

CANADIAN ACADEMY OF PSYCHOLOGISTS
IN DISABILITY ASSESSMENT (CAPDA) FORUM

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Update: Ontario's Proposed Auto Insurance Reforms (2010)

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OVERVIEW

- On November 2, 2009, the Ontario Minister of Finance announced changes to the Ontario automobile legislation
- The changes include major reductions to accident benefits available in non-catastrophic injury cases
- The changes have not yet been drafted into Regulations although the implementation date has been announced as 'summer 2010'

OVERVIEW

This presentation will:

1. Examine the background to the Reforms
2. Review many of the proposed legislative changes, and
3. Discuss Solutions to dealing with the legislative changes

THE FINANCIAL SERVICES COMMISSION (FSCO)

- Ontario Insurance Act calls for 5-Year Review (2008)
- Stakeholders made submissions to FSCO July 2008
- FSCO Reports to Minister
- Reforms Announced November 2, 2009
- Timing
 - Regulations in draft expected this month
 - Introduction in Summer 2010 ??

REASONS FOR REFORM

- Premium Affordability
- Escalating Costs:
 - Accident Benefits
 - Complexity
 - Inefficiency
- Insurer Profitability
 - Cycles
 - Stability
 - Impact of Prior Reform

OVERVIEW OF 2009 REFORMS

- Slight Increase in Tort
- Failure to Implement FSCO Tort Recommendations
- Reduced Coverage
 - Med/Rehab
 - Soft tissue
 - Housekeeping
- Assessments and Obstacles to Accessing Benefits

WHY THESE REFORMS

The Three 'P's:

- 1) Profits
- 2) Premiums
- 3) Politics

CHALLENGES MOVING FORWARD

- Short Term Solutions
- Systemic Problems Not Addressed
- Challenges of Optional Coverage
- Consumer Interest in Better Coverage and Lasting Solutions

THE GOOD

- No reductions to accident benefits available in ‘catastrophic impairment’ cases
- An expanded definition of ‘catastrophic impairment’ to include single limb amputees
- The elimination of the statutory deductible in fatality claims against at-fault drivers (there was a \$15,000 vanishing statutory deductible that applied)

THE BAD

- Major reductions in basic accident benefits for non-catastrophic injury claims, including:
 - Medical and Rehabilitation benefits reduced to \$50,000 (from \$100,000).
 - Attendant Care benefits reduced to \$36,000 (from \$72,000)
 - The elimination of housekeeping benefits (was a maximum of \$10,400).
 - The elimination of caregiver benefits (was \$250 per week, plus \$50 per dependant).

- All assessment costs are deducted from the available medical and rehabilitation benefits.

'CATASTROPHIC' DEFINITION AND CATASTROPHIC ASSESSMENTS

1. Expand the definition of "catastrophic impairment" to include single-limb amputees
2. Consult with the medical community to amend the definition of "catastrophic impairment" and redefine the threshold for catastrophic brain injuries
3. Restrict the ability to conduct catastrophic impairment assessments to practitioners with appropriate training and experience

'CATASTROPHIC' DEFINITION AND CATASTROPHIC ASSESSMENTS

Current "Catastrophic Impairment" Definition (SABS s. 1.2):

- *Paraplegia or quadriplegia (a)*
- *Loss of two limbs (b & c)*
- *Total loss of vision (d)*
- *GCS of 9 or less due to brain impairment (e)(i)*
- *GOS of 2 (vegetative) or 3 (severe disability) due to brain impairment six months or more post accident (e)(ii)*
- *55% or more whole person impairment two years post MVA (or if unlikely to cease) according to AMA Guide (f)*
- *Class 4 (marked) or 5 (extreme) impairment due to mental/behavioural disorder according to AMA Guide (g)*
- *Analogous tests when under 16 at time of MVA (1.3-1.4)*

'NON-CATASTROPHIC' BENEFIT REDUCTIONS AND ELIMINATIONS

1. Medical and rehabilitation benefits for non-catastrophic claims reduced to \$50,000 (from \$100,000)
2. Attendant care benefits reduced to \$36,000 for non-catastrophic injuries (from \$72,000)
3. Housekeeping and home maintenance benefits eliminated (was a maximum of \$10,400)
4. Caregiver benefits eliminated (was \$250 per week, plus \$50 per dependant)

INCOME REPLACEMENT BENEFIT CHANGES

1. The maximum of \$400 per week remains; however, the calculation of the weekly amount is changed to 70% of gross income (was previously 80% of net income)
2. The cost of accounting reports to substantiate a claim for weekly benefits will be capped

TORT DEDUCTIBLE

1. Statutory deductibles will not apply in the case of fatalities (previously there was a \$15,000 vanishing statutory deductible for family members)
2. Provide an option to reduce the tort deductibles to \$20,000 (for not-at-fault accident victims) and \$10,000 (for family members under the Family Law Act)

ACCIDENT BENEFIT ASSESSMENT COSTS

1. Elimination of Assessment Costs as a separate category of accident benefits resulting in all assessments costs being paid out of medical and rehabilitation limits
2. Treating assessment costs (section 24) would be limited to \$2,000 per assessment
3. Cost of completing treatment assessment forms capped at \$200

ACCIDENT BENEFIT ASSESSMENT COSTS

4. Insurer examinations (section 42) would be limited to \$2,000 per assessment
 - Rebuttal examinations would be completely eliminated
 - The cost of future care cost reports would not be an expense recoverable under the SABS

ACCIDENT BENEFIT ASSESSMENT PROCESS

1. Attendant Care assessments only to be completed by occupational therapists and nurses who have been trained on the use of the Form 1
2. Availability of in-home assessments would be limited to seriously injured claimants and would only be used to evaluate their need for attendant care services and home modifications
3. Adjusters to be provided with some discretion to deny assessment and treatment requests

ACCIDENT BENEFIT ASSESSMENT PROCESS

4. The time frame provided to adjusters to review assessment requests would be the same as the time frame that applies to treatment plans (10 business days) to allow for proper claims handling
5. Amending the Regulations to make it more difficult for insurers to deflect accident benefits claims when the issue of the appropriate accident benefit insurer is in dispute

OVERDUE INTEREST

1. Reduce the interest rate chargeable on overdue accident benefit payments by insurers to 1% per month compounded monthly (from 2% per month compounded monthly)

PUBLIC TRANSIT-NO COLLISION NO BENEFITS?

1. Government to consider legislative amendments to exclude accident benefits to those on public transit services where no collision has occurred

PROOF OF NEED FOR BENEFITS

1. Where an arbitrator has found that the insurer has been unreasonable in denying attendant care benefits, payments should be made even if no attendant care expenses have been incurred
2. Reimbursement for housekeeping and home maintenance expenses and for replacement caregivers to reflect actual economic losses up to caps

WHIPLASH TYPE INJURIES

1. Those who suffer minor injuries in car accidents would receive a maximum of \$3,500 worth of treatment and assessments

SOLUTIONS FOR DEALING WITH THE REDUCED ACCIDENT BENEFITS

1. Continuously monitor case for 'Catastrophic' criteria
2. Contact the claimant's personal injury lawyer about being paid out of tort claims at regular hourly rates (as opposed to the reduced accident benefit rates)
3. Consider developing financing arrangements with those better situated to take on the risk of non-payment (in cases where invoices would otherwise be paid later)

CONCLUSION

- As a result of the new Ontario auto legislation, those with serious but non-catastrophic impairments will face substantial financial hardship and will be forced to micro manage their reduced benefits.
- Psychologists and other health care providers will need to work closely with plaintiff's personal injury lawyers to, wherever possible, provide continuity of necessary care—by investigating whether certain claims can qualify as 'catastrophic' and by discussing funding solutions in cases with viable tort claims

Thank you

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FOR MORE INFORMATION

- For current information on the Ontario Auto Insurance Changes monitor www.thomsonrogers.com or go to www.ontarioautoinsurancechanges.com
- Please feel free to contact us at anytime with questions

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