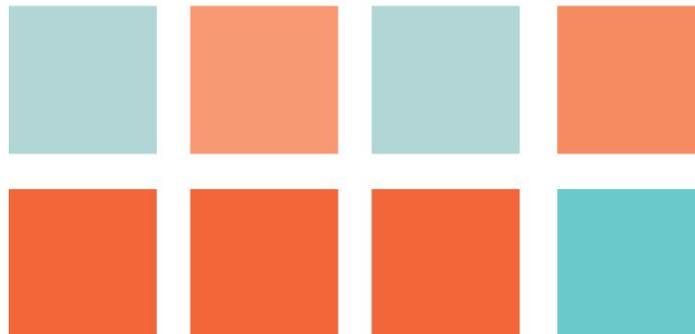


***RNAO feedback on Fair
Benefits Fairly Delivered:
A Review of the Auto Insurance
System in Ontario***

Submission to the Ministry of Finance

September 18, 2017



Summary of RNAO Recommendations

Recommendation 1. Accident victims have the right to choose to obtain legal representation.

Recommendation 2. Programs of care must be treated as guidelines and not be prescriptive.

Recommendation 3. More investigation into the hospital-based IEC model must be completed before decisions are made about its implementation.

Recommendation 4. Accident victims only (i.e., not insurers) should have the opportunity to dispute an IEC decision by requesting that the arbitrator ask for a second opinion.

Recommendation 5. RN and NP case managers should be used more broadly, and not only for catastrophic cases.

Recommendation 6. RN and NP case managers must be able to sign HCAI electronic forms independently.

Recommendation 7. A RN or NP case manager, who is an expert on health-care delivery in the auto insurance sector, should be part of the Board of the new Financial Services Regulatory Authority.

Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP), and nursing students in all settings and roles across Ontario. Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contributions to shaping the health system, and influenced decisions that affect nurses and the public they serve. It is the strong, credible voice leading the nursing profession in Ontario.

RNAO welcomes the opportunity to provide feedback to the Ministry of Finance on the recommendations from the *Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario* report.¹ Our comments consider the impact of these changes on accident victims, as well as RNs and NPs.

RNAO supports a number of key recommendations of the report. Specifically:

- Injured people should receive the care that they need when they need it.
- It is necessary to eliminate obstacles that prevent accident victims from accessing benefits and health care in a timely manner. This is particularly important for seriously injured accident victims.
- Ontario's accident benefits should not be further reduced.²
- It is important to provide for consumer education on automobile insurance to improve transparency and accessibility of accident benefits.

RNAO has identified a number of concerns with some recommendations in the *Fair Benefits Fairly Delivered* report that are likely to impact the health-care services provided to individuals injured in automobile accidents, in a manner that is not in the best interest of Ontarians. We urge you to address the following as you consider implementing these recommendations.

Vulnerability of accident victims

RNAO agrees that "accident victims are in a vulnerable position."³ They are injured, often seriously, and sometimes catastrophically. Accident victims must be properly protected and compensated by the insurance that they purchase, which is the premise of any insurance scheme. They should be able to access the benefits to which they are entitled with ease.

While we welcome the report's recommendations around making the accident benefits system simpler and more accessible, navigating the complex auto insurance system is not the only purpose of obtaining legal representation. We are concerned by repeated recommendations in the report that accident victims should not require legal representation to obtain their entitlement. The unfortunate reality is that there is a significant power imbalance between insurance companies and injured accident victims. Insurance companies have ample resources with which to advance their interests and avoid payment even to accident victims who are clearly entitled. Any ambiguity around entitlements – which we envision could easily follow from the report's recommendation that the *Insurance Act* and regulations be amended to include only broad principles, subject to interpretation by the regulator – can be exploited by insurance companies.

Recommendation 1. Accident victims have the right to choose to obtain legal representation.

Programs of care

RNAO recognizes the value in providing guidelines for client care; our own Nursing Best Practice Guideline Program currently has 53 published guidelines to support Ontario’s RNs, NPs, and nursing students.⁴ In principle, we are supportive of the recommendation to create programs of care for the most common types of automobile injuries. We are in agreement that the application of programs of care is not appropriate for the treatment of serious and/or complex injuries.

Guidelines and programs of care should be informed by research evidence. We are strongly supportive of the recommendation for continuous improvements of programs of care so that they are regularly updated to reflect emerging best practices.

It is critical that best practice guidelines and programs of care are used to facilitate but not limit treatment. We therefore caution against the use of overly prescriptive programs of care that do not allow for innovative treatment or for individual variance as determined by health-care providers. All injuries are different and impact injured accident victims in different ways, and treatment should always take into account differences in rehabilitative needs, available supports, and rates of healing. There is no replacement for professional and clinical judgment.

Recommendation 2. Programs of care must be treated as guidelines and not be prescriptive.

Independent examination process

The report’s description of hospital-based independent examination centres (IEC) is vague. It is not clear what is meant by ‘hospital-based,’ or what are the benefits of locating them in an acute setting given that the majority of accident rehabilitation takes place in the community. We are also concerned about the implications that hospital-based IECs will have on access (i.e., how many centres, and in which hospitals will they be located).

Regardless of where it takes place, the independent examination process needs to be more transparent and must be neutral. Therefore RNAO agrees with the need for unbiased, high quality assessment of injury and treatment plan.

We are very concerned with recommendations stating that hospital-based IEC decisions around treatment plans are not disputable. There are many legitimate reasons to dispute an IEC decision – for instance, an accident victim may not agree with the treatment plan for his or her unique situation – so we question this delegation of absolute authority. This also impedes patient engagement in their care, and contradicts prioritizing patient preferences and choices. The intent of this recommendation appears to be protection for accident victims in regards to treatment plans their insurer may not wish to pay for. However it also may result in silencing accident victims by giving them no recourse.

Recommendation 3. More investigation into the hospital-based IEC model must be completed before decisions are made about its implementation.

Recommendation 4. Accident victims only (i.e., not insurers) should have the opportunity to dispute an IEC decision by requesting that the arbitrator ask for a second opinion.

RN and NP case managers

The Statutory Accident Benefits Schedule (SABS) do not mandate the use of case managers in any case except those of catastrophic impairment.⁵ RNAO believes that there are instances when serious and complex, albeit non-catastrophic, cases will benefit from the services of a case manager.

RNs and NPs already play a pivotal role in the delivery of case management services for accident victims. They are ideal case managers for a number of reasons. Firstly, patients and members of the public consistently report high levels of trust in the nursing profession. This trust means that an accident victim is more likely to work cooperatively with a suggested plan of care when interacting with a nurse compared to other providers.⁶ Additionally, the broad scope of nursing practice, combined with our specialized expertise and skills in assessment and rehabilitation,⁷ enable RNs and NPs to evaluate what services an accident victim requires, and then coordinate and implement appropriate treatment plans.⁸ This makes Ontario's RNs and NPs the ideal members of the health-care team to take on the role of case manager and facilitate injured individuals' return to daily life.

Currently, nurses must get other providers (e.g., OTs, physicians) to sign their treatment plans. The efficient use of RNs and NPs as case managers will be strengthened when they are able to sign their own treatment plans.

Recommendation 5. RN and NP case managers should be used more broadly, and not only for catastrophic cases.

Recommendation 6. RN and NP case managers must be able to sign HCAI electronic forms independently.

Recommendation 7. A RN or NP case manager, who is an expert on health-care delivery in the auto insurance sector, should be part of the Board of the new Financial Services Regulatory Authority.

References:

¹ Marshall, D. (2017). Fair benefits fairly delivered: A review of the auto insurance system in Ontario. Retrieved from <https://www.fin.gov.on.ca/en/autoinsurance/fair-benefits.html>.

² In 2016, accident benefits in Ontario were substantially reduced. For more information: https://www.fsco.gov.on.ca/en/auto/brochures/pages/brochure_changes10.aspx.

³ Marshall, D. (2017). Fair benefits fairly delivered: A review of the auto insurance system in Ontario. Retrieved from <https://www.fin.gov.on.ca/en/autoinsurance/fair-benefits.html>. Quote taken from page 60 of the report.

⁴ For more information about the RNAO Best Practice Guidelines program: <http://rnao.ca/bpg>.

⁵ O. Reg. 34/10, S. 17

⁶ RNAO & OARN. (2000). Brief on the provision of rehabilitation nursing services to victims of automobile accidents.

⁷ RNs with at least one year demonstrated rehabilitation experience or who hold the Certificate in Neuroscience Nursing (CNN(C)) or Certificate in Rehabilitation Nursing (CRN(C)) from the Canadian Nurses Association, have the broad and specialized knowledge, skills and expertise to manage the complex rehabilitation needs of accident victims.

⁸ RNAO. (2009). Letter re, FSCO report on the five year review of automobile insurance.