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ALBERTA AUTO INSURANCE REFORMS

Who We Are

The Association of Independent Assessment Centres (AIAC) is a non-profit industry group that represents the independent businesses and the thousands of health care professionals who perform independent medical examinations (IMEs) across Canada.

Introduction

Auto insurance stakeholders, the government and the general public are currently engaged in discussions about how the province's auto insurance system can be modernized to better serve Albertans. Our ultimate objective is to create an auto insurance system focused on the most appropriate rehabilitation of accident victims to their optimal pre-accident health.

Our Position

IMEs provide vital and impartial checks and balances in the auto insurance system. The IME industry ensures that accident victims receive fair, impartial and transparent assessments. This important service only accounts for one percent of all auto insurance claims costs in the province. Any auto insurance reforms in Alberta need to ensure that proper evidence-based IMEs are accessible and structured within the regulations of the auto insurance system to ensure fairness and transparency for all parties.

Our position is supported by proven successes in other jurisdictions, both in Canada and abroad, like New South Wales, Australia. Any changes to the auto insurance system in Alberta should focus on recovery from injury and support for injured people. However, we do not agree to caps and limits on benefits payable to injured claimants' based on the severity of their injuries or length of recovery time. The scientific evidence from The Neck Pain Task Force (2008) estimates that 55% of Whiplash patients will have persistent neck pain one year after the accident. This is not to suggest that a substantive amount of injured claimants require an IME, but it does illustrate a potential gap in the system, if arbitrary limits are put in place.



The AIAC agrees with a number of the proposed changes that have been recommended by other auto insurance stakeholders. In particular, we agree that the true cost drivers, such as fraud, distracted driving and auto repair costs are what government should focus on in order to decrease costs in the system. These are the real cost drivers behind increasing premiums and decreasing consumer satisfaction across the province.

The AIAC believes that changes in the following four areas will benefit drivers and accident victims.

1. Treatment, Care and Income Replacement

The AIAC believes that Alberta drivers should have more access to pre-approved treatment, care and income replacement benefits. This is in line with many of the recommendations from other stakeholders, such as the IBC.

For example, there is opportunity to update Alberta's approach to programs of care¹ so that accident victims can obtain treatment in a more timely and efficient manner. Currently in Alberta, programs of care, and care in general, are obtained through Section B benefits which are a type of no-fault benefits delivered by the insurer. The AIAC supports the increase in a program of care pre-approval to \$2500 med/rehab sub-limit for all injuries. A subsequent \$2500 benefit should only be accessible if an independent healthcare assessor deems it reasonable and necessary.

2. Regulatory Changes

There are a number of regulations in the province's auto insurance system that have served Albertans well. The AIAC supports the continued use of the Minor Injury Regulation (MIR), as it has helped stabilize premiums. We also view the recent expansion of the Minor Injury Regulations in June 2018 to include post-concussion syndrome, psychological injuries and TMJ injuries of a less severe nature to be positive changes. These amendments will a) help stabilize costs and b) not unfairly jeopardize (or prevent) injured Albertans from receiving the care and compensation that they deserve. We do not agree with other stakeholder's recommendation that the MIR regulation be further amended, namely:

Amend the minor injury definition in the MIR so it includes any clinically associated sequelae arising from a sprain, strain or whiplash injury, whether physical or psychological in nature, and make corresponding changes to the scope of a certified examiner's assessment.

¹ A program of care is a government-approved and evidence-based health care delivery plans that describe treatment shown to be effective for specific injuries and illnesses.



Adopting this recommendation would have a severe impact on accident victims. Sequelae severity and its impact on a person's life needs to be considered and certified examiners are not adequately trained or competent to perform these exams. Changes to the MIR need to move more towards protecting accident victims, as opposed to loosening rules around assessments to benefit insurers' bottom lines. Again, we feel that the changes introduced in 2018 have accomplished this. Having said that, we would welcome the opportunity to discuss fine tuning Alberta's minor injury definition so that it is fair for consumers and is based on up-to-date medical literature.

We also recommend reviewing the use of certified medical examiners and their assessments to determine minor injuries. Certified examiners have not been as effective in their role as they could be, primarily because of concerns with bias and lack of oversight. The Alberta Civil Trial Lawyers Association (ACTLA) has highlighted this issue in the *Jones v Stepanenko*, 2016 ABQB 295. In that case, the certified examiner chosen by the insurer assessed numerous injured Albertans for a period of 15 years and never found anyone to have a serious impairment or injury that would be classified as non-minor. This is statistically very unlikely and the trial judge in this case reprimanded this examiner as being inherently biased toward the insurer.

We recommend that neither insurers nor lawyers should be allowed to select medical examiners for the purposes of determining whether injuries are minor. Independent Medical Examinations should be unbiased and impartial. To ensure that they are, assessments should be performed by Independent Medical Examination facilities that are CARF accredited. That accreditation requires that the focus remain on the person being examined. These facilities should be permitted to select the most appropriate independent medical assessor in each case.

Another regulatory change that the AIAC supports is the continued use of the Diagnostic and Treatment Protocols Regulation (DTPR) to provide collision victims who sustain minor injuries with pre-approved medical treatment. Measures like the DTPR have helped expedite access to care for drivers with minor injuries and helped them recover as quickly as possible.

Lastly, we agree that Usage-Based Insurance (UBI) should be the method by which auto insurance is provided in Alberta. UBI gives drivers the option to have their premiums based, in part, on how and/or how often, they drive. UBI often results in premium savings as premiums are more personalized and based on each driver's specific driving data and needs.

3. Mandatory Tort Access

Auto insurance stakeholders, such as IBC, have suggested that tort access to pain and suffering for those with minor injuries be made optional. Optional insurance products that remove drivers' rights to sue for damages and medical care can have long term negative consequences for the accident victims and public healthcare systems that end up absorbing the costs.



Insurance products like these will force Albertans to choose between their wallet and potential care and compensation. This disproportionately impacts low-income Albertans, who will likely opt out of maintaining tort coverage as a way of paying lower premiums. This will put them at risk of not being covered in the event of a motor vehicle accident. High income Albertans will not be forced to make the same compromise. Having the financial resources or ability to purchase the coverage should not determine access to justice.

The Alberta government should maintain tort access for all damages and injuries, including pain and suffering for those with minor injuries. This is especially true where a person who was not at fault requires more than the available treatment/attendant care/income replacement.

We disagree with the need for a hybrid no-fault system where only those injuries that are deemed “serious” and meet the serious injury criteria have access to the courts for compensation. If the government were to favour this hybrid model, then we would recommend the use of the American Medical Association’s (AMA) Guides to the Evaluation of Permanent Impairment (4th and 6th edition) to determine the level of permanent and serious impairment amongst injured persons. We can elaborate on the use of the AMA Guides further in future correspondence.

4. Dispute Resolution and IMEs

The New South Wales regulations state, “An injured person can request an internal review of a decision by an insurer as the first step in resolving a dispute. An insurer internal review is required before most disputes can be lodged with SIRA’s DRS”. We agree that there be a first step in order to resolve a dispute between an insurer and an injured claimant. However, an independent medical evaluation is the most neutral process and will provide a medical opinion that is necessary to determine if a treatment in dispute is reasonable and necessary or whether income replacement benefits should continue. This cannot be left to the discretion of insurers who lack the expertise to properly make such determinations that are medical in nature. IME facilities will provide the necessary check and balance in the system to ensure fairness in adjudication of accident benefit claims for all parties. Without a neutral check and balance that is independent of the insurer adjudicating the claim there will be an increase in disputes, increase in costs and poorer patient outcomes. The NSW report states that 98 percent of claims have yet to be filed due to the two-year waiting period. This has the potential to significantly increase disputes.

5. The Cost of IME’s

IME costs have traditionally been a small proportion of total loss costs. There is no equivalent to Ontario's HCAI database in Alberta but both provinces have a privately delivered system where insurers have access to a third party medical when they require them. When you examine the Ontario data, it shows that Insurer Examinations have been estimated between 1% and 2% of

claim costs. What the data doesn't show is that the Insurer Examination reports assist insurers in managing claims costs. As a result, the net costs are insignificant.

Appendix A - Background Information

What is an Independent Medical Examination?

An independent medical examination, or IME, is a medical evaluation conducted by an objective and neutral third party to provide an opinion about a specific injury, appropriate treatment or disability status. An IME can be requested by insurance companies, benefit providers, HR managers, lawyers, or employers. In certain circumstances, IME requests are legislated requirements, such as when an insurance company disputes an accident victim's claims. In these cases, the law mandates that insurance companies must cover the costs of the IME. After this examination, an IME report is produced that is often used by insurers to confirm or deny benefits to the accident victim. In an employment situation, the report contains recommendations to employers to allow for a safe and timely return to work for injured workers.

Who conducts an IME?

Typically, an IME is conducted by a regulated health professional who has completed occupation-specific and psychosocial IME training. A range of regulated health professionals can perform IMEs including, but not limited to, doctors, psychologists, physiotherapists and chiropractors. These are known as independent healthcare assessors and these individuals conduct IMEs separate and apart from their regular practices.

Who organizes an IME?

IME centres organize and manage the assessment process from start to finish. After a client (for example, an insurance company) contacts an IME centre, that company is responsible for completing a clinical quality assurance review of the accident victim's file, sorting the medical brief and selecting the most appropriate independent healthcare assessor to conduct the IME. A number of criteria are considered when selecting an assessor, including the need to ensure that the assessor has the relevant qualifications and is located geographically near the person being examined. The IME centre then schedules and confirms the examination and coordinates additional services such as chaperones, special accommodations, interpretation and ensures there is no conflict of interest and neutrality and transparency is maintained. Once the assessor has completed his/her report, the IME centre then obtains the report from the assessor, completes a quality assurance review and delivers the IME report securely to the referral source. We recommend that copies be provided to all parties to optimize transparency and neutrality.



How do IMEs benefit consumers?

IMEs play a vital role in the auto insurance system by providing a necessary check and balance for all stakeholders. In the case of auto insurance companies, for example, the IME process minimizes and weeds-out fraudulent activity by confirming diagnoses and opining on proposed treatment using an evidence-based medical approach. For accident victims, IME centres ensure appropriate entitlement to accident benefits if such entitlement is in question by an insurer. IMEs also help to guide appropriate treatment for accident victims. IME centres help to control costs and benefit all Alberta rate-paying drivers by helping to reduce costs and keep premiums low.

The objective, evidence-informed medical opinions provided by IMEs create a system where the interests of accident victims are prioritized, in an environment in which all stakeholders can operate in a manner that is fair to injured consumers. It is not surprising that many jurisdictions around the world, including every province and territory in Canada, use IME centres to ensure fairness to injured claimants and other stakeholders when disputes occur.

We trust that this letter will be viewed as a collaborative effort in optimizing auto insurance in Alberta. Should you require any other information please do not hesitate to contact me via email at drguerriero@nyrc.ca or by phone at 780 229 5200, extension 524227.

Thank you,

A handwritten signature in black ink, appearing to be 'R. Guerriero', written over a horizontal line.

**Dr. Rocco Guerriero B.Sc., DC, FRCCSS(C), FCCPOR(C), FCCOS(C)
Vice President, Association of Independent Assessment Centres**