recommendation from the HSP that in-person was required to best meet the needs of the client;

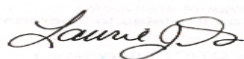
It is our belief that the mandate and tools to investigate and enforce insurer non-compliance with the SABs are currently in place. An accessible, transparent and timely mechanism for health service providers to make complaints to FSRA about inappropriate claims handling practices would do much to improve insurer accountability to their insured clients.

We support updating/introducing additional investigation and enforcement tools if doing so is required to hold insurers accountable to consumers.

iv. Facilitate FSRA's ability to share F&A information with other regulators.

We have long advocated for a more fulsome recognition by the auto insurance regulator of the key role played by regulated health professional Colleges in protecting the interests of the public. Indeed, given the cost/benefit relationship of the current FSRA HSP regulatory regime, as outlined in this submission, we support a policy direction that would lessen the regulatory burden on healthcare providers in this sector and cede much of FSRA's role to that of the Colleges.

Submitted respectfully and with thanks for the opportunity to offer these observations,



Laurie Davis, Executive Director