

New changes to benefits for car accident victims

By Steven Polak

On November 2, 2009, the McGuinty government announced a package of proposed reforms to the accident benefit (no-fault) car insurance system in Ontario. The proposed changes are expected to be implemented by the summer of 2010. The proposed changes will considerably reduce the standard benefits available to most people who have been injured in car accidents. Ontarians will still have the option of buying extra coverage when they purchase their auto insurance.

While catastrophically injured patients will be affected by the changes, patients who are deemed to be “non-catastrophic” will face the most notable reductions in benefits. Non-catastrophic patients, in most cases, do not have access to funding for case management, which means that they may well require more benefits advice and

assistance from social workers, discharge planners and nurses in the period before they retain counsel.

Under the current legislation, there are often disputes about whether the injured victim (patient) is “catastrophically impaired”. The outcome of the disputes are important because of the significantly increased benefits available to catastrophically injured persons. The number of disputes may well increase as non-catastrophic benefits are reduced. While some “catastrophic impairments” are easy to identify (ie: quadriplegia), there are many that are not as easy (ie: someone who has sustained a 55% impairment of their whole person). It should be noted that the proposed changes include an, as of yet undefined, amendment to the definition of what “catastrophic” will mean.

While not all of the changes have been identified yet, some of the significant changes that

have been announced for non-catastrophic claimants are:

- **Housekeeping benefits:** Eliminated completely
- **Caregiver benefits:** Eliminated completely
- **Attendant care benefits:** Cut in half to \$36,000 maximum
- **Interest rate penalty to insurers for failure to pay timely benefits:** Cut in half
- **Medical/Rehabilitation/Assessment benefits:** *Cut by more than half, leaving \$50,000 for all medical/rehabilitation and assessment needs.
- **“Minor Injury” Medical/Rehabilitation/Assessment benefits:** restricted to \$3,500. It remains to be seen how “minor injuries” will be defined

The current system for accident benefits provides \$100,000 for non-catastrophic medical and rehabilitation needs, plus reasonable amounts for assessment costs requested by the injured person. It also allows injured persons to obtain “rebuttal reports” to reply to insurance

company reports that they feel are unfair. Funding for rebuttal reports will be completely eliminated under the proposed changes.

Although \$50,000 may be more than enough to satisfy the medical, rehabilitation and assessment needs of many car accident victims, there will likely be other cases where the available benefits are used up before the patient’s needs are satisfied. Further, because some patients are not deemed catastrophic until quite some time after the accident, there may well be patients whose benefits expire before they reach the point where they can even meet the definition of being catastrophic.

While catastrophically injured persons will continue to have access to one million dollars for medical and rehabilitation benefits, the cost of assessments will now be deducted from that amount.

The assessment funding

changes are significant because of the cost of assessments, the long wait to obtain specialist appointments through OHIP and the frequent need to reply to reports obtained by insurance companies. There will have to be a calculated balance between the need for no-fault assessment funding and the need to fund treatment.

Non-catastrophic patients may need guidance from social workers, nurses and discharge planners about what type of assessments are vital and may also need other advice about how best to meet their treatment needs while conserving their medical and rehabilitation benefit limits.

If a patient has a viable lawsuit against the persons who caused the accident, the assessments could potentially be funded by the claimant’s lawyer and claimed for in the lawsuit, freeing up the full no-fault medical and rehabilitation limits for treatment.

Continued on page 19

New changes to benefits for car accident victims

Continued from page 2

If patient needs exceed the

available no-fault benefits, patients can, in many circumstances, still pursue compensation as part of a lawsuit against the people who caused the accident. However, patients will

have to wait until the successful completion of a lawsuit to get the money necessary to pay for their treatment or assistance with tasks of daily living. This may lead to an increased num-

ber of patients who undergo treatment, or receive assistance, on the promise to pay for it upon settlement or resolution of their lawsuit.

Steven Polak is a partner with Lerner's LLP in Toronto. For clarification, you may contact Steven at 416-601-2355 or by emailing SPOLAK@LERNERS.CA