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ONTARIO REGULATION 251/15

made under the

INSURANCE ACT

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Amending O. Reg. 34/10
(STATUTORY ACCIDENT BENEFITS SCHEDULE - EFFECTIVE SEPTEMBER 1, 2010)

1. (1) Subsection 2 (1) of Ontario Regulation 34/10 is amended by striking out "in section 68".

(2) Section 2 of the Regulation is amended by adding the following subsections:

(1.1) The following provisions, as they read immediately before O. Reg. 251/15 came into force, apply in respect of accidents occurring on or after September 1, 2010 and before June 1, 2016:

1. The definition of "neuropsychologist" in subsection 3 (1).
2. Subsections 3 (2) to (6).
3. Subsection 15 (1).
4. Subsection 16 (3).
5. Section 38.
6. Subsection 39 (2).
7. Subsection 40 (8).
8. Subsections 42 (11) and (15).
9. Subsections 45 (2) and (4).

(1.2) The following provisions, as they read immediately before O. Reg. 251/15 came into force, apply in respect of contracts entered into or renewed on or after September 1, 2010 and before June 1, 2016:

1. Section 12.
2. Subsection 17 (1).
3. Subsections 18 (3) to (5).
4. Subsection 19 (3).
5. Section 20.
6. Subsections 28 (1), (5) and (6).
7. Subsections 30 (1) and (4) to (8).
8. Subsections 42 (12) and (16).
9. Subsection 50 (3).
10. Subsection 57 (4).

(3) Subsection 2 (2) of the Regulation is amended by striking out "Parts X, XI and XII" in the portion before paragraph 1 and substituting "Parts X, XI and XII, as they read immediately before O. Reg. 251/15 came into force".

2. (1) The definition of "neuropsychologist" in subsection 3 (1) of the Regulation is amended by adding "who has been registered to practice as a neuropsychologist in Canada for a minimum of five years" at the end.

(2) Subsections 3 (2) to (6) of the Regulation are revoked.

3. The Regulation is amended by adding the following section:

Catastrophic impairment

3.1 (1) For the purposes of this Regulation, an impairment is a catastrophic impairment if an insured person sustains the impairment in an accident that occurs on or after June 1, 2016 and the impairment results in any of the following:

1. Paraplegia or tetraplegia that meets the following criteria:

    i. The insured person's neurological recovery is such that the person's permanent grade on the ASIA Impairment Scale, as published in Marino, R.J. et al, *International Standards for Neurological Classification of Spinal Cord Injury*, Journal of Spinal Cord Medicine, Volume 26, Supplement 1, Spring 2003, can be determined.

    ii. The insured person's permanent grade on the ASIA Impairment Scale is or will be,

        A. A, B or C, or

        B. D, and

            1. the insured person's score on the Spinal Cord Independence Measure, Version III, item 12 (Mobility Indoors), as published in Catz, A., Itzkovich, M., Tesio L. et al, *A multicentre international study on the Spinal Cord Independence Measure, version III: Rasch psychometric validation*, Spinal Cord (2007) 45, 275-291 and applied over a distance of up to 10 metres on an even indoor surface is 0 to 5,

            2. the insured person requires urological surgical diversion, an implanted device, or intermittent or constant catheterization in order to manage a residual neuro-urological impairment, or

            3. the insured person has impaired voluntary control over anorectal function that requires a bowel routine, a surgical diversion or an implanted device.

2. Severe impairment of ambulatory mobility or use of an arm, or amputation that meets the following criteria:

    i. Trans-tibial or higher amputation of a leg.

    ii. Amputation of an arm or another impairment causing the total and permanent loss of use of an arm.

    iii. Severe and permanent alteration of prior structure and function involving one or both legs as a result of which the insured person's score on the Spinal Cord Independence Measure, Version III, item 12 (Mobility Indoors), as published in Catz, A., Itzkovich, M., Tesio L. et al, *A multicentre international study on the Spinal Cord Independence Measure, version III: Rasch psychometric validation*, Spinal Cord (2007) 45, 275-291 and applied over a distance of up to 10 metres on an even indoor surface is 0 to 5.

3. Loss of vision of both eyes that meets the following criteria:

    i. Even with the use of corrective lenses or medication,

        A. visual acuity in both eyes is 20/200 (6/60) or less as measured by the Snellen Chart or an equivalent chart, or

        B. the greatest diameter of the field of vision in both eyes is 20 degrees or less.

    ii. The loss of vision is not attributable to non-organic causes.

4. If the insured person was 18 years of age or older at the time of the accident, a traumatic brain injury that meets the following criteria:

    i. The injury shows positive findings on a computerized axial tomography scan, a magnetic resonance imaging or any other medically recognized brain diagnostic technology indicating intracranial pathology that is a result of the accident, including, but not limited to, intracranial contusions or haemorrhages, diffuse axonal injury, cerebral edema, midline shift or pneumocephaly.

    ii. When assessed in accordance with Wilson, J., Pettigrew, L. and Teasdale, G., Structured Interviews for the Glasgow Outcome Scale and the Extended Glasgow Outcome Scale: Guidelines for Their Use, Journal of Neurotrauma, Volume 15, Number 8, 1998, the injury results in a rating of,

        A. Vegetative State (VS or VS*), one month or more after the accident,

        B. Upper Severe Disability (Upper SD or Upper SD*) or Lower Severe Disability (Lower SD or Lower SD*), six months or more after the accident, or

        C. Lower Moderate Disability (Lower MD or Lower MD*), one year or more after the accident.

5. If the insured person was under 18 years of age at the time of the accident, a traumatic brain injury that meets one of the following criteria:

    i. The insured person is accepted for admission, on an in-patient basis, to a public hospital named in a Guideline with positive findings on a computerized axial tomography scan, a magnetic resonance imaging or any other medically recognized brain diagnostic technology indicating intracranial pathology that is a result of the accident, including, but not limited to, intracranial contusions or haemorrhages, diffuse axonal injury, cerebral edema, midline shift or pneumocephaly.

ii. The insured person is accepted for admission, on an in-patient basis, to a program of neurological rehabilitation in a paediatric rehabilitation facility that is a member of the Ontario Association of Children's Rehabilitation Services.

iii. One month or more after the accident, the insured person's level of neurological function does not exceed category 2 (Vegetative) on the King's Outcome Scale for Childhood Head Injury as published in Crouchman, M. et al, *A practical outcome scale for paediatric head injury*, Archives of Disease in Childhood, 2001: 84: 120-124.

iv. Six months or more after the accident, the insured person's level of neurological function does not exceed category 3 (Severe disability) on the King's Outcome Scale for Childhood Head Injury as published in Crouchman, M. et al, *A practical outcome scale for paediatric head injury*, Archives of Disease in Childhood, 2001: 84: 120-124.

v. Nine months or more after the accident, the insured person's level of function remains seriously impaired such that the insured person is not age-appropriately independent and requires in-person supervision or assistance for physical, cognitive or behavioural impairments for the majority of the insured person's waking day.

6. Subject to subsections (2) and (5), a physical impairment or combination of physical impairments that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 per cent or more physical impairment of the whole person.

7. Subject to subsections (2) and (5) a mental or behavioural impairment, excluding traumatic brain injury, determined in accordance with the rating methodology in Chapter 14, Section 14.6 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 6th edition, 2008, that, when the impairment score is combined with a physical impairment described in paragraph 6 in accordance with the combining requirements set out in the Combined Values Table of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 percent or more impairment of the whole person.

8. Subject to subsections (3) and (5), an impairment that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993 results in a class 4 impairment (marked impairment) in three or more areas of function that precludes useful functioning or a class 5 impairment (extreme impairment) in one or more areas of function that precludes useful functioning, due to mental or behavioural disorder.

(2) Paragraphs 6 and 7 of subsection (1) do not apply in respect of an insured person who sustains an impairment as a result of an accident unless,

(a) two years have elapsed since the accident; or

(b) an assessment conducted by a physician three months or more after the accident determines that,

(i) the insured person has a physical impairment or combination of physical impairments determined in accordance with paragraph 6 of subsection (1), or a combination of a mental or behavioural impairment and a physical impairment determined in accordance with paragraph 7 of subsection (1) that results in 55 per cent or more impairment of the whole person, and

(ii) the insured person's condition is unlikely to improve to less than 55 per cent impairment of the whole person.

(3) Paragraph 8 of subsection (1) does not apply in respect of an insured person who sustains an impairment as a result of the accident unless,

(a) two years have elapsed since the accident; or

(b) a physician states in writing that the insured person's impairment is unlikely to improve to less than a class 4 impairment (marked impairment) in three or more areas of function that precludes useful functioning, due to mental or behavioural disorder.

(4) Subsection (5) applies to an insured person who was under the age of 18 at the time of the accident and whose impairment is not a catastrophic impairment within the meaning of subsection (1).

(5) If the insured person's impairment can reasonably be believed to be a catastrophic impairment for the purposes of paragraph 6, 7 or 8 of subsection (1), the impairment shall be deemed to be the impairment referred to in paragraph 6, 7 or 8 of subsection (1) that is most analogous to the impairment, after taking into consideration the developmental implications of the impairment.

4. (1) Subsection 12 (2) of the Regulation is amended by striking out "Subject to subsection (3)" at the beginning.

(2) Subsections 12 (3), (4) and (5) of the Regulation are revoked and the following substituted:

(3) The insurer is not required to pay a non-earner benefit,

(a) for the first four weeks after the onset of the complete inability to carry on a normal life;

(b) before the insured person is 18 years of age;

(c) for more than 104 weeks after the accident; or

(d) if the insured person is eligible to receive and has elected under section 35 to receive either an income replacement benefit or a caregiver benefit under this Part.

5. (1) The English version of clause 15 (1) (g) of the Regulation is amended by adding “and” at the end.

(2) Clause 15 (1) (h) of the Regulation is revoked and the following substituted:

(h) other goods and services of a medical nature that the insurer agrees are essential for the treatment of the insured person, and for which a benefit is not otherwise provided in this Regulation.

6. (1) The English version of clause 16 (3) (k) of the Regulation is amended by adding “and” at the end.

(2) Clause 16 (3) (l) of the Regulation is revoked and the following substituted:

(l) other goods and services that the insurer agrees are essential for the rehabilitation of the insured person, and for which a benefit is not otherwise provided in this Regulation, except,

(i) services provided by a case manager; and

(ii) housekeeping and caregiver services.

7. Clause 17 (1) (b) of the Regulation is revoked and the following substituted:

(b) if the optional medical, rehabilitation and attendant care benefit referred to in paragraph 4 of subsection 28 (1) or the catastrophic impairment benefit referred to in paragraph 5 of subsection 28 (1) is available to the insured person.

8. (1) Subsection 18 (3) of the Regulation is revoked and the following substituted:

(3) The sum of the medical, rehabilitation and attendant care benefits paid in respect of an insured person who is not subject to the financial limit in subsection (1) shall not exceed, for any one accident,

(a) $65,000; or

(b) if the insured person sustained a catastrophic impairment as a result of the accident, $1,000,000.

(2) Subsection 18 (4) of the Regulation is amended by striking out “paragraph 3 or 5” and substituting “paragraph 3, 4 or 5”.

(3) Subsection 18 (5) of the Regulation is amended by striking out “medical and rehabilitation benefits” in the portion before clause (a) and substituting “medical, rehabilitation and, where applicable, attendant care benefits”.

9. Subsection 19 (3) of the Regulation is revoked and the following substituted:

(3) The amount of the attendant care benefit payable in respect of an insured person shall not exceed the amount determined under the following rules:

1. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 4 of subsection 28 (1) or the catastrophic impairment benefit referred to in paragraph 5 of subsection 28 (1) has not been purchased and does not apply to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed,

i. $3,000 per month, if the insured person did not sustain a catastrophic impairment as a result of the accident, or

ii. $6,000 per month, if the insured person sustained a catastrophic impairment as a result of the accident.

2. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 3 of subsection 28 (1) has been purchased and applies to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed the amount set out in subparagraph 1 i.

3. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 4 of subsection 28 (1) or the catastrophic impairment benefit referred to in paragraph 5 of subsection 28 (1) has been purchased and applies to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed the monthly limit under subsection 28 (7).

4. Despite paragraphs 1, 2 and 3, if a person who provided attendant care services (the “attendant care provider”) to or for the insured person did not do so in the course of the employment, occupation or profession in which the attendant care provider would ordinarily have been engaged for remuneration, but for the accident, the amount of the attendant care benefit payable in respect of that attendant care shall not exceed the amount of the economic loss sustained by the attendant care provider during the period while, and as a result of, providing the attendant care.

5. Despite paragraphs 1, 2 and 3, if a person who provided attendant care services (the “attendant care provider”) to or for the insured person did so for remuneration, and the actual expenses incurred in respect of the attendant care services are lower than the amount of the monthly attendant care benefit as determined under subsection (2), the insurer shall only be liable for payment of the incurred expenses.

10. Section 20 of the Regulation is revoked and the following substituted:

Duration of medical, rehabilitation and attendant care benefits

20. (1) Subject to subsection (2), no medical, rehabilitation and attendant care benefit is payable for expenses incurred,

(a) more than 260 weeks after the accident, in the case of an insured person who was at least 18 years of age at the time of the accident; or

(b) after the insured person's 28th birthday, in the case of an insured person who was under 18 years of age at the time of the accident.

(2) The time limits set out in subsection (1) do not apply in respect of an insured person,

(a) who sustains a catastrophic impairment as a result of the accident; or

(b) who is entitled to optional medical, rehabilitation and attendant care benefits under paragraph 4 of subsection 28 (1) or catastrophic impairments benefits under paragraph 5 of subsection 28 (1).

11. (1) Paragraphs 3 to 5 of subsection 28 (1) of the Regulation are revoked and the following substituted:

3. An optional medical, rehabilitation and attendant care benefit of up to $130,000 in respect of an insured person for any one accident in which the impairment sustained by the insured person is not a catastrophic impairment, instead of the maximum amount specified in clause 18 (3) (a).
4. An optional medical, rehabilitation and attendant care benefit of up to the following maximum amounts, instead of the maximum amount specified in subsection 18 (3), and that does not limit the period of time for which expenses are to be paid by the insurer for medical, rehabilitation and attendant care benefits:
   i. $1,000,000 if the insured person did not sustain a catastrophic impairment as a result of the accident.
   ii. $2,000,000 if the insured person sustained a catastrophic impairment as a result of the accident.
5. An optional catastrophic impairment benefit for medical, rehabilitation and attendant care benefits of up to $1,000,000 if the insured person sustained a catastrophic impairment as a result of the accident.

(2) Subsections 28 (5) and (6) of the Regulation are revoked and the following substituted:

(5) For the purposes of paragraphs 3, 4 and 5 of subsection (1), the medical, rehabilitation and attendant care benefits payable in respect of an insured person include all fees and expenses for conducting assessments and examinations and preparing reports in connection with any benefit or payment to or for an insured person under this Regulation, other than,

(a) fees in connection with any examination required by an insurer under section 44; and

(b) expenses in respect of a report referred to in subsection 7 (4).

(6) For the purposes of paragraphs 3, 4 and 5 of subsection (1), no attendant care benefit is payable if the insured person's impairment is a minor injury.

(7) For the purposes of paragraphs 4 and 5 of subsection (1),

(a) the maximum monthly attendant care benefit payable in respect of an insured person shall not exceed $6,000; and

(b) the medical and rehabilitation benefits payable in respect of an insured person include any amount paid in respect of the insured person for services provided by a qualified case manager as authorized under section 17.

12. (1) Paragraphs 3 and 4 of subsection 30 (1) of the Regulation are revoked and the following substituted:

3. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 3 of subsection 28 (1) was purchased and is applicable to the insured person, the outstanding balance with respect to medical, rehabilitation and attendant care benefits, as calculated under subsection (4).
4. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 4 of subsection 28 (1) was purchased and is applicable to the insured person, the outstanding balance with respect to medical, rehabilitation and attendant care benefits, as calculated under subsection (5).
5. If the optional catastrophic impairment benefit referred to in paragraph 5 of subsection 28 (1) was purchased and is applicable to the insured person, the outstanding balance with respect to medical, rehabilitation and attendant care benefits, as calculated under subsection (6).
6. If paragraphs 3, 4 and 5 do not apply, the outstanding balance with respect to medical, rehabilitation and attendant care benefits, as calculated under subsection (7).

(2) Subsections 30 (4) to (8) of the Regulation are revoked and the following substituted:

(4) For the purpose of paragraph 3 of subsection (1), the outstanding balance with respect to medical, rehabilitation and attendant care benefits is the amount calculated using the formula,

E – F

in which,

"E" is the indexation balance for the year equal to,

(a) the amount specified in paragraph 3 of subsection 28 (1), if the year is the first year the optional indexation benefit applies, or

(b) the outstanding balance for the previous year as calculated under this subsection and indexed under subsection (2), if the year is the second or a subsequent year the optional indexation benefit applies, and

"F" is the total of medical, rehabilitation and attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies.

(5) For the purpose of paragraph 4 of subsection (1), the outstanding balance with respect to medical, rehabilitation and attendant care benefits is calculated using the formula,

G – H

in which,

"G" is the indexation balance for the year equal to,

(a) the amount specified in subparagraph 4 i or ii, as the case may be, of subsection 28 (1), if the year is the first year the optional indexation benefit applies, or

(b) the outstanding balance for the previous year as calculated under this subsection and indexed under subsection (2), if the year is the second or a subsequent year the optional indexation benefit applies, and

"H" is the total of medical, rehabilitation and attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies.

(6) For the purpose of paragraph 5 of subsection (1), the outstanding balance with respect to medical, rehabilitation and attendant care benefits is calculated using the formula,

I – J

in which,

"I" is the indexation balance for the year equal to,

(a) the amount specified in paragraph 5 of subsection 28 (1), if the year is the first year the optional indexation benefit applies, or

(b) the outstanding balance for the previous year as calculated under this subsection and indexed under subsection (2), if the year is the second or a subsequent year the optional indexation benefit applies, and

"J" is the total of medical, rehabilitation and attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies.

(7) For the purpose of paragraph 6 of subsection (1), the outstanding balance with respect to medical, rehabilitation and attendant care benefits is calculated using the formula,

K – L

in which,

"K" is the indexation balance for the year equal to,

(a) the amount specified in clause 18 (3) (a) or (b), as the case may be, if the year is the first year the optional indexation benefit applies, or

(b) the outstanding balance for the previous year as calculated under this subsection and indexed under subsection (2), if the year is the second or a subsequent year the optional indexation benefit applies, and

"L" is the total of medical, rehabilitation and attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies.

13. (1) The English version of clause 38 (2) (b) of the Regulation is amended by striking out "or" at the end.

(2) Clause 38 (2) (c) of the Regulation is revoked and the following substituted:

(c) the expense is reasonable and necessary as a result of the impairment sustained by the insured person for,

(i) drugs prescribed by a regulated health professional, or

(ii) goods referred to in clauses 15 (1) (d) to (f) and 16 (3) (h) to (j) with a cost of $250 or less per item; or

(d) the insurer agrees that the expense is essential for the treatment or rehabilitation of the insured person for goods or services referred to in clause 15 (1) (h) or 16 (3) (l) with a cost of $250 or less per item or service, as the case may be.

(3) Subclause 38 (3) (c) (ii) of the Regulation is revoked and the following substituted:

(ii) stating, if the treatment and assessment plan is in respect of an accident that occurred before September 1, 2010, that the expenses contemplated by the treatment and assessment plan are reasonable and necessary for the insured person's treatment or rehabilitation.

(4) Section 38 of the Regulation is amended by adding the following subsection:

(8.1) If the insurer has not agreed that the goods and services referred to in clause 15 (1) (h) or 16 (3) (l) are essential, the notice under subsection (8) must so advise the insured person.

14. Clause 39 (2) (d) of the Regulation is revoked and the following substituted:

(d) the insurer shall, if there is a dispute about whether for the purposes of subsection 15 (1) or 16 (3) an expense described in the notice is reasonable or necessary, or whether for the purposes of clause 15 (1) (h) or 16 (3) (l) an expense described in the notice is essential, pay the expense pending resolution of the dispute in accordance with sections 279 to 283 of the Act.

15. Clause 40 (8) (a) of the Regulation is revoked and the following substituted:

(a) the benefits are deemed to be reasonable and necessary, or essential, as the case may be, for the purposes of sections 15 and 16; and

16. (1) Subsection 42 (11) of the Regulation is amended by striking out "subject to section 20 and paragraph 2 of subsection 19 (3)" and substituting "subject to subsection 18 (3) and section 20".

(2) Subsection 42 (12) of the Regulation is revoked and the following substituted:

(12) If more than 104 weeks have elapsed since the accident, the insurer shall not require an examination under section 44 to determine the insured person's entitlement to attendant care benefits and the insured person shall not submit nor be required to submit an assessment of attendant care needs to the insurer unless at least 52 weeks have elapsed since the last examination under section 44 relating to entitlement to attendant care benefits.

(3) Clause 42 (15) (b) of the Regulation is amended by striking out "section 20 and paragraph 2 of subsection 19 (3)" and substituting "subsection 18 (3) and section 20".

(4) Subsection 42 (16) of the Regulation is amended by striking out "104 weeks" and substituting "260 weeks".

17. (1) Paragraph 2 of subsection 45 (2) of the Regulation is amended by striking out "brain impairment" and substituting "traumatic brain impairment".

(2) Subsection 45 (4) of the Regulation is amended by striking out "104 weeks" in the portion before clause (a) and substituting "260 weeks".

18. The Regulation is amended by adding the following section:

Determination of catastrophic impairment — certain traumatic brain injuries

45.1 If an insured person who is under 18 years of age at the time of the accident sustains a traumatic brain injury that meets the criteria in subparagraph 5 i or 5 ii of subsection 3.1 (1) and that was caused by an accident that occurs on or after June 1, 2016, the person may submit an application under subsection 45 (1) and subsections 45 (2) to (5) do not apply, and the impairment is deemed to be a catastrophic impairment for the purposes of subsection 45 (6).

19. (1) Clauses 50 (3) (a) and (b) of the Regulation are amended by striking out "medical and rehabilitation benefits" wherever it appears and substituting in each case "medical, rehabilitation and attendant care benefits".

(2) Clause 50 (3) (d) of the Regulation is revoked and the following substituted:

(d) the amount paid to the date of the benefit statement in respect of medical and rehabilitation benefits;

20. Subsection 57 (4) of the Regulation is amended by striking out "medical and rehabilitation benefits" and substituting "medical, rehabilitation and attendant care benefits".

21. Paragraphs 2 and 3 of subsection 68 (2) of the Regulation are amended by striking out "subsection 28 (1)" wherever it appears and substituting in each case "subsection 28 (1) as it read immediately before O. Reg. 251/15 came into force".

Commencement

22. This Regulation comes into force on the later of June 1, 2016 and the day it is filed.

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