

Proposed Rule: Unfair or Deceptive Acts or Practices (UDAP) – Discussion with Group 3

FSRA

Financial Services Regulatory
Authority of Ontario

Date: March 24, 2021



Ontario



Agenda

- Welcome – Opening Remarks (10 minutes)
 - Introductions
 - Background on UDAP / Rule
 - Purpose of Discussion
- Discussion questions (45 minutes)
- Next Steps (5 minutes)

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Introductions

- FSRA
 - Policy – Auto/P&C
 - Policy – Market Conduct
 - Legal and Enforcement
 - Market Conduct – Insurance Conduct
- Ministry of Finance
- Canadian Association of Financial Institutions in Insurance (CAFII)
- Canadian Life and Health Insurance Association (CLHIA)



Background on UDAP

- The Proposed Rule is intended to promote safety, fairness and choice for insurance customers. It 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.
- Section 439 of Part XVIII of the *Insurance Act* prohibits Unfair or Deceptive Acts or Practices (UDAP), which are prescribed in Ontario Regulation 7/00 (UDAP regulation) under the Act.
- The UDAP regulation prescribes specific actions that are considered as unfair or deceptive, and may apply to everyone engaged in the business of insurance (only lawyers are exempt from certain sections in the regulation).
- FSRA is adopting a staged approach to transforming UDAP in Ontario. The first stage is intended to:
 - enable the definition of UDAP by a FSRA rule;
 - reduce identified barriers to innovation with a focus on incentives (e.g., rebates and inducements); and
 - redraft in an outcomes-focused manner in support of transitioning towards principles-based regulation.
- The draft rule is intended to preserve the substantive intent of the regulation where key consumer harms are at issue.
- 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.



Purpose of Discussion

- The statutory 90-day consultation period closed on March 18, 2021.
- FSRA received 24 comments, 10 questions and 26 submissions from stakeholders.
- FSRA received a number of comments from insurance advisors in the group benefits field, particularly with respect to the proposed Section 7 on Incentives / rebating.
- The focus of today's discussion is on the concerns FSRA has heard around Section 7 and how it would apply to the life and health insurance sector, specifically to group insurance / employee benefits plans.



Discussion Questions – Group 3 (1/2)

- FSRA has heard concerns from a number of advisors in the group benefits field that:
 - Benefit plans might be initially underfunded, when the rebate is taken into account, leading to increase in premiums at renewal –
 - as a result, employers might experience significant and disproportionate costs on renewal
 - the costs and inconvenience of finding a new provider might reduce the chances employers would switch to new, more appropriate coverage
 - this experience might, in some cases, lead employers to withdraw from providing benefits
 - Insurers might use rebates to obtain business, driving others out of the market; insurers might then increase pricing, leading to issues with availability of insurance.



Discussion Questions – Group 3 (2/2)

- FSRA has heard concerns that:
 - There is the possibility of rebates not being passed on to the end consumer, such as in cases where the insurer pays a rebate to a plan sponsor even though the individual member is responsible for paying premiums.
 - There could be tax implications –
 - are the rebates taxable income, and will insurers report them as such
 - might rebates taint the tax classification of disability benefits where an employee otherwise pays for all of the premiums; might the resulting benefits be at risk of being classified as taxable income
- How do your member companies intend to implement Section 7 on Incentives?
- Other concerns?



Next Steps

- Review feedback from stakeholders, and hold follow-up consultation meetings for clarification where necessary.
- Integrate stakeholder feedback into proposed UDAP rule, as appropriate.
 - If changes are material, a second consultation period would be held.
- If no material changes are needed, FSRA would submit the proposed UDAP rule to the Minister of Finance for approval after the consultation closes.
- The FSRA Act provides a 60-day timeline for the Minister to review a rule submitted for approval. The coming into force of the rule could take longer if FSRA chooses to tie the coming into force of the rule to a future date or the coming into force of supporting legislative changes.

Questions?