



Province of Alberta

INSURANCE ACT

AUTOMOBILE ACCIDENT INSURANCE BENEFITS REGULATIONS

Alberta Regulation 352/1972

With amendments up to and including Alberta Regulation 39/2016

Office Consolidation

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(Consolidated up to 39/2016)

ALBERTA REGULATION 352/72

Insurance Act

**AUTOMOBILE ACCIDENT INSURANCE
BENEFITS REGULATIONS**

1 Schedule “A” applies with respect to accident insurance benefits provided for in section 629 of the Act or in this Regulation.

AR 352/72 s1;114/95;121/2004

2 A contract evidenced by a motor vehicle liability policy insures, in respect of an accident involving an automobile, for accident insurance benefits payable to the persons, in or to at least the amounts, and in accordance with or subject to section 629 of the Act and the terms, conditions, restrictions and exclusions, that are prescribed in Schedule “A”.

AR 342/72 s2;114/95;121/2004

3 The numbering in Schedule “A” differs from the normal numbering system in use in order to reflect the corresponding numbering in the standard motor vehicle liability policy.

AR 114/95 s2

4(1) The Superintendent may prescribe fees and disbursements or the maximum fees and disbursements to be paid for any service, supply, report or any other activity or function necessitated by, described in or referred to in this Regulation.

(2) The fees and disbursements or maximum fees and disbursements prescribed under subsection (1) must be published in The Alberta Gazette.

AR 121/2004 s3

5 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on September 30, 2018.

AR 121/2004 s3;149/2011;39/2016

Schedule "A"**Section B - Accident Benefits**

The Insurer agrees to pay with respect to each insured person as defined in this section who sustains bodily injury or death directly and independently of all other causes by an accident arising out of the use or operation of an automobile.

Subsection 1 - Medical Payments**(1)** In respect of

(a) injuries to which the *Diagnostic and Treatment Protocols Regulation* applies and that are diagnosed and treated in accordance with the protocols under that Regulation, the expenses payable for any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment or making a report, or any other activity or function authorized under that Regulation, and payment must be made in the manner and subject to the provisions of that Regulation, notwithstanding anything to the contrary in Section B, and

(b) injuries

(i) to which the *Diagnostic and Treatment Protocols Regulation* applies but that are not diagnosed and treated in accordance with the protocols under that Regulation,

(ii) to which the *Diagnostic and Treatment Protocols Regulation* ceases to apply but for which the insured person wishes to make a claim under provision (3) of "Special Provisions, Definitions, and Exclusions of Section B", and

(iii) to which Section B applies, other than those injuries referred to in subclauses (i) and (ii),

all reasonable expenses incurred within 2 years from the date of the accident as a result of those injuries for necessary medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing and ambulance services and, in addition, for other services and supplies that are, in the opinion of the insured person's attending physician and in the opinion of the Insurer's medical advisor, essential for the treatment or rehabilitation of the injured person,

to the limit of \$50 000 per person.

(2) Notwithstanding provision (1),

- (a) expenses payable in respect of chiropractic services provided under provision (1)(b) are limited to \$750 per person;
- (b) expenses payable in respect of massage therapy services provided under provision (1)(b) are limited to \$250;
- (c) expenses payable in respect of acupuncture services provided under provision (1)(b) are limited to \$250.

(3) Subject to provision (4), the Insurer is not liable under this provision for those portions of expenses payable or recoverable under any medical, surgical, dental or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of any insured person.

(4) Except for those portions of expenses payable or recoverable under any law, provision (3) does not apply to expenses payable or recoverable for an injury to which the *Diagnostic and Treatment Protocols Regulation* applies.

Subsection 2 - Death, Grief Counselling, Funeral and Total Disability

Part 1 - Death, Grief Counselling and Funeral Benefits

Subject to the provisions of this Part 1, for death, a payment of a principal sum - based on the age and status at the date of the accident of the deceased in a household where the head of the household or the spouse/adult interdependent partner or dependants survive - of the following amount:

Age of Deceased at Date of Accident	Status of Deceased at Date of Accident		
	Head of Household	Spouse/Adult Interdependent Partner	Dependent Relative
Up to age of 4 years	-	-	\$1000
5 to 9 years	-	-	2000
10 to 17 years	\$10 000	\$10 000	3000

18 to 64 years	10 000	10 000	2000
65 to 69 years	10 000	10 000	2000
70 years and over	10 000	10 000	1000

In addition, funeral service expenses up to the amount of \$5000 in respect of the death of any one person.

In addition, grief counselling expenses up to the amount of \$400 per family in respect of the death of any one person.

In addition, with respect to the death of the head of household,

- (a) where there are 2 or more survivors who are
 - (i) a spouse/adult interdependent partner and one or more dependent relatives, or
 - (ii) 2 or more dependent relatives,the principal sum payable is increased 20% for each survivor other than the first, and
- (b) where there is a spouse/adult interdependent partner or dependent relative survivor living in the household, the death benefit is increased
 - (i) by \$15 000 for the first spouse/adult interdependent partner or dependent relative survivor, and
 - (ii) by a subsequent \$4000 for each of the remaining survivors.

For the Purposes of this Part 1

(1) "head of household" means that member of a household with the largest income in the year preceding the date of the accident;

(2) "dependent relative" means a person

- (a) under the age of 18 years for whose support the head of household or the spouse/adult interdependent partner of the head of household (or both of them) is legally liable and who is dependent upon either or both of them for financial support; or
- (b) 18 years of age or over and residing in the same dwelling premises as the head of household who, because of mental or physical infirmity, is principally dependent on the head

of household or the spouse/adult interdependent partner of the head of household (or both the head of household and the spouse/adult interdependent partner) for financial support;

(2.1) If the head of household has both a spouse and an adult interdependent partner, a reference to spouse/adult interdependent partner or surviving spouse/adult interdependent partner means

- (a) the spouse or surviving spouse, or
- (b) the adult interdependent partner or surviving adult interdependent partner

living in the same dwelling premises as the head of household.

(3) the total sum payable shall be paid with respect to death of head of household or spouse/adult interdependent partner to the surviving spouse/adult interdependent partner. If there is no surviving spouse/adult interdependent partner in the household, no amount shall be payable unless there are surviving dependent relatives, and in that event the total sum payable shall be divided equally among the surviving dependent relatives.

(4) The total amount payable with respect to death due to a common disaster of head of household and spouse/adult interdependent partner shall be paid equally to surviving dependent relatives.

(5) The sum payable with respect to the death of a dependent relative shall be paid to the head of household or, if he does not survive, to the surviving spouse/adult interdependent partner of the head of household but, if neither the head of household nor the spouse/adult interdependent partner survives, no amount is payable.

(6) amounts payable under this Part I shall be paid only to a person who is alive 60 days after the death of the insured person.

(7) the amount payable under this Part I for the death of any person shall be reduced by the amount of any payments made to or for such person with respect to the same accident under Part II, Total Disability.

(8) The amount payable under this Part for grief counselling is payable to the spouse/adult interdependent partner or other immediate family member of the deceased in respect of grief counselling for the immediate family members of an insured person who dies as a result of the accident.

Part II - Total Disability

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person, provided

- (a) such person was employed at the date of the accident;
- (b) within 60 days from the date of the accident such injury prevents him from performing any and every duty pertaining to his occupation or employment;
- (c) no benefit shall be payable for the first seven days of such disability or for any period in excess of 104 weeks.

Amount of Weekly Benefit -

The weekly benefit payable shall be the lesser of:

- (a) \$400 per week, and
- (b) 80% of the average gross weekly earnings, less any payments for loss of income from occupation or employment received by or available to such insured person under Subsection 2(A) of this Section B.

The above benefits shall be subject to the terms of provision (3) below.

For the purpose of this Part II,

(1) an insured person who is 18 years of age or over and who is not engaged in an occupation or employment for wages or profit and is completely incapacitated and unable to perform any of his or her household duties shall, while so incapacitated, receive \$135 per week for not more than 26 weeks;

(1.1) average gross weekly earnings is the greater of

- (a) average gross weekly earnings from an occupation or employment for the 4 weeks preceding the accident, and
- (b) average gross weekly earnings from an occupation or employment for the 52 weeks preceding the accident;

(2) a person shall be deemed to be employed

- (a) if actively engaged in occupation or employment for wages or profit at the date of the accident, or
- (b) if 18 years of age or over, so engaged for any six months during the 12 months preceding the date of the accident.

(3) if the benefits for loss of time payable under this Part, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the average gross weekly earnings of the insured person, the weekly benefit shall be calculated in accordance with the following formula:

$$WB = \frac{80\% \text{ of } WE}{PB + OB} \times PB$$

where

WB is the weekly benefit,

WE is the average gross weekly earnings of the insured person,

PB is the lesser of \$300 and 80% of WE,

OB is the total of all other weekly benefits payable to the insured person under other contracts, including a contract of group accident insurance and a life insurance contract providing disability insurance, excluding benefits under the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* (Canada);

(4) the disability of the insured person shall be certified by a duly qualified medical practitioner, if so required by the Insurer.

**Subsection 2(A) - Supplemented Benefits
Respecting Accidents Occurring Outside
Alberta in a No-fault Jurisdiction**

(1) In this Subsection,

- (a) "accident" means an event resulting in bodily injury caused by an automobile or by the use of an automobile or by the load of an automobile, including damage caused by a trailer;
- (b) "applicable laws" means, with respect to a no-fault jurisdiction, the laws in force from time to time governing the system of no-fault automobile insurance in that jurisdiction;
- (c) "insured person" means an individual who is a resident of Alberta and who

- (i) is an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,
 - (ii) is an occupant of an automobile and is
 - (A) the named insured, or a spouse/adult interdependent partner of the named insured living in the same dwelling premises as the named insured, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as the named insured,
 - (iii) while a pedestrian, is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,
 - (iv) while a pedestrian, is struck by an automobile and is
 - (A) the named insured, or a spouse/adult interdependent partner of the named insured living in the same dwelling premises as the named insured, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as the named insured,
 - (v) is the occupant of an automobile or a pedestrian struck by an automobile and is
 - (A) an employee or partner of the named insured who is provided with the regular use of the described automobile, or a spouse/adult interdependent partner of the employee living in the same dwelling premises as the employee or a spouse/adult interdependent partner of the partner living in the same dwelling premises as the partner, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as that individual,
- or
- (vi) is
 - (A) the occupant of an automobile, or

(B) a pedestrian struck by an automobile

driven by an individual described in any of subclauses (i) through (v),

but does not include an individual who is, at the time of an accident in Quebec, the owner or occupant of an automobile registered in Quebec;

(d) "no-fault jurisdiction" means the Province of Quebec, Ontario, Manitoba or Saskatchewan;

(e) "pedestrian" means an individual who is not an occupant of an automobile;

(f) "resident of Alberta" means an individual who

(i) is authorized by law to be or to remain in Canada and is living and ordinarily present in Alberta, and

(ii) meets the criteria for non-residency in the no-fault jurisdiction established by the applicable laws of the no-fault jurisdiction.

(2) The definition of "insured person" under the heading Special Provisions, Definitions, and Exclusions of Section B does not apply to this Subsection.

(3) Where an insured person suffers personal injury as a result of an accident occurring in a no-fault jurisdiction, the insurer agrees to pay to the insured person the amount that would be payable under the applicable laws of the no-fault jurisdiction as if the insured person were a resident of the no-fault jurisdiction.

(4) For the purposes of calculating an amount payable under (3) in respect of an accident occurring in Quebec, references in the *Automobile Insurance Act* (Quebec) to other statutes or regulations of Quebec used to calculate an amount payable under (3) shall be read as references to corresponding Alberta statutes or regulations or federal statutes or regulations that apply in Alberta.

(5) In any claim or action in Alberta arising out of an accident in Alberta, the insurer agrees not to exercise its right of subrogation against a resident of Manitoba or Saskatchewan in respect of Section B - Accident Benefits paid to a resident of Alberta under an automobile insurance policy issued in Alberta.

(6) No exclusion or limitation in Section B or in the General Provisions, Definitions and Exclusions and the Statutory Conditions of this policy may be raised by the insurer in respect of a claim by an insured person under (3).

**Special Provisions, Definitions,
and Exclusions of Section B**

- (1) "Insured person" Defined - In this section, the words "insured person" mean
- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
 - (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse/adult interdependent partner and any dependent relative of either while an occupant of any other automobile; provided that
 - (i) the insured is an individual or are two spouses/adult interdependent partners in a household;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
 - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
 - (c) in subsection 1 and 2 of Section B only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy.
 - (d) in subsection 1 and 2 of Section B only, the named insured, if an individual and his or her spouse/adult interdependent partner and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that

- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, or a sole proprietorship, any employee or partner of the insured for whose regular use the automobile is furnished, and his or her spouse/adult interdependent partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile; and
- (f) in subsections 1 and 2 of Section B only, any employee or partner of the insured, for whose regular use the automobile is furnished, and his or her spouse/adult interdependent partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that in respect of (e) and (f) above,
- (i) neither such employee nor partner of his or her spouse/adult interdependent partner is the owner of an automobile;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
 - (iv) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;

in respect of (e) above only,

- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(1.1) "Prescribed claim form" Defined - In this section, the words "prescribed claim form" mean a form prescribed by the Minister under section 803 of the *Insurance Act*.

(1.2) "Spouse/adult interdependent partner" Defined - In this section, the words "spouse/adult interdependent partner" mean the spouse or adult interdependent partner, as the case may be.

(2) Exclusions -

- (a) The Insurer shall not be liable under provision (1) of subsection 1, nor under part II of subsection 2 of this section B for bodily injury to any person
 - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan as a result of the accident; or
 - (iii) where the person at the time of the accident is engaged in a race or speed test; or
 - (iv) caused directly by sickness or disease; or
 - (v) who is using the automobile for any illicit or prohibited trade or transportation.
- (b) The Insurer shall not be liable under Part II of Subsection 2 of this Section B for Bodily injury
 - (i) sustained by any person who is convicted of an offence under section 253(b) of The Criminal Code (driving with more than 80 milligrams of alcohol in 100 millilitres of blood) or under section 253(a) of The Criminal Code (driving while ability to drive impaired by alcohol or a drug) occurring at the time of the accident, or
 - (ii) sustained by any person driving the automobile who is under the age prescribed by the law of the jurisdiction in which the accident occurs as being the minimum age at which a licence or permit to drive the automobile may be issued to him; or

- (iii) sustained by any person driving the automobile who is not for the time being either authorised by law or qualified to drive the automobile.

(3) Notice and Proof of Claim - Subject to the *Diagnostic and Treatment Protocols Regulation*, the insured person or the insured person's agent, or the person otherwise entitled to make a claim or that person's agent, shall

- (a) deliver personally,
- (b) mail,
- (c) fax, or
- (d) send by e-mail if both parties have agreed to this method of sending and receiving notices and other documents,

a properly completed prescribed claim form, containing at least the information referred to in provision (3.1), to the chief agency or head office of the Insurer in Alberta within 30 days of the accident, or if giving notice within 30 days is not reasonable, as soon as practicable after that.

(3.1) Contents of Claim Form - The completed prescribed claim form must include

- (a) details of the injury, and
- (b) details of the accident that are within the personal knowledge of the insured person.

(3.2) Responsibility for Expenses Related to Completion of Claim Form - The Insurer shall pay all expenses incurred by or on behalf of the insured person in completing the medical report portion of the prescribed claim form.

(3.3) Total Disability Claim - With respect to a total disability claim, the insured person shall, if so required by the Insurer, furnish a certificate from a duly qualified medical practitioner as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby.

(4) Medical Reports - Subject to provision (4.1), the Insurer has the right and the claimant shall afford to a duly qualified medical practitioner named by the Insurer an opportunity to examine the person of the insured's person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(4.1) Exemption - The Insurer has no right and the claimant is under no obligation under provision (4) with respect to

- (a) injuries to which the *Diagnostic and Treatment Protocols Regulation* applies during the period and with respect to any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment, making a report or other activity or function authorized under that Regulation;
- (b) subject to provision (4.2), any other injuries for which the following services are provided:
 - (i) chiropractic services;
 - (ii) massage therapy services;
 - (iii) acupuncture services;
 - (iv) the following services to the extent of the specified limit:
 - (A) psychological services, up to \$600 per person;
 - (B) physical therapy services, up to \$600 per person;
 - (C) occupational therapy services, up to \$600 per person.

(4.2) Non-application - Provision (4.1)(b) does not apply to those injuries to which the *Diagnostic and Treatment Protocols Regulation* ceases to apply.

(5) Release - Notwithstanding any release provided for under the relevant sections of the *Insurance Act* of the Province, the insurer may demand, as a condition precedent to payment of any amount under Section B of the policy a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(6) When Moneys Payable -

- (a) Except for the expenses authorized to be paid in accordance with the *Diagnostic and Treatment Protocols Regulation*, all amounts payable under Section B other than benefits under Part II of Subsection 2 shall be paid by the Insurer within 60 days after it has received a completed prescribed claim form. The initial benefits for loss of time under Part II of Subsection 2 shall be paid within 30 days after the Insurer has received the completed prescribed claim form, and payments shall be

made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes, prior to payment, proof of continuing disability.

- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions (3) and (4) are complied with, nor until the amount of the loss has been ascertained as provided in this section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this Section B must be commenced not later than 2 years after the cause of action against the insurer arose.

See also general provisions, definitions, exclusions, and statutory conditions of this policy.

(7) and (8) Repealed AR 121/2004 s8.

AR 352/72 Sched.A;233/78;12/81;273/82;409/87;171/88;178/89;
306/91;114/95;4/98;36/98;121/2004;259/2006;127/2012



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