



July 21, 2009

## Psychological impairments and automobile insurance, “Keeping Doors Open”

### Objectives:

- ✚ To ensure that accident victims with psychological impairments (including those resulting from brain injuries) do not suffer further discrimination or lack of access to treatment and other benefits as a result of any changes to auto insurance.
- ✚ To ensure sufficient funding for access to timely assessment and treatment/rehabilitation for these accident victims to facilitate their recovery and return to pre-accident function.
- ✚ To ensure that any cost saving measures considered for auto insurance do not cause transfer of burden and cost of care for accident victims with psychological impairments to publicly funded systems.

### Background:

Previous submissions by the Ontario Psychological Association Auto Insurance Task Force have been focused on the policy issues in the current reform process as they affect all injured persons as well as those with psychological impairments. We were compelled by an exciting new initiative of the Ministry of Health, captured in their paper “**Every Door is the Right Door**” to review our previous concerns and think about the unique impacts of proposed changes in auto insurance for patients with psychological impairments in light of the intended direction for mental health in Ontario. The Ministry of Health paper is comprehensive, with a strong emphasis on the need for a diversity of access points to treatment and rehabilitation, hence the title “**Every Door is the Right Door.**” A careful review of the FSCO proposals raises concerns that in an attempt to contain costs, doors are being closed to many of those with psychological impairments.

The vast majority of crash victims either have no or only transitory psychological impairments and do not require psychological screening, comprehensive assessment, or treatment. Only a minority of crash victims require multidisciplinary rehabilitation with psychological input. However psychological impairments are a significant component of the problems faced by some accident victims and contribute to poor recovery. These patients are likely to run out of benefits and will be unable to receive necessary treatment/rehabilitation if the basic policy limit is drastically reduced. Thus patients with psychological impairments and brain injuries will be over-represented in the group of accident victims who will be harmed by reduction in benefits and by an arbitrary cap on the cost of assessments.

As is clear from the Ministry of Health paper and from our experience, patients with mental health problems have a variety of difficulties accessing needed services in the public mental health system. While accident victims presenting with psychological impairments may be prescribed psychotropic medications by their family physician, access to psychological treatment and rehabilitation is difficult to obtain within the public mental health system. Evidence shows that failure to provide these additional

treatments may result in delayed or failed recovery. At this time accident victims with psychological conditions are able to access clinical assessments and treatment utilizing their extended health and accident benefits to provide funding for services. These services will become very limited or unavailable under auto insurance with proposed reduction in basic benefits and proposed caps to assessment costs.

Psychological services to crash victims are provided by a variety of highly specialized practitioners in the areas of traumatic stress, general clinical psychology, health psychology, neuropsychology, neuro-rehabilitation, rehabilitation psychology, and vocational psychology. These practitioners for the most part treat the more seriously injured accident victims and their families.

Fees for psychological services were already drastically cut in 2003 and this discounting of the fee continues. Auto insurers are only obligated to pay the maximums indicated in the FSCO published Professional Services Guideline (PSG). The PSG fee is approximately 68% of the recommended OPA recommended hourly fee.

Some patients' psychological conditions are noted in the acute period and they are referred early to psychologists. This is often optimal because it allows for early intervention to reduce long term disability and associated costs to the auto and public system. However, other patients are not referred for years due to poor screening by general health professionals, including physicians, or focus on other injuries. In addition, some patients have a later need for psychological services. For example a patient may experience depression when it is determined that their pre-accident physical functioning will not be restored and they are unable to return to their previous occupation. They may also require psycho-vocational assistance to determine alternative employment. With the proposed reduction of benefits to below the 1990 level many of these patients will not be referred until after benefits are exhausted. We are concerned that these accident victims will not readily find another open door for timely access to needed services.

### **Issues to be considered and OPA recommendations:**

#### **+ Level of Benefits**

- Severity of psychological impairments and need for treatment and other benefits cannot be determined and/or limited by the nature or severity of the physical injury.
- Consideration of an individual accident victim's level of psychological impairment and need for treatment cannot be limited based on whether the patient was hospitalized at the time of injury.
- A clinical/administrative decision to provide initial treatment within the Pre Approved Framework (PAF) cannot be used to limit further access to treatment and rehabilitation. It is clinically and scientifically incorrect to cap or restrict benefits based on initial presentation of injury severity or assignment to a treatment program.
- Consideration of capping or limiting treatment or other benefits for accident victims with "minor, or limited soft tissue injuries" must not include accident victims with psychological impairments or brain injuries
- Most often the initial concern of the accident victim and their treatment team is for acute physical rehabilitation. The accident victim's psychological impairments may only be identified after the physical condition is stabilized. There may also be emergent psychological impairments diagnosed in those cases when there is a failure of physical rehabilitation and the accident victim is not able to return to previous life functions.

- Consideration of establishing an additional level of accident victims with “serious”, but non-catastrophic, injuries must include patients with psychological impairments to allow for the potential to receive necessary treatment and other benefits.
- The OPA recommends:
  - Retain the \$100,000 general benefit level. If there is any reduction, sufficient funding must be retained for treatment of psychological impairments that are often identified later in the rehabilitation process.
  - Retain a two level system benefit system (general and catastrophic).
    - Inserting a third level for “minor” or for “serious” injuries would add complexity, increase disputes as well as assessment and transaction costs regarding these categorizations.

### Access to treatment

- Direct access to specialist treatment for psychological impairments is essential for accident victims.
- The FSCO proposals to require referral from a physician, usually the family doctor, creates an obstacle for many accident victims, adding delays in accessing treatment, as well as increasing burden on the family doctor and costs to the system for these services.
- Continuing stigma causes many accident victims to be very reluctant to discuss their psychological problems with their other treatment providers including the family doctor. If a referral was required, many would go without necessary treatment rather than discuss their psychological problems with an additional health professional.
- The College of Psychologists instructs, *"A member evaluating a client's treatment needs should ensure that enough information has been obtained to adequately assess the client's psychological status to establish an appropriate treatment plan ... a differential diagnosis (should) be established in order to develop a treatment plan appropriate to the client's needs."*
- The alternative proposals from some parties, to require a social worker or OT “case navigator/manager”, who would not provide treatment to the patient would similarly add an obstacle for the accident victim. It would require the accident victim to discuss their situation with a person who would not be providing treatment and would add delays, costs and complexity to the system.
- While “conflict of interest” and kick-backs or payments for referrals must be addressed, this should not be confused with sound health care practices.
  - In psychological treatment, sound health care requires that the psychologist providing the treatment complete an assessment to diagnose impairments and prescribe the treatment prior to providing the actual treatment. Psychological treatment includes ongoing monitoring and evaluation to determine need for modification of the treatment plan. The *Commissioner's Guideline No. 1/97 Ontario Insurance Commission Guideline* respecting conflict of interest in the provision of medical and rehabilitation services, states re “self-referrals”:
    - *The conflict of interest provisions indicate that the person who receives a financial benefit would have to profit from services provided by another person. Therefore, if the health professional who prepares the treatment plan is the person who will treat the insured person, no conflict of interest exists.*
- The OPA recommends:
  - Maintain direct access by accident victims to the psychologist of their choice for assessment and treatment without requirement of referral.
  - Integration/coordination be improved among the treating health professionals by encouraging communication.

- These communication/coordination activities would be included as a component of the treatment plan.
- Adjusters should be educated to appreciate the need for this communication and support the time required in their review of treatment plans for collaboration among the treating health professionals.
- This model would provide more integrated treatment without additional obstacles to the patient and at more modest costs to the system.

#### **+ Assessment costs:**

- FSCO's proposals to limit fees for form completion to \$200, including the fee for the assessment to complete the form, and to limit the costs of all other assessments to \$2000, would severely disadvantage accident victims with psychological impairments including brain injuries.
- Psychological and neuropsychological impairments are generally more subtle and complex. Their evaluation is far more time consuming than assessments of physical impairments because substantial information is required for accurate diagnosis and effective treatment planning. This includes for example: background history, pre-accident personality, pre-accident trauma, immediate emotional reactions to the accident, pre-accident vocational and personal functioning, present psychological and physical complaints, exploration of coping resources and strategies, etc.
- Psychological and neuropsychological (as well as psycho-vocational) assessments require significantly more direct health professional/patient 1-to-1 time than other types of assessments.
  - Often administration of a large battery of standardized tests is required.
- If funding for these assessments is inappropriately limited, accident victims with psychological impairments will not have the funds necessary to have their impairments properly diagnosed and to have most effective treatment prescribed.
- Proper assessment clearly defines the impairments that are the result of the accident and directs the nature of the treatment, contributing to cost effective psychological intervention. These assessments also define present disability and guide rehabilitation to previous or alternative employment and reintegration into pre-accident activities in home and personal life.
- We have seen a trend toward ever-larger insurer examiner teams for reviewing applications. We see some problems in the present regulations which require a new IE in every instance to reject an application. For example, even when an IE has just been completed regarding treatment, and it was determined that there was no impairment, the insurer is required to have a further IE conducted to reject a disability application based on that same impairment.
- Rebuttals examinations are essential to maintain balance and fairness in the system.
  - Patients with psychological impairments may face discrimination due to inadequate knowledge of adjusters in reviewing their applications.
  - Questions including diagnosis of impairments, the causal role of an accident, the range of indications for psychological treatment; and the contribution of psychological factors to disability and catastrophic impairment require a high level of expertise. Some IEs fail to properly consider these issues and rebuttal serves to inform the insured whether they should mediate the insurer's denial of their benefit application.
- The OPA recommends:
  - Fees for psychological assessments should be based on professional guidelines (these are available from the Ontario Psychological Association) for the number of hours reasonably required to complete the assessment and the Professional Services Guideline regarding the hourly fees.

- Greater insurer discretion in utilization of IE's and adjuster education regarding more selective use so as to avoid unnecessary IEs. In addition, the use of a single assessor and/or paper review should be at the discretion of the insurance adjuster and/or the IE examiner.
- Retain funding for rebuttal examinations

#### **✚ Catastrophic impairment definition and determination:**

- The FSCO report recommends, “ *Further consultation with experts in the field is needed to amend the definition of “catastrophic impairment.” The goal for this review should be to ensure that the most seriously injured accident victims are treated fairly*”.
- The catastrophic impairment criteria have been interpreted by the courts and arbitrators to allow psychological impairments to be combined with other bodily impairments to determine the whole person impairment (WPI). However, the IBC has advocated to reinforce discrimination and unfairness against those with psychological impairments and brain injuries and to remove the ability to include these impairments in the WPI.
- Assessments to determine catastrophic impairment, including WPI determination require comprehensive and intensive assessment
  - Given the need in many instances to consider both physical and psychological impairments, and their interaction, as well as, functional implications sound assessment may require a team of experts.
  - Expertise in diagnosis, determination of causality and measurement of psychological impairments is often required.
  - The time required for proper examination and measurement of psychological and neuropsychological impairments cannot be based on the time generally required for examination and measurement of musculoskeletal impairments.
- The OPA recommends:
  - Psychological impairments (including those resulting from brain injuries) continue to be combined with other bodily injuries to determine the Whole Person Impairment rating to ensure fairness to this group of seriously injured accident victims.
  - Processes and sufficient funding to allow the accident victim to access comprehensive assessment by their own selected assessors, as well as assessment by insurer- selected assessors, will need to be determined.
  - Funding available for catastrophic impairment assessments must be sufficient to allow for multi-disciplinary assessments to properly address the various systems that may be involved, their interaction and functional implications.

While auto insurance accident benefits periodically face cost pressures, it is critical not to close doors to those vulnerable crash victims with psychological impairments.

Thank you for the opportunity to share these concerns regarding the potential impacts of auto insurance benefit reductions on our patients. If I can provide any further information or clarification please feel free to contact me.

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