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Subject: AMO Breaking News - Bill 16 Proposes Transfer of OHIP

TO THE IMMEDIATE ATTENTION OF THE CLERK AND COUNCIL

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Bill 16 Proposes Transfer of OHIP and Related Costs to Municipalities

Bill 16 (the Budget Bill), proposes amendments to the Insurance Act which would permit the transfer of OHIP costs to municipal governments in cases where municipalities, acting as road authorities, are found to be liable for contributing to an injured party.

Subrogation (the transfer of costs to another party) of OHIP costs to municipalities ceased in 2002 as a result of an Ontario Court of Appeal decision, which found the practice unlawful. If passed, the proposed change means municipalities will now be responsible for all health insurance costs of an injured party, including those now covered by OHIP, if found liable. The addition of just two words to the Insurance Act will likely result in millions of dollars of new costs for municipalities.

While this affects tavern owners and automobile repair shops among others, a majority of those affected by this change will be municipalities. It will have dramatic consequences for all municipal insurance rates and deductible limits, whether found liable or not. This statutory change is significant and it is a form of downloading.

The proposal comes on the eve of AMO's presentation of a paper to the Attorney General's office on the need for liability reform. It points out the ease with which a municipality can be found liable because of the existing joint and several liability regime. Just a fraction of responsibility can cost millions of dollars. The change as proposed in Bill 16 will send insurance rates even higher. Municipalities are already struggling with high premium increases. Essex County, as an example, recently renewed its 2010 insurance policy with a 47% increase.

The Ministry of Health and Long-Term Care's analysis of expected municipal costs is based on information that is at least eight years out of date. In addition, the Ministry only accounted for OHIP costs, not the additional cost of insuring against subrogation. More recent information points to costs growing at a rate of 6-8% annually for those catastrophically injured in motor vehicle accidents (not including OHIP costs). In addition, the frequency of brain injury cases has doubled since 2003 according to the Frank Cowan Company.

The Ministry of Health and Long-Term Care notes municipalities "can mitigate their exposure to potential liability by engaging in practices that reduce the likelihood of any negligence or wrongful act." The Ministry fails to recognize that municipalities cannot close roads and have limited ability to do more to prevent motor vehicle accidents. AMO's liability paper lists many of the risk management practices municipalities have been putting into place over the last two decades to reduce risk. This has even included the withdrawal of services. Despite this, claims against municipalities continue to rise. Municipalities have come to be regarded as insurers of last resort, specifically because of joint and several liability and the common perception that municipalities have 'deep pockets'.

It is estimated there are over 1,000 claims made annually against municipalities related to motor vehicle accidents. In addition, motor vehicle accidents are the most expensive of all claims due to the severity of injuries sustained.

The government's proposed change in law to recoup these costs is not just a downloading of health care costs on municipalities, it would also represent significant insurance cost increases and even higher deductibles, that are funded by tax dollars.

Bill 16, Creating the Foundation for Jobs and Growth Act, 2010, Schedule 11, Health Insurance Act, Subsection 30 (5) will be considered by the Legislature's Standing Committee on Finance and Economic Affairs tomorrow. Municipalities should contact their MPPs immediately to express their concerns and pressure the government to amend the Bill to remove the provision. AMO is asking the Committee to change the Bill as well.

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