

FSRA SUBMITS UNFAIR OR DECEPTIVE ACTS OR PRACTICES (UDAP) RULE FOR APPROVAL

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On December 21, 2021, the Financial Services Regulatory Authority of Ontario (“**FSRA**”) submitted its Unfair or Deceptive Acts or Practices (“**UDAP**”) [Rule](#) (“**Rule**”) to the Minister of Finance for final approval, after making revisions and receiving positive feedback during two public consultations conducted throughout 2021.

The Rule will replace the current UDAP Regulation^[1] and will prescribe prohibited UDAPs for purposes of Part XVIII of Ontario’s *Insurance Act* (the “**Act**”).^[2]

The intent of the Rule is to strengthen the supervision of insurance industry conduct and better protect consumers by clearly defining the outcomes that are unfair or otherwise harmful to consumers. The Rule, if adopted, will provide FSRA with discretion to determine whether a UDAP has occurred based on clear legal tests and a consideration of the circumstances.

The Rule will apply to acts or omissions of insurance agents, brokers, adjusters, and insurers, and to any person who provides goods or services that are fully or partially expected to be paid for through the proceeds of insurance including, for example, automotive repair, towing, or storage services.

While the current UDAP Regulation defines UDAPs by virtue of a list of prohibited conduct (which has been criticized as being too prescriptive), the proposed Rule provides for an outcomes-based approach. A UDAP is “conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out” under the following categories:

- non-compliance with law
 - for example, the commission of any act prohibited under the Act, or under any regulation or FSRA rule.
- unfair discrimination
 - for example, any unlawful or unfair discrimination in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.
- unfair claims practices
 - for example, any adjuster or insurer not providing a claimant with timely, clear, comprehensive and

accurate information about the status of a claim, the process for settling a claim or reasons for a decision made respecting a claim.

- fraudulent or abusive conduct related to goods and services provided to a claimant
 - for example, a referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant
- incentives
 - for example, the payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance in relation to auto insurance which is based, in whole or in part, on, or is calculated by reference to, prohibited factors
- misrepresentation
 - for example, a person being charged for any premium or fee other than as stipulated in a contract of insurance.
- prohibited conduct in automobile insurance quotations, applications or renewals
 - for example, credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than in accordance with the consent obtained in compliance with applicable privacy laws.
- affiliated insurers
 - for example, 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.

An outcome, event or circumstance will be reasonably expected if a reasonable person in the person's business or profession with full knowledge of the facts and circumstances that were known or ought to have been known, would have expected it. For an insurer, the reasonable person will be deemed to have a level of knowledge and expertise comparable to the insurer's nature, size, complexity, operations, and risk profile.

Of particular note, the Rule adds that any contravention of the Ontario Human Rights Code^[3] in the provision or administration of insurance, or goods or services related to insurance, is an unfair act, thereby expanding the scope of unfair acts currently prescribed by the UDAP Regulation.

The UDAP Rule also purports to remove barriers to innovative consumer incentives and encourage competition. Generally, innovative incentives may be offered if they do not involve unlawful acts, unfair discrimination, or anti-competitive practices, and adhere to additional requirements set out under the Rule including, for example, clear and transparent communication.

The Rule reflects FSRA's ongoing commitment to strengthening consumer protections and adapting to the

evolving market through a principles-based approach. If approved, the Rule will take effect once other consequential amendments are proclaimed into force. Stakeholders who will be subject to the new Rule should review it closely to ensure that their current practices would not constitute UDAPs and to update their processes and procedures, as needed.

[1] [ps2id id='1' target='']/*Unfair or Deceptive Acts or Practices*, O Reg 7/00.

[2] [ps2id id='2' target='']/*Insurance Act*, RSO 1990, c I8.

[3] [ps2id id='3' target='']/*Human Rights Code*, RSO 1990, c H 19.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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