

Emerging trends in Ontario's accident benefits

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With seven months under their belts since significant new changes to the *Statutory Accident Benefits Schedule* (SABS) were introduced in Ontario last September, lawyers, adjusters, health care providers and accident victims are only now beginning to see the real life consequences of the new SABS. The effect of some changes has been immediate; others will only be felt with the passage of time. Just when the Bar had figured out most of the old SABS, new language has been added which will trigger a fresh round of litigation.

Optional benefits

The concept of optional benefits is not new, but the laundry list of options available to policyholders has certainly expanded under the new SABS. They include:

- a housekeeping benefit;
- a caregiver benefit;
- a buy-up of increased income replacements (IRBs) to a maximum of \$1,000 per week (which is still contingent on pre-accident income following a crash

substantiating the quantum of the benefit);

- indexation of the limits for most of the others.

Optional benefits have never been a big seller in Ontario. Early indications seem to suggest that this trend has not changed. Policyholders who bought optional benefits are as rare as Sasquatch sightings. Anecdotal information in the industry suggests the historical uptake rate for optional benefits averaged three per cent of consumers and has not increased since September.

The philosophical change to the way auto benefits is packaged—an unbundling of benefits, so that consumers can customize the policy to purchase the specific benefits that are needed—leaves all consumers with significantly reduced benefits unless some of the optional benefits are added. Accident victims who failed to think through their coverage needs, will find themselves without enough insurance protection following a car crash. There will be cries of anguish in the months ahead when this reality sets in.

Incurred expense provisions

Front-line adjusters and plaintiffs' lawyers alike are seeing the impact of the new requirement restricting the pay-

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ment of attendant care benefits to those persons who have provided the care in the course of the employment, occupation, or profession they would ordinarily have been engaged in but for the accident, or to someone who has sustained an economic loss as a result of providing the care. Commonly, when an accident victim was discharged from hospital, he or she would be cared for at home by a family member. This arrangement is in jeopardy, with the accident victim either having to hire strangers to come into the house or, in some cases, having to be discharged from hospital to some type of long-term care facility.

The new language in the SABS, unquestionably, has increased the rates of denial of claims for attendant care benefits. Case law has yet to establish parameters on the new "incurred expense" provisions, but early

indications suggest there will be litigation to follow. Even the front-line adjusters appear somewhat dismayed at the impact that this change has had, often being heard to apologetically state that, while they would like to help, "their hands are tied," given company policy or the limitations of the new SABS.

Transition rules

If your insurance policy has not yet been renewed since September, you are still entitled to a level of benefits consistent with the old SABS (although even this is subject to a number of exceptions).

In the short run, handling of accident benefit files in Ontario has been complicated by the need to secure a copy of the insurance declaration sheet, not only to scour it for the possibility (however faint) that there could be optional benefits available,

but also to determine the date of a policy renewal to see whether the old or the new SABS apply to the accident.

More than one insurance adjuster has been heard to say that it will be a relief to make it to September, the one-year anniversary of the new SABS, which will then eliminate the need to check and double-check the applicable policy dates as the period of transitional benefits will then expire.

Cap on assessments

The new SABS imposes a \$2,000 cap on the cost of a medical assessment that will be reimbursed by the insurer. Many assessments simply cannot be funded within this cap—for example, a comprehensive neuropsychological evaluation. The changes have created an unintended hardship.

Advice for the public

In theory, one goal of the new SABS was to reduce complexity in the system. Ironically, the SABS is longer and more detailed after the new changes, not shorter and simpler.

All drivers should take a lesson and carefully review their own policy of auto insurance to ensure that the right basket of optional benefits has been purchased. If there is a value to the new system with more options and the ability to customize a package of insurance, that value will be lost if policyholders overwhelmingly default to the minimum bundle of benefits. After an accident has occurred, it is too late to realize that you need housekeeping, but do not have that benefit, or that you need more than the minimum \$50,000 of medical and rehabilitation coverage. If a spouse has a job with a high salary and no access to long-term disability benefits, careful consideration of the IRB top-up option, along with indexation, is warranted.

For parents with children, the optional caregiver benefit should be examined, along with the possible need for access to higher limits for care costs. In a buyer beware culture, this caution is all the more applicable to the new, unbundled package of auto insurance benefits. ■

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