

Putting Drivers First: Care, Not Cash Default

Consultation Paper

Ministry of Finance

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Ontario 

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1. INTRODUCTION

1.1. Government Commitment

Ontario's Government for the People is taking action to fix the broken auto insurance system. In the 2019 Ontario Budget, the province announced the Putting Drivers First blueprint, the government's plan to put drivers first and put money back in people's pockets by lowering costs, increasing consumer choice and making the auto insurance market more competitive.

The blueprint committed to ensuring that people hurt in auto collisions receive faster access to treatment and care. That's why the government is introducing a "Care, Not Cash" default clause so that a driver's auto insurance coverage will pay for treatment rather than cash settlements which may not be directly linked to recovery. This reform was recommended by David Marshall in his 2017 review of Ontario's auto insurance system¹. In keeping with our promise to offer consumers more choice, the driver will still have the ability to be eligible to negotiate a cash settlement by purchasing an optional benefit when they buy auto insurance.

1.2. Why We Are Consulting

The Ontario Government is inviting drivers, consumers, and all interested stakeholders to share their views on how to make sure that the Care, Not Cash default is implemented in a way that puts drivers first by focusing on care for people injured in collisions and making sure they can access treatment faster.

This is the first step in our discussion process. Your feedback is important and will support the development of draft regulations.

We look forward to hearing from you by September 17, 2019.

2. AFTER AN AUTO ACCIDENT

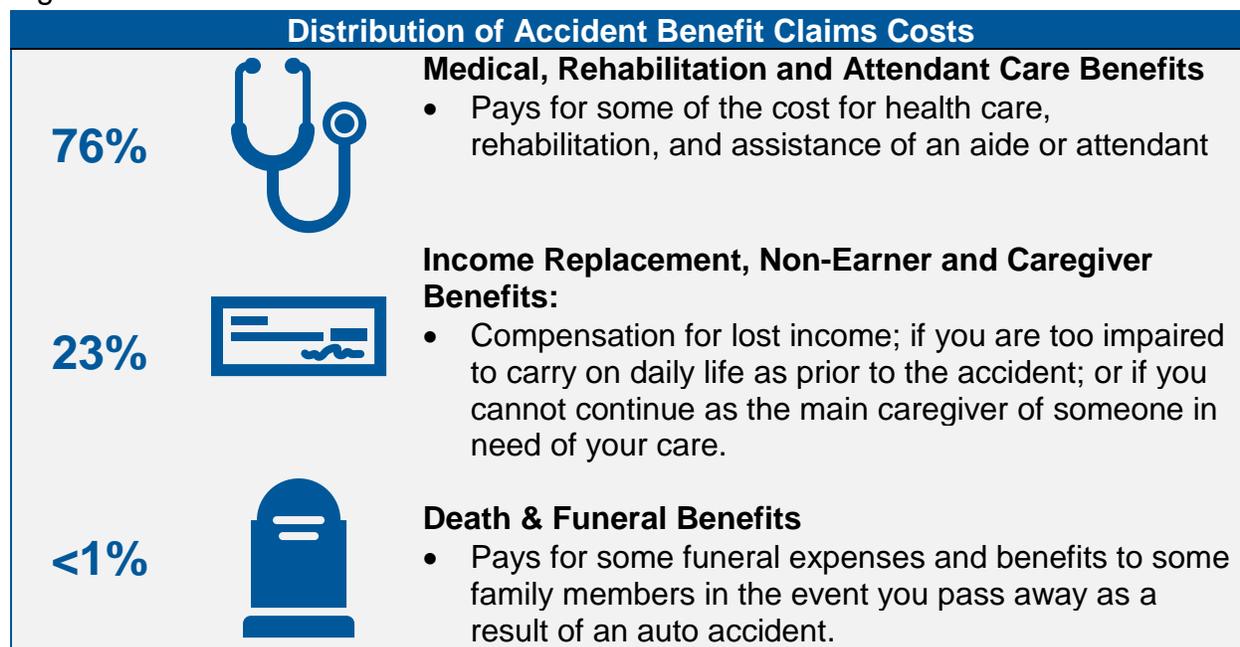
2.1. Care After an Auto Accident

An auto insurance policy covers certain costs for the care of injuries sustained in an auto accident by drivers, passengers and pedestrians. This care includes medical, rehabilitation and attendant care to help with an injured claimant's recovery. Medical,

¹ Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario. Accessed here: <https://www.fin.gov.on.ca/en/autoinsurance/fair-benefits.html#s31>

rehabilitation and attendant care account for approximately 76 per cent of overall accident benefits claim costs (Figure 1).

Figure 1: Distribution of Accident Benefits Claims Costs



Note: numbers do not add to 100% due to rounding.

Source: General Insurance Statistical Agency (GISA), *Incurred Loss Development Factor Report for Accident Year 2018 (as of December 31, 2018)*

The Statutory Accident Benefits Schedule (SABS), a regulation under the *Insurance Act*, sets out the following:

- The amount of medical, rehabilitation and attendant care costs that would be covered under a standard auto insurance policy, depending on the severity of the injuries sustained.
- The duration of time that these benefits are provided, with some exceptions.
- Additional optional coverage with higher monetary limits and lifetime duration for medical, rehabilitation and attendant care.

2.2. Cash Settlements

Currently, the *Insurance Act* and its regulations do not require insurers to offer cash settlements. However, insurers can negotiate cash settlements with claimants for all types of accident benefits, if certain regulatory requirements are met.

We have heard from the industry, accident victims and their representatives, and others that cash settlements are often negotiated where a claimant is catastrophically injured and requires lifetime care. However, settlements are also negotiated in other less severe circumstances where an insurer and a claimant have jointly agreed to settle and close a claim.

Figure 2: What is a Cash Settlement?

| What is a Cash Settlement? | |
|---|---|
|  | <p>A cash settlement is a final agreement between an insurer and an insured person for a lump sum payment to cover the cost of past, present and future accident benefits for which the person would otherwise be eligible.</p> <p>This final agreement ends the claimant's entitlement to specified accident benefits, and rights to dispute, litigate, or make appeals concerning the benefits which are the subject of the settlement.</p> |

3. PROPOSAL: CARE, NOT CASH DEFAULT

3.1. What is the proposed Care, Not Cash Default?

Care, Not Cash would require insurers by default to pay for the cost of medical, rehabilitation and attendant care. Insurers would also be required to offer consumers the option of buying a benefit that would make them eligible to negotiate a cash settlement.

Under the default, insurers would not be permitted to negotiate a cash settlement with an insured person, except when one or more of the following applies:

1. The insured person is catastrophically injured;
2. The claim is for costs not related to medical, rehabilitation and attendant care benefits (e.g., costs to repair vehicles, income replacement benefits);
3. The policyholder purchased an optional benefit that makes them eligible to negotiate a cash settlement; or
4. Extenuating circumstances apply that require an exception (e.g., the injured person moves out of the country).

Expected Outcomes

While cash settlements are sometimes necessary, implementing the Care, Not Cash default is expected to:

- Encourage faster treatment and care;
- Discourage fraud and abuse of accident benefits; and
- Reduce overall accident benefit claim costs.

3.2. Key Considerations

The implementation of Care, Not Cash may:

- Require increased consumer awareness and knowledge of the terms and conditions of the cash settlement optional benefit;
- Require clarity, efficiency, and consistency in the development and approval of treatment plans and the tracking of treatment progress to enable the consistent and timely delivery of care to injured claimants;
- Impact insurers' claims management processes (e.g., policyholders that have purchased optional benefits for medical, rehabilitation and attendant care benefits with no time limits);
- Impact the volume of cases going to the Licence Appeal Tribunal (LAT) regarding disputes over diagnosis and/or treatment plans;
- Require changes to existing regulatory requirements and conditions (e.g., the current one-year moratorium) related to cash settlements; and
- Require a different approach to regulatory oversight to ensure compliance with the restriction on cash settlements.

4. WE WANT TO HEAR FROM YOU

4.1. Your Privacy Matters

All feedback received is subject to the *Freedom of Information and Protection of Privacy Act* and will be considered public. The feedback will be considered by the Ministry of Finance as part of the government's plan to reform and modernize the auto insurance sector.

Some or all comments or materials, or summaries of them, may be disclosed to other interested parties during and after the consultation.

If you feel your feedback should not be shared with other parties or have any questions about this consultation, please contact the Ministry of Finance at AutoInsurance@ontario.ca

4.2. How to Respond

Your input is important. We welcome your answers to the consultation questions (where applicable to you) and any added input or suggestions you may wish to offer.

Please provide concrete examples or evidence to support your suggestions where possible.

You may respond by completing the online survey, by email to AutoInsurance@ontario.ca, or by mail to:

Auto Insurance Consultation Paper
Ministry of Finance
Financial Institutions Policy Branch
95 Grosvenor Street
Frost Building (North), 4th Floor
Toronto, ON M7A 1Z1

4.3. Your Information

When submitting your feedback, please provide your name, contact information (e.g., an email or mailing address) and tell us a bit about yourself by answering the question below.

Name/Organization: _____

Contact Information: _____

Which of the following **best** describes the way you are involved / interact with the auto insurance system?

- Consumer / driver
- Auto insurance company
- Sellers of auto insurance (e.g., broker, agent)

- Health service provider (e.g., family physician, health practitioner)
 - Legal service provider (e.g., paralegal, lawyer)
 - Vehicle service provider (e.g., towing, auto body repair, car rental)
 - Academic
 - Industry / Professional Association – please indicate name of the association
 - Other (please specify)
-

4.4. Consultation Questions

Current State: Cash Settlements

1. What do you believe are the main reasons injured persons and insurers engage in cash settlements for auto insurance claims?
2. If you are responding on behalf of industry, over the last ten years, what is the average:
 - a) value of cash settlements by injury type?
 - b) amount spent per settlement on non-medical care? (e.g., legal expenses, wage loss, independent examinations)

Implementation Details: Care, not Cash Default

3. What could be done to facilitate earlier resolution of disputes regarding the delivery of care (including benefit entitlement, treatment decisions and assessments / insurer examinations)?
4. What types of extenuating circumstances for the exception to the Care, Not Cash default should be considered? Please include an explanation of the rationale and supporting evidence. With suggestions, please consider how to ensure clarity for consumers and insurers as to avoid unnecessary disputes.
5. What would be the best approach and timing for the transition to the Care, Not Cash default to ensure consumers have sufficient time and opportunities to make informed choices (e.g., tie implementation to auto policy renewal dates, make it

effective immediately for all claims, or make it effective for accidents that occur on or after a certain date)?

6. In implementing Care, Not Cash, what are the concerns, challenges, and mitigation considerations that must be contemplated (e.g., insurers' claims management operations, health service providers' operations, consumer experience, etc.)? Please be as specific as possible based on your role in the insurance system.

Implementation Details: Optional Benefit (cash settlements)

7. What terms, conditions, limits, or other factors should the government consider in designing a cash settlement optional benefit?

Supporting Implementation: Consumer Education and Awareness

8. How should the insurance industry (insurers, agents, brokers) support consumer awareness and informed decision making with respect to a Care, Not Cash default and the cash settlement optional benefit?
9. What other opportunities exist to ensure consumer awareness / education?

Additional Comments

10. Please share any additional comments, suggestions or information to inform the proposed Care, Not Cash default.

Thank you for participating in our consultation and providing your views on this paper.