Financial Services Regulatory Authority of Ontario (FSRA)

Notice of Proposed Rule and Request for Comment

Proposed Rule [2020-002]

Unfair or Deceptive Acts or Practices

Introduction

FSRA is making the supervision of conduct in Ontario's insurance system more transparent, dynamic and flexible. Through a new rule defining unfair or deceptive acts or practices (UDAP) under the *Insurance Act*, FSRA is moving towards a clearly understood regime that is adaptable to changing circumstances and in which all stakeholders participate so that misconduct can be better identified, curbed and sanctioned to protect the public interest.

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the **FSRA Act**), the Financial Services Regulatory Authority of Ontario (**FSRA** or the **Authority**) is publishing for comment Proposed Rule [2020-002] – *Unfair or Deceptive Acts or Practices* (the **Proposed Rule**) under the *Insurance Act*.
The text of the Proposed Rule is set out in Appendix A to this Notice. Interested persons are invited to make written representations to FSRA with respect to the Proposed Rule on or before March 18, 2021.

Substance and Purpose of the Proposed Rule

Section 439 of the *Insurance Act* prohibits UDAP, which are prescribed in O. Reg 7/00 (**the Regulation**) under the *Insurance Act.* According to the Regulation, actions defined as UDAP may apply to insurers (including the officers, employees or agents of insurers), brokers, intermediaries, adjusters and providers of goods and/or services engaged in the insurance sector (including but not limited to lawyers, paralegals, health service providers, tow truck operators, vehicle repair shops and automobile storage facilities).

FSRA was provided with rulemaking authority under section 121.0.1 (1) 67 of the *Insurance Act* to prescribe "any activity or failure to act that constitutes an unfair or deceptive act or practice under the definition of "unfair or deceptive acts or practices" in section 438 and prescribing requirements that, if not complied with, are considered UDAP.

FSRA rulemaking on UDAP aims to advance the following Objects, as stated in the FSRA Act:

- Regulate and generally supervise the regulated sectors;

- Contribute to public confidence in the regulated sectors;
- Deter deceptive or abusive conduct, practices and activities by the regulated sectors;
- Promote high standards of business conduct;
- Promote transparency and disclosure of information by the regulated sectors;
- Protect the rights and interests of consumers; and
- Foster strong, sustainable, competitive and innovative financial services sectors.

FSRA's 2020-2023 Annual Business Plan, which was approved by the Minister of Finance in June 2020, committed to exploring opportunities for FSRA rulemaking regarding UDAP. The Proposed Rule delivers on this commitment by promoting safety, fairness and choice for insurance customers. It also supports FSRA's cross-cutting commitments to enhancing effectiveness and transparency, removing barriers to innovation, aligning with international best practices and transitioning towards principles-based regulation.

FSRA is adopting a staged approach to transforming UDAP in Ontario. The first stage, described below, is intended to enable the definition of UDAP by a FSRA rule, reduce certain identified barriers to innovation and redraft in an outcomes-focused manner in support of transitioning towards principles-based regulation. The first stage of drafting is also intended to further alignment with particular Canadian Council of Insurance Regulators / Canadian Insurance Services Regulatory Organizations (**CCIR / CISRO**) Fair Treatment of Customers (**FTC**) Guidance standards as appropriate, including in relation to advice, product promotion, disclosures to policy holders and customers, compliance with laws, claims handling and settlements. If approved, the first stage of UDAP rulemaking would conclude with the coming into force of the Proposed Rule and the revocation of the existing Regulation. A second stage of UDAP rulemaking is intended with a focus on issues that were deemed out of scope for stage one, including further transition towards principles-based regulation.

The Proposed Rule is intended to advance FSRA's objects, with a focus on transparency and protecting the public interest, while enhancing regulatory efficiency and effectiveness. It aims to achieve these goals and further the ongoing regulatory dialogue between FSRA and stakeholders on conduct in the insurance sector by:

- Providing outcomes-based definitions of UDAP that are consistent with FSRA's objects, facilitate better outcomes and support transition to principles-based regulation;

- Providing clear and objective standards for determining misconduct that incorporate examples of unfair treatment and reference to the Ontario Human Rights Code to enhance precision, and allowing for supplemental FSRA guidance where permitted;

- Removing barriers to innovation in the area of customer incentives, including rebates and incentives provided that they:
    - do not lead to decisions that are against the interests of consumers;
    - are not prohibited by law;
    - are transparently communicated; and
    - are not unfairly discriminatory, anti-competitive or reliant on prohibited factors.

- Bringing greater alignment with certain CCIR / CISRO FTC Guidance provisions, particularly in the areas of misrepresentation and unfair claims practices; and

- Reducing regulatory burden through consolidation, streamlining and removing redundant or spent provisions.

FSRA's objective of removing specific barriers to innovation through the Proposed Rule is aligned with the Ontario government's commitment to provide the CEO of FSRA with "the power to operate an insurance regulatory sandbox to pilot initiatives that bring new consumer-focused products and services to market more quickly in response to changing consumer needs."[1] In this regard, the government has passed amendments that permit the CEO of FSRA, on application by a person or entity, to exempt persons or entities from requirements under the Act that are prescribed by regulation, and specify the conditions to which the exemption is subject, should the CEO be of the opinion that doing so would not be prejudicial to the public interest. The amendments will come into effect on a day to be named by proclamation of the Lieutenant Governor.

Authority for the Proposed Rule

The following statutory provisions grant FSRA the authority to make the Proposed Rule:

- Section 21(1) of the FSRA Act authorizes FSRA to make rules in respect of any matter over which a statute gives FSRA rulemaking authority; and

- Section 121.0.1 (1) 67 of the *Insurance Act* grants FSRA the authority to prescribe through rulemaking any activity or failure to act that constitutes an unfair or deceptive act or practice under the definition of "unfair or deceptive acts or practices" in section 438 of the *Insurance Act*, and to prescribe requirements that, if not complied with, constitute an unfair or deceptive act or practice.

[1] Ontario Ministry of Finance, *Ontario's Action Plan: Protect, Support, Recover* (Queen's Printer for Ontario, 2020), 117.

Summary of the Proposed Rule

The following section provides a high-level summary of each provision within the Proposed Rule.

Section 1: Interpretation
This section defines key terms used in the Proposed Rule.

Section 2: Unfair or Deceptive Practices
This section defines UDAP in terms of outcomes that can be expected to result from action or inaction by certain persons or entities active in the insurance sector, excepting conduct by lawyers or paralegals providing services as authorized by the Law Society Act.

Section 3: Non-Compliance with the Law
This section deems that any non-compliance with the *Insurance Act*, its regulations or FSRA rules made in respect of the *Insurance Act* is a UDAP.

Section 4: Unfair Discrimination
This section defines unfair discrimination for the purpose of determining a UDAP and clarifies the meaning of 'reasonable and bona fide grounds.

Sections 5: Unfair Claims Practices
This section provides that certain outcomes associated with any unfair claims practice are a UDAP, defines related terms and provides discretion to the CEO of FSRA.

Section 6: Fraudulent or Abusive Conduct related to Goods and Services Provided to a Claimant
This section provides that certain outcomes associated with fraudulent or abusive conduct related to goods and service providers are a UDAP and defines related terms.

Section 7: Incentives
This section determines the scope and circumstances in which the offering or provision of an incentive is deemed a UDAP and defines related terms.

Section 8: Misinformation
This section provides that the receipt of inaccurate or misleading information across a variety of mediums with respect to insurance policies, contracts, claims or coverage is a UDAP and defines related terms.

Section 9: Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals
This section deems that the unfair treatment of consumers with respect to quotations, applications or renewals is a UDAP and provides indicators of unfair treatment as well as discretion to the CEO of FSRA for the purposes of determining unfair treatment.

Section 10: Affiliated Insurers
This section prescribes the circumstances in which the failure to offer the lowest rate available from an insurer or its affiliates to a person requesting a quote for automobile insurance is a UDAP.

Development of the Proposed Rule
Prior to developing the Proposed Rule, in 2019-2020, FSRA had already received stakeholder input on UDAP provisions that were found to be overly prescriptive or barriers to innovation, particularly with respect to incentives (including rebates and inducements). As part of FSRA's Take All Comers Consultation, insurers recommended that FSRA undertake a review of section 2 of UDAP with a view to removing provisions that are unnecessarily prescriptive, inconsistent with desired regulatory outcomes or not consistent with a principles-based approach to insurance conduct regulation.

FSRA carried out a line-by line review of the Regulation and comparative analysis with the CCIR / CISRO FTC Guidance. The review examined consumer protection needs and identified opportunities for outcomes-focused redrafting, enabling innovation on incentives and aligning with certain aspects of international standards. The line-by-line review, comparative analysis of FTC Guidance and information collected by FSRA prior to beginning work on the Proposed Rule informed the development of FSRA's staged approach and guiding principles, including the intentions of the Proposed Rule as set out above.

FSRA conducted targeted outreach and consultations to solicit input on best practices and feedback from consumers, stakeholders, experts and industry leaders on FSRA's plan to transform UDAP regulation in Ontario. Preliminary consultations involved FSRA's Consumer Advisory Panel as well as representatives from over 30 regulated entities, including the members of FSRA's Stakeholder Advisory Committees for property and casualty insurance, life and health insurance and health service providers who met to discuss FSRA's initial assessment and approach (see **Appendix C**). In addition, FSRA has convened a Residents Reference Panel on Automotive Insurance in Ontario that will provide further insights regarding consumer expectations once its work is complete.

Stakeholders expressed general support for FSRA's approach to the Proposed Rule, provided feedback on FSRA's initial assessment and raised issues for consideration in the second stage of UDAP rulemaking (see **Table 1**, below).

Work undertaken as part of the development of the Proposed Rule and preliminary consultations identified key principles that guided FSRA's approach to drafting. FSRA determined that:

- **Outcomes-focused drafting** would provide stronger consumer protections, clearer UDAP definitions and support future transition to principles-based regulation. The Proposed Rule is intended to recast the definition of UDAP in terms of behavior on the part of persons or entities active in the sector that can

reasonably be expected to produce outcomes unfair or otherwise harmful to consumers.

- As far as possible, the Proposed Rule should be **complete**. The Proposed Rule is intended to anticipate as far as possible the sorts of gaps that would otherwise be addressed in guidance.

- At the same time, the Proposed Rule is intended to be **flexible**, with a built-in framework that incorporates the participation of stakeholders and, within established processes and parameters, enables possible future guidance to supplement the rule.

- The Proposed Rule should **define key terms** that are subjective or otherwise prone to dispute. The Proposed Rule is intended to provide clear legal tests for key terms such as “unfair,” “reasonable expectation” and “unsuitable.”

- The Proposed Rule should promote **transparency** and facilitate the participation of all stakeholders in the ongoing identification and prevention of misconduct to protect the public interest and ensure desire outcomes.

- A **streamlined** rule that consolidates sections as appropriate and removes redundant provisions as far as possible would reduce regulatory burden while enhancing clarity, accessibility and ease of use.

- Where changes are inappropriate given the scope of **stage one** or otherwise unsuitable given contemplated consumer harms, the Proposed Rule should preserve the substantive intent of the Regulation.

The Proposed Rule provides a framework for the ongoing participation of stakeholders in the evolving definition of misconduct, while enabling possible guidance to supplement the rule within established parameters and processes. The Proposed Rule thereby builds in transparency and flexibility to better keep pace with the changing nature of misconduct and adapt to changing circumstances in the sector.

Table 1: Summary of Stakeholder Feedback

Key Topic	Stakeholder Feedback	FSRA Response
FSRA’s recommended approach to UDAP rulemaking	• Broad support for FSRA’s recommended staged approach to rulemaking and opportunity for further engagement during the second stage of rulemaking.	N/A

Key Topic	Stakeholder Feedback	FSRA Response
Principles-based redrafting	• Broad support for FSRA's intention to transition to principles-based regulation. Some stakeholders wanted to learn more about the desired end state of the rule. • Health service provider stakeholders raised questions about the enforceability of principles-based regulation and expressed concern that a shift to principles-based regulation could lead to abuse by insurers.	• The first stage of rulemaking will focus on outcomes-focused redrafting in support of transitioning to principles-based regulation. • Principles-based regulation would require less prescriptive oversight resources, while generating improved outcomes for consumers; principles-based regulation, however, does not entail giving up the ability to enforce.
Reducing barriers to innovation	• P&C sector stakeholders supported a more permissive approach to incentives. • L&H sector stakeholders expressed concerns about improper rebating but noted that existing prohibitions in the legislation and regulations would be adequate to guard against consumer harm resulting from incentives offered by advisors. • Overall stakeholders viewed the proposal as a positive step with further changes required to meet innovation goals	• Proposal is not meant to address standalone advisor conduct requirements related to offering incentives in the L&H sector (prohibitions on inducements in the Agents regulation under the *Insurance Act* are not in scope for rulemaking). • FSRA will continue work to foster innovation through the next stage of UDAP rulemaking and other activities.
Alignment with CCIR / CISRO FTC Guidance	• Broad support for alignment with certain FTC principles. • Some stakeholders expressed concerns about the vagueness and subjectivity of language like "fairness," with an emphasis on consumer protection and claims handling.	• The intention is to align with certain principles that are already set out in the FTC Guidance, with a more comprehensive review in the next stage of FSRA's work. • Definitions are embedded within the redrafted provisions to address terms that are subjective or prone to dispute.

Alternatives Considered

FSRA considered several alternatives while developing the Proposed Rule in the first stage of its work to transform UDAP in Ontario. Many of the alternatives brought forward as part of FSRA's review, including alternatives recommended by stakeholders, have been considered and deferred to the second stage of FSRA's work rather than rejected outright.

FSRA considered further convergence with CCIR / CISRO FTC Guidance. FSRA determined that doing so should be reserved for stage two given the scope of rulemaking authority established by the enabling legislation, as well as a lack of conceptual alignment between the existing regulation and other components of the guidance that could potentially lead to greater compliance costs and complexity in implementation of the stage one rule.

FSRA also considered not adopting a staged approach to transforming UDAP. Given the specific issues identified related to barriers to innovation as well as burdensome and prescriptive provisions in the current regulation, FSRA determined that a staged approach allowing for the early prioritization of, and progress on, those issues would better serve the public interest.

Unpublished Materials

The development of the Proposed Rule was informed by stakeholder submissions provided to FSRA through preliminary consultations on FSRA's initial assessment and intended approach. Other than these submissions, FSRA has not relied on any significant unpublished study, report, decision or other written materials, other than internal reports prepared by FSRA management for the FSRA Board of Directors.

Anticipated Costs and Benefits

New costs for businesses are anticipated in connection with the need to adapt existing compliance programs to a new principles-based and outcomes-focused rule administered by FSRA.

If approved, the Proposed Rule would reduce barriers to innovation and provide greater flexibility to insurers while providing consumers with a high standard of protection. Some of the specific anticipated benefits of the Proposed Rule include:

- FSRA would be provided with greater flexibility to meet evolving consumer needs and unanticipated market changes;

- Insurers would be able to offer innovative incentive programs, which could bring greater value and benefit to consumers;

- Redrafting in a principles-based manner that allows for greater flexibility, while simplifying the Regulation and removing redundant provisions, would lead to reduced regulatory burden; and

- The Proposed Rule would better align with existing CCIR / CISRO FTC Guidance.

The Proposed Rule preserves the substantive intent of the Regulation with respect to consumer protection and contemplated consumer harms. It is anticipated that any new compliance costs created for businesses will be outweighed by the anticipated benefits of the Proposed Rule.

Consequential Amendments

FSRA's recommendation that the Proposed Rule be approved by the Minister of Finance will be conditional on consequential amendments being made to the *Insurance Act*, O. Reg 408/12 (Administrative Penalties) and O. Reg. 132/97 (Variable Insurance Contracts), which, if passed or approved, would provide FSRA with the necessary powers to enforce the Proposed Rule.

As regulations made under the *Insurance Act* supersede FSRA rules in cases of conflict, and the Proposed Rule is intended to replace the Regulation, it is recommended that O. Reg 7/00 be revoked.

Targeted Questions

Although all feedback from interested parties is welcome, the following questions are of particular interest:

1. Are there any parts of the Proposed Rule that are too general or require further detail, including for the purposes of clarity or closing possible gaps?

2. Are there any implementation considerations, such as transition issues or the coming into force date of the Proposed Rule, that interested parties would like to bring to FSRA's attention?

3. FSRA has drafted the Proposed Rule to ensure that the intent of existing consumer protection provisions is preserved where no substantive policy change is being proposed. FSRA has deliberately erred on the side of maintaining consumer protections even where they may be redundant given other aspects of the Proposed Rule. An example includes provisions related to non-compliance with the Statutory Accident Benefits Schedule in section 5 (Unfair Claims Practices) given the contents of section 3 (Non-Compliance with Law). Are there sections of the Proposed Rule that are redundant and can be removed without compromising consumer protection?

4. Are there any other issues or amendments to the Proposed Rule that FSRA should consider as it proceeds to its intended second stage of work in this area?

Comment

Interested parties are invited to make written representations with respect to the Proposed Rule. Submissions received by March 18, 2021 will be considered.

Submissions should be submitted through the submission system on FSRA's website at: FSRA's first proposed insurance rule released for Public Consultation – the Unfair or Deceptive Acts or Practices (UDAP) Rule.

Under the *FSRA Act*, FSRA is required to make all written representations publicly available. As a result, all submissions received will be posted on FSRA's website in a timely manner: FSRA's first proposed insurance rule released for Public Consultation – the Unfair or Deceptive Acts or Practices (UDAP) Rule.

Appendix A – Proposed Rule
Appendix B – Key UDAP Changes
Appendix C – List of Stakeholders

Appendix A – Proposed Rule [2020-002]
Unfair or Deceptive Acts or Practices

1 Interpretation

1(1) In this Rule,

(i) "Act" means the Insurance Act, R.S.O. 1990, c. I.8, as amended,

(ii) "Affiliated insurer" means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,

(iii) "Claimant" means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,

(iv) "Contract of insurance" means:

(a) for a contract of life insurance, has the meaning ascribed to such term in s. 174 of the Act,

(b) for a contract of group insurance, has the meaning ascribed to such term in s. 293 of the Act, and

(c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to "contract" in s. 1 of the Act,

(v) "Credit information" means information about a person's creditworthiness, including the person's credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from his or her occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,

(vi) "Declination grounds" means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

(vii) Prohibited factor" means:

(a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,

(b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990, insurers are prohibited from using as elements of a risk classification system, or

(c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

(viii) "Reasonable person" means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

(ix) "Schedule" means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are still active claims,

(x) "Substantially deficient" means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the purpose intended from the perspective of a reasonable person who is the intended recipient of the goods or services,

(xi) "Unfair discrimination" means discrimination which contravenes the provisions of the Ontario *Human Rights Code* or any other discrimination which FSRA, in its published guidance, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and

(xii) "Unreasonable consideration" means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of the goods or services, would not charge or seek, or would not expect a reasonable person, in the position of the recipient of the goods or services, to accept.

1(2) For greater clarity:

(i) in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate with that insurers size and type of business, and

(ii) Sections 22, 25(2), 25(2.1), 25(2.2) and 25(3)(a)-(b) of the Ontario *Human Rights Code* are applicable in assessing whether discrimination amounts to unfair discrimination under this Rule.

1(3) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or legal representative of that person shall be deemed to have

committed an unfair or deceptive act or practice if that director, officer, employee or legal representative,

(i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person; or

(ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.

1(4) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

2(1) For the purposes of the definition of "unfair or deceptive act or practice" in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.

2(2) For the purpose of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule:

(i) if the action or conduct, including inaction or omission is committed by:

(a) an agent, broker, adjuster, insurer or any director, officer, employee or legal representative of an agent, broker, adjuster or insurer, or

(b) any person, or any director, officer, employee or legal representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances the person knew about or, with reasonable diligence under the circumstances, ought to, have known.

(ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and

circumstances the person knew about or ought to, with reasonable diligence under the circumstances, have known.

2(3) Section 2(1) does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the Law Society Act which results in the outcomes listed in in sections 6(1), 6(2) and 6(3).

3 Non-Compliance with Law

3(1) The commission of any act prohibited under the Act, or under any regulation or rule made under the Act.

3(2) Any provision of the Act, or a regulation or rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.

3(3) Non-compliance with the requirements under the Act or a regulation or rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

4(1) Unfair Discrimination:

(i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or

(ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

5(1) Resolution or delay in the adjustment or settlement of any claim which would be considered unreasonable or unfair, such as, but not limited to:

(i) treating a claimant in an arbitrary, capricious or malicious manner,

(ii) not acting in good faith,

(iii) seeking a result which is inequitable or inconsistent with the rights of the claimant under the contract,

(iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,

(v) communicating in an untimely manner or misrepresenting the rights of the claimant or obligations of the insurer under the contract, or

(vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

5(2) With respect to automobile insurance:

(i) non-compliance with the Schedule, including but not limited to:

(a) payment for goods or services not being made, or

(b) the cost of an assessment not being paid,

without reasonable cause, within the time period prescribed in the Schedule.

(ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if the insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or

(iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.

6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.

6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.

6(4) With respect to auto insurance, a claimant signing or being asked to sign a claims form or other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a Guideline applicable for the purposes of the Schedule before the goods or services related to such a form or document have been provided.

6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant

which a reasonable person, in the position of the intended recipient, would consider false, misleading or deceptive.

7 Incentives

7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly,

(i) as an incentive or inducement for a person to take an action or make a decision that would encourage that person to buy a product which would not, considering the options generally available in the marketplace, be recommended as a suitable insurance product by a reasonable person licensed to sell such an insurance product,

(ii) which is otherwise prohibited under the Act, Regulations or Rules,

(iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,

(iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including, but not limited to, tied selling or predatory pricing, or

(v) if related to automobile insurance, is based, in whole or in part, on, or is calculated by reference to, prohibited factors.

7(2) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.

7(3) For the purpose of this section clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.

7(4) For the purpose of this section, a gift or thing of value will not be considered an incentive or inducement if the gift or thing of value is a good or service related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of the recipient would consider to be inappropriate, inaccurate or misleading, respecting:

(i) the terms, benefits or advantages of any contract of insurance issued or to be issued,

(ii) an insurance claim, the claims process or whether a policy provides coverage, or

(iii) any comparison of contracts of insurance.

9 Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals

9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to:

(i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining insurance,

(ii) using credit information or a prohibited factor,

(iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,

(iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk to be assumed by the insurer,

(v) misclassifying a person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use,

(vi) making the issuance or variation of a policy of automobile insurance conditional on the insured having or purchasing another insurance policy,

(vii) engaging in unfair discrimination,

(viii) treating a consumer in an arbitrary, capricious or malicious manner,

(ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias,

(x) communicating in an untimely manner or misrepresenting the rights of the claimant or obligations of the insurer under the contract, or

(xi) any other practice or conduct which the Authority has identified in published guidance as unfair treatment for the purpose of this section.

9(2) credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than:

(i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under subsection 227 (1) of the Act, or

(ii) in accordance with the consent obtained in compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) of the person to whom the information relates.

10 Affiliated Insurers

10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to the insured or potential insured, having regard to all of the circumstances, including but not limited to:

(i) each insurer’s declination grounds,

(ii) each insurer’s rates and risk classification systems,

(iii) each insurer’s method of distribution; or

(iv) whether the insurers only recently became affiliated.

Appendix B – Key UDAP Changes

<table>
<tr><th>Existing #</th><th>Existing Provision (Reg 7/00)</th><th>Proposed Rule</th></tr>
<tr><td colspan="3">Heading: Interpretation
Summary of Key Changes
Changed references from “regulation” to “rule.”
Added new definitions of “claimant,” “contract of insurance” and “schedule” to reduce redundancy, increase readability and otherwise support new drafting.
Added new definitions of “reasonable person,” “unfair discrimination,” “substantially deficient,” “unreasonable consideration,” “inaccurate” and “misleading” to support outcomes-based drafting and provide a legal test for terms that may be subjective or prone to dispute.
Added a section which expands liability for directors, officers, employees involved with a corporation engaged in a UDAP.</td></tr>
<tr><td>0.1(1)</td><td>In this Regulation</td><td rowspan="4">1 Interpretation

1(1) In this Rule,

(i) “Act” means the Insurance Act, R.S.O. 1990, c. I.8, as amended,

(ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,

(iii) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,

(iv) “Contract of insurance” means:

(a) for a contract of life insurance, has the meaning ascribed to such term in s. 174 of the Act,</td></tr>
<tr><td></td><td>“affiliated insurer” means an insurer that is considered to be affiliated with another insurer under subsection 414 (3) of the Act;</td></tr>
<tr><td></td><td>“credit information” means information about a person’s creditworthiness, including the person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from his or her occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets;</td></tr>
<tr><td></td><td>“declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile</td></tr>
</table>

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	insurance or to refuse to provide or continue a coverage or endorsement;	(b) for a contract of group insurance, has the meaning ascribed to such term in s. 293 of the Act, and (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to "contract" in s. 1 of the Act, (v) "Credit information" means information about a person's creditworthiness, including the person's credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from his or her occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets, (vi) "Declination grounds" means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement, (vii) Prohibited factor" means: (a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section, (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990, insurers are prohibited from using as elements of a risk classification system, or (c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b), (viii) "Reasonable person" means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the
	"prohibited factor" means, (a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section, (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990, insurers are prohibited from using as elements of a risk classification system, and (c) any other factor that is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b)	
	"prohibited manner" means a manner that is subjective or arbitrary or that bears little or no relationship to the risk to be borne by the insurer.	
0.1(2)	References in this Regulation to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
		person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances, (ix) "Schedule" means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are still active claims, (x) "Substantially deficient" means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the purpose intended from the perspective of a reasonable person who is the intended recipient of the goods or services, (xi) "Unfair discrimination" means discrimination which contravenes the provisions of the Ontario *Human Rights Code* or any other discrimination which FSRA, in its published guidance, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and (xii) "Unreasonable consideration" means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of the goods or services, would not charge or seek, or would not expect a reasonable person, in the position of the recipient of the goods or services, to accept. 1(2) For greater clarity: (i) in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate with that insurers size and type of business, and

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
		(ii) Sections 22, 25(2), 25(2.1), 25(2.2) and 25(3)(a)-(b) of the Ontario *Human Rights Code* are applicable in assessing whether discrimination amounts to unfair discrimination under this Rule. 1(3) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or legal representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or legal representative, (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person; or (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice. 1(4) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.
Heading: Unfair or Deceptive Practices *Summary of Key Changes* • Defining UDAP in terms of outcomes that can reasonably be expected to follow from actions or inactions by specified entities or persons. This change is intended to support transition to principles-based regulation. The change is intended to apply a different standard of "reasonable expectation" depending on the class of entity or person at issue, and the definition of "reasonably expected" is provided in order to provide a clear legal test for actions resulting in outcomes.		

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
1	For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, each of the following actions is prescribed as an unfair or deceptive act or practice:	**2 Unfair or Deceptive Act or Practice** 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice. 2(2) For the purpose of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule: (i) if the action or conduct, including inaction or omission is committed by: (a) an agent, broker, adjuster, insurer or any director, officer, employee or legal representative of an agent, broker, adjuster or insurer, or (b) any person, or any director, officer, employee or legal representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services, then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person’s business or profession with full knowledge of all and any facts and circumstances the person knew about or, with reasonable diligence under the circumstances, ought to, have known. (ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person’s position with knowledge of all and any relevant facts and circumstances the person knew about or ought to, with reasonable diligence under the circumstances, have known.
3(4)	This section does not apply to a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the Law Society Act. However, paragraph 6 of subsection (2) applies at all times with respect to lawyers and paralegals.	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
		2(3) Section 2(1) does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the Law Society Act which results in the outcomes listed in in sections 6(1), 6(2) and 6(3).
Heading: Non-Compliance with Law *Summary of Key Changes* • Definition of UDAP as it relates to non-compliance with the law is extended to FSRA rules and broadened so that it includes violation of the act, rules or regulations as such, including failure to comply or inaction. • Changes align with FTC Guidance regarding conduct of business – compliance with laws. • Streamlined by removing specific reference to variation from forms approved under the *Insurance Act* given existing requirement for compliance with the law and the existing framework for review and approval of forms under the *Insurance Act*		
1.1	The commission of any act prohibited under the Act or the regulations.	**3 Non-Compliance with Law** 3(1) The commission of any act prohibited under the Act, or under any regulation or rule made under the Act. 3(2) Any provision of the Act, or a regulation or rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person. 3(3) Non-compliance with the requirements under the Act or a regulation or rule made under the Act, by the subject of an examination or purported examination.
1. 13	Any examination or purported examination under oath that does not comply with the requirements under the Act or the regulations.	
1. 12	The use of a document in place of a form approved for use by the Chief Executive Officer, unless none of the	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	deviations in the document from the approved form affects the substance or is calculated to mislead.	
Heading: Unfair Discrimination *Summary of Key Changes* • Existing provisions in the Regulation have been consolidated into one section with language that remains substantively the same. • In redrafting FSRA has adopted the Supreme Court Canada's test of "reasonable and bona fide grounds" consistent with its guiding principle of defining key terms that are subjective or subject to dispute. This standard is specified in the definitions section of the Proposed Rule.		
1.2	Any unfair discrimination between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts.	**4 Unfair Discrimination** 4(1) Unfair Discrimination: (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.
1.3	Any unfair discrimination in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.	
Heading: Unfair Claims Practices *Summary of Key Changes* • Provisions concerning unfair claims practices from the Regulation have been adapted to outcomes-focused drafting. • Provisions concerning claims practices in general and those associated with Statutory Accident Benefit Schedules in particular have been consolidated into one section to reduce regulatory burden while also making the rule easier to navigate. • A new provision has been added concerning unfair resolution or delay in the processing, negotiation or payment of claim in general (i.e., not limited to insurers and licensees).		

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
• Criteria has been provided for the purposes of defining how a reasonable person would judge the adjustment or settlement of claims as unreasonable or unfair. • The existing broad claims adjustment provision in the Regulation has been modified to reflect CCIR FTC indicators of unfair treatment related to: o handling claims in a manner consistent with written procedures; o failing to have written procedures and internal dispute resolution mechanisms; and o claimants being unable to obtain timely information about their claims.		
1.9	Any conduct resulting in unreasonable delay in, or resistance to, the fair adjustment and settlement of claims.	**5 Unfair Claims Practices** 5(1) Resolution or delay in the adjustment or settlement of any claim which would be considered unreasonable or unfair, such as, but not limited to: (i) treating a claimant in an arbitrary, capricious or malicious manner, (ii) not acting in good faith, (iii) seeking a result which is inequitable or inconsistent with the rights of the claimant under the contract, (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services, (v) communicating in an untimely manner or misrepresenting the rights of the claimant or obligations of the insurer under the contract, or (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim. 5(2) With respect to automobile insurance:
6.	For the purposes of the definition of “unfair or deceptive acts or practices” in section 438 of the Act, each of the following actions is prescribed as an unfair or deceptive act or practice in relation to a claim for statutory accident benefits under the *Statutory Accident Benefits Schedule — Effective September 1, 2010, made under the Act (in this section referred to as the Schedule)*:	
6. 1	The failure or refusal of an insurer without reasonable cause to pay a claim for goods or services or for the cost of an assessment within the time prescribed for payment in the *Schedule*.	
6. 2	The making of a statement by or on behalf of an insurer for the purposes of an adjustment or settlement of a claim if the insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the *Schedule*.	
3.(2)	The failure to disclose a conflict of interest to a person who claims statutory accident benefits or to an insurer,	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
6	as required under the *Statutory Accident Benefits Schedule*	(i) non-compliance with the Schedule, including but not limited to: (a) payment for goods or services not being made, or (b) the cost of an assessment not being paid, without reasonable cause, within the time period prescribed in the Schedule. (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if the insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.
Heading: **Fraudulent or Abusive Conduct related to Goods or Services Provided a Claimant** *Summary of Key Changes* • Provisions concerning unfair claims practices from the Regulation have been adapted to outcomes-focused drafting while preserving the original intent of the Regulation. As s. 3 of the Regulation concerns unfair claims practices by providers of goods or services, including those with whom FSRA does not have a direct regulatory relationship, the original more prescriptive drafting remains appropriate.		
3(2) 1	Charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance, if the goods or services are not provided.	**6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant** 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner. 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
3(2) 2	Soliciting or demanding a referral fee, directly or indirectly, by or from a person who provides goods or	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance.	6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant. 6(4) With respect to auto insurance, a claimant signing or being asked to sign a claims form or other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a Guideline applicable for the purposes of the Schedule before the goods or services related to such a form or document have been provided. 6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person, in the position of the intended recipient, would consider false, misleading or deceptive.
3(2) 3	Acceptance of a referral fee, directly or indirectly, by or from a person who provides goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance.	
3(2) 4	The payment of a referral fee, directly or indirectly, to or by a person who provides goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance.	
3(2) 5	Charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance, where the amount charged unreasonably exceeds the amount charged to other persons for similar goods or services.	
3(2) 7	Requiring, requesting or permitting a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance to sign, before it has been completed in full, a claims form or other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a Guideline applicable for the purposes of the *Statutory Accident Benefits Schedule — Effective September 1, 2010*.	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
3(2) 8	The communication of any false, misleading or deceptive information by a person who provides or offers to provide goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance regarding any of the following: (i) The business and billing practices of the person who provides or offers to provide the goods or services. (ii) The licence status of the person who provides or offers to provide the goods or services, or any other information related to a licence issued to the person under subsection 288.5 (3) of the Act.	
3(3)	For the purposes of paragraphs 1 and 5 of subsection (2), a person who provides good or services includes, (a) A person who provides towing services or owns a tow truck; (b) A person engaged in the provision of vehicle repair services; (c) a person engaged in the provision of automobile storage services. O. Reg. 547/05. S. 1(2).	
3(4)	This section does not apply to a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act.* However, paragraph 6 of subsection (2) applies at all times with respect to lawyers and paralegals. O. Reg 15/13, s. 1(2).	
Heading: Incentives		

<table>
<tr><th>Existing #</th><th>Existing Provision (Reg 7/00)</th><th>Proposed Rule</th></tr>
<tr><td colspan="3">Summary of Key Changes
Removes the existing prohibition against incentives, which have acted as a barrier to new and innovative consumer offerings, and replaces it with a permissive provision that makes it a UDAP to offer incentive (e.g. a rebate or an inducement) in those cases where the incentive:
leads to a decision that is not in the consumer’s interests;
is otherwise prohibited by law;
is not transparently communicated; and
is discriminatory, anti-competitive or relies on prohibited factors.
The change is not intended to address advisor conduct related to offering inducements in the Life & Health sector. The Agents Regulation under the Insurance Act (O. Reg 347/04) includes a prohibition for licensed life insurance agents on using inducements for securing business.
The provisions on rebating are no longer limited by the type of actor offering incentives or to behavior intended to make someone sign a contract of insurance (i.e., it includes incenting someone to accept a settlement).
Changes are also intended to align with principles established through Government changes to rebating provisions in the Regulation made in April 2020 and associated FSRA-issued guidance (Auto Insurance – Consumer Relief during a Declared Emergency under the Emergency Management and Civil Protection Act) aimed at facilitating rebating for the purpose of providing financial relief to auto insurance policyholders during the COVID-19 pandemic.
A “reasonable person” test has been added to provide clear legal test for behavior defined as UDAP.</td></tr>
<tr><td>1
7</td><td>Any payment, allowance or gift or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure.</td><td rowspan="2">7 Incentives

7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly,

(i) as an incentive or inducement for a person to take an action or make a decision that would encourage that person to buy a product which would not, considering the options generally available in the marketplace, be recommended as a suitable insurance product by a reasonable person licensed to sell such an insurance product,

(ii) which is otherwise prohibited under the Act, Regulations or Rules,</td></tr>
<tr><td>2(1)
2</td><td>When such a person pays, allows or gives, directly or indirectly, a rebate of all or part of the premium stipulated by a policy to a person insured or applying for insurance in respect of life, person or property in Ontario, or offers or agrees to do so.</td></tr>
</table>

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
2(1) 3	When such a person pays, allows or gives, directly or indirectly, any consideration or thing of value that is intended to be in the nature of a rebate of the premium, stipulated by a policy to a person insured or applying for insurance in respect of life, person or property in Ontario, or offers or agrees to do so.	(iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently, (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including, but not limited to, tied selling or predatory pricing, or (v) if related to automobile insurance, is based, in whole or in part, on, or is calculated by reference to, prohibited factors. 7(2) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance. 7(3) For the purpose of this section clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated. 7(4) For the purpose of this section, a gift or thing of value will not be considered an incentive or inducement if the gift or thing of value is a good or service related to reducing the risk insured by the contract of insurance to which it is related.
2. (3)	Despite paragraphs 1 to 3 of subsection (1), a rebate of all or part of an automobile insurance premium is not prescribed as an unfair or deceptive act or practice if, (a) an emergency is declared under the *Emergency Management and Civil Protection Act*; (b) the rebate is issued in response to the declared emergency; and (c) the insurer files an undertaking with the Chief Executive Officer, in the form approved by the Chief Executive Officer. O. Reg. 150/20, s. 1.	
2.(4)	Subsection (3) applies from the day an emergency is declared under the *Emergency Management and Civil Protection Act* to the day that is one year after the day on which the declared emergency is terminated under that Act. O. Reg. 150/20, s. 1.	
2(1) 1	When such a person makes or attempts to make, directly or indirectly, an agreement with a person insured or applying for insurance in respect of life, person or property in Ontario as to the premium to be paid for a policy that is different from the premium set out in the policy.	
Heading: Misrepresentation		

<table>
<tr><th>Existing #</th><th>Existing Provision (Reg 7/00)</th><th>Proposed Rule</th></tr>
<tr><td colspan="3">Summary of Key Changes
Provisions concerning disclosures have been redrafted in an outcomes-focused manner aimed at furthering alignment with certain CCIR FTC standards (including advice, product promotion and disclosure to policyholder / customer).
Changes make it a UDAP to provide information, promotional materials, or advice in any form that is inaccurate or misleading.
A “reasonable person” test has been added to provide clear legal test for behavior defined as UDAP.</td></tr>
<tr><td>1.
4</td><td>Any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, terms, benefits or advantages of any policy or contract of insurance issued or to be issued.</td><td rowspan="4">8 Misrepresentation

8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of the recipient would consider to be inappropriate, inaccurate or misleading, respecting:

(i) the terms, benefits or advantages of any contract of insurance issued or to be issued,

(ii) an insurance claim, the claims process or whether a policy provides coverage, or

(iii) any comparison of contracts of insurance.</td></tr>
<tr><td>1.
5</td><td>Any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued.</td></tr>
<tr><td>1.
6</td><td>Any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing or intending to induce an insured to lapse, forfeit or surrender a policy or contract.</td></tr>
<tr><td>1.
8</td><td>Any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance upon which a sales commission is payable to the person.</td></tr>
<tr><td colspan="3">Heading: Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals
Summary of Key Changes
Changes are intended to consolidate multiple existing auto insurance specific provisions into a single provision on unfair treatment.
Existing provisions were redrafted in an outcomes focused manner. Instances of unfair treatment are provided. The new language is intended to streamline provisions on auto insurance conduct, incorporate feedback received as part of FSRA take all comers consultation, and maintain key consumer protections.</td></tr>
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Existing #	Existing Provision (Reg 7/00)	Proposed Rule
2(1) 4	When such a person uses credit information or a prohibited factor, i. in processing or otherwise responding to requests for quotations for automobile insurance, ii. in processing or otherwise responding to requests for applications to apply for automobile insurance, iii. in processing or otherwise responding to completed and signed applications for automobile insurance, iv. in processing offers to renew existing contracts of automobile insurance, or v. In connection with any other matter relating to quotations for automobile insurance, applications for automobile insurance or renewals of existing contracts of automobile insurance. vi. in connection with any other matter relating to quotations for automobile insurance, applications for automobile insurance or renewals of existing contracts of automobile in	**9 Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals** 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to: (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining insurance, (ii) using credit information or a prohibited factor, (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing, (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk to be assumed by the insurer, (v) misclassifying a person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, (vi) making the issuance or variation of a policy of automobile insurance conditional on the insured having or purchasing another insurance policy, (vii) engaging in unfair discrimination, (viii) treating a consumer in an arbitrary, capricious or malicious manner,
2(1) 5	When such a person applies any information or other factor in a prohibited manner on receiving a request for a quotation for automobile insurance, a request for an application to apply for automobile insurance, an application for automobile insurance or in connection	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	with an offer to renew an existing contract of automobile insurance.	(ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, (x) communicating in an untimely manner or misrepresenting the rights of the claimant or obligations of the insurer under the contract, or (xi) any other practice or conduct which the Authority has identified in published guidance as unfair treatment for the purpose of this section. 9(2) credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than: (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under subsection 227 (1) of the Act, or (ii) in accordance with the consent obtained in compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) of the person to whom the information relates.
2(1) 6	When such a person requires someone to consent or to obtain the consent of another person to the collection, use or disclosure of any credit information as a condition for providing a quotation for automobile insurance or an offer to renew an existing contract of automobile insurance.	
1. 10	Making the issuance or variation of a policy of automobile insurance conditional on the insured having or purchasing another insurance policy.	
1. 11	When rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use.	
2(1)7	When such a person collects, uses or discloses any credit information about someone in any manner in connection with automobile insurance, other than, i. for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under subsection 227 (1) of the Act, or ii. in accordance with the consent obtained in compliance with the Personal Information Protection and Electronic Documents Act (Canada) of the person to whom the information relates.	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
Heading: Affiliated Insurers *Summary of Key Changes* • Outcomes-focused redrafting and clarification of affiliated insurers requirement by adding clearly stated circumstances to be considered when determining compliance. This change is intended to provide greater flexibility to regulated entities and discretion to the CEO of FSRA while maintaining the consumer protection intent of the current Regulation. • A "reasonable person" test has been added to provide clear legal test for behavior defined as UDAP. • Clarifying the applicability of the affiliated insurer provision as related to agents, insurers (including their officers, employees or agents).		
2(1)8 and 2(2)	8. When, in connection with a request for a quotation for automobile insurance or an application for automobile insurance made to an affiliated insurer, or an offer by an affiliated insurer to renew an existing contract of automobile insurance, such a person fails to provide the lowest rate available from the insurer or any of the insurers with which it is affiliated in accordance with, i. their declination grounds, and ii. their rates and risk classification systems as approved under the Act or the Automobile Insurance Rate Stabilization Act, 2003. O. Reg. 7/00, s. 2; O. Reg. 37/10, s. 2 (1); O. Reg. 128/19, s. 2. (2) The reference to the "lowest rate available" in paragraph 8 of subsection (1) is a reference to the lowest rate available having regard to all of the circumstances, including the means of distribution through which the	**10 Affiliated Insurers** 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers. 10(2) In this section "lowest rate available" is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to the insured or potential insured, having regard to all of the circumstances, including but not limited to: (i) each insurer's declination grounds, (ii) each insurer's rates and risk classification systems, (iii) each insurer's method of distribution; or (iv) whether the insurers only recently became affiliated.

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	request, application or offer is made. O. Reg. 37/10, s. 2 (2).	
END OF NEW RULE.		
Spent Provisions • The Proposed Rule does not carry over provisions in s. 5 of Reg 7/00 – these provisions deal with conduct under the Reg 403/96 (Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996) which was revoked on July 3, 2020.		
5.	For the purposes of the definition of "unfair or deceptive acts or practices" in section 438 of the Act, each of the following actions, if done on or after March 1, 2006, is prescribed as an unfair or deceptive act or practice in relation to a claim for statutory accident benefits under the *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996 (in this section referred to as the Schedule):*	N/A
5. 1	The failure or refusal of an insurer without reasonable cause, following internal mechanisms or informing insureds about processes for settling claims, to pay a claim for goods or services or for the cost of an assessment within the time prescribed for payment in the *Schedule*.	
5. 2	The determination by an insurer that a person is not entitled to a statutory accident benefit or that a person does not have a catastrophic impairment if,	

Existing #	Existing Provision (Reg 7/00)	Proposed Rule
	i. the insurer makes the determination before obtaining a report of an examination in respect of the person under section 42 of the *Schedule*, and The *Schedule* does not authorize the insurer to make the determination without having obtained the report.	
5.3	The making of a statement by or on behalf of an insurer for the purposes of an adjustment or settlement of a claim if the insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 42 of the *Schedule*.	
5.4	A requirement by an insurer that an insured person attend for an examination under section 42 of the *Schedule* conducted by a person whom the insurer knows or ought to know is not reasonably qualified by training or experience to conduct the examination.	
5.5	A requirement by an insurer that an insured person attend for an examination under section 42 of the *Schedule* that the insurer knows or ought to know is not reasonably required for the purposes authorized under the *Schedule*.	
5.6	The failure of an insurer to obtain the written and signed consent of an insured person in the approved form before a pre-claim examination under section 32.1 of the *Schedule* is conducted in respect of the insured person. O. Reg. 547/05, s. 2	

Appendix C – List of Stakeholders Consulted

FSRA Stakeholder Advisory Committees (SACs)

- P&C Insurance SAC
- L&H Insurance SAC
- Health Service Provider SAC

Regulated Entities

- Aviva Canada
- Desjardins General Insurance Group
- Intact Financial Corporation
- Manulife
- Onlia
- Wawanesa Insurance

Other Organizations

- FSRA Consumer Advisory Panel
- Health Profession Regulators of Ontario
- Law Society of Ontario
- Insurance Bureau of Canada