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FAIR comments regarding Proposal Number 24-MOF014,
[the Proposed amendments to the Insurance Act, and to Ontario Regulation 34/10 \(Statutory Accident Benefits Schedule\) \(SABS\) under the Insurance Act regarding optional benefits, priority of payment for SABS medical and rehabilitation benefits, and correct an error in the French-language version of the SABS](#)

September 9, 2024

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and who have struggled with the current auto insurance system in Ontario. Our members' lives, as a result of these MVAs, have been turned upside down by long-term debilitating injuries, brain injury, a need for surgery and reparative therapy, loss of time from work, loss of jobs and sometimes loss of independence.

We welcome the opportunity to comment on the proposed changes and appreciate the well-prepared material supplied by the Ministry of Finance.

1. Enabling Consumer Choice

We note there are no details about what the new options will actually cost consumers or what savings, if any, there will be for consumers.

The proposed new optional benefits may save insurers money but not consumers, who, as taxpayers, are already picking up substantial costs to support MVA survivors in the current system. Currently private auto insurers routinely download the costs of their customers' recovery to taxpayers while touting the current bare bones coverage as 'generous'. The truth is - Ontario has the lowest Minor Injury Guideline (MIG) cap in Canada with about 80% of all claims capped for med/rehab at \$3500. The current income replacement at \$400/wk or 70% of the insured person's gross weekly employment income is far below the poverty line and this inadequate coverage is undermining recovery and consumer faith in the product. What makes anyone believe private insurers and their intermediaries (agents/brokers) will inform potential customers of all the optional coverages available?

How will the Minister or the Regulator (FSRA) monitor that the 2024 budget promise of the implementation of the proposed changes “will be done in a way to help ensure that drivers are able to make informed decisions when choosing insurance coverage options” if they can’t ascertain that consumers are informed? This uncertainty opens up the potential for increased litigation going forward. The proposed legislation at 4.1 (1) states “**every insurer shall offer the following optional benefits under every contract**” but there’s no way to be sure this will happen. Insurers currently are not obligated under legislation to educate their customers and this seriously undermines consumer ability to protect their interests when the shocking moment of inadequate coverage is revealed at a time when an injury claim is put forward. The most obvious and effective path to educate would appear to be the opt-out model where a full package is offered and then options and the associated costs are subtracted from that package.

The Minister’s proposed ‘opt-in’ structure will likely see the most vulnerable of Ontarians who are financially challenged, cognitively impaired, or those whose command of the English language may be limited, be the consumers most likely to decline to add in options like income replacement (IRB) coverage. These are the consumers most likely to need monetary assistance after a car crash injury.

We support those Ontario drivers, who are not entitled to access certain resources such as the IRB, not be forced to pay for coverage they are ineligible to collect. As it stands, with this proposed legislation as opt-in, with no qualifying prerequisite to opt-out of IRBs, it won’t just be millions of [retired drivers](#) or disabled Ontarians without a taxable income who will choose to decline optional coverage. Consumers, who are looking to save money, will take that chance to not purchase options and if that proves to be a poor choice, the taxpayers will pay when insurers don’t have to.

The government’s promise to “**maintain mandatory auto insurance accident benefit coverage for critical coverages (medical, rehabilitation and attendant care benefits)**” makes sense. We would put forward that, for working Ontarians, the income replacement benefit (IRB) is exactly that – critical coverage. Auto insurance is mandatory and it should include sufficient benefits to allow an injured person to recover to the furthest extent possible so carving the coverage into component parts and putting a price on each as opt-in will encourage many consumers to weaken their coverage to reduce their monthly premium payment.

A recent [FSRA study](#) showed Ontario consumers find the most important factor when purchasing or renewing auto insurance is lower price (68% in 2023) so costs are a real decision driver and this could have serious consequences for those who need the coverage the most. The second most important factor in purchasing auto insurance is clear pricing with no surprises (66%). Its clear there needs to be a qualification to decline in the IRB section of the legislation so consumers don’t immediately become financially unstable after an injury and ultimately end up relying on Ontario’s inadequate taxpayer funded supports systems such as Ontario Works (OW) and Ontario Disability Support Program (ODSP). Enabling greater consumer choice shouldn’t end up as undermining the ability to recover from a car crash injury.

The proposed change at 23.(1) indicates a cut to coverage. See: **23. (1) The insurer shall pay up to the amount fixed by the optional benefit ~~\$100 per week~~ for reasonable and necessary additional expenses incurred by or on behalf of an insured person as a result of an accident for housekeeping and home maintenance services if, as a result of the accident, the insured person**

sustains an catastrophic impairment that results in a substantial inability to perform the housekeeping and home maintenance services that he or she normally performed before the accident. O. Reg. 34/10, s. 23.

The introduction of: ***23. (2) Despite subsection (1), if the impairment sustained by the insured person is not a catastrophic impairment, expenses incurred more than 104 weeks after the onset of the disability are not payable by the insurer.*** This cuts coverage and it isn't an 'option'. It is a cut to supports needed by often significantly injured claimants in recovery by restricting the time available to collect the benefit. This will only benefit insurers.

Recommendations:

- The Minister of Finance should immediately investigate the current individual costs of each of these proposed optional benefits and whether removing the proposed optional coverages from the basic package will save consumers money before enacting this proposed legislation.
- The dollar amounts associated with the limits of coverage have been removed in the amended legislation. This opens the door to ambiguity. The lack of specificity at 29. (2) is an example of an opportunity for insurers to lower the basic amount of the benefit which has currently not been adjusted to inflation for decades. This is an open door to undermine coverage and provide insurers with greater opportunity for profit. Specifics to the base coverage amount should not be removed but should be adjusted for inflation and indexed yearly. Insurers could offer increased amounts as an option but the base should be tethered to real costs today.
- The model should be an opt-out program, not opt-in, in order to create the opportunity to educate consumers so they aware of the import of their decisions.
- Opting out of income replacement (IRB) should only be available to those individuals who do not have a taxable income in order not to overload Ontario's public supports system.
- Consumers should be presented with a full package such as we have now. The designated options can be subtracted according to consumer needs. This opt-out creates awareness of costs and benefits similar to the new Direct Compensation Property Damage (DCPD) model and protects consumers, insurers and their intermediaries (agents/brokers).
- A translation of the options should come from insurers (and through their intermediaries) and should be made available to consumers with limited command of the English language (in both languages) to ensure the consumer is aware of the options and what it means to them should a claim for injury be made. As above this would be easier to facilitate in an opt-out scenario with a written list of the options. FSRA currently has some translation [capability](#) on their website and this could be considered as the type of tool used to facilitate consumer knowledge/education and understanding.
- Insurers should be obligated to fund the education of their intermediaries, agents and brokers to better facilitate consumer education in order to avoid the risk of consumers underinsuring.
- A method of accountability for insurers who do not comply with legislation should be created and attached to the legislation with clear and concise penalties for the failure to adhere to the FSRA [Automobile Insurance Supervision Plan 2023-2025](#) which is "aimed at preventing and/or identifying potential unfair or deceptive practices that may mislead customers in the absence of accurate and transparent information".

- There should be some legislative clarity around how these changes will affect passengers and pedestrians who do not have individual insurance coverage.

2. Priority of Payment

We support the proposed amendments to legislation to simplify the SABS claims process, and reduce administrative burdens on consumers, insurers and health service providers by enacting legislation that ends the requirement that “an insured person who sustains an impairment because of an auto accident must exhaust their supplementary health insurance plan benefits before these expenses are submitted to an auto insurer for payment”.

This simplified first-payor positioning for Ontario’s auto insurers will likely assist all parties in the claims process.

Recommendations:

- The proposed amendment should be enacted as soon as possible.
- The wording offered in the draft legislation is not clear and should be adjusted for clarity at: **47. (2.1) *Despite subsection (2), payment of a medical or rehabilitation benefit, other than for medication expenses, for an accident that occurs in Ontario on or after [date reg CIF] is required for that portion of an expense for which payment is reasonably available to the insured person under a supplementary health insurance plan.***

3. French Language Discrepancy

We have no comment in respect to the proposed amendment to correct the French language regulation in order to align with the English language regulation.

Recommendations:

- This amendment should be enacted as soon as possible.

Again, FAIR appreciates the opportunity to have the voice of Ontario’s car crash survivors heard in the policy and legislative process. What constitutes reasonable basic coverage should be the main driver of any changes and this should apply to optional benefits as well. Ontario’s No-Fault mandatory auto insurance is described as consumer protection legislation and care must be taken to ensure we have fair coverage at a fair price and the contract we sign with insurers has real value and offers meaningful protection in a time of need.

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StatCan 2020: 2,036,100 licensed drivers over 65 years old in Ontario (81.8%)

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310078901&pickMembers%5B0%5D=1.7&pickMembers%5B1%5D=2.1&cubeTimeFrame.startYear=2020&cubeTimeFrame.endYear=2020&referencePeriods=20200101%2C20200101>

Financial Services Regulatory Authority of Ontario 2022 Consumer Research: Auto Insurance, pg. 34

<https://www.fsrao.ca/media/24056/download>

FSRA Automobile Insurance Supervision Plan 2023-2025

<https://www.fsrao.ca/industry/auto-insurance/publications/automobile-insurance-supervision-plan-2023-2025>

A multi-lingual translation feature has been added to FSRA's website

<https://www.fsrao.ca/announcements/multi-lingual-translation-feature-has-been-added-fsras-website>