NEW SOUTH WALES GOVERNMENT

STATE INSURANCE REGULATORY AUTHORITY (SIRA)

DRAFT GUIDELINES FOR THE NSW COMPULSORY THIRD PARTY (CTP) SCHEME

OCCUPATIONAL THERAPY AUSTRALIA (OTA) NSW DIVISION SUBMISSION

AUGUST 2017
Introduction

Occupational Therapy Australia (OTA) welcomes this opportunity to provide a submission to the State Insurance Regulatory Authority (SIRA) on the draft guidelines for the NSW Compulsory Third Party (CTP) scheme.

Occupational Therapy Australia is the professional association and peak representative body for occupational therapists in Australia. As of March 2017 there were more than 5000 registered occupational therapists working across the government, non-government, private and community sectors in New South Wales. Occupational therapists are allied health professionals whose role is to enable their clients to participate in meaningful and productive occupational roles, including student, worker, parent and partner.

Occupational therapists use therapeutic interventions to improve both physical and mental health using a range of modalities. They provide services such as vocational rehabilitation, chronic disease management and assessments for assistive technology and home modifications, as well as key disability supports and services.

Occupational therapists are key providers of services to people who are injured in road accidents. They play a vital role during the rehabilitation process and are well placed to assess how an injury will affect an individual’s capacity to perform their occupational roles. They develop strategies to assist their occupational engagement, modify the environment to enable participation, and prescribe equipment to assist with daily tasks. Occupational therapists also perform medico-legal assessments for people seeking access to common law benefits, and to estimate ongoing treatment, attendant care and support service costs if the person’s disability is enduring in nature.

In April 2016, OTA provided a submission to the NSW Government’s review of the NSW CTP scheme. We called for the introduction of a hybrid no-fault, defined benefits scheme with common law benefits retained in parallel (Option 3).

The following feedback on the draft guidelines has been provided by OTA members in NSW.

Part B: Soft tissue and minor psychological or psychiatric injury

The amount of time allocated for domestic services and home maintenance for people with minor injuries is potentially not enough in some cases, as it does not take into account the medical restrictions placed on the injured party and their pre-injury tasks and responsibilities. One example would be a stay-at-home parent who is the primary carer of six young children and has been instructed to avoid active range of motion (ROM) in the shoulder for six weeks. In this instance, 12 hours of domestic assistance over four weeks would not be appropriate and could exacerbate the injury, thereby stalling the person’s recovery and placing their children at risk.

Section 1.6 (3) of the Motor Accident Injuries Bill 2017 defines a minor psychological or psychiatric injury as one ‘that is not a recognised psychiatric illness’. Does this therefore mean that individuals with psychological conditions that have been not been formally diagnosed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) are able to make claims?
Psychological conditions resulting for motor vehicle accidents that may be successfully treated after six months include anxiety and post-traumatic stress disorder (PTSD), however would require targeted early intervention to treat situation-specific symptomatology. These types of conditions can improve, however many people have symptoms persist for a number of years despite their condition having initially been considered ‘minor’. A condition that remains untreated or only partially treated can result in chronic psychological barriers which impede a person’s return to their pre-injury occupational role performance.

In saying this, the guidelines for the new scheme will allow people to clearly understand that the expectation is they will make a recovery from their injury. By providing support upfront rather than down the track when the case goes to court is consistent with occupational therapy philosophy; that is, encouraging the person to resume their pre-injury responsibilities.

One issue of concern is that insurers may use the recommended assistance guidelines for soft tissue injuries for other injury categories (eg. fractures and surgical repairs to tendons).

**Part C: Claims**

Concerns have been raised that not enough time is provided to make a claim to receive weekly payments of statutory benefits (28 days after the date of the accident); particularly when considering that the injured person may have been hospitalised for this period, may not be aware of what benefits they are entitled to, and may not have legal representation.

There may also be questions around the person’s ability to make an informed decision. Clearly, more time would be necessary for those who are in a coma as a result of having suffered a traumatic brain injury and are unable to be consulted or asked to complete documentation.

An example of a situation where this timeframe would be inappropriate is where a single parent is undergoing treatment in one hospital while their child is in another. In this case, forms could not be signed and identity documents could not be sourced.

OTA believes that the time allowed to receive weekly payments should be the same as the timeframe for lodging a claim (three months after the date of the accident).

**Case study**

One occupational therapist who has recently had to deal with two insurance companies after two not-at-fault accidents raised concerns about being able to access services under the new scheme. This therapist has two young children and has required physiotherapy as a result of ‘soft tissue’ injuries. They requested additional childcare on their days off in order to attend appointments, however this was refused by their insurer. As a result, the therapist is now spending an additional $200 a week on childcare.

*I have been advised to not lift more than 5kgs. This is just impossible when I care for 2 toddlers. Some days it is easier to pay for extra childcare than look after the kids. I am an OT*
and modified absolutely everything that I can but there are times you just can’t avoid it as your child’s safety is the priority.

This therapist noted that they have felt completely unsupported by their insurer and, although they are in a position where they can afford the additional costs incurred as a result of their injuries, questions how others could do the same if they were not working.

The therapist also asked what change management strategies will be implemented as part of the reforms to ensure that insurers support people, as it appears that the reforms will give insurers greater control. They have found that both insurers they have dealt with change their case managers every three months, which is confusing for clients and delays the process even further. Moreover, it can take well over a week to receive a response to emails.

There is mention in the draft guidelines of claimants being able to undergo an internal review if they submit an application. The therapist questions the time that this would take and the delay then in accessing treatment. They note that at one stage they were owed more than $900 from the insurer due to accessing treatment and CT scans because of the slow process. Not everyone has access to these funds.

I just don't see the need to punish all the people who are doing the right thing for the few that have been fraudulent.

As a hard working person I have been made to feel like I am in the wrong because I am trying to access treatment for accidents I had no control over.

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OTA strongly believes that appropriate safeguards need to be put in place to ensure that those injured in motor accidents receive the care they need when they need it. It cannot be assumed that insurers will always do the right thing, particularly as those tasked with handling claims very often do not have a health background and are arguably not in a position to make decisions about a person’s care.

Other concerns

• There is no provision early on for claimants who do not have access to cars and where public transport is likely to aggravate their symptoms. Currently, claimants can request that they be reimbursed for travel costs to attend therapy and medical appointments.
• There is no provision for the development and implementation of a graded activities of daily living (ADL) program in the list of approved treatment services. While there is a ‘rehabilitation’ category, this usually refers to hospital-based services. A private practice occupational therapist noted that they usually see people in their homes and use a graded ADL approach, which may include leisure or vocational activities as a build-up to return to work (RTW) services.
• Treatment and care expenses are set at AMA rates – OTA assumes that these rates apply to medical services only.
- The draft guidelines do not contain any mention of the role of expert Injury Management Advisors.