Focus INSURANCE

Balancing lower premiums with the bottom line

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For decades, a game of tug-of-war in the area of automobile insurance has been going on. On one end are the insurance companies concerned with their bottom lines, and on the other are consumers worried about the cost of premiums. In the middle of it all are the provincial governments who have struggled to balance these seemingly competing interests.

It's in this context that Ontario's minority Liberal government announced in August that it would be introducing legislation that, if passed, would reduce auto insurance premiums by 15 per cent over a two-year period. According to the government, the target reductions will be achieved by implementing various measures including cracking down on fraud such as licensing health clinics that invoice auto insurance companies, and exploring other cost-reduction initiatives.

Although most in the industry agree that fraud is a concern that needs to be addressed, it is the potential "other cost-reduction initiatives" that are a source of considerable debate. While consumers no doubt look forward to reduced rates, the Insurance Bureau of Canada (IBC) proclaimed almost immediately after the government's announcement that reducing costs is the only way to reduce premiums. The IBC has called on the government to quickly introduce a new definition of "catastrophic (CAT) impairment" in the context of accident benefits in order to help achieve lower costs.

If a person is deemed to have suffered a CAT impairment, the benefits available for both medical and rehabilitation benefits and attendant-care benefits increase to $1 million. As it stands, a person will be deemed "catastrophic" if they have suffered more severe injuries or impairments, including paraplegia or a brain injury. According to government statistics, in 2006 about one per cent of claimants with bodily injuries were catastrophically impaired.

On the other side of the debate are those (such as the Fair Association of Victims for Accident Insurance Reform) who argue that a tightening of the definition will result in reduced benefits for those who require them the most. They point out that merely being deemed CAT does not result in a windfall. The injured person must establish that the expenses are reasonable and necessary before they must be paid.

The debate over the definition of CAT impairment is not new. In 2010, the government directed the Financial Services Commission of Ontario to consult with the medical community to amend the definition of CAT impairment. In June 2012, the Ministry of Finance released its report which contained numerous recommendations to try and improve the fairness and predictability of the process for determining CAT impairments. The government has yet to implement the substance of these recommendations, but potential changes loom and will continue to be a source of considerable debate.

In many respects, the potential change to the CAT definition is one of the last battleground areas in the arena of auto insurance. In 2010, the government significantly overhauled the accident benefits available to those who suffered non-CAT injuries. Among other things, the changes included decreasing medical and rehabilitation benefits from $100,000 to $50,000, and establishing a new category of injuries which fall under something called the "Minor Injury Guideline" (MIG) where the medical benefits are only $3,500.

In addition to decreasing the amount of coverage available, the entitlement to certain benefits was also restricted. For example, in order to qualify for the payment of attendant-care benefits, the services must be incurred and a non-professional service provider must have suffered an "economic loss" in providing the service. One of the stated intentions of the government when introducing the changes was to allow drivers more choice when it comes to their coverage. Consumers do have the choice to increase their benefits but this does not apply if you are under the MIG, where the limit remains at $3,500.

It remains to be seen how the courts will interpret and apply the changes made in 2010. Caselaw is now starting to emerge addressing some of the issues resulting from these changes. For example, in *Henry v Gore Mutual Insurance Company,* [2013] O.J. No. 3792, the Ontario Court of Appeal held that attendant care is not limited to the extent of the economic loss suffered by the service provider. As long as an economic loss was suffered this would qualify for entitlement to benefits in accordance with the Form 1 assessment. No definition of "economic loss" was provided by the court.

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In *Lenworth Scarlett and Belair Insurance Company Inc.* (FSCO A12-001079, Feb. 22, 2013), the arbitrator held that claimants who would otherwise fall into the MIG can be treated outside of the MIG "if there is credible medical evidence that a pre-existing condition will prevent the insured person from achieving maximal recovery" from the injury. This case is under appeal.

Despite the changes in 2010, there has been no measurable reduction in premium rates. According to government figures, from 2004 to 2012, auto insurance rates increased 11.4 per cent, while in 2012 rates decreased only 0.26 per cent. As the courts continue to grapple with interpreting the SABS, provincial governments of the future will continue to face the challenge of balancing the interests of consumers with those of insurance companies concerned with their bottom line.

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Man in limbo after being declared dead

An Ohio man who was declared legally dead in 1994 is finding out there's no easy way to come back from the grave, the Associated Press reported. Donald Miller Jr. went to court earlier this month to ask a county judge to reverse the ruling made eight years after he vanished from his home in 1986. Calling it a "strange, strange situation," Hancock County Probate Court Judge Allan Davis turned down his request, citing a three-year time limit for changing a death ruling. "We've got the obvious here. A man sitting in the courtroom, he appears to be in good health," said Davis. "I don't know where that leaves you, but you're still deceased as far as the law is concerned." Miller, 61, resurfaced about eight years ago. His ex-wife and mother of their two children says he left to avoid support payments. She also says she doesn't have the money to repay the Social Security benefits that were paid out to her after Miller was declared dead. Miller told the judge he disappeared in the 1980s because he had lost his job and was an alcoholic. He lived in Florida and Georgia before returning to Ohio. "It kind of went further than I ever expected it to," Miller said. "I just kind of took off, ended up in different places." His parents told him about his legal "death" when he returned home. – **STAFF**