

# Consultation Paper

## Insurance 2021

Follow-up Consultation

Diagnostic and Treatment Protocols  
for Automobile Accident Victims

Care for Common Traffic Injuries

Insurance Division

1 April 2021

FINANCIAL AND  
CONSUMER SERVICES  
COMMISSION



COMMISSION DES SERVICES  
FINANCIERS ET DES SERVICES  
AUX CONSOMMATEURS

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# Introduction

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Established in 2013, the Financial and Consumer Services Commission (the Commission) is responsible for the administration and enforcement of provincial legislation that regulates insurance, securities, pensions, credit unions, trust and loan companies, co-operatives and a wide range of consumer legislation. Our mission is to protect consumers and enhance public confidence in our financial and consumer marketplaces through the provision of regulatory and educational services.

On the 18<sup>th</sup> of February 2020, the Commission released a consultation paper on a proposal to adopt diagnostic and treatment protocols for automobile accident victims. At the end of the comment period (extended to 18 May 2020 due to the COVID-19 pandemic), the Commission had received 12 responses from the following businesses and organizations:

- Fidelis Law
- Max Moncton Physiotherapy PC Inc.
- The Association of New Brunswick Massage Therapists
- The Canadian Bar Association – NB Insurance Law Section
- The College of Massage Therapists of NB
- The College of Psychologists of New Brunswick
- The Consumer Advocate for Insurance
- The Cooperators Group Limited
- The Insurance Bureau of Canada
- The New Brunswick Chiropractors Association
- The New Brunswick Physiotherapy Association
- United General Insurance Corporation

The Commission appreciates this valuable feedback. Based on the responses, the Commission has amended our original proposal. This consultation serves as a follow-up to the previous paper and outlines the Commission’s updated proposal for diagnostic and treatment protocols. The primary objective of the protocols remains ensuring that accident victims receive appropriate care on a timely basis to ensure that they make a full and speedy recovery.

The Commission’s new approach draws greatly from the OPTIMa Protocol for Traffic Injury Management Collaboration report entitled “Enabling Recovery from Common Traffic Injuries: A Focus on the Injured Person.” A copy of the report can be found [here](#). The report was developed through a comprehensive and detailed review of the scientific literature on the topic and by conducting qualitative research with patients receiving health treatments for traffic collision injuries. The report was a multi-disciplinary collaboration from a team of expert clinicians, academics and scientists, as well as a patient liaison, a consumer advocate, a retired judge and insurance industry experts. The report outlines “Care Pathways” that were created for the clinical management of common traffic injuries. It is our intention to leverage the valuable research and conclusions in this report to help ensure the appropriate care and the best possible outcomes for those involved in traffic collisions in New Brunswick.

We appreciate you taking the time to participate in this consultation and look forward to hearing from you.

# Background

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In 2011, the New Brunswick Auto Insurance Working Group submitted their report recommending certain changes to the insurance system in New Brunswick. One of these recommendations was to mandate the Superintendent of Insurance to implement protocols that made funds available for accident victims to access early diagnosis and treatment for their injuries. As mentioned, in February 2020, the Commission released a consultation paper outlining a proposal to address this recommendation.

As indicated in the February 2020 paper, the current New Brunswick insurance system can have barriers for some accident victims. These barriers can cause delays in diagnosis and beginning required treatment and can ultimately hinder an accident victim's full recovery. The barriers faced can vary in each case and can be linked to the individual circumstances of the accident victim. Common barriers to care include:

- Some accident victims do not have access to a family doctor who can see them quickly and who can provide the necessary referrals to the appropriate medical practitioner to begin treatment and recovery.
- Those without a family doctor may not know how to navigate the complexities of the system on their own. Navigating the system can involve knowing what you are entitled to, where to seek treatment and who to see.
- Many accident victims do not have the financial means to pay for services up-front and then wait to be reimbursed by their insurer. This is often required in the current system. Accident victims may not be working which often increases the precariousness of their financial situation. When faced with these financial challenges, accident victims may choose to forego treatment, resulting in longer recovery times and unnecessary grief for accident victims.
- Many treatments require pre-approval from the insurer. Navigating this in a timely manner so that treatment and subsequent recovery is not delayed can be difficult.
- Under the current system, accident victims must often exhaust their personal or workplace health insurance before they can access their Section B benefits, meaning those benefits are unavailable if they are needed for a medical issue unrelated to their accident.

In addition to these obstacles for the patient in the current system, there can also be obstacles for those in the medical field. Dealing with lawyers, insurers and others involved in the treatment process can be challenging and cumbersome.

The Commission believes that the diagnostic and treatment protocols will provide:

- quicker access to diagnosis and treatment,
- predictability in the treatment journey,
- flexibility in the specialists that can be seen without a referral, and
- greater simplicity in payment options.

The protocols will incorporate treatment in line with the Care Pathways. The proposal aims to:

- accelerate recovery,
- reduce the intensity of symptoms,
- promote early restoration of function,

- prevent chronic pain and disability,
- improve health related quality of life, and
- reduce recurrences and promote active participation in care.

The protocols are not intended to be prescriptive but are instead meant to be guidelines for health care practitioners that are backed by research and evidence. They aim to ensure consistent standards of treatment across the province, while permitting flexibility to address the specific circumstances of the injury. In addition to providing treatment guidelines, the protocols also identify treatments that have been shown to be ineffective or counter-productive.

# 1. How the Protocols Work

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Based on feedback received, the Commission is proposing expanding the list of health care providers eligible to initiate and coordinate care. Under this new proposal treatment for common collision injuries begins by visiting an “Coordinating Health Professional”. This is the individual responsible for coordinating care and making certain determinations about the injury. The list of those eligible to act as a Coordinating Health Professional would be:

- physicians,
- physiotherapists,
- chiropractors,
- nurse practitioners,
- dentists, and
- any other qualified health professional designated by the Superintendent of Insurance.

Under the protocols, all Coordinating Health Professionals must provide treatment in accordance with the Care Pathways and may also, at their discretion, prescribe treatment that is provided by a “Supporting Health Professional”. This would be any therapeutic service delivered in accordance with the Care Pathways from any of the following duly qualified health professionals:

- massage therapists,
- occupational therapists,
- psychologists,
- psychiatrists,
- social workers,
- acupuncturist, and
- any other qualified health professional designated by the Superintendent of Insurance.

For certain types of injuries, services administered by someone other than a registered health professional such as yoga may also be permitted. In applying the protocols, it’s expected that all health professionals will act within their scope and expertise and recognize when an injury should be referred to another professional.

Under the previous proposal, the protocols were limited to strains, sprains and whiplash injuries. Although these represent some of the most common collision injuries, accident victims with other physical injuries would benefit from being included under the protocols. Further, many accident victims can also suffer mental or psychological effects that can inhibit or prevent recovery. To give the best opportunity for complete recovery, we are proposing that these types of injuries be included in the protocols. Under this modified proposal, a much wider array of common collision injuries can now be treated within the protocols as long as treatment is delivered in accordance with the Care Pathways.

The OPTIMa report classifies injuries in the following three categories:

- Type I injuries – These types of injuries have been shown in studies to have a favourable natural history and victims are likely to recover from the injury in days or a few months.

- Type II Injuries – These types of injuries are those that are unlikely to undergo a spontaneous recovery and the injured person may require medical, surgical and/or psychiatric/psychological care.
- Type III Injuries – These types of injuries are a subset of Type II injuries, that involve permanent catastrophic impairment or disability.

The protocols are aimed at type 1 injuries. The protocols will provide guidelines for the diagnosis, management and treatment of “Common Collision Injury” which we propose be defined as follows:

A “Common Collision Injury” means any one or more of the following impairments that results from a motor vehicle accident:

Physical impairment:

- grades I, II, III (cervical radiculopathy) neck pain and its associated disorders (NAD);
- headaches associated with neck pain,
- thoracic and lumbar spine pain;
- thoracic radiculopathy and lumbar radiculopathy (nerve root injury);
- grade I and II girdle and limb sprains and strains and related soft tissue injuries;
- grades I and II sprains and strains of the temporomandibular joint and related soft tissue injuries;
- skin and muscle contusions abrasions and skin lacerations which do not extend beneath the dermis and pain associated with any of the above listed impairments.

Mental impairments: concussion/mild traumatic brain injury (MTBI) (manifested as a loss consciousness lasting less than 30 minutes after the accident, altered consciousness less than 24 hours after the accident, post traumatic amnesia less than 24 hours after the accident, and an initial Glasgow Coma Scale of 13-15), with normal structural imaging, and with signs and symptoms resulting from the MTBI last no more than 3 months.

Psychological Impairments: early psychological signs and symptoms, including depressed mood, anxiety, fear, anger, frustration and poor expectation of recovery.

The protocols will be based on evidence-based guidelines establishing the best practices for the clinical management of a number of common collision injuries. The types of injuries covered in the guidelines include:

- neck pain and associated disorders (NAD I, II and III);
- headaches associated with neck pain;
- soft tissue disorders of the upper extremity;
- soft tissue disorders of the lower extremity;
- temporomandibular disorders;
- mild traumatic brain injury (i.e. concussion); and
- low back pain with and without radiculopathy

Each guideline sets out Care Pathways for the treatment and management of specific injuries within the categories listed above. The guidelines and Care Pathways can be viewed [here](#). We foresee the Care Pathways being implemented through a guideline issued by the Superintendent of Insurance. This will allow for the guidelines to be updated quickly to reflect any improvements in treatment.

An Impairment does not fall under the protocols when a Coordinating Health Professional acting impartially and within the scope of their expertise confirms in writing and provides compelling evidence that:

- The common collision injury is not the most serious impairment sustained by the insured person as a result of the motor vehicle accident.

Or

- The common collision injury is the most serious impairment sustained by the insured person as a result of the motor vehicle accident, but the insured person:
  - has any of the following conditions (which may pre-date the accident or develop during the course of treatment under this Guideline):
    - neurological disorder (for example, cervical spondylotic myelopathy);
    - autoimmune disorder with or without joint involvement (for example Type 1 Diabetes in an uncontrolled state);
    - psychiatric condition (for example active psychoses, severe PTSD); or
    - other serious pathology (for example, active cancer)

and

- The condition is likely to prevent the insured person from recovering if treated only under the Care Pathways.

**Consultation Questions:**

- 1.1 Do you have any comments on the treatments set out in the Care Pathway or on integrating them into the diagnostic and treatment protocols for New Brunswick? Please elaborate on your response.
- 1.2 Do you have any comments on the list of Coordinating Health Professional? Please elaborate on your response.
- 1.3 Do you have any comments on the list of supporting health care practitioners? Please elaborate on your response.
- 1.4 Do you have any comments on the definition of Common Collision Injury? Please elaborate on your response.



1.5 Do you have any comments on the circumstances under which an injury does not fall under the protocols? Please elaborate on your response.

1.6 Do you have any comments on the Care Pathways being issued as a guideline by the Superintendent?

1.7 Please comment on any other matters related to this section.

## 2. Administration and Treatment Plans

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Under this proposal, pre-approved care is delivered in two distinct phases: the Recent Onset Phase, which starts from the date of the accident and lasts for a period of 3 months, and the Persistent Phase, which lasts an additional 3 months after the end of the Recent Onset Phase. At the end of the Recent Onset Phase, the patient is reassessed by their Coordinating Health Professional to determine if they are fully recovered. If they are not fully recovered, the patient would start the Persistent Phase. If the individual has not recovered at the end of the Persistent Phase, they will exit the protocols and will move to their regular section B benefits where the insurer is no longer the first payer and treatments are not pre-approved.

In this modified proposal, rather than having a set number of visits to a health practitioner, individuals now have a set amount of available funds for treatment during each phase. Accident victims can access up to \$2,500 for care for each phase in accordance with the Care Pathways. This updated model aims to provide greater flexibility and to simplify billing for health service providers.

<b>Phase</b>	<b>Time Period</b>	<b>Sub-Limit</b>
Recent Onset Phase	0-3 months after date of accident	\$2,500
Persistent Phase	3-6 months after date of accident	\$2,500

The insurer will be the first payor for services and fees must be directly billed. This will prevent the patient from having to pay out of their own pocket and then wait to be reimbursed and will also facilitate easy payment collection for health professionals. We anticipate the development of fee guidelines to provide greater predictability in treatment costs.

The previous proposal suggested a network of Injury Management Consultants similar to what is used in Alberta and Nova Scotia. These Injury Management Consultants would have provided advice when a diagnosis was uncertain, or an injury was not resolving as expected. Based on feedback received, the Commission is proposing that Injury Management Consultants no longer be part of the protocols.

When an individual suffers a common collision injury, they can begin care by visiting an “Coordinating Health Professional” who completes a form confirming and outlining the nature of the injury. This form is to be forwarded to the insurer within 10 days. The Coordinating Health Professional will complete a concluding report when there is no additional treatment required, the treatment provided in accordance with the Care Pathways has completed or the patient is non-compliant. Coordinating Health Professionals will be compensated a set amount for completing each form. This amount will be deducted from the \$2,500 available during the respective phase of treatment.

Under the current system, excess involvement of insurance adjusters can, in some cases, create barriers and cause delays in treatment. Since, under the protocols, treatment is pre-approved, both parties will have a better understanding of the expectations and the treatments that will have the greatest chance of success. This clarity will result in a lower likelihood of disputes.

If the insured person has more than one injury that falls under the protocols, each injury should be treated using the appropriate Care Pathway. For example, a person with one or more lower extremity soft tissue impairments and neck pain should be cared for in accordance with the *Guideline for the Clinical*

*Management of Lower Extremity Soft Tissue Disorders and the Guidelines for the Clinical Management of Neck Pain and its Associated Disorders.*

Under the proposed protocols, a patient or health care practitioner can make a claim by completing the claim form within 10 business days from the date of the accident. If that time-frame is not reasonable, the form should be completed as soon as practicable. After receiving the claim form, the insurer must send the applicant a decision notice within five (5) business days. The insurer can only refuse the claim if:

- the person injured does not meet the definition of “insured” under the s. 224 of the *Insurance Act* (see definition below);
- the insurer is not liable because of exclusions in the Standard Automobile Policy;
- there is no existing contract between the insurer and the person injured; or
- the injury did not arise from the use of an automobile.

Under s. 224 of the *Insurance Act*, “insured” means “a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in subsection 256(1) and subsection 257(1), whether described therein as an insured person or not”. Subsections 256(1) and 257(1) relate to accident benefits under an automobile insurance policy.

If an insurer does not respond to the applicant, they are deemed to have approved the claim. An insurer may later refuse an approved claim by sending notice to all parties but may only refuse for the reasons previously mentioned. The insurer must pay any claim for treatment that is authorized under the protocols within 30 days of receiving, as long as all required invoices, receipts, forms and patient verifications are provided.

Under this proposal, insurers would be prohibited from offering any cash settlements that surrender or limit any rights under the protocols.

**Consultation Questions:**

- 2.1 Do you believe the protocols should be mandatory? Please elaborate on your response.
- 2.2 Do you have any comments on providing care in two phases? Do you agree in the amounts for each phase? Please elaborate on your response.
- 2.3 Do you have any comments on the patient being reassessed by their Coordinating Health Professional at the end of the Recent Onset Phase?
- 2.4 Do you have any comments on the treatment process? Please elaborate on your response.
- 2.5 Do you have any comments on the grounds upon which an insurer can refuse a claim? Please elaborate on your response.
- 2.6 Do you have any comments on whether it should be optional or mandatory for accident victims to seek treatments under the protocols for common traffic injuries? If it was optional and an accident

victim wished to seek treatment outside of the protocols, they would be subject to the normal rules for Section B Benefits.

2.7 Do you have any comments on proposed timeframes for completing the forms and for approval and denial of claims by insurers? Please elaborate on your response.

2.8 Please comment on any other matters related to this section.

## Providing Feedback

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The Commission is publishing this Consultation Paper for a **60-day comment period**. Please send your comments in writing on or before **31 May 2021**.

All submissions should refer to “**Consultation Paper – Insurance 2021 – Diagnostic and Treatment Protocols**”. This reference should be included in the subject line if the submission is sent by email. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word format.

### **Please address your submission to:**

E-mail: [consultation@fcnb.ca](mailto:consultation@fcnb.ca)

Alternatively, submissions may be sent by mail or fax to:

Insurance Division c/o David Weir  
Financial and Consumer Services Commission  
200-225 King St.  
Fredericton, NB E3B 1E1  
Fax: (506) 453-7435

We cannot keep submissions confidential as they may be subject to a request under the *Right to Information and Protection of Privacy Act*. Additionally, any submissions or comments received during the comment period may be published; therefore, you should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission.

### **If you have any questions, please refer them to:**

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