Newfoundland and Labrador Chiropractic Association

Ms. Cheryl Blundon
The Board of Commissioners of Public
Utilities of Newfoundland and Labrador
Auto Insurance Review
120 Torbay Road. P.O. Box 21040
St. John's, A1A 5B2

August 29, 2018

Re: Public Utilities Board Review into Automobile Insurance

Dear Ms. Blunden,

Chiropractors in Newfoundland and Labrador play an integral role in the management of musculoskeletal injuries (MSK), including those which occur in motor vehicle collisions.

The Newfoundland and Labrador Chiropractic Association (NLCA), in reviewing recent proposed reforms to the manner in which automobile insurance benefits are administered in NL, has identified some key areas for consideration by your board. These primarily address the appropriate clinical management of injured parties.

While we are in agreement that insurance reform in NL is both necessary and long overdue, it is important that we adequately consider the impact that the proposed changes will have on the recovery of accident victims. We therefore respectfully provide the following submission for your consideration.

Sincerely,

Dr. Darrell J Wade DC
CEO
Newfoundland and Labrador Chiropractic Association

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Newfoundland and Labrador Chiropractic Association

The Role of Chiropractors in Managing MSK injuries

Chiropractors are expertly trained to assess, diagnose and implement evidence based treatment protocols for their patients, including those who have been injured in motor vehicle collisions. A World Health Organization (WHO) summary of basic training for chiropractors can be found at http://www.who.int/medicines/areas/traditional/Chiro-Guidelines.pdf

It is through this extensive level of training that chiropractors are able to interpret clinical and diagnostic imaging findings, establish an accurate clinical diagnosis, decide on appropriate care, and provide the level of treatment coordination that should be expected of a primary care provider.

These characteristics are important in establishing better models of care that address the changing needs of an evolving insurance system and those it serves.

This is recognized in the current SPF No.1 which identifies chiropractic as one of the primary health care services for which all reasonable expenses are covered for those services that are necessary.

> ***Section B — Accident Benefits*** *The insurer agrees to pay to or with respect to each insured person as defined in this Section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile: Subsection 1 — Medical, Rehabilitation and Funeral Expenses (1) All reasonable expenses incurred within 4 years from the date of the accident as a result of such injury for necessary medical, surgical, dental,* ***chiropractic,….***

The ability of injured parties to avail of necessary treatment rendered by a licensed chiropractor is an integral part of successful injury management. Despite this, access to necessary care by chiropractors continues to be impacted by some insurer practices that delay, limit or discourage access to appropriate care by a chiropractor of the injured party's choice.

In 2008, Deputy Superintendent of Insurance, Douglas Connolly issued a bulletin clarifying that patients do not require referral from a medical physician in order to seek treatment by a chiropractor, in relation to injuries sustained in a motor vehicle accident. Despite the fact that this bulletin was widely distributed throughout the insurance industry, chiropractors in NL continue to receive demands for medical referrals by some insurers before having the ability to initiate appropriate care.

As these practices negatively impact access to care and therefore delay timely recovery of injured parties, it is important that any reforms include clear and enforceable measures in the event that an insurer chooses to operate in a manner contrary to the governing policies.

Current Practices by Some Insurers Limit Access to Provider of Choice.

Current practices by some insurers appear to limit the ability of those injured to access care by a chiropractor or other health practitioner of their choice without incurring upfront and unnecessary financial burden.

This has been created through the practice of only allowing clinics who are listed on these insurers' list of preferred providers to receive direct reimbursement for services rendered. While patients may choose to seek care from a provider who is not on the approved list, they must pay for services up front and seek reimbursement from the insurer following payment for the services.

As many of those seeking care may be under significant financial strain, these practices impose undue financial hardship and in doing so discourage the use of a patient's provider of choice.

Placing Limits on Necessary Care as Requested by Some Insurers

In the submission by Intact Financial dated March 8, 2018 the insurer states the following:

"*If a customer does not fall within an evidence-informed program of care and passive treatments such as massage therapy and chiropractic care are being pursued, such treatment should be subject to clear per-visit caps and maximum limits*"

The NLCA fully supports and encourages the use of evidence-informed guidelines for the care of musculoskeletal injuries. The above statement by Intact Financial appears to suggest that if a patient is under the care of a chiropractor, they are considered to be engaging in a treatment program that is not evidence-informed. This is false.

Chiropractic care is not a passive treatment but rather an evidence-informed intervention that involves education, activity modification, home based exercise programs as well as the use of evidence based interventions such as joint mobilization and manipulation only as required to restore proper function to injured structures.

In addition, research suggests that when a chiropractor is the first point of contact following a back injury, the duration of illness and associated claim cost is significantly less than when the injured party first consults another primary contact profession (MD, PT)[1].

Chiropractors are regulated health care providers who are guided by a strict code of ethics as referenced in provincial legislation that prescribes that a chiropractor will recommend only those diagnostic procedures deemed necessary to assist in the care of the patient, and treatment considered essential for the well-being of the patient. As breaching this code of ethics carries the potential of significant disciplinary measures, which may include suspension or revocation of license, placing limits on care as a means to limit unnecessary treatment implies unethical behaviour on the part of a regulated health professional which is both inappropriate and unwarranted.

This does not, however, mean that reforms to the manner in which health care benefits are coordinated following a motor vehicle collision are unnecessary.

In keeping with recommendations that a "piling on" of providers and interventions is generally not beneficial to recovery, chiropractors represent one of the most integral members of a successful injury recovery plan as they are able to function as both the primary coordinator of care as well as the provider

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[1] Association Between the Type of First Healthcare Provider and the Duration of Financial Compensation for Occupational Back Pain. Blanchette MA, Rivard M, Dionne CE, Hogg-Johnson S, Steenstra I. J Occup Rehabil. 2017 Sep;27(3):382-392 (attached)

of most treatments as outlined in evidence based guidelines for Type I injuries. The reduction in the need to seek care by multiple providers not only reduces the need for multiple appointments at different offices, it also achieves the more cost effective model of care which is desired by insurers and required by consumers in order to arrive at a sustainable and affordable insurance model for NL.

On the contrary, referral practices from coordinators of treatment who are not adequately trained in the evidence based management of musculoskeletal injuries often encourage the utilization of interventions that may be popular but are not beneficial to recovery. Not only does this result in unnecessary costs to insurers, it also delays access to appropriate care for acute injuries which left untreated, are now at risk of becoming chronic in nature. Injuries that become chronic require much more extensive treatment than would have been required if appropriate care had been rendered in a timely fashion which ultimately leads to increased cost and duration of illness.

While the utilization of evidence based guidelines to guide appropriate care is essential to creating a better system, David Sackett, who is considered by many as the father of evidence based medicine cautions:

Evidence based medicine is not "cookbook" medicine. Because it requires a bottom up approach that integrates the best external evidence with individual clinical expertise and patients' choice, it cannot result in slavish, cookbook approaches to individual patient care

For this reason, it is essential that any recommendations relating to evidence based protocols include the requirement for collaborative development between insurers and primary coordinators of care in NL, including chiropractors. Doing so will ensure that these guidelines respect the principles of evidence based health care, the individuality of those injured, and the needs of insurers for cost-effectiveness.

The Need for Better Treatment Coordination

In contrast to the current practice in NL, in which insurers most often instruct those injured in motor vehicle collisions that they must utilize a medical physician to coordinate their treatment, the Insurance Bureau of Canada (IBC) suggests a different approach.

Insurers in Alberta and Nova Scotia have evidence-informed diagnostic and treatment protocols for common injuries, whose focus is to provide patients with immediate access to evidence-informed treatment on a pre-approved basis. This approach allows patients to recover quickly and includes Chiropractors explicitly as coordinators of care.

The NLCA is in firm agreement with the IBC that:

"*Limiting treatment coordination to only the select professions qualified to treat an entire injury, and having an associated fee schedule are crucial to ensuring that the injured person receives quality treatment and that his/her accident benefits are used responsibly"*

In addition, the suggestion by the IBC that the auto insurer is the first payer and pays the health provider directly is a model which respects the ability of the injured party to choose their own provider without financial penalty. This approach also protects their private health care benefits should they be required in the event of an injury or illness which is not related to the motor vehicle accident.

Our members too often report that a patient who has exhausted their private coverage in relation to a motor vehicle accident is left to pay out of pocket when they experience an unrelated injury and require care. We therefore support the position of the IBC that the automobile insurer be the first and only payer of medical costs related to injuries sustained in a motor vehicle accident.

Defining Minor Injury

It has been suggested that it is appropriate to have the term "minor injury" included in reforms and defined as:

a minor injury definition that includes sprains, strains and whiplash injuries, including any clinically associated sequelae, whether physical or psychological in nature, that does not result in a serious impairment.

While the report entitled Enabling Recovery from Common Traffic Injuries: A Focus on the Injured Person[2] identifies a group of injuries that may have similar prognostic characteristics (Type I injuries) it must be clarified that the term Type I injury and the term "Minor" injury are not interchangeable. In fact, Cote and his co-authors specifically note:

Having considered the narratives of persons who have experienced injuries and received care under the MIG, *(minor injury guidelines)* ***we have concluded that it is not appropriate to categorize either the injuries or their associated symptoms as minor injuries, inasmuch as they can be associated with a broad range of symptomatology and with some degree of disability for activities of daily life or work. It is our view that there is no scientific rationale or merit in continuing to employ the term "minor injury".***

The work conducted by Cote and his team aimed to classify a group of injuries that respond favourably to specific methods of care in order to establish evidence based guidelines that facilitate recovery. While it is not the intention of the chiropractic profession to discuss the imposition of caps for non-pecuniary damages, we must clarify that this research was not intended to, nor did it focus on imposing limits on compensation for pain and suffering and therefore should not be utilized for this purpose.

It must also be clear that the term "recovery" as utilized in the same report constitutes a term that has differing meanings depending on the outcome parameters that the original research defined. As stated by the authors:

The term "recovery" is defined by studies in many different ways, and this has an impact on their conclusions about the average time to reach that criterion.

Cote also acknowledges:

For the purpose of the development of this guideline, the population of interest included injured persons with injuries commonly caused or exacerbated by a traffic collision. These are injuries that

[2] Cote P, Shearer H, Ameis A, Carroll L, Mior M, Nordin M and the OPTIMa Collaboration. Enabling recovery from common traffic injuries: A focus on the injured person. UOIT-CMCC Centre for the Study of Disability Prevention and Rehabilitation. January 31 2015.

leads to a physical, mental, or psychological impairment for which the scientific evidence suggests that at least 50% of patients recover within six months.

We must recognize that even though injuries may be classified as Type I, the threshold for an injury to be classified as a Type I injury is that at least 50% of patients should be expected to recover within 6 months. While this is the threshold that has been set by the researchers, it is evident that there is still a significant opportunity for a large percentage of those classified as having type I injuries to not recover within 6 months and potentially experience pain and disability that continues beyond 6 months.

Symptoms associated with soft tissue injuries such as whiplash often include aspects which are largely subjective including headaches, joint pain, burning in soft tissues, and other generalized pain symptoms. While these aspects of injury are sometimes difficult to objectify, they are no less impactful to the daily lives of those who experience soft tissue injuries.

The Bone and Joint Decade Task Force on Neck Pain and Associated disorders[3] suggests that

Most people with neck pain do not experience a complete resolution of symptoms. Between 50% and 85% of those who experience neck pain at some initial point will report neck pain again 1 to 5 years later. These numbers appear to be similar in the general population, in workers and after motor vehicle crashes

Ultimately, we must carefully consider the impact of implementing categorical definitions to conditions that encompass such a broad range of characteristics and recovery times.

Sequelae of some injuries including arthritis or future disc herniation may not show up diagnostically until years afterwards despite the fact that the pain produced by these changes is real and being reported by the patient from the time of injury. As a result, these patients often require ongoing care that far exceeds the duration of what guidelines suggest are the norm. It is important to consider this with respect to the creation of injury definitions in order to ensure that appropriate access to necessary care is not compromised.

Recommendation

In summary, the Newfoundland and Labrador Chiropractic Association recommends that the PUB consider the implementation of reforms that:

- encourage the development of evidence based protocols through consultation with coordinators of care such as physicians and chiropractors in order to guide early and appropriate management of injuries and facilitate optimal recovery

- require automobile insurers to become the first and only payer of costs related to treatment and management of injuries sustained in a motor vehicle collision and pay directly to the health care provider of the insureds choice.

[3] Nordin M, Carragee, EJ, Hogg-Johnson S, Schecter Weiner S, Hurwitz EL, Peloso PM, Guzman J, van der Velde G, Carroll LJ, Holm LW, Côté P, Cassidy JD, Haldeman S. Assessment of neck pain and its associated disorders. Results of the Bone and Joint Decade 2000-2010 Task Force on Neck Pain and its Associated Disorders. Spine. 2008; 33 (4S): S101-S122.

- include chiropractors explicitly as primary coordinators of care in relation to a motor vehicle collision

- prevent the use of preferred provider networks and create disciplinary measures for insurers who engage in practices that limit or intend to influence the insureds provider of choice.

- acknowledge the potential for individual responses to treatment that differ from suggested recovery times in guidelines and in those circumstances allow for a process to ensure that injured persons are able to access appropriate and necessary care that is recommended by their treating health practitioner

We recommend that the PUB not entertain reforms that

- utilize the term "Minor Injury" as research suggests that this inappropriately trivializes the complex nature of many injuries sustained in motor vehicle collisions

- create caps on non-pecuniary damages that are linked to classifications of injury such as those contained in ***Enabling recovery from common traffic injuries: a focus on the injured person*** as these injury classifications are intended only to guide treatment and do not adequately address the impact of pain and suffering on injured parties

- Impose limitations on treatments that are determined as necessary by a qualified health care provider, are consistent with premise of evidence informed care and are related to injuries sustained in a motor vehicle collision

Sincerely,

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Newfoundland and Labrador Chiropractic Association