

MINISTRY OF FINANCE

FRAUD & ABUSE CONSULTATION PAPER

INTRODUCTION

Ontario announced the Putting Drivers First Blueprint (Blueprint) in the 2019 Budget, which included a government commitment to combatting fraud so that honest drivers do not have to pay for the dishonest actions of fraudsters. Regulated entities have also indicated that establishing strong anti-fraud measures will be an important factor to addressing some of the issues that drive up auto insurance system costs. Following through on this commitment, the 2020 Budget identified the following reforms as a first step in removing costs associated with fraud from the system:

- The government improved the deterrence of fraudulent activities that drive up auto insurance system costs by proposing changes that would allow insurers to reject vehicle damage claims where misrepresentation or fraud is involved.
- The government has also established a task force to improve provincial oversight of the towing and storage industry.

To further the Blueprint commitment, the Ministry of Finance (MOF) and the Financial Services Regulatory Authority of Ontario (FSRA) are working toward fraud and abuse reduction strategies that enhance consumer protection.

Call for Action

Within the Ontario auto insurance sector, “insurance fraud and abuse” is neither defined in legislation nor regulation, nor is there an accurate quantification of the size and scope of fraud and abuse. In the past, the government, its regulators (including the Financial Services Commission of Ontario) and industry have taken various approaches to identifying and measuring fraud and abuse. As a result, over time, the industry has taken individualized approaches for managing fraud and abuse, which has created further inconsistencies.

Furthermore, there are limited tools and resources that are made available to FSRA, regulated entities and the general public to tackle fraud and abuse, when it is suspected or proven. This, again, has resulted in inconsistent approaches, but has also highlighted the need to develop solutions that would prevent bad actors from entering the system, replace inefficient processes, reduce costs and improve public confidence and safety.

That is why MOF and FSRA are consulting on a fraud and abuse plan that will aim to sustainably reduce system costs that drive up auto insurance premiums for drivers.

Fraud and Abuse Strategy

Together, MOF and FSRA have reviewed stakeholder feedback, and industry-conducted analysis related to fraud and abuse, and have identified key issues that prevent effective action against fraudulent and abusive activities that unnecessarily drive up auto insurance system costs. To tackle these issues, MOF and FSRA are jointly proposing a Fraud and Abuse (F&A) Strategy that includes the following key outcomes:

1. Quantify the type, size and scope of auto insurance F&A issues.
2. Develop tools to enable insurers to effectively manage fraud and abuse, in a way that protects and advances consumers' interests and creates appropriate deterrents.
3. Enable FSRA with the tools to take effective oversight and enforcement action.

To achieve these outcomes, the ministry and FSRA have identified the following themes and possible supporting initiatives that require further public input:

1. INSURANCE FRAUD AND ABUSE DEFINITION <ul style="list-style-type: none">• Define Insurance Fraud and Abuse.	2. FRAUD AND ABUSE DATA <ul style="list-style-type: none">• Improve use of data in the industry's fraud and abuse management activities by enabling better collection, analysis and reporting of relevant data / information.
3. FRAUD MANAGEMENT TOOLS <ul style="list-style-type: none">• Mandate insured's cooperation with insurer F&A investigations.• Enhance the use of insurer Preferred Provider Networks (PPN), and review/update processes for potential disagreements.• Allow insurers to exclude coverage for services provided by certain vendors, based on investigations and reasoned decisions, and review/update processes for potential disagreements.	4. REGULATOR TOOLS <ul style="list-style-type: none">• Set up a whistleblower program and / or protection(s).• Establish expectations for fraud and abuse management plans.• Review and update/introduce FSRA investigation and enforcement tools.• Facilitate FSRA's ability to share F&A information with other regulators.

Public Consultation Purpose and Outcomes

MOF and FSRA are requesting public feedback focused on:

- Offering data or evidence in support of the expected costs and benefits of specific initiatives and the F&A Strategy overall;
- Identifying additional initiatives for consideration; and
- Understanding any risks, limitations or unintended consequences of any one initiative.

Based on the above criteria, the ministry and FSRA will consider next steps for the F&A Strategy.

FRAUD AND ABUSE INITIATIVES

1. INSURANCE FRAUD AND ABUSE DEFINITION		
Supporting Initiatives ↓	MOF Considerations	Consultation Questions
<p>i. Define Insurance Fraud and Abuse</p>	<ul style="list-style-type: none"> Insurance crimes range in severity, from slightly exaggerating claims to deliberately causing accidents or damage. It could also include involvement from a number of parties, such as consumers, service providers, agents or insurers. The ministry is considering how existing definitions for “insurance fraud and abuse” may be well-aligned for application in the Ontario auto insurance market. <p>The definition should consider applicability within the Ontario auto insurance market and include all aspects related to the types of fraud and abuse that should be captured (e.g., monetary, property, services, etc.).</p>	<ol style="list-style-type: none"> Based on the anticipated outcomes described in the ministry’s F&A Strategy, what are important aspects of fraud and abuse that the definition should capture? Will a definition require multiple parts to account for different types of auto insurance fraud and abuse that can be committed? Do you have a suggestion for a proposed definition of insurance fraud and abuse?

2. FRAUD AND ABUSE DATA

Supporting Initiatives ↓	MOF Considerations	Consultation Questions
<p>i. Improve use of data in the industry’s fraud and abuse management activities by enabling better collection, analysis and reporting of relevant data / information.</p>	<ul style="list-style-type: none"> • Lack of a clear definition of insurance fraud, lack of data to track fraud and varied approaches amongst insurers to measure fraud, present challenges for measurement of fraud management effectiveness through standardized metrics. • The ability to collect / pool / share information in a centralized system has shown to be an effective way to detect & investigate frauds, as well as monitor F&A trends in the insurance ecosystem in different jurisdictions, particularly the US and the UK. • Further data / information collection or sharing would require controls and governance to mitigate risk of improper collection and/or use of consumers’ data. <div style="background-color: #e1f5fe; padding: 5px; margin-top: 10px;"> <p>A centralized fraud reporting repository could enable measurement of fraud, support cross-insurer fraud investigation and deter fraudulent and abusive behaviour in the system.</p> </div>	<ol style="list-style-type: none"> 1. What aspects of data do you think are important to collect and use when measuring and managing fraud and abuse? What information do you, or your organization, currently collect? 2. Do metrics need to distinguish between standardized approaches and insurer-specific approaches to fraud management? If so, how can the distinction be made while allowing for meaningful measurement and oversight? 3. What are high impact / high priority opportunities that the industry will benefit from improved sharing and / or use of data? What barriers are preventing action on those opportunities? What would you recommend the government or FSRA do to help to remove these barriers and what governance or oversight measures, including consequences for non-compliance, should be put in place if government or FSRA plays a role in removing those barriers? 4. What are some concerns and controls to protect data privacy and data security related to data

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		<p>sharing? Are there leading examples of these controls?</p> <p>5. Is it a fair trade-off for consumers to have their information shared for the purposes of managing fraud and efforts to lower premiums? How can improved transparency support a fair trade-off?</p> <p>6. What role, if any, should MOF, FSRA and industry play in the establishment of a centralized fraud reporting repository?</p>

3. FRAUD MANAGEMENT TOOLS		
Supporting Initiatives ↓	MOF Considerations	Consultation Questions
<p>i. Mandate insured's cooperation with insurer F&A investigations.</p>	<ul style="list-style-type: none"> • Currently, auto insurers have limited ability to investigate and act against policy fraud. • Limitations on an insurer's ability to cancel a policy prevent auto insurers from cancelling a policy for failure to cooperate during an investigation of policy fraud. • Mandatory terms of an auto insurance policy (statutory conditions) require the insured to 	<ol style="list-style-type: none"> 1. Would this tool help insurers manage fraud and abuse in a way that protects and advances consumer interests? 2. What are some concerns and mitigations to protect consumers from being unfairly targeted by insurers? 3. What is considered an adequate level of cooperation?


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	<p>cooperate only in the event of a claim, but not for policy fraud.</p> <ul style="list-style-type: none"> ○ The limitations were put in place to protect consumers from arbitrary cancellations but have the unintended consequence of protecting fraudsters from meaningful investigations. ● Allowing auto insurers to require the reasonable cooperation of an insured during a policy F&A investigation and to take action by cancelling the policy where that cooperation is unreasonably withheld, may result in better investigation outcomes without causing unintentional harm to consumers. 	
<p>ii. Enhance the use of insurer Preferred Provider Networks (PPN), and review/update processes for potential disagreements.</p>	<ul style="list-style-type: none"> ● PPNs are used by insurers in all lines of business, including auto insurance. ● Stakeholder feedback regarding PPNs is varied and includes concerns about claimant choice and competition among service providers. ● Enhancements to the use of PPNs could include allowing insurers to offer consumers a point of sale 	<ol style="list-style-type: none"> 1. Would this tool help insurers manage fraud and abuse in a way that protects and advances consumer interests? 2. Do PPNs help insurers manage fraud and abuse in a way that protects and advances consumers' interests? 3. What consumer outcomes should enhancements to the use of PPNs target, and what mechanisms (e.g.


3. FRAUD MANAGEMENT TOOLS

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	<p>choice to, at time of claim, exclusively use service providers that are part of an insurer's PPN.</p> <ul style="list-style-type: none"> • Implementation of this tool would need to primarily consider outcomes for consumers, including claimants, as well as outcomes for other parties (i.e. insurers and service providers) interacting with those consumers. • In addition, implementation would need to consider incorporating a system of fairness to all service providers, including appropriate dispute resolution mechanisms. 	<p>disclosure, transparency, regulatory oversight) should be in place to facilitate achievement of those outcomes?</p> <ol style="list-style-type: none"> 4. What would be an appropriate process for service providers and auto insurers to resolve their disputes regarding their PPN status? 5. Should exclusive use of PPNs be available to consumers as an option when buying auto insurance? Should other choices (e.g. obligation to use PPN for common injury claims) be available? And how can this program benefit consumers without reducing consumer choice? 6. Should other enhancements to the use of PPNs be considered?
<p>iii. Allow insurers to exclude coverage for services provided by certain vendors, based on investigations and reasoned decisions, and review/update processes for potential disagreements.</p>	<ul style="list-style-type: none"> • An excluded provider would not be eligible for payment by an insurer for a service provided. • Providing insurers with the option to adopt this practice, subject to appropriate oversight and protections, would support the removal of bad actors within the system. Appropriate dispute 	<ol style="list-style-type: none"> 1. Would this tool help insurers manage fraud and abuse in a way that protects and advances consumer interests? 2. What criteria is appropriate for excluding service providers? 3. What methods/avenues could service providers and auto insurers use to resolve their disputes?

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	<p>resolution mechanisms must be in place to ensure impartial and consistent decision-making across the sector.</p> <ul style="list-style-type: none"> Implementation features could include a requirement to follow specific conduct expectations and consequences for non-compliance, such as prohibiting use of the tool. 	<ol style="list-style-type: none"> How can this program benefit consumers without reducing consumer choice? What consumer outcomes should the use of this tool target, and what mechanisms (e.g. disclosure, transparency, regulatory oversight) should be in place to facilitate achievement of those outcomes?

6. REGULATOR TOOLS		
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<ol style="list-style-type: none"> Set up a whistleblower program and / or protection(s). 	<ul style="list-style-type: none"> MOF is review existing legislative examples for whistleblowing protections that could be applied to the F&A Strategy to achieve the intended outcomes. <p>Protections should consider the spectrum of potential fraud activities that may be committed and any unique circumstances that should be considered from a whistleblower's perspective.</p>	<ol style="list-style-type: none"> Is there any existing case law that the ministry should consider where whistleblower protections either worked well or not? What are the key types of whistleblower protections that should be considered?
<ol style="list-style-type: none"> Establish expectations for fraud and abuse management plans. 	<ul style="list-style-type: none"> Provide clarity that insurers have the primary responsibility to manage fraud and abuse 	<ol style="list-style-type: none"> What best practices currently exist that could be used as a reference or model?

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	<p>effectively, by establishing fraud and abuse management expectations.</p> <ul style="list-style-type: none"> • Insurers should demonstrate adherence to expectations through F&A management plans, including expectations for collaboration involving fraud against multiple parties. • The plans' expectations will help meet consumer-focused expectations for dealing with F&A and serve as a mechanism for identifying gaps and improvements. • Insurers should be accountable for measuring effectiveness, providing sufficient resourcing and defining protocols and procedures including strong oversight from senior leadership. 	<ol style="list-style-type: none"> 2. How can an insurer's plan be monitored and continuously improved, and what role can data and metrics (see above) play in that process? 3. Should management plans be proportionate with the size / profile of an insurer's business? Should there be consequences for insurers that do not or cannot establish and carry out a reasonable and proportionate fraud management plan? 4. How can the approach to fraud management plans best reflect the competitive nature of the auto insurance industry? 5. What barriers or gaps currently exist that prevent insurers from effectively implementing fraud and abuse management plans?
<p>iii. Review and update / introduce FSRA investigation and enforcement tools.</p>	<ul style="list-style-type: none"> • FSRA requires adequate authority to enforce its legislative mandate, including matters related to F&A. Currently, FSRA has limited legislative authority to promote compliance and investigate F&A activities within the auto insurance sector in order to take effective 	<ol style="list-style-type: none"> 1. Other provinces have provided enhanced investigation powers, such as the British Columbia Financial Services Authority (BCFSA). Should FSRA have similar powers? 2. Should FSRA have the tools and mandate to investigate and sanction fraud and abuse within

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	<p>enforcement action that protects consumers.</p> <ul style="list-style-type: none"> • FSRA’s enforcement sanctions are limited with respect to “bad actors” who engage in F&A and are not licensees. • FSRA should have appropriate authority to effectively supervise and enforce insurer compliance with expectations related to F&A management tools or requirements (e.g., F&A Management Plans, use of PPN or EPN, and requirements to collect, analyze, report and act on relevant data/information). 	<p>the auto insurance sector by non-licensees? If so, which non-licensees? If not, who should?</p> <p>3. What regulatory sanctions should be available to deter and address fraud and abuse in the auto insurance sector? Who should they apply to?</p>
<p>iv. Facilitate FSRA’s ability to share F&A information with other regulators.</p>	<ul style="list-style-type: none"> • The <i>Financial Services Regulatory Authority of Ontario Act</i> (FSRA Act) includes an object for FSRA to cooperate and collaborate with other regulators where appropriate. MOF could investigate how this object may be leveraged to enable FSRA with the ability to share data with regulators and potential partners, such as OHIP and WSIB. 	<p>1. What are some concerns and mitigations to protect privacy and data security related to data sharing?</p>

NOTICE TO CONSULTATION PARTICIPANTS

Privacy Statement:

Please note that all submissions are subject to the requirements of the *Freedom of Information and Protection of Privacy Act*.

Any submissions received from organizations in response to this consultation will be considered public information and may be used and disclosed by the Ministry of Finance to assist the ministry in evaluating its approach to address auto insurance fraud and abuse. This may involve disclosing any response received, or summaries of them, to other interested parties, including FSRA. An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered public information but may be used and disclosed by the ministry to help evaluate its approach. Any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual's prior consent unless required by law.

If you have any questions about the collection, use or disclosure of this information, please contact AutoInsurance@ontario.ca

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