

Chapter 4

Section 4.13

Ministry of Health and Long-Term Care

Recovery of Health Costs Resulting from Accidents

Follow-up to VFM Section 3.13, *2005 Annual Report*

Background

The Ministry of Health and Long-Term Care has the legal authority to recover the medical and hospital costs incurred in treating people injured in non-automobile accidents (for example, slips and falls, medical malpractice, and product and general liability) caused by someone else. A subrogation unit of 27 staff (21 in 2004/05) pursues cost recoveries. In the 2006/07 fiscal year, the unit spent about \$1.8 million (\$1.9 million in 2004/05) to pursue an average of 13,000 active case files (about the same average number as in 2004/05) and recovered about \$13.7 million (\$12 million in 2004/05) net of legal costs.

Until 1990, the Ministry's right to recover such costs also extended to injuries arising from automobile accidents where a driver insured in Ontario was found at fault. As a result of changes in the *Insurance Act*, that right was eliminated and, between 1990 and 1996, no amounts were recovered. In 1996, the *Insurance Act* and related regulations were amended to require automobile insurers to pay an annual "assessment of health system costs" (assessment) in lieu of having the province pursue individual claims against at-fault drivers. The Financial Services Commission of Ontario had collected about \$80 million annually since 1996

from automobile insurance companies through the assessment under the *Insurance Act*, which is administered by the Ministry of Finance.

In our *2005 Annual Report*, we reported that the ministries of Health and Long-Term Care and Finance could potentially recover twice as much, perhaps in excess of \$100 million a year more. However, to accomplish this, they required better information on recoverable health costs actually being incurred by the province. Our particular concerns were:

- The Ministry of Finance advised us that, in view of the instability of auto insurance rates and the potential negative effect on premiums, it had not changed the \$80 million annual assessment charged to the automobile insurance industry since its introduction in 1996. As a result, Ontario's levy per registered vehicle was among the lowest of the provinces, despite the fact that Ontario's health costs had risen 70% since 1996. Our review of available information led us to conclude that the actual recoverable health costs incurred were considerably higher than what was being recovered from the annual assessment and that Ontario was recovering proportionately less than most other provinces.
- The Ministry of Health and Long-Term Care did not have information systems or processes

to collect and analyze health-care costs and insurance industry data to quantify the extent and costs of non-automobile accident cases not reported.

- Much more could be done to identify unreported cases that may justify cost recovery. Ministry staff acknowledged that many cases in which they may have an interest go unreported. Hospitals alone incurred costs of over \$500 million in 2004 to treat more than 38,000 people injured in slips and falls, but the Ministry was recovering costs from only about 2,800 such cases annually. The potential for increased recoveries is thus substantial, even though there has been no study of the proportion of these accidents that is attributable to third-party negligence.
- In calculating recoveries of hospital-care costs, the Ministry did not use the uninsured hospital rates charged to non-residents receiving treatment here, as required by the legislation. Instead, it used the Interprovincial Hospital Billing rates, normally charged to other Canadians injured in Ontario. These are, on average, 77% lower.
- The Ministry also needed to review the feasibility and cost-effectiveness of alternative recovery methods, such as bulk subrogation agreements with liability insurers similar to the automobile insurance assessment, as a way of increasing recoveries of health costs arising from non-automobile accidents.

We made a number of recommendations for improvement and received commitments from both the Ministry of Health and Long-Term Care and the Ministry of Finance that they would take action to address our concerns.

Current Status of Recommendations

The Ministry of Finance has made significant progress in addressing our key recommendation relating to the inadequacy of amounts being recovered from the automobile insurance industry, in that it has increased its annual recovery by \$62 million to \$142 million. According to information received from the Ministry of Health and Long-Term Care, progress has also been made in addressing the other recommendations contained in our *2005 Annual Report*. We acknowledge that additional time will be needed by the Ministry to complete stakeholder consultations and legislative changes and to develop a methodology for health system cost data collection and analysis. The current status of action taken on our recommendations is as follows.

HEALTH SYSTEM COSTS ASSESSMENT

Recommendation

To help ensure that the “assessment of health system costs” meets its original objective, the Ministry of Finance, in conjunction with the Ministry of Health and Long-Term Care, should review the adequacy of the current assessment amount in recovering the cost of provincially funded health-care services provided to individuals injured in automobile accidents.

Current Status

The Ministry of Health and Long-Term Care advised us at the time of our follow-up that it had provided the Ministry of Finance with information on available data on the cost of health services provided to individuals injured in automobile accidents. The ministries concluded that no one health database exists that would provide accurate data on which to establish an annual adjustment mechanism.

The Ministry of Finance conducted an interim review of the assessment, concluding that the

amount of the original assessment was inadequate. In September 2006, regulations were amended to increase the annual assessment of automobile insurers by \$62 million to \$142 million, an increase of about 78%.

In February 2007, the two ministries established a joint work group to conduct further analysis of the initial data sources for health information provided by the Ministry of Health and Long-Term Care to ensure that future assessment amounts adequately cover the cost of health services provided to individuals injured in auto accidents.

At the time of our follow-up, the work group was meeting to discuss the viability of using the existing data sets in order to establish an annual adjustment mechanism. The ministries have indicated that it will take some time to develop the appropriate mechanism.

COST OF PROVIDING HEALTH-CARE SERVICE TO ACCIDENT VICTIMS

Recommendation

To help determine the recoverable amounts for the costs of health-care services provided to injured parties as a result of someone else's negligence, the Ministry should develop a cost-effective method for periodically collecting the necessary cost information to reliably estimate the cost to the health system.

Current Status

The Ministry of Health and Long-Term Care informed us that it had completed a review of its internal and corporate health databases as well as a review of systems used by other provinces with private automobile insurance delivery systems and similar assessment recovery processes for health costs. The review found no one data source that could identify all the health costs resulting from accidents. Each data source, such as costs incurred by hospitals and billings by physicians and home-care providers, required further careful analysis to estimate actual costs.

At the time of our follow-up, the Ministry was assessing the potential for its health-planning information system to assist in researching health-care costs for subrogation purposes. This information, combined with claims cost data that the Ministry had begun to collect from insurers, may provide a better basis for more reliably estimating accident-related health costs resulting from someone else's negligence.

IDENTIFICATION OF POTENTIAL SUBROGATION CASES

Recommendation

To help improve the effectiveness of the notification process for potential subrogation cases, the Ministry should:

- *assess the potential of using data contained in the health-care information systems to detect unreported subrogation claims;*
- *develop a process to efficiently collect and analyze insurance company claims data; and*
- *develop a stakeholder education strategy to reinforce awareness among lawyers and insurers of their legal obligations to report accidents resulting from the negligence of someone else.*

Current Status

The Ministry indicated that it had undertaken three pilot projects to determine the usefulness of its internal databases for detecting unreported cases in which it could potentially recover health-care costs through subrogation. The first two databases were found not to be cost-effective. A review of the third database was expected to be completed by June 2007.

At the time of our follow-up, the Ministry was in the process of capturing insurance company claims data for accidents occurring from January 1, 2005, and expected to have sufficient information to analyze insurance company claims once two years of claims data had been collected.

The Ministry also indicated that, since our audit, it had on two occasions conducted educational sessions with stakeholder groups outlining the subrogation process. It had also met with representatives from the Ontario Trial Lawyers Association to develop draft industry-sector protocols for reporting claims to the Ministry. The draft protocols were presented to the trial lawyers at their October 2006 conference. The protocols, together with a formal education strategy, were expected to be finalized by December 2007.

REVIEW OF SUBROGATION FILES

Recommendation

To help ensure that settlement decisions are appropriate and supported by adequate documentation, the Ministry should:

- *update its policies to require management approval for settlements over a specified amount; and*
- *periodically conduct an independent review of case files, and document the results, including actions taken to correct any deficiencies.*

Current Status

In 2005, the Ministry completed a review of the policies and operational procedures governing its recovery of funds in subrogation claim settlements. The review included consultation with other provincial subrogation (third-party liability) units on the procedures they employed. The updated policies and procedures were made available to all staff.

As a result of the operational review, a new organizational structure was developed and is expected to be fully operational by December 2007. The structure includes a formal delegation of authority for approving settlements for lesser amounts than the Ministry's claim.

The Subrogation Unit will also have a dedicated lawyer from the Ministry's Legal Services Branch who will review and provide advice on any contentious files, as well as all subrogation claims in excess of \$500,000.

CALCULATION OF HOSPITAL COSTS

Recommendation

To help ensure that health-care costs are recovered as required by legislation, the Ministry should discontinue its practice of using the Interprovincial Hospital Billing rates to calculate costs for subrogation claims.

Current Status

We were informed by the Ministry that it had completed extensive research of legal and legislative archives and had confirmed that the current legislation did not support the use of the Interprovincial Hospital Billing rates for subrogation purposes.

The Ministry indicated that it was considering a number of options, including changes to the legislation that would clearly define hospital costs for subrogation purposes as the Interprovincial Hospital Billing rates plus a capital component, similar to the costing practice followed by several other provinces. Since any increase in hospital costs would have a significant effect on the insurance industry, the Ministry was developing a stakeholder analysis and consultation plan.

Until the legislation is amended, the Ministry is continuing to use the Interprovincial Hospital Billing rates excluding the capital component that is added by many other provinces.

OTHER APPROACHES TO RECOVERING COSTS

Recommendation

To help ensure that the recovery of health-care costs is being made in an efficient and effective manner, the Ministry should formally analyze other methods of cost recovery and pursue initiatives already identified that may increase cost recoveries.

Current Status

The Ministry indicated that its Legal Services Branch had completed a first draft of proposed legislation amendments to enhance subrogation recovery by eliminating current legal barriers to claims and expanding subrogation rights to other

ministry programs such as the Assistive Devices Program.

The Ministry informed us that the Subrogation Operating System, implemented in April 2006, would contain insurance company claims data collected from third-party insurers. This would enable the Ministry to monitor trends and engage in other revenue-generating activities with private-sector casualty insurers.

MONITORING INSURERS' COMPLIANCE WITH PAYMENT RESPONSIBILITY

Recommendation

To help ensure that the Subrogation Unit is effectively fulfilling its responsibility to monitor insurers' compliance with their payment responsibilities, the Ministry should develop:

- *a formal communication plan to increase public and private awareness of the respective responsibilities of the province and insurers for certain health services associated with automobile accidents; and*
- *processes to collect information from the insurance industry and service providers to help identify those health costs that should have been borne by insurers.*

Current Status

The Ministry informed us that by December 2007, a project team of senior subrogation staff would develop a communication plan for educating stakeholders and a strategy for requesting health-provider groups, such as Community Care Access Centres (CCACs), to identify individuals receiving services as a result of a motor vehicle accident. The Ministry expects to hire four senior analysts by June 2007 whose responsibilities will include conducting information and educational sessions with all stakeholders.

As part of the Ministry's consultation with representatives from the Ontario Trial Lawyers Association on ways to improve processes for

handling claims, mentioned earlier, draft protocols for reporting accident claims to the Ministry were created and presented at the Association's October 2006 conference.

In addition, information and education sessions have been conducted with stakeholder groups such as the CCACs and the auto insurance industry reminding them of the payment responsibilities for certain health benefits resulting from motor vehicle accident injuries.

The Ministry also indicated that it was reviewing published revenue information for casualty insurers in order to monitor industry trends and identify other potential sources of recoverable costs.

MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

Recommendation

To help demonstrate that the Ministry is effectively fulfilling its goals for recovering health costs and for monitoring whether insurers' payment responsibilities are being adhered to, and to support the related decision-making process, the Ministry should develop measurable objectives and performance targets to track progress in achieving these goals.

Current Status

The Ministry advised us that with the implementation of the Subrogation Operating System in April 2006, it had begun to capture critical data, such as legal fees and costs required to support a management information system, and to track and compare recovery results over time. The Ministry was able to produce ad hoc reports using data collected for the 2006/07 fiscal year but had not yet established a routine reporting format.

The Ministry also informed us that measurable criteria, such as the percentage of cost recovered, had been developed and would be included in future performance development plans of Subrogation Unit staff. Further measures would be identified on an ongoing basis as more information is obtained.