

Back-to-School II

with Thomson, Rogers in collaboration with the Toronto ABI Network

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Update on Statutory Accident Benefit Legislation

Presented by:

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Barristers and Solicitors

OVERVIEW OF PRESENTATION

- The new Statutory Accident Benefit Schedule is here—but we are still dealing with old accidents—how does it all work?
- This presentation will summarize all of the developments relating to the new SABS (effective September 1, 2010) since our March 31, 2010 conference
- This presentation will NOT review the basic changes set out in the new SABS—see our Summary Charts for a review of the new SABS and the Top 20 Changes from the Old SABS

ROADMAP OF PRESENTATION

- This presentation will review the following:
 - A) Transitional Issues
 - B) A Brief Overview of the Minor Injury Guideline (MIG)
 - C) The New Accident Benefit Forms
 - D) Amendments to the new SABS (O. Reg. 289/10)
 - E) Key Interpretation Issues:
 - 1) Pre-Approval for Form 1s?
 - 2) Interpreter and Transportation Costs and the \$2,000 cap
 - 3) Denials of Treatment and Assessment Plans
 - F) Insurance Act Amendments
- See paper at tab 2 and attachments (new SABS at tab 2I)

A) TRANSITIONAL ISSUES

- Three different categories of AB files:
 - 1) Accidents before Sept 1, 2010 ('old accidents')
 - 2) Accidents on or after Sept 1, 2010 governed by old (unrenewed) policies
 - 3) Accidents on or after Sept 1, 2010 governed by new (renewed) policies

- Recall three different categories of injuries:
 - 1) Minor Injuries (previous PAF)
 - 2) Non-Catastrophic Impairments
 - 3) Catastrophic Impairments

A) TRANSITIONAL ISSUES

- Transitional Bulletin released by FSCO (see tab 2A)
- Simple Rules (...that aren't simple at all):
 - The new SABS process governs everything
 - Regarding benefit entitlement:
 - For ALL accidents on or after Sept 1, 2010, you follow the new SABS in all respects, and, if an old (unrenewed) policy governs, then simply read in optional benefits for:
 - med/rehab benefits
 - attendant care benefits
 - housekeeping and home maintenance benefits, and
 - caregiver benefits
 - For ALL accidents before Sept 1, 2010, the substantive elements remain (such as the benefit maximums and benefit availability, the old definition of 'incurred' and assessment costs not coming out of med/rehab limits)

A) TRANSITIONAL ISSUES

- Because it isn't simple...see the Transitional Cheat Sheet
- Note the following:
 - a) Assessment costs do not come out of med/rehab limits for old accidents (but do come out of limits for MVAs on/after Sept 1)
 - b) The new definition of "incurred" does not apply to old accidents (but does apply to all MVAs on/after Sept 1)
 - c) The \$2,000 assessment cap applies to all claims (old & new)
 - d) The following procedural items apply to all claims (old & new)
 - i) Must use Treatment and Assessment Plans (no more OCF-22s)
 - ii) No Rebuttals
 - iii) Restrictions on who can complete a Form 1
 - iv) Restrictions on who can complete a CAT application
 - v) Insurer Examination Process (re Scheduling and Timelines)

B) A BRIEF OVERVIEW OF THE MINOR INJURY GUIDELINE

- The Minor Injury Guideline (MIG) is available (see tab 2C)
- The MIG sets out a framework for spending the up to \$3,500 available in medical and rehabilitation benefits for persons with 'minor injuries' (i.e. soft tissue injuries...)
- The MIG provides for up to \$2,200 in pre-approved goods
- The MIG provides three blocks of treatment post accident:
 - Block 1 – weeks 1 to 4 - \$775
 - Block 2 – weeks 5 to 8 - \$500
 - Block 3 – weeks 9 to 12 - \$225
- The MIG provides \$400 for supplementary goods and services and a \$50 transfer fee for a new practitioner

C) THE NEW ACCIDENT BENEFIT FORMS

- The new AB forms are all available
- FSCO's Bulletin dated June 16, 2010 provides the links to all of the new AB forms (see tab 2D)
- The new forms must be used for all accidents (old & new)
- The new Treatment and Assessment Plans (OCF-18) eliminates the use of the old Approval of an Assessment or Examination form (the old OCF-22)
- Note the requirement to have claimants sign the Treatment and Assessment Plan (unless waived by insurer), unlike the old OCF-22s where a signature was optional—and plan accordingly

D) AMENDMENTS TO THE NEW SABS

- Ontario Regulation 289/10 passed on July 14, 2010, amends the new SABS (O. Reg. 34/10)—it serves to:
 - a) Revert back to allowing CAT applications prior to the 2 year anniversary of the accident where the condition is stable
 - b) Clarify that an assessment team can assist in completing a catastrophic impairment assessment
 - c) Expand the \$2,000 assessment cap to expressly include the cost of ‘preparing reports’
 - d) Expand the \$2,000 cap to expressly include “expenses”
 - e) Clarify that a ‘minor injury’ can include multiple soft tissue injuries
 - f) Slightly narrow the new controversial definition of ‘incurred’
 - g) Expand the definition of ‘qualified case manager’ to include coordinating attendant care benefits

E) KEY INTERPRETATION ISSUES- FORM 1 REQUIRING PRE-APPROVAL?

- The old SABS allowed for a Form 1 assessment to be completed without prior approval, although many rehab companies sought prior approval to avoid payment disputes
- The new SABS obligates an insurer to pay for reasonable fees associated with a form 1 assessment (see s. 25(1)4)
- But s.38(2) of the new SABS says an insurer is not liable to pay an expense for an assessment or examination conducted before a treatment and assessment plan is submitted (unless emergency exemption, etc.)
- FSCO initially advised that the old process of not requiring pre-approval would remain—but now FSCO says pre-approval IS required (see FSCO email at tab 2F)
- Best to be careful—file a treatment and assessment plan

E) KEY INTERPRETATION ISSUES- INTERPRETER & TRANSPORTATION

- The \$2,000 assessment cap (s. 25(5)(a)) now expressly includes “expenses”
- FSCO has said that translation expenses, like the use of an interpreter would be caught by the \$2,000 cap, meaning that an assessor must absorb the translation cost out of their \$2,000 maximum account (same goes for IE assessments)
- FSCO has also said that the assessor’s transportation expenses would be caught within the \$2,000 cap (although the claimant’s transportation costs could be recovered separately)—see FSCO email at tab 2G
- Problems—how to fairly assess claimants in remote communities and claimants speaking foreign languages

E) KEY INTERPRETATION ISSUES- TREATMENT/ASSESSMENT DENIALS

- The new SABS expressly requires an insurer to stipulate the ‘medical and any other reasons’ for a denial (see. S.38(8))
- Adjusters continue to deny on the basis of a treatment and assessment plan not clearly being ‘reasonable and necessary’-but this is no longer a valid basis for a denial
- It is suggested that insurers be asked to identify the medical and any other reasons for a denial—see precedent letter at tab 2H provided courtesy of Karen Rucas
- Forcing the insurers to identify their medical and any other reasons may encourage adjusters to actually review the file and provide a logical basis for the denial....or approve it
- Realistically though, insurers may develop standard denial terminology that they claim meets the new requirements

F) INSURANCE ACT CHANGES

- Two notable changes to the Insurance Act that impact tort claims (claims against at-fault parties)—just FYI:
 - 1) The fatality deductible that applied to tort claims by family members has been removed—so in cases of death, family members can sue at-fault parties without having to pay the \$15,000 statutory deductible
 - 2) The restriction on past income loss claims against at-fault parties has been changed to allow claims for 70% of the gross past income loss—to correspond to the change in the amount paid in income replacement benefits under the new SABS

CONCLUSION

- The new SABS reduces benefits available to accident victims and restricts access to those reduced benefits (such as through the new definition of ‘incurred’)
- It is unrealistic to think that optional benefits will become the norm rather than the exception
- Further changes are expected....such as a Guideline on how to conduct Catastrophic Assessments
- Monitor our website at thomsonrogers.com for information

THANK YOU

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