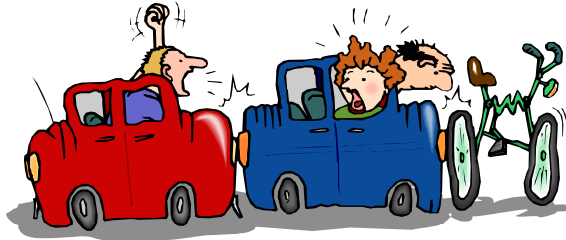


Bill 198 and the New SABS

Thomson, Rogers presents
Adapting to the Changes in the Rehabilitation Setting



Opening Community Doors Conference
Leonard H. Kunka
Thomson, Rogers, 416-868-3100



Bill 198 History

Bill 166 (June 2002)

Insurers' wish list:

- proposals were anti – injured victims
- never saw the light of day



Bill 198 History

Sept 16 2002: First Set of Proposed Changes

- Introduced concept of the “guidelines” for less serious injury
- Right to sue for healthcare expenses in tort
- Removal of section 24 assessment entitlement
- Severe restriction on ABI CAT entitlement
- Sept 24/02 Conference TRI with MPP Sampson
- Healthcare workers & lawyers critique of proposals

Bill 198 History

Fall 2002 - Initial Consultation Process with MPPs
Oct 30 2002 - Bill 198

- Alleged expansion of Catastrophic Definition
- Right to sue for health care expenses
- Much left to regulations
- Much left to Guidelines
- Significant changes to treatment plans, DAC'S, Assessments & Assessment Plans.
- PAF/Non-PAF system introduced

Bill 198 History

December 9, 2002

- Third and Final reading of Bill 198
- Not yet in force
- New draft regulations delivered Feb 21, 2003
- Likely in force before election



The Tort Claim

- Who is the at-fault driver?
- Does it have to be a car?
ATV, Snowmobile, Jet Skis, Boats, Motorcycle
- What can I sue for?
lost income, pain and suffering, housekeeping, home maintenance
- Are there any restrictions on my right to sue?
Under Bill 59
 - no med/rehab/care unless CAT
 - no pain and suffering unless serious and permanent

The Tort Claim

How is this changed under Bill 198?

- No deductible for pain and suffering awards over \$100,000.
- No deductible for Family claims over \$50,000
- Can sue for excess medical / rehab / care costs if injury is serious and permanent
- 80% net for past lost income
- No change for housekeeping and home maintenance

Bill 198 SABS

New Pre Approved Framework (PAF) Guidelines

- Affects Whiplash Associated Disorder (WAD 1 and 2)
- No DACs, Assessments, Insurer Exams
- Limits on treatment:
 - WAD 1 – 4 weeks < \$1200
 - WAD 2 - 6 weeks ?
- DACs to get out of PAF if insurer disputes

Bill 198 SABS

Treatment Plan Changes

- Treatment Plan is now six (6) pages not three (3), with increased requirements;
- Treatment Plans for multi-disciplinary centers can only be submitted once every thirty (30) days for first six (6) months and once every sixty (60) days thereafter;
- Benefits are not payable until a application “completed” to the insurer’s satisfaction.

Bill 198 SABS

Treatment Plan Changes (continued)

- If a victim doesn’t give notice of accident within seven (7) days then initial treatment, income benefits, attendant care, visitor expenses and-or funeral benefits are delayed by up to forty-five (45) days from the date of submission of the relevant form to date of the insurers approval or denial;
- If insurers fail to approve or deny treatment within fourteen (14) days the only sanction is that they will be obliged to pay for treatment between day 14 and the day they give notice denying treatment;

Bill 198 SABS

Treatment Plan Changes (continued)

Conclusions Regarding Delays caused by Bill draft S.A.B.S

- Seriously injured victims could reasonably see the time frame between recommendation by discharge planner from hospital for treatment and date of receipt of recommended treatment double under Bill 198 from the time frame applicable under Bill 59;

Bill 198 SABS

Assessment Plan Form OCF-18A

- Replaces Section 24
- must request insurer consent to assessments for seriously injured persons;
- If insurer denies assessment request, DAC will be involved. Process could add delay of twenty-seven (27) days to obtain approval for assessments;

Bill 198 SABS

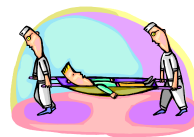
Assessment Plan Form OCF-18A (continued)

- Section 24 assessments are abolished. All assessments will need to be pre-approved with the sole exception that for those with minor injuries (WAD I or WAD II, 3 assessments X \$180.00 each maximum by different assessors) will be paid by the insures. There are other limited exceptions;

Bill 198 SABS

Increased Attendant Care Rates

- Current rates not realistic in the marketplace
- Amount of increase in line with 2002 WSIB hourly rates for basic and complex care.
- No indication of change to Form 1 at present



Bill 198 SABS

Catastrophic Definition

- Loss of use or amputation of both legs (No real change)
- Children CAT testing measures expanded
- Insurer must determine CAT status in 2 yrs
- Optional benefits: care increased to \$6,000
- Includes case management



Other Proposed Changes to SABS

- s. 32 (1) – Proposal to reduce time period for notifying insurer to 7 days (from 30 days) Penalty in s. 38 (18) & 39 (3) that insurer is given within 45 days to respond to application where no notice is given.
- s. 33 (1.1) – Any person submitting an application for benefit's shall submit to an examination under oath, if requested by the insurer.

Other Proposed Changes to SABS

DAC Assessments

s. 53 (7) Timing of DAC assessments

- Proposals contemplate that DAC facility must be notified within 7 days of request by insured for a DAC and DAC “assessments” should “begin” within 2 weeks
- Unclear what “begin means” . Does it mean medical review or actual physical assessment DAC delays.

Other Proposed Changes to SABS (continued)

DAC's (continued)

- While the time frame for completing DACs is shortened, DACs are given no power to enforce compliance with request for information from insurers and insurers receive no penalty for failing to co-operate with DACs in proving the required documentation;
- No improvement on DAC delay.
- Persons who conduct DACs cannot conduct insurer examination;
- DACs opinions are assumed correct unless the contrary is shown on the preponderance of the evidence; s. 43(9)

Other Proposed Changes to SABS (continued)

Pursuing Payment Outstanding Treatment expenses;

- Treatment provider will no longer be able to take an assignment from the accident victim for the right to mediate or arbitrate and sue in relation to unpaid treatment expenses;

Bill 198

Timing for Commencement:

Before anticipated April election

**Written responses must be delivered to MPP
Chudleigh by March 14, 2003:**

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Thank You

For actual draft regulations and forms:

www.thomsonrogers.com

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