



**PRACTICE APPROACHES TO THE
MARCH 1/06 SABS CHANGES:
Lawyer's Perspective**

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SIGNIFICANT CHANGES:

- ⊙ Pre-claim Examination
- ⊙ Consulting Fees
- ⊙ Paper review s. 42 exams
- ⊙ Assessment requirements
- ⊙ Insurer examination time frames
- ⊙ Insurer examination effect
- ⊙ Rebuttal reports

Pre-claim exam recommendations:

- avoid pre-claim exams

Instead:

- application should be sent in
- OT should do a Form 1 and home assessment
- case manager should be appointed to convene appropriate tx team

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ASSESSMENTS

Still no pre-approval required to obtain payment of reasonable fees for:

- preparing disability certificates
- reviewing tx plan
- preparing assessment of attendant care needs (Form 1)
- preparing CAT application

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ASSESSMENTS

No pre-approval required to obtain payment of reasonable fees for:

- being consulted by s. 42 examiner (30 minutes at normal rate max)
- up to 3 assessments at up to \$200 each to prepare tx plan
- assessment at up to \$200 to prepare disability certificate, or
- if immediate risk of harm to insured person or person in his/her care

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ASSESSMENTS

All other assessments require pre-approval...

If pre-approval sought and no response within 3 business days
– deemed approved – s.38.2(9)

- send confirming fax & proceed to assess

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ASSESSMENTS

Is insurer likely to say no to assessment cost?

- under UDAP, can't say no without a s. 42 exam
- (cost of s. 42 may be more than assessment cost)
- s. 42 exam may be paper review
- for paper review must deliver extensive notice within 3 days of Ax plan: identify assessors, dates of same
- I.E. must deliver s. 42 report from paper review within 5 business days of notice, unless
- paper review of OCF 19 report - delivered within 10 days of notice

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ASSESSMENTS

Is insurer likely to say no to assessment cost?

e.g. Costs of saying no to assessment to prepare tx plan

= \$ for assessment

+ \$?? 500 for sec. 42 evaluator (paper review)

+ \$?? 1,000⁺ if section 42 evaluator requires in person review

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ASSESSMENTS

Adjuster costs:

- stress of arranging s. 42 and getting s. 42 notice out within 3 days
- stress of having committed an unfair and deceptive act
 - if delay approval and s. 42 says its reasonable
 - if delay approval and it is found assessment was proper
- stress of knowing has paid as much or more to say no, or
- stress of having only a paper review to defend a decision to say no to an assessment in person (which will proceed and will likely be funded by counsel)

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ACCESS TO TREATMENT

Treatment plans

- insurer can't say no to tx plan without s.42 assessment
- can only require s. 42 assessment within 10 business days
- extensive requirements for notice, therefore less likely for s. 42 exam (s.42(4) – reasons, type of exam, name of examiner, time and location)
- if fail to send notice, insurer shall pay for tx until send notice
- (s. 38(8)2.)

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ACCESS TO TREATMENT

Treatment plans

- denial after s. 42 shall have a description of reasons for insurer's refusal
- denial is not the final word >>>

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REBUTTALS

Very powerful tool – the last word

- experienced PI counsel will always request rebuttals when tx denied
 - counsel should fund all those which insurer does not
- insurer pays for rebuttals for all denials except of assessment or ancillary goods and services to a PAF claim
- for housekeeping or disability benefit denial, insurer pays rebuttal cost for first denial
- for attendant care denial (includes partial denial), insurer pays rebuttal cost unless less than 52 weeks has passed since last assessment

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REBUTTALS

Rebuttal fees

- no limit if CAT (reasonable fees)
- up to \$775 if commentator is not physician
- up to \$995 if commentator is physician
- must be paid within 30 days of invoice

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REBUTTALS

Why and when insurer unlikely to deny tx plan

- under UDAP, can't say no without a s. 42 exam
- (cost of s. 42 may be more than treatment cost)
- to deny, must deliver extensive notice within 10 days of tx plan, and
- must receive s. 42 report from paper review within 10 business days of notice, and
- must send to HCP within 5 days following receipt

Therefore, tx plans of shorter duration / lower expense will more likely be approved

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APPROACHES TO SECURE Ax/Tx APPROVAL

Advise in tx plans / cover letters or appendices:

- who referred
- who supports the tx plan / ax plan
- if longer than normal, identify why tx will exceed norms
- identify medical history barriers resulting in additional length or frequency
- identify outcome results specifically
 - not just increase adls, able to unload dishwasher
- call adjuster in advance of ax and tx plans

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TREATMENT PLANS

Is insurer likely to say no to Tx plan?

Adjuster costs:

- stress of getting s. 42 in person examinations arranged and getting notice out within 10 days
- stress of having committed an unfair and deceptive act
 - if delay approval and s. 42 says its reasonable
 - if delay approval and it is found assessment was proper
- stress of knowing has paid as much or more to say no, or
- stress of having only a paper review to defend a decision to say no to treatment previously refused
- if insurer delays payment of benefit to get a s. 42 Ax done when no s. 42 exam is reasonably required, may be an “unfair or deceptive act or practice”

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TREATMENT PLANS

Disadvantage to insurer of saying no

- unreasonable delay of tx is unfair and deceptive act
- s. 42 exams will be presumed to be biased
- most s. 42 exams will be based on paper review only
 - o of limited use / persuasive value
- S. 42 exams are difficult to arrange:
 - o in 3 days if Ax plan denied
 - o in 10 days if other benefits denied
- s. 42 exams are difficult to complete and report on within 10 days
- s. 42 exams lack the background info avail to treating HCPs
- s. 42 exams may be more expensive than the treatment proposed
- treating practitioner has rebuttal =“last word”, more compelling

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ATTENDANT CARE

Form 1 should only show “need”, not how needs met.

If form 1 deducts for services being provided>>>

- may be an unfair and deceptive act or practice, since it may be
- “examination that does not comply with the requirements of the regulations”
- see my A.C. presentation at www.thomsonrogers.com

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ATTENDANT CARE

Attendant care process:

- no requirement for assessment pre-approval (24(1)6.)
- treating OT does Form 1 and narrative report
- insurer has 10 business days to agree
- if denies any portion, must arrange s. 42 exam and
 - must pay amount on Form 1 until s. 42 report received by insurer
 - must be in person s. 42 evaluation

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ATTENDANT CARE

Attendant care process:

- if 42 reduces amount,
 - rebuttal
 - or
- new Form 1 if “there are changes that would affect the amount of the benefits”

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ATTENDANT CARE

Attendant care after 104 weeks

Same as first 104 weeks, EXCEPT>>>

- if insurer has had a s. 42 exam within 52 weeks of receiving a new Form 1 from treating or insured-chosen assessor, >>>
 - insurer CANNOT HAVE S.42 EXAM until 52 weeks have passed
 - insured cannot submit new Form 1 until 52 weeks have passed since last s. 42 exam

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ATTENDANT CARE

Attendant care and CAT status

If insured applies to be CAT within 104 weeks,

- insurer must pay AC benefits at CAT level until CAT s. 42 exam complete. If CAT, continues at that level

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Questions & Comments