

# Recovery of Health Costs Resulting from Accidents

## Background

The Ministry of Health and Long-Term Care (Ministry) has the legal authority to recover the medical and hospital costs incurred in treating people injured in accidents caused by someone else. These recoveries are usually made through “subrogation,” a legal term unique to insurance law. This recovery mechanism provides the Ministry “the right to recover costs incurred as the result of an injury suffered by an insured person, caused by the fault or negligence of another person.” In subrogation, the injured person’s lawyer is required to act on behalf of the Ministry, saving the Crown the need to engage its own counsel.

Until 1990, the Ministry’s right of subrogation also extended to injuries arising from automobile accidents where a driver insured in Ontario was found at fault. But changes that year to the *Insurance Act*, which reformed the automobile insurance industry in Ontario, eliminated that right. The province recovered no health costs resulting from automobile accidents until 1996, when the *Insurance Act* and related regulations were amended to require automobile insurers to pay an annual “assessment of health system costs” (assessment). The assessment is in lieu of the province subrogat-

ing individual claims against at-fault drivers. The Ministry of Finance administers the *Insurance Act*, while the Financial Services Commission of Ontario (Commission) is responsible for collecting the annual assessment from insurers. The Commission has collected about \$80 million annually since 1996 from automobile insurance companies through the assessment.

The Ministry of Health and Long-Term Care has a right of subrogation for all insured services provided to victims of non-automobile accidents through the *Health Insurance Act*, and all services and benefits rendered in accordance with the *Long-Term Care Act*. These accidents typically include slips and falls, medical malpractice, product liability, and general liability. Cost recoveries are pursued by the Subrogation Unit (Unit) of the Ministry’s Supply and Financial Services Branch. The Unit has a staff of 21 and spends about \$2.5 million annually to pursue an average of 13,000 active case files, recovering about \$12 million a year (net of legal costs). Total assessment and other subrogation recoveries have remained stable over the last eight years, as illustrated in Figure 1.

**Figure 1: Annual Health-care-cost Recoveries**

Source of data: Public Accounts of Ontario

Fiscal Year	Health Assessment <sup>1</sup> (\$ million)	Subrogation Revenue (\$ million)	Total (\$ million)
1995/96	—	5.3	5.3
1996/97	32.9	9.7	42.6
1997/98	78.3	9.2	87.5
1998/99	79.1	12.8	91.9
1999/2000	81.1	10.4	91.5
2000/01	83.9	12.3	96.1
2001/02	77.1	10.7	87.8
2002/03	82.2	13.3	95.5
2003/04	80.2	11.7	91.9
2004/05	80.3	12.0	92.3

1. Annual health assessment revenues vary from the total required assessment amount of \$80 million due primarily to the timing of receipt of payments from the insurance companies.

## Audit Objective and Scope

The objective of our audit was to assess whether satisfactory policies and procedures were in place to identify and recover the cost of health services provided to individuals injured as a result of someone else's negligence.

Our audit was performed in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances. Prior to commencing our work, we identified the audit criteria we would use to address our audit objective. These criteria were reviewed and agreed to by senior Ministry management.

The scope of our audit included a review and analysis of information available at the Ministry of Health and Long-Term Care's Subrogation Unit, and the Ministry of Finance's Financial Services Commission of Ontario. As well, we interviewed

staff responsible for administering health-care-cost recoveries. We also researched third-party recovery programs in other jurisdictions, and reviewed research and related reports of experts in the field of health-care-cost recovery resulting from negligent or wrongful acts.

Our audit did not include a review of the policies and procedures for recovery of health-care costs by the Workplace Safety and Insurance Board of Ontario for insured persons injured at the workplace. Neither did we examine the process used by the Financial Services Commission to calculate and collect the assessment from individual auto insurers, given that the total amount is established by regulation and simply allocated to the automobile insurers based on their related premium revenues.

The Ministry's Internal Audit Services had not conducted any recent audits or reviews relating to the operation of the Subrogation Unit or the assessment of health system costs that affected the scope of our audit.

## Summary

The Health and Finance ministries did not have satisfactory policies and procedures in place to identify and recover the cost of provincially funded health services provided to people injured through someone else's fault. We believe that the ministries could potentially recover twice as much as they do now, perhaps in excess of \$100 million a year more. However, to accomplish this, they will need better information on recoverable health costs actually being incurred by the province.

The Ministry of Finance has not changed the \$80-million annual assessment charged to the automobile insurance industry since its introduction in 1996. According to the Ministry of Finance, it has undertaken periodic informal reviews of the annual assessment paid by insurers to offset auto

accident health costs incurred. In each of these cases, a decision was made to maintain the current assessment level in view of the instability of auto insurance rates and the potential negative effect on premiums. However, given that Ontario's levy per registered vehicle is among the lowest of the provinces, and that Ontario's health costs have risen 70% since 1996, there is a compelling case for a formal review of the current \$80-million figure. Annual assessment revenues would rise by over \$56 million if the province recovered the same proportion of health-care costs that it did in 1996. Such an increase would also result in a per-vehicle assessment amount that is more comparable to most other provinces.

Comprehensive data on the cost of health-care services provided in Ontario to people injured in motor vehicle accidents was not available. But our review of what information there was, and comparisons to other jurisdictions, leads us to conclude that the actual health costs incurred are considerably higher than what is currently being recovered from the annual assessment and that Ontario recovers proportionately less than most other provinces.

The Ministry of Health and Long-Term Care's policies and procedures for subrogating non-vehicle accident cases did not ensure that it identified and recovered all the eligible costs that it should. In particular:

- There were no recent studies or analyses of the actual health-care costs incurred as a result of accident-related injuries. The absence of information systems or processes to collect and analyze health-care costs and insurance industry data has limited the Ministry's ability to quantify the extent and costs of cases not reported.
- While the Ministry has some procedures to proactively identify and report potential court actions and settlements, much more could be done to identify unreported cases that may justify subrogation. 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 subrogating 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.

- Staff were not required to obtain management approval for individual settlements, regardless of amount, to ensure that the settlements reached were appropriate in the circumstances. Documentation supporting settlement agreements was insufficient and had not been periodically reviewed by an appropriate level of authority.
- 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. The uninsured rates are, on average, 77% higher than the Interprovincial rates currently used by the Ministry. Although other provinces also use the Interprovincial Hospital Billing rates, they add a capital-cost component of 25% to 30%. Ontario does not.
- The Ministry did not have the necessary data collection systems to proactively fulfill its responsibility to monitor the automobile insurance industry's compliance with its payment responsibilities for non-professional health services provided to persons injured in automobile accidents.

The Ministry also needs 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.

## Detailed Audit Observations

### HEALTH SYSTEM COSTS ASSESSMENT

Prior to the introduction of the *Insurance Act* amendments in 1990, the Health Ministry had full right of subrogation against defendants in automobile accident litigation. From 1978 to 1990, the Ministry entered into individual voluntary arrangements, commonly referred to as “bulk subrogation agreements,” with the automobile insurance industry. Under these agreements, insurers made a predetermined lump-sum payment to the Ministry for health-care costs in lieu of individual case-by-case subrogation. These amounts were based on a percentage, to a maximum 2.4%, of the insurer’s third-party liability premiums. In the last year of the agreements, the Ministry recovered \$52 million from the insurance industry. With the passing of the amendments to the *Insurance Act* in 1990, both the right of subrogation and the bulk subrogation agreements were eliminated, and the province no longer recovered any health-care costs from automobile insurers.

In 1996, the *Insurance Act* was amended to include an annual assessment of automobile insurers for health-care costs incurred by the Ministry. The amount, known as the “assessment of health system costs” (assessment), was set at \$80 million a year, and was intended to help defray costs incurred under the acts or programs administered by the Ministry of Health and Long-Term Care.

According to the Ministry of Finance, since its inception, the annual assessment has been reviewed informally on a regular basis, but no formal review has been initiated. Since, in each of these cases, a decision was made to keep the current level of assessment, the amount has remained unchanged. The original negotiations to determine the assessment amount recognized that this new cost would increase the premiums charged by insur-

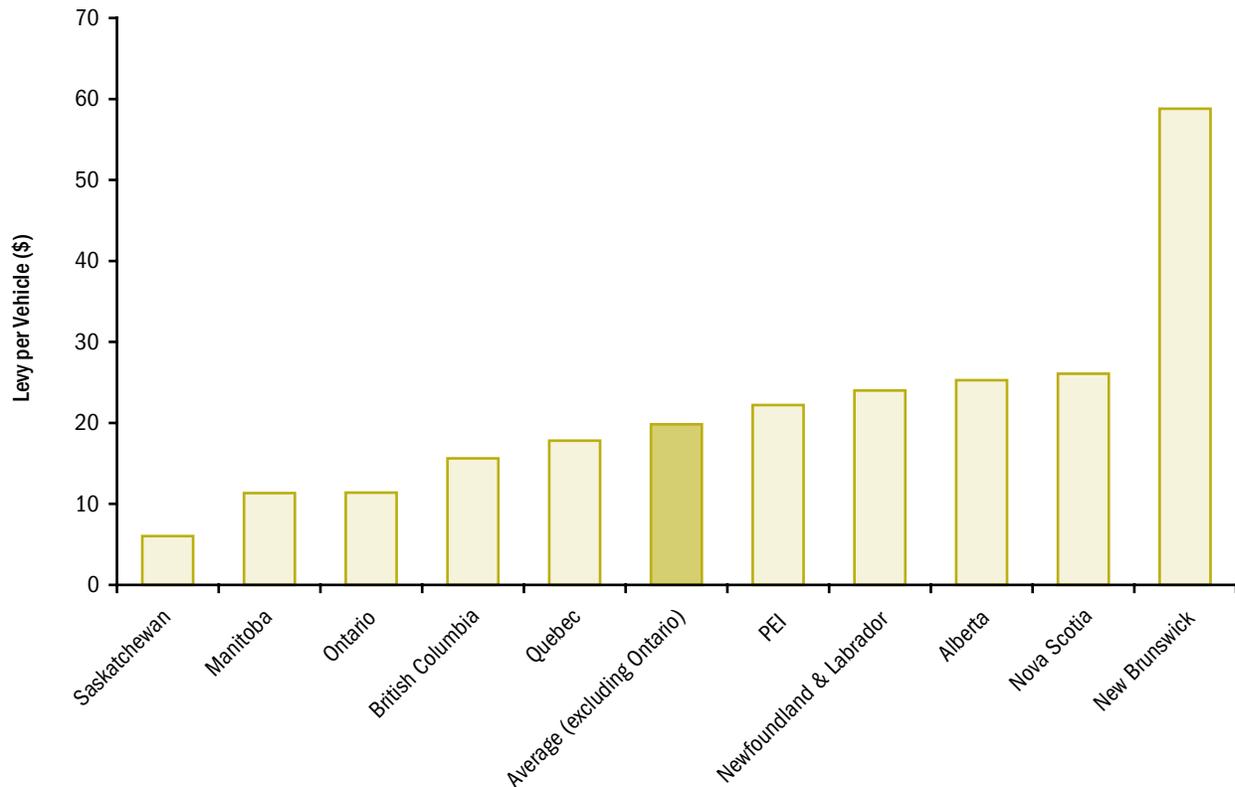
ers. Since then, there has been much public concern over the rising cost of automobile insurance. Consequently, the Ministry of Finance’s emphasis had been on seeking ways to reduce the costs incurred by motorists and insurers. For example, the 4% sales tax on insurance premiums was phased out over four years, starting in 2001. This saved insured drivers at least \$800 million since then and almost \$380 million in the 2004/05 fiscal year alone.

Reforms were also introduced to control rising health-care costs. For example, guidelines were established for the treatment of minor injuries, such as whiplash, so that injured individuals receive appropriate treatment through their insurance policy rather than through the public health-care system.

As part of our audit, we compared the assessment amount to the changes in provincial health-care costs and motor vehicle third-party liability premiums since 1996. The results of our analysis indicated that while the assessment remained at \$80 million, the costs for hospital and physician services alone have increased almost 70%. In order to recover today an amount proportional to that collected in 1996, the assessment would have to rise by \$56 million. In addition, we note that the assessment as a percentage of insurance companies’ revenues from auto insurance liability premiums has declined from about 4% to about 2%.

We also compared Ontario’s assessment to the amounts levied in other jurisdictions and found that on a per-registered-vehicle basis, Ontario’s rate was among the lowest in Canada, as illustrated in Figure 2. If Ontario’s assessment per registered vehicle were raised to the national average, the assessment amount would increase by \$60 million, or about \$8 per registered vehicle.

Given the differences in population and registered vehicles, the other provinces appear to be recovering a substantially higher percentage of their accident-related health costs from the insurance industry. In Alberta, a July 2003 report by

**Figure 2: Comparison of Automobile Insurance Industry Assessment for Provincial Health Costs, 2004**Source of data: 2004 Interprovincial Third-Party Liability Conference and *Canadian Vehicle Survey* (Statistics Canada, 2004)

an independent study group, co-sponsored and co-funded by the Insurance Bureau of Canada and Alberta Health and Wellness, estimated that the annual cost to Alberta's health-care system of treating people injured in such accidents was over \$150 million. The estimate was based on a study of a sample of the 32,000 casualties that occurred in that province in 2001. The group further estimated that about \$100 million of these costs were the result of negligence. Alberta was recovering approximately 60% of these costs (\$60.3 million) from the insurance industry.

Assessments in other provinces may be proportionately higher because most other jurisdictions require their respective health departments to annually review and assess the adequacy of the health levy in recovering provincial health costs arising from negligence. As part of these review processes, provincial health departments attempt to quantify the actual costs of the health services pro-

vided as a result of a road accident. We noted that the health-costs levies of two other provinces that have a more formal process have increased an average of 45% since 1996.

In Ontario, neither the Finance Ministry nor the Health Ministry has formally studied the cost of health-care services provided to individuals for injuries suffered as a result of automobile accidents. Reliable estimates are difficult to make in the absence of such studies. Nevertheless, given that there are far more injuries from motor vehicle accidents in Ontario than in Alberta (more than 84,000 in 2003, according to data from Ontario's Ministry of Transportation), related health costs would also be significantly higher than the costs incurred in Alberta. It is therefore likely that Ontario is recovering far less than 60% of its actual health costs resulting from motor vehicle accidents caused by others.

## 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.

## MINISTRIES' RESPONSES

### Ministry of Health and Long-Term Care

The Ministry fully supports the Auditor General's recommendation to review the adequacy of the current assessment of health system costs. In consultation with the Ministry of Finance, the Ministry will conduct an appropriate analysis to ensure that the assessment is in keeping with the 1996 intent. In advance of this anticipated joint review, the Ministry will search for data sources to determine the true full costs associated with motor vehicle accident injuries and the potential recoverable costs over the past 10 years.

### Ministry of Finance

The Ministry agrees with this recommendation and will review the current assessment, taking into consideration the cost of vehicle accident health-care costs and the impact of increasing the assessment on Ontario's auto insurance premiums.

## COST OF PROVIDING HEALTH-CARE SERVICE TO ACCIDENT VICTIMS

Since 1990, no definitive studies or analyses have been undertaken to determine the actual cost of health-care services associated with accident-related injuries. Health records can only identify accident victims who visit an emergency room or

are hospitalized, not those who receive treatment directly from a physician or clinic. With the exception of workplace accidents covered by the Workplace Safety and Insurance Board, the current OHIP billing process does not require a physician to indicate if the services are being provided as the result of an accident. Similarly, police collision data and accident reports are not linked to the health-care system. Consequently, it is difficult to obtain information about accidents directly.

As part of our audit, we attempted to estimate the cost of providing hospital care to persons injured in accidents relating to automobiles and to slips and falls. Using the Ministry's statistical databases for 2003/04, we obtained a report on the number of reported hospitalizations attributed to those types of accidents and the costs of a sample of them. Data on specific cases were prepared using the International Classification of Disease codes (ICD-10 codes). Developed by the World Health Organization, these clinical diagnosis codes classify cases by disease, injury, and cause of death. The results of our analysis are summarized in Figure 3. While only a portion of these accidents were a result of negligence, the figures indicate the magnitude of potential costs to the health-care system. More study is needed in this area. The experience of other provinces that have conducted such studies may be of assistance in conducting the needed study in Ontario.

It is critical that an analysis of the costs associated with health services provided to injured parties as a result of negligence be conducted to ensure that any future negotiations with the insurance industry are based on sound information about the actual costs of providing these services. For example, it would be useful to research the proportion of slips and falls due to the negligence of others.

**Figure 3: Estimated Hospitalization Costs Attributed to Accidents, 2003/04**

Source of data: Ministry of Health and Long-Term Care, Ontario Case Costing Initiative Databases

Type of Accident	# of Cases in Emergency Ward	Service Cost Emergency Ward (\$ million)	# of Cases Hospitalized	Cost of Hospitalization (\$ million)	Estimated Total Hospital Costs (\$ million)
automobile	74,890	24.3	6,865	94.1	118.4
slips and falls	344,360	76.8	38,780	451.4	528.2
<b>Total</b>	<b>419,250</b>	<b>101.1</b>	<b>45,645</b>	<b>545.5</b>	<b>646.6</b>

## RECOMMENDATION

*(This and all subsequent recommendations were issued to and responded to by the Ministry of Health and Long-Term Care.)*

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.

## MINISTRY RESPONSE

The Ministry fully agrees with the Auditor General's recommendation and will explore the use of available corporate databases to obtain better information relating to the cost of treatment for victims of accidents and will work with the Ministry of Finance on future reviews of the assessment of health system costs. During the course of analyzing and evaluating health-care costs to determine the appropriateness of the assessments for automobile insurance claims, the Ministry will develop a mechanism (such as statistical reports) to assist in determining the proper costs to be recovered.

## IDENTIFICATION OF POTENTIAL SUBROGATION CASES

The Subrogation Unit relies on the legislative requirement that the plaintiffs, their lawyers, and the defendants' insurers must notify the Ministry of pending lawsuits, claims against insurance policies, and settlements resulting from negligence. However, the Unit has neither the resources nor a systematic method to proactively identify instances where it has not been notified of a legal action or settlement in which recoveries could be made.

According to a 1996 internal review, Subrogation staff said that they were receiving notification in only 60% of the potential health-care recovery cases. They said that the problem "would only increase as legal representatives become aware of the loopholes within the existing legislation." For example, many large organizations are either self-insured or have a high deductible, and often settle directly with the injured party to avoid publicity or increased insurance premiums. The current legislative reporting requirements do not cover self-insurers. Consequently, the Unit believes that many potential third-party liability cases are still not being identified and reported to the Ministry.

Insurers are expected to complete a standard accident report for all claims, providing the Ministry with details of the claim, including the insurer and injured-party information. At the time of our audit, Ministry management estimated that only 2% of its current subrogation cases were a result of information provided by insurers. Legal experts say

that if liability insurers voluntarily reported all out-of-court settlements, the Ministry's subrogation revenues could rise by 25%, or \$3 million.

The Ministry also needs better information to help it monitor claims reporting by insurers. For example, the Ministry needs to collect information in order to compare the number of notifications by insurers to their share of the liability insurance business and to their loss-experience data. Explanations could be obtained from those companies with below-average notifications in comparison to the policies written or losses incurred. In one province, the health department tracks the number of notifications by insurance company for analysis purposes.

One way to proactively detect potential subrogation cases at the point of origin is to periodically collect case information from hospital databases using the ICD-10 codes. As part of our audit, we asked the Ministry to use these codes to prepare an analysis for the 2003/04 fiscal year of all patients receiving hospital treatment for injuries resulting from slips and falls. From this analysis, we found that some 38,000 people were hospitalized that year for such falls, at a cost to the provincial hospital system of approximately \$530 million. In comparison, the Subrogation Unit annually recovers from about 2,800 cases relating to falls, or less than 7% of such hospital admissions. Although it is unlikely that most falls are the result of negligence of a third party, the very low notification rate suggests that liability insurers may not be alerting the Ministry to all negotiated settlements.

The data from a sampling of 11 Ontario hospitals also indicated that 50 patients suffered serious accidental falls resulting in hospitalization costs exceeding \$100,000 each. These costs don't include the amounts paid out for physician services through the OHIP system, or any other services provided by long-term care facilities or other service providers. We provided these data to the Unit and as of May 2005, it was still in the process of investigating

the cases to determine if any of them are subject to subrogation.

Another way to increase reporting of settlements by insurers and lawyers is to periodically remind them of their legal responsibility to inform the Ministry of all such settlements. Reminders could be delivered by placing articles in insurance industry and legal profession periodicals, by speaking at the appropriate conferences, or by working with industry associations to clarify respective responsibilities in this area.

## 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.

## MINISTRY RESPONSE

The Ministry agrees with the Auditor General that a number of opportunities exist that could improve the effectiveness of the notification process for potential subrogation cases. While investigating the usefulness of the corporate health databases for motor vehicle accident costing purposes, the Ministry will also evaluate the usefulness of the information for identifying other unreported accident claims for which the Ministry may have a right of subrogation. In addition, the Ministry will continue to research

other potential sources of information that may exist or be in development within the Ministry or at other ministries.

The Ministry has identified the need for various reporting requirements, including the need to capture data not currently available. The Ministry will be creating an internal database that will provide critical information, such as the ratio of the number of accidents reported by each private casualty insurer in the province to the volume of business as reported by each insurer in their Annual Statistical Report. Where a significant deviation exists between the number of accident cases reported to the Ministry versus the losses reported by the insurer, follow-up with individual insurers will take place.

In the past, the Ministry has placed a “Reminder to Solicitors” in the *Ontario Report* (a serial publication that contains, among other things, government notices to the legal profession) reminding legal counsel of their statutory duty to include a claim on behalf of the Ministry in their client’s (the insured person’s) personal injury claim for damages. The Ministry will review the timing for inserting a future notice to solicitors. In addition, as part of a stakeholder education strategy, the Ministry will continue to provide information sessions at industry-sponsored conferences and trade shows, with a target audience of private insurance claims specialists, lawyers, and health-care providers. Also, other strategies will be evaluated and implemented based on their anticipated effectiveness. Such strategies could include publishing articles in industry publications and engaging plaintiff law firms to present the Ministry’s requirements at specific venues, such as Ontario Trial Lawyers Association seminars.

## REVIEW OF SUBROGATION FILES

The Subrogation Manager and Officers are responsible for evaluating potential cases to ensure that the Ministry’s legal right to recover funds is maximized. Each year, the Unit opens and closes approximately 5,000 case files. Subrogation Officers have a great deal of autonomy in reaching decisions with plaintiffs, their legal representatives, and insurance adjusters.

In reviewing a sample of subrogation files, we observed the following:

- The Unit’s current policy does not require a Subrogation Officer to obtain the Unit Manager’s approval before accepting a settlement offer. Currently, Subrogation Officers have complete authority, regardless of the dollar value of a case, to respond to a settlement offer by accepting it, rejecting it, or referring it to senior management.
- Although the Unit’s policy indicates that Subrogation Officer files are to be reviewed by the Manager or Team Leader, we found no formal documentation or reports on the results of such reviews, or any ensuing recommendations. The case files we reviewed generally lacked sufficient documentation to support the settlement reached. In one case involving past and future health costs of \$700,000, the Subrogation Officer accepted a lawyer’s telephone offer of \$200,000. However, the file did not provide the calculations used to reach the anticipated future health costs or the reasons why the settlement offer was deemed adequate.

We noted that at least one province has policies and procedures requiring the approval of senior management for settlements in excess of \$50,000. As well, the program director in that province indicated that they use a standard process to periodically audit their case files for adherence to program-documentation policy and procedures.

Such an independent review of the closed files provides senior ministry management with some

assurance that decisions and actions are properly documented, both administratively and legally, and that a reasonable settlement is achieved in the circumstances. Given the complexity of the subrogation process, periodic review by independent experts could provide an opportunity for staff training and ensure a more consistent recovery process.

## 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.

## MINISTRY RESPONSE

The Ministry agrees with the findings of the Auditor General's review and assessment of current subrogation operational policies and procedures. Currently, Subrogation Officers, who are responsible for file development and negotiation of the Ministry's subrogated claim, have complete control of the file. Subrogation files are referred or escalated to senior staff or the Unit Manager based on the complexity of the file or for non-routine matters (such as a variation of a case-law precedent) and not based on the value of the potential subrogated interest. Although there is a requirement to document all file activity, it is acknowledged that this may be lacking in some instances.

In order to ensure that settlement decisions are appropriate, the Ministry will:

- conduct a review of its current policies and procedures;

- update operational procedures to reflect a new automated workflow system;
- require management approval for settlements over a predetermined amount; and
- develop a standardized process to periodically review case files for adherence to program-documentation policy and procedures based on best practices used in other jurisdictions.

## CALCULATION OF HOSPITAL COSTS

The *Health Insurance Act* (Act) defines for subrogation purposes the cost of a service rendered to an insured person—a resident of Ontario—in a hospital or health facility. Specifically, the Act requires the Ministry to use the hospital rates that apply to persons not covered by any provincial health plan. These rates are considerably higher than the Interprovincial Hospital Billing rates charged to other Canadians receiving treatment in Ontario.

In reviewing a sample of subrogation files, we observed that the Ministry was not using the required uninsured rates when preparing payment summaries. Rather, it used the Interprovincial rates for both in-patient and out-patient services. Although the Unit maintains and annually updates the uninsured rates for all Ontario hospitals, management was unable to explain the rationale for using the lower Interprovincial rates rather than the required, higher, non-insured rates when calculating the costs of health-care services for subrogation purposes.

To estimate the impact of the difference in rates, we obtained a sample of more serious cases from 11 hospitals and compared their uninsured rates per day and their actual average costs per day to the Interprovincial rates for both in-patient and out-patient services. Based on our sample, the Interprovincial rates used in subrogating claims did not realistically reflect the true cost of hospital services,

and were significantly below the current hospital daily rates charged to uninsured patients.

The insured rates used by the Unit are on average 77% lower than the uninsured rates. Assuming that about half of the current annual subrogation revenues of \$12 million relate to hospital costs, the Ministry could collect \$4 million more if it used the rates required by legislation or \$1.6 million more based on actual costs. Actual recoveries would vary depending on such factors as court decisions, size of awards, and liability limits of insurers.

We noted that while other provincial health departments use the Interprovincial Hospital Billing rates, they add a capital component of 25% to 30% in arriving at their hospital per-diem rates. In Ontario, no allowance for capital costs is added to the Interprovincial rates.

## 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.

## MINISTRY RESPONSE

The Ministry agrees with the Auditor General's findings and will review the hospital cost recovery rate. The Ministry's review will require extensive consultation with private casualty insurers, who may need to modify or adjust their policy/premium rating practices to accommodate this cost exposure.

## OTHER APPROACHES TO RECOVERING COSTS

There are a variety of other methods for recovering health costs incurred as the result of the negligence of someone else. These include direct court action,

also known as the independent right of recovery, and annual health cost assessments on the insurance industry.

In some other jurisdictions—Alberta, for example—subrogation has been replaced with the independent-right-of-recovery method, in which the province launches its own legal action independent of the injured person.

In reviewing the Ministry's subrogation activities, we observed that the Unit is pursuing a significant number of files for which it has a relatively small subrogation interest. Although each individual file is relatively insubstantial, on a cumulative basis they represent considerable revenue and are worth pursuing.

Unit staff indicated that much of the administrative cost of subrogation relates to collecting the information on health costs incurred. Once this information is obtained, they will pursue virtually all claims they have researched because there are few additional costs. More than two-thirds of all files closed in 2004/05 resulted in recoveries of less than \$1,000, as indicated in Figure 4.

Prior to the introduction in 1996 of the assessment of health system costs, the Ministry negotiated "bulk subrogation agreements" with the major Ontario automobile insurers. In exchange for waiving its subrogation rights, the Ministry accepted from insurers a payment based on a proportion of their premium revenues. The primary benefit of this

**Figure 4: Recovery per Closed Subrogation File, 2004/05**

Source of data: Ministry of Health and Long-Term Care, Subrogation Unit

Amount Recovered	# of Closed Files	% of Total Files	% of Annual Recovery
less than \$1,000	3,524	68	8
\$1,001-\$5,000	1,288	25	24
\$5,001-\$10,000	225	4	12
\$10,001-\$100,000	166	3	34
over \$100,000	14	<1	22
<b>Total</b>	<b>5,217</b>	<b>100</b>	<b>100</b>

approach was a reduction in the administrative and legal costs of subrogating claims individually.

Similar agreements with the insurance industry could be examined for non-automobile cases. The introduction of agreements containing annual assessments would be more economical to administer and would provide greater certainty and predictability for both the Ministry and the insurance industry. However, before entering into such agreements, the Ministry needs better information on the costs of health services it provides to accident victims.

The decrease in caseload resulting from implementing such agreements would potentially enable the Ministry to redeploy resources to other areas, including monitoring the recovery of health-care costs from self-insured and uninsured parties, or focusing greater effort on monitoring larger cases not covered by new bulk agreements.

Since 1996, the Ministry has been developing the necessary legislative changes to allow the recovery of other health-care service costs not included in the current subrogation legislation. These include the cost of prescription drug benefits and assistive devices such as wheelchairs. In our review of other provinces' recovery programs, we noted that four of the largest provinces currently include the cost of prescription drugs in their recovery processes. In its business case, the Unit estimated that adding prescription drug benefits and assistive devices would result in additional recoveries of \$5 million a year.

## 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.

## MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation to formally analyze other methods of cost recovery that will result in operational and cost-recovery efficiencies.

To achieve this goal, the Ministry will:

- continue with its plans to expand the right of subrogation to other ministry-funded programs, such as the Ontario Drug Benefit Plan (ODB) and the Assistive Devices Program (ADP), which requires legislative amendments to overcome barriers that limit the Ministry's entitlement to recover costs;
- update and validate past analysis on the potential recovery of other ministry-funded programs (ODB and ADP specifically);
- analyze the financial impacts on cost recovery from legislative amendments (removing barriers); and
- quantify the value of the potential health-care cost recovery of all recoverable accident claims not currently reported by using information and data collected from the review of data sources for identifying non-reported accident claims.

The completion of these steps may be necessary to maximize cost recovery under any other method of cost recovery, including entering into agreements with the private casualty insurers.

## LEGAL BARRIERS TO SUBROGATION PROCESS

The legislation governing the Ministry's right of subrogation has historically been subject to legal challenges that tended to weaken the Unit's ability to recover health costs. According to staff, these have become more numerous and creative in recent years, leading to precedents and interpretations of the legislation that have either reduced or

eliminated the Ministry's ability to recover costs in certain circumstances.

Other provinces have encountered similar difficulties. However, most of the provinces we reviewed either amended their legislation or initiated policy changes to address the effects of precedent law. For example, Alberta discontinued subrogation in favour of the direct-recovery method. Prince Edward Island and Nova Scotia amended their legislation to reduce the effects of certain legal precedents on their subrogation programs.

According to ministry documentation, since 1995 the Unit has been proposing amendments to its legislation designed to clarify the Ministry's subrogation rights and reduce the effects of court decisions. For example, changes were recommended to strengthen the notification requirements for lawyers, insurance companies, and self-insured persons and to increase the sanctions for failure to notify the Ministry.

The Ministry advised us that it anticipated that the necessary amendments to the *Ministry of Health Act* would be introduced in the spring 2006 session.

### MONITORING INSURERS' COMPLIANCE WITH PAYMENT RESPONSIBILITY

With the amendments to the *Insurance Act* in 1990, automobile insurers became responsible for the cost of non-professional health-care services required by their clients following automobile accidents. These include personal support, attendant care, and homemaking assistance. Such services may be provided through the ministry-funded Community Care Access Centres (CCACs), long-term-care facilities, or other service providers, who invoice the insurer. Alternatively, automobile insurers may arrange for their clients to receive these services and pay the service provider directly.

In a 1996 internal review, the Unit estimated that the province, through the CCACs, was providing about \$10 million a year in attendant and

homemaking services that should have been paid by insurers.

The Unit assumed responsibility for monitoring compliance by insurers with these payment responsibilities. But it was never given the necessary supporting data-collection systems required to effectively fulfill this mandate. The Unit does not have a systematic process in place to monitor or detect insurers who fail to make the appropriate payments. Consequently, it can seek full reimbursement from an insurer only after becoming aware that the province has paid for non-professional services that were the responsibility of that insurer.

In an effort to help clarify the respective responsibilities of all parties, the Unit undertook an education and awareness program. Unit staff attended meetings sponsored by hospitals, insurers, and community service providers to explain the parties' respective roles with regard to responsibilities for providing services.

However, we observed that the Unit has little information on the effectiveness of these education and awareness programs. As well, the Unit does not routinely receive information from insurers or the CCACs indicating either the number of automobile accident victims referred by the CCAC to their insurers or the number of seriously injured automobile accident victims receiving CCAC services due to insufficient insurance coverage. Such information would provide the Unit with an indication of the magnitude of payments currently being made by the insurance industry and the potential for further recoveries.

### 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.

## MINISTRY RESPONSE

The Ministry agrees with the findings and recommendations of the Auditor General. To ensure the compliance of private automobile insurers in making payments and provisions for certain health-care benefits required as a result of a motor vehicle accident, the Ministry will put in place a formal structure to improve communications with Community Care Access Centres (CCACs) and other stakeholders. The plan will include:

- expanding its information sessions to all CCACs in the province;
- formalizing an information package for all CCACs and companies in the insurance industry;
- communicating the automobile insurer's requirements in all information sessions, conferences, and other stakeholder forums;
- in consultation with CCACs, developing processes to collect information on the effectiveness of any communication strategies and information sessions; and
- researching other methods that may be available or developed to collect information from the insurance industry or other areas, such as health-care-provider groups or the Ministry of Finance.

## MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

Good performance information is essential for sound decision-making and for demonstrating the achievement of program objectives. Currently, the Subrogation Unit has two distinct goals:

- recover the cost of health services resulting from an injury to an insured person caused by the fault of another where the law permits such recovery; and
- monitor insurers' compliance with their responsibility to pay for certain health-care benefits required by an insured person injured as a result of an automobile accident.

The Ministry has not established specific objectives with measurable targets to allow senior management to assess how effectively the Unit is fulfilling its goals and achieving specific results. At the time of our audit, the Unit was providing senior management with basic monthly information on its subrogation activities, including the number of files opened and closed, and recoveries made. As for its monitoring of insurance industry payments, the Unit was unable to provide any data on its activities in this regard.

Other statistical information, such as the ratio of recoveries to actual health-care costs incurred, might provide a better indication of the Unit's effectiveness in recovering costs. It would also permit management to identify trends that require further investigation and corrective action.

## 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.

## MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation that measurable objectives and targets be established. The Subrogation Unit does provide a five-year outlook on subrogation cost recovery based on past-year recoveries and current indicators, such as the impact of case law.

In 2005, the Subrogation Unit implemented a new automated workflow system. As part of this automated system, the Ministry will develop meaningful indicators in support of a Management Information System (MIS). This MIS will include individual and collective performance measurements to evaluate file management processes and the cost effectiveness of pursuing certain file types.

The Ministry will establish measurable objectives using information and data gathered from other data sources while identifying health-care costs for victims of motor vehicle accidents and identifying other sources for non-reported claims.