

The Injury Advocates represent health care providers and legal professionals supporting seriously injured people across Ontario. Working in the Motor Vehicle Accident sector, we have witnessed a steady depletion of available benefits over the years. It has become increasingly difficult for consumers to access the crucial benefits they rely on for their safety and recovery. That has left severely injured innocent premium paying accident victims with no alternative but to access OHIP funded services, family members, and often without help at all. The barriers to access for treatment and care have increased the burden on the public purse, caused economic harm to family members who have had to leave jobs to support their seriously injured family members and left many without care and treatment. Recently, we have seen a concerning trend of denied support stemming from the *Malitskiy v. Unica* decision.

Attendant care is the most basic level of care for individuals with serious injuries such as brain injuries, spinal cord injuries, serious orthopedic injuries, and/or amputations. It enables a Personal Support Worker to assist with essential tasks like personal care, safety, supervision, meal preparation, hygiene, and other therapies.

The Form 1 assessment was originally designed to calculate the monetary amount injured individuals could use to hire a Personal Support Worker. Here is a quote from the Financial Services Commission of Ontario (FSCO) 2018 bulletin:

1. Attendant Care Hourly Rate Guideline

Calculation of Monthly Benefit

The Attendant Care Hourly Rate Guideline has been revised to require that the maximum hourly rates set out in the guideline be used with the Assessment of Attendant Care Needs (Form 1) to calculate the monthly attendant care benefit in accordance with section 19 (2) of the Statutory Accident Benefits Schedule – Effective September 1, 2010 (SABS).

Previous guidelines could be interpreted to strictly apply the maximum hourly rates as the maximum payable for attendant care services, rather than using the hourly rates to calculate a monthly benefit as was originally intended.

The approved amount on the Form 1 is calculated by multiplying the time required each month for a specific type of support by the Form 1 hourly rate assigned to that service (e.g., \$14.00, \$14.90, and \$21.11).

Concerns Regarding Economical Insurance's Post-Malitskiy v. Unica Attendant Care Policies

In the aftermath of the *Malitskiy v. Unica* decision, Economical Insurance, along with its related companies Sonnet and Definity, has implemented sweeping policies that severely limit payments for attendant care based on outdated hourly rates. These rates are now not only below minimum wage but also fail to account for essential business-related expenses.

As a result, insurers are making only partial payments on invoices, leaving claimants responsible for covering the shortfalls. This practice effectively shifts the financial burden onto critically injured individuals and their families, jeopardizing their access to necessary care.

By exploiting this legal loophole, these companies are setting a dangerous precedent. If left unaddressed, other insurers may follow suit, further eroding the standard of care for vulnerable claimants, all while sidestepping regulatory or legal accountability.

This issue urgently needs attention, as the continued undermining of the system will have long-lasting repercussions on the quality of care and financial fairness for injured individuals.

Costs related to Providing Attendant Care services

There are many costs associated with providing Attendant Care services, most of which have drastically increased with the Covid-19 Pandemic.

As many Ontarians know, the province is experiencing a shortage of Personal Support Workers and Care Providers. This shortage has led to increased competition among employers and agencies to attract and retain workers. To stay competitive, companies have been forced to significantly raise wages.

Additionally, the Ontario government promised a \$3 per hour wage increase for Personal Support Workers in the public sector. In response, private sector employers had to match or exceed this pay increase to remain competitive, resulting in further wage adjustments. These rates have not decreased since and are expected to continue rising over time.

Employment costs for a Personal Support Worker include contributions to the Canada Pension Plan (CPP), Employment Insurance (EI), Ontario Health Taxes, and Workplace Safety and Insurance Board (WSIB). If a PSW is paid \$25 per hour, the employer's contributions would be as follows:

- **Employer CPP Contribution:** \$1.49
- **Employer EI Contribution:** \$0.57
- **WSIB Contribution:** \$0.42

Thus, the total cost per hour for this Personal Support Worker would be \$27.48.

Other costs associated with running attendant care businesses include:

- **Insurance Costs:** Premiums for liability, property, and third party auto insurance.
- **Recruiting Costs:** Expenses related to attracting and hiring qualified staff.
- **Administrative Costs:** Overhead expenses for office management and other administrative functions.
- **Losses:** Financial losses due to factors such as staff turnover or unpaid services.
- **Other Costs:** Miscellaneous expenses that may arise, including training, equipment, and supplies.

In addition to these costs, health care expenses are known by economists to increase at a rate 1.5 – 2 times the inflation rate. Factors such as inflation, the potential for future pandemics, and other unforeseen events can significantly impact the cost of services. It is essential to consider

these factors when planning for the future costs of attendant care services. Without adjusting the hourly rates now to be in line with commercial costs, premium paying accident victims are deprived support from a diminishing pool of psw's willing to work for less than they can receive working for other employers, including the Ministry of Health, which pays hourly rates and benefits above commercial rates.

Without adjusting the rates, with psw's unable and unwilling to work for below minimum wage/commercial rates, the burden of care poses a large economic cost on the province and families, both of whom are thrust into the position of having to provide care when insurers breach the insurance contract they have with voters/premium payers and deny or fail to pay the full monthly rate calculated, to pay qualified psw's.

Solutions:

A: Increasing Accessibility to Assessment of Needs to other qualified health care practitioners: Currently, only nurses and OT's are allowed to complete the Form 1. There is no basis for this restriction, which limits access to care for those with severe injuries who can not access the treatment of many practitioners without psw support. Often the gateway to recovery begins with physiotherapy and chiropractic. The decision to remove the ability of certain healthcare professionals, such as physiotherapists and chiropractors, to complete the Form 1 was a significant misstep by the previous government. The completion of Form 1 is well within the scope of practice for these professionals, particularly for physiotherapists, who are uniquely qualified to diagnose and convey a diagnosis. By restricting the completion of Form 1 solely to Occupational Therapists and nurses, patient access to this essential service was unjustly limited. This change not only made it more costly for patients to obtain a Form 1 but also reduced their ability to even access it when needed. The Financial Services Commission of Ontario (FSCO) made this decision in response to insurance industry lobbying without adequately consulting healthcare colleges, professionals, or patient advocacy groups. This restriction on healthcare professionals' scope of practice offloads costs onto the public healthcare system, reduces access to care, and ultimately harms patient outcomes. This mistake needs to be rectified to restore patient access to necessary services.

Solutions to the issues stemming from the *Malitskiy v. Unica* decision should focus on allowing companies to bill competitive rates and ensuring full payments for approved services. We propose the following options:

1. **Updating Form 1 Rates:** Adjusting the Form 1 rates to reflect current public health facility rates nor market rates that attendant care companies need to charge to provide services, nor is there a mechanism allowing access to cost increases caused by inflation and limited resources.
2. **Billing Based on Approved Time:** The Form 1 unilaterally divides into 3 categories for care. Many of the services overlap. It is meant to be holistic. It is painfully ironic and

tragic when insurers defeat the holistic intention by indicating they will only pay x minutes for level one care at its 1990's rate, y minutes for level 2 care at its 1990's rate and z minutes for level 3 care at a 1980's rate. Calculating the total minutes that the claimant is approved for and allowing companies to bill their own rates for the time spent providing care is what was intended and what was directed by the Superintendent, but not being followed by insurers. This is the preferred method, as it more readily accommodates market adjustments and encourages companies to offer competitive pricing to attract clients. Claimants can then seek out competitive rates and choose which company they wish to provide the service.

This is similar to the WSIB model whereby agency attendant rates are negotiated with and paid directly to the agency.

Long term care homes, private nursing homes and the Ministry of Health contracts with agencies to provide services and pays them on the hours used model. The prepaid contract for accident benefit funded care on an if and when needed basis puts billions of dollars into the hands of insurers for contingent needs, providing a windfall unless there is an accident. When an accident happens and the severely injured innocent premium paying accident victim voter has a need and the insurer wont follow the government regulations and pay for that need, we all suffer.

3. **Expand the Pool of Professionals Authorized to Complete Form 1:** To ensure broader access to filling out Form 1s without increasing costs for this service, it is appropriate to recognize the acumen of other health care professionals and practitioners to complete the Form 1, especially when those same practitioners are the first line of support for seriously injured accident victims. We propose expanding the pool of healthcare professionals authorized to complete Form 1. Specifically, physiotherapists and chiropractors should be reauthorized to complete this form, as it falls well within their scope of practice. These professionals are uniquely qualified to assess and diagnose conditions that necessitate attendant care, making them well-suited to determine the level of support a patient requires. By expanding the pool of authorized professionals, we can reduce barriers to accessing Form 1, lower costs for patients, and improve overall patient outcomes by ensuring timely and appropriate care. This change would rectify the oversight that occurred when the ability to complete Form 1 was unjustly restricted, ultimately enhancing patient care and access
4. **Increase Cap Rates:** Cap rates have also remained unchanged for many years, which poses challenges for seriously injured clients who require significant care. Currently, the maximum amount of approved funds is \$3,000 per month for non-catastrophically injured clients and \$6,000 per month for those who are catastrophically injured. These limits need to be increased to accurately reflect the true cost of providing necessary care.

Implementing these changes will help ensure that Ontarians seriously injured in motor vehicle accidents receive the necessary care funded by the mandatory auto insurance benefits they have paid for.

Proposed Rate

A proposed rate of \$55-\$60 per hour for attendant care services is justified by the need to cover the full spectrum of costs associated with providing high-quality care while ensuring the sustainability and competitiveness of the business.

Key Factors Justifying the Rate:

1. **Wages and Employment Costs:** Personal Support Workers (PSWs) in Ontario are often paid around \$25 per hour. When you include mandatory employer contributions such as CPP, EI, and WSIB, the actual cost to the employer rises to approximately \$33 per hour. This amount in no way accounts for the cost of ensuring services are provided, detailed below, under Business Overhead.
2. **Business Overhead:** Running an attendant care business involves significant overhead costs, including insurance premiums, recruiting expenses, administrative operations, and ongoing training. These overhead costs can add another 35-40% on top of direct labour costs, bringing the total hourly expense to around \$45 per hour.
3. **Profit Margin for Sustainability of Small Businesses, the engines of Ontario's economy:** For a business to remain viable, it must also include a reasonable profit margin. In service industries such as healthcare, a profit margin of 20-25% is necessary to ensure the business can reinvest in quality improvement, absorb unforeseen costs, and remain competitive in attracting top talent. This brings the hourly rate to approximately \$55-\$60.

Competitive Market Rates:

In the Canadian context, where service rates are higher due to high housing costs, high transportation costs and increased costs of living and doing business, a rate of \$55-\$60 per hour aligns with what other skilled services charge. For example, plumbing and electrical services in Canada typically range from \$100 to \$150 per hour, reflecting similar cost structures and the need to sustain business operations.

Conclusion:

A rate of \$55-\$60 per hour is not just a reflection of current market conditions but a necessary adjustment to ensure that businesses providing attendant care services can cover all operational costs, offer competitive wages, and maintain a sustainable profit margin. This rate will allow accident victims and voters confidence that the services they need will be able to be made

available when they need it most, and ensure the quality of care remains as high as it is in the public sector, and commercial sector, with the same qualification of skilled personal support workers available and willing to work in public, private and insurer funded sectors for an equal and fair wage.

The *Malitskiy v. Unica* decision requires urgent attention, particularly regarding the calculation of attendant care payments. It is essential to clarify that the hourly rates in Form 1 Assessments are intended only as a means to calculate a monthly monetary amount, not as a cap on the hourly rate for agency services. These rates should not be misconstrued as maximum allowable rates, as they do not reflect the current market conditions or the true costs of providing care.

With the support of these important legislative and regulatory adjustments, Ontario voters and its economy will get what they have paid for from their insurers and will not be forced to pay doubly for the same service, once through their auto insurance premiums and second through unnecessary use of tax health care dollars which should only be used to provide services for those who don't have the benefit of paid for insurance health care services.