

Thomson, Rogers on Bill 198 for Acute Care Patients

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New Government = New Changes???

- **The Expert Assessor Network,**
as proposed in a White Paper in March of 2004, has essentially been abandoned. However a reform of the DAC system and insurer evaluation system is still likely. (see below)

- **Customized Insurance,**
which was recently advertised as a concept the government was considering, came under harsh criticism and seems to have been discarded as an option.

- **DACs & Insurer Assessments,**
We can expect shortly, an announcement about revisions to s. 42 (insurer) assessments, and the DAC system. Preliminary information suggests that DAC assessments may be discarded and replaced with a new streamlined system.

Current Issues in Catastrophic Impairment Determination

- SABS sub-sections 1.4 and 1.3 contain changes which affect the Catastrophic Impairment tests, primarily as they are applied to children.

(1.4) *“for the purposes of clauses (1.2) (e) (f) and (g), an impairment sustained in an accident by an insured person described in Sub-section (1.3) that can reasonably be believed to be a catastrophic impairment shall be deemed to be the impairment that is most analogous to the impairment referred to in clause (1.2) (e), (f) or (g), after taking into consideration the developmental implications of the impairment.”*

O.Reg. 281/03, s.1(5)

- This allows for the expansion of the catastrophic criteria as it relates to injured persons under the age of 16, who are being evaluated under the GCS, GOS, and/or AMA Guidelines for impairment, by allowing the assessing practitioner to consider the developmental implication of the impairment. This permits the assessor to bring their own clinical judgment/experience relating to future implications, into the assessment.
- This expanded interpretation is reinforced by several sections of the Catastrophic DAC guidelines, and the Paediatric Catastrophic Impairment Guidelines.

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- Where the AMA guidelines are to be used to assess 55% whole body impairment or “marked” or “extreme” psychological impairment, two important changes have been incorporated

Old Test	New Test
The condition must have <u>“stabilized and was unlikely to improve with treatment”</u>	The person’s health practitioner must state in writing that the <u>“condition is unlikely to cease to be catastrophic”</u>
or	or
<u>Three (3) years</u> have elapsed since the accident	<u>Two (2) years</u> have elapsed since the accident

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➤ **Effect of Alcohol on GCS:**

In the recent case of *Holland v. Pilot Insurance*, Justice Keenan found that GCS readings should be accepted by a CAT DAC on their face, and the legislation did not impose limitations on the interpretation of GCS scores for factors such as suppression of the score because of alcohol or drug use.

➤ **Reasonable Period of Time for GCS Testing:**

Cases have used as short as 20 minutes after accident to as long as 1 hour after accident, however the overriding principal is that what is reasonable *"must be determined in the context of the particular circumstances of each case."*

➤ **Marked and Extreme Psychological Disorders:**

The editor of the 5th edition of the AMA Guides confirms that if at least two of the four domains are markedly impaired, that is sufficient to classify one as having a Class IV Marked Impairment.

4 Domains:

- i. limitation in activities of daily living
- ii. limitation of social activity
- iii. concentration
- iv. persistence / pace & deterioration / decompensation in work or in work-like settings

**Bill 198: Accident Benefit
Entitlements for Patients in Acute
Care Institutions**

Meeting the Immediate needs of the Survivor and Family

- SABs requirement for notice
- dealing with family perceptions of recovery prospects
 - SABs terms and sensitivity
- identifying and solving financial needs

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Section 32, Seven day notice period

What is a reasonable explanation?

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Section 39: Attendant care benefits while hospitalized

- Who chooses the occupational therapist to assess need?
- How should the need be calculated
- When?
- How does care provided by the hospital fit in?
- Is OHIP or the insurer the first Payor?

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Section 39: Attendant care benefits while hospitalized

- How does the family "incur" an expense?
- What information can the insurer request about the care provided?
- What if, because of their age or preaccident health, they would have required the care anyway?

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Visitor expenses

- Direct billing
- Travel
- Meals
- Telephone
- Child Care
- Accommodation

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SABs Section 17: Case Management

- Only in CAT cases?
 - paediatric
 - mild to moderate brain injury
- Who chooses the case manager?
 - the client's right

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Assessments while in hospital

- Availability of consultation notes from hospital health care professionals
- Sign back forms
- Disability certificates
- Catastrophic applications
- Payments for cost to complete forms
- Role of lawyer
- Preapproval except if:
 - CAT
 - Form 1
 - Immediate risk of harm

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Who should prepare the Accident Benefit Application?

- When
- "How did the accident occur"

Examinations under oath

- Will they be used?
 - reasonable excuses

...Brain Injury Case Scenario...

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