

Back to School with Thomson, Rogers and the Toronto ABI Network
Thursday, September 10, 2009

Are you prepared for changes to the Ontario Automobile Insurance Legislation?

Prepared by:

David R. Tenszen

416-868-3210

dtenszen@thomsonrogers.com


David A. Payne

416-868-3193

dpayne@thomsonrogers.com



Barristers and Solicitors



Proposed changes to:

Medical and Rehabilitation Benefits

Income Replacement Benefits

Attendant Care Benefits

Housekeeping and Home Maintenance Benefits

Obligations of Public Transit Authorities to Pay

Accident Benefits

Presented by:

David R. Tenszen
Partner, Thomson Rogers

Medical and Rehabilitation Benefits

Recommendation #15:

Consider having treatment plans completed only after a referral is made by the health professional primarily responsible for the claimant's rehabilitation (in most cases a family physician). Treatment plans would continue to be submitted by providers following a referral.

Recommendation #22:

Reduce the cap for medical and rehabilitation benefits for non-catastrophic claims to \$25,000.00. Introduce a \$100,000.00 optional medical and rehabilitation benefit along with the existing \$1 million optional benefit.

Medical and Rehabilitation Benefits

Recommendation #23:

In partnership with key stakeholders, FSCO should contact members of the Neck Pain Task Force to examine the feasibility of expanding the PAF Guidelines to provide a more extensive continuum of care and to include the treatment and assessment of other soft tissue injuries.

Recommendation #28:

Conduct annual review of reimbursement rate for travel in a personal vehicle.

Medical and Rehabilitation Benefits

Recommendation #33:

The cost of future care cost reports should not be an expense recoverable under the SABS.

Recommendation #36:

Consumers, health care providers and insurers should work together to improve consumers' awareness and expectations around treatment and outcomes. Some of the savings from changes in the accident benefits system should be used to fund these educational efforts.

Income Replacement Benefits

Recommendation #26:

FSCO needs to continue to monitor fees and the availability of services in the auto insurance sector, in particular, for seriously injured claimants.

Recommendation #27:

Increase the maximum income replacement benefit to \$500.00 per week.

Recommendation #32:

Amend the *SABS* to provide for an appropriate cap on the cost of accounting reports to substantiate a claim for weekly benefits.

Attendant Care Benefits

Recommendation #24:

Only occupational therapists and nurses who have been trained on the use of Form 1 should be permitted to assess auto accident victims for the attendant care benefit. This should apply to assessments conducted under both sections 24 and 42 of the *SABS*.

Attendant Care Benefits

Recommendation #25:

The attendant care benefit should continue to compensate claimants for incurred expenses. However, to enhance consumer protection and transparency, the *SABS* could clarify that where an arbitrator has found that the insurer has been unreasonable in denying the attendant care benefit, payments should be made even if no expenses have been incurred.

Housekeeping and Home Maintenance Benefits


Recommendation #29:

Make housekeeping and home maintenance expenses and caregiver benefits optional. Reimbursement for housekeeping and home maintenance expenses and for replacement caregivers needs to reflect actual economic losses.

Changes to the Obligations of a Public Transit Authority Accident Benefits

Recommendation #37:

The government should consider legislative amendments to reflect the unique status of public transit services operated by municipal authorities by excluding injuries from no-fault where no collision has occurred.



Proposed changes to:
Catastrophic Level of Benefits
Accident Benefits Assessments

Presented by:

David A. Payne
Partner, Thomson Rogers

Catastrophic Level of Benefits

Recommendation #17:

Restrict the ability to conduct catastrophic impairment assessments to practitioners with appropriate training and experience.

Catastrophic Level of Benefits

Recommendation #35:

Insurance claims departments need to better focus on the needs of claimants with serious injuries. The IBC, Insurance Institute of Ontario and the Ontario Insurance Adjusters Association should work together to train adjusters on the needs of claimants with serious injuries to reduce exposure to potential allegations of unfair and deceptive acts or practices.

Accident Benefits Assessments

Recommendation #1:

When determining the merits of any future regulatory changes, consideration should be given to whether a change would increase complexity and regulatory burden. There should be a compelling reason for making a change that would add complexity to the accident benefit system.

Recommendation #2:

Review the *SABS* to identify provisions that: a) are overly complex and could be simplified without changing the intent of the Regulation, or b) are essentially ineffective and could be eliminated without changing the impact of the Regulation.

Accident Benefits Assessments

Recommendation #3:

Contact a forms consultant to assist FSCO and stakeholders in simplifying the application process and revising forms that should first be tested on consumers.

Recommendation #11:

Section 24 assessment expenses should be subject to the same maximum monetary and time limits that apply to medical and rehabilitation benefits under section 19 of the *SABS*.

Accident Benefits Assessments

Recommendation #12:

The fee for completing forms, including any assessment required to complete the forms, should be capped at \$200.00. The cost of all other assessments should be capped at \$2,000.00.

Recommendation #13:

The time frame provided to adjusters to review assessment requests should be the same as the time frame that applies to treatment plans (10 business days) to allow for proper claims handling.

Accident Benefits Assessments

Recommendation #14:

Availability of in-home assessments should be limited to seriously injured claimants and should only be used to evaluate their need for attendant care services and home modifications.

Recommendation #15:

Consider having assessment requests completed only after a referral is made by the health professional primarily responsible for the claimant's rehabilitation (in most cases a family physician). Assessment requests would continue to be submitted by providers following a referral.

Accident Benefits Assessments

Recommendation #16:

The health care professional association and the insurance industry should jointly develop standards for the delivery of third party medical examinations as well as qualifications for assessors. FSCO would facilitate the process.

Recommendation #18:

The cost of insurer examinations should be capped at \$2,000.00.

Accident Benefits Assessments

Recommendation #19:

Provide adjusters with some discretion in reviewing assessment and treatment requests and modify *Ontario Regulation 7/00* to reflect possible amendments to the *SABS*.

Recommendation #20:

Revoke section 42.1 of the *SABS* which allows claimants to obtain an assessment from their health care provider to address issues raised in an insurer examination.

THANK YOU