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No. A-17/96

Property & Casualty

- Auto

Priority of Payment Rules for Optional and Transitional Statutory Accident Benefits Coverages

To the attention of all insurance companies in the Province of Ontario

licensed to transact auto insurance

This Bulletin is designed to assist insurers in interpreting Section 268 of the *Insurance Act* (the *Act*). This section of the *Act* applies to situations where an accident occurs involving a named insured, a spouse of the named insured, a dependant of the named insured or spouse, or a person specified in the policy as a driver of the insured automobile, and where there is more than one insurance policy in effect, and:

- policies have been issued on or after November 1, 1996, where one policy has the mandatory Statutory Accident Benefits (SABS) coverage only, and another policy includes optional statutory accident benefits in the SABS; or
- policies have been issued prior to November 1, 1996, where one policy has the transitional coverage provided for in Section 70 of the *Statutory Accident Benefits Schedule - Accidents on or After November 1, 1996*, and another policy has been issued for coverage commencing on or after November 1, 1996, with mandatory SABS coverage only.

The insurance industry has expressed concern that certain interpretations of the *Act* could frustrate the objectives of optional statutory accident benefits and transitional SABS coverages. At the request of the industry, the Ontario Insurance Commission (OIC) is taking steps to protect claimants from any uncertainty associated with unintended interpretations of the *Act*.

This Bulletin provides information on an undertaking for transitional SABS coverages, and an endorsement insurers will be required to offer for optional benefits in the SABS. The endorsement must be shown on the Certificate of Automobile Insurance. The endorsement will be mandated by regulation (an amendment will be made to the SABS regulation).

Optional Benefits in the SABS

A key objective of the *Automobile Insurance Rate Stability Act, 1996* (Bill 59), is to lower the cost of compulsory automobile insurance by establishing the mandatory SABS coverages that consumers are required to purchase at a level which is in line with the needs of most consumers. Consumers with additional needs may purchase optional statutory accident benefits. Implicit in this approach is an understanding that when a consumer purchased optional statutory accident benefits, that coverage would be portable. In other words, that coverage would apply to that consumer as well as the consumer's spouse, dependents, and any person specified as a driver under the policy, whether the accident took place in a vehicle described in the policy, or in any other vehicle. The rate filings of insurers for the optional statutory accident benefits reflects this portable aspect of the coverage.

Certain interpretations of the *Act* may not, however, reflect this intended portability. An example is a consumer who has purchased his or her own policy with optional statutory accident benefits. The consumer is injured in an accident while occupying the vehicle of a spouse or dependent who is insured under a separate policy without optional statutory accident benefits. The *Act* can be interpreted, in this case, to require the consumer with optional statutory accident benefits, to claim under the spouse's or dependent's policy instead. As a result, the consumer who has purchased optional statutory accident benefits would not be able to claim these benefits.

Under the leadership of the Insurance Bureau of Canada, a joint industry/government working group has developed an endorsement form to protect purchasers of optional statutory accident benefits from different interpretations of the *Act* which may result in denial of coverage. The endorsement form is OPCF 47, *Agreement Not to Rely on SABS Priority of Payment Rules*, and a sample is attached for your reference. **This endorsement must be provided**

without charge to every policyholder who purchases optional statutory accident benefits and must be shown on the Certificate of Automobile Insurance as evidence of coverage.

Where optional statutory accident benefits have been purchased prior to the approval of this endorsement, insurers should add the endorsement to existing policies. In lieu of reissuing a certificate, insurers can provide a copy of the endorsement instead. The endorsement does not require an automobile policy number to be shown in cases where there are multiple vehicles under one policy. The endorsement must, however, include an effective date in the event consumers choose to purchase optional statutory accident benefits mid-way through a policy term.

The timing for incorporation of these requirements is flexible, so that insurers who need time to make the necessary program changes have an opportunity to do so. However, insurers who have not made these changes must continue to provide a copy of the endorsement to policyholders. **The provision of this coverage to policyholders who purchase optional statutory accident benefits will be made mandatory by regulation.**

Additional quantities of this endorsement will be available from Informco Inc. The phone number for Informco Inc. is (416) 285-1700 and the fax number is (416) 285-0595. If you have your own printer and wish to obtain the form on disk, please send your request by fax to the attention of the Administrative Officer, Public Affairs, Corporate Operations Branch, OIC, indicating both the title and code # (OPCF 47) of the form. The fax number is (416) 590-7070. Please note that the disk is only available in Pagemaker 5.0 format.

Transitional SABS coverage

One of the reasons for transitional coverage in Section 70 of the *Statutory Accident Benefits Schedule – Accidents on or After November 1, 1996*, is to reflect the fact that consumers with unexpired policies under the previous system have paid for a higher level of mandatory coverage. Since most consumers would not normally renew their policies with the introduction of Bill 59, transitional coverage gives them time to evaluate whether they need to purchase optional statutory accident benefits.

As with optional statutory accident benefits, the objective in providing transitional coverage may be frustrated if a consumer is required to claim under another policy issued on or after November 1, 1996, that provides only mandatory benefits. For example, a consumer whose vehicle is insured under a policy issued prior to November 1, 1996, could be required to claim under the policy of a spouse or dependent, which was entered into or renewed on or after November 1, 1996, and which only has the mandatory statutory accident benefits.

Given the large number of policies involved, and the diminishing number of cases that could arise as these policies expire, it is considered impractical to deal with transitional coverage by way of endorsement. The OIC is, with the support of the industry / government working group, asking all insurers to uphold the intent of providing transitional coverage pending the expiry of coverage purchased under the previous system. Insurers are being asked not to raise a defence to providing transitional coverage on the basis that the insured is required by the priority rules to claim under another policy if that other policy provides only mandatory benefits.

To determine the intent of individual insurers in complying with this directive, Mr. Charles Anderson, Director of Rates and Classifications at the OIC, will be providing each insurer with an undertaking. Insurers can indicate by signing the undertaking that they will not raise a defence to providing transitional coverage based on the *Act*. It should be noted that insurers are not required to sign the undertaking. However, in accordance with Section 29 of the *Act,* **the OIC will require all insurers to respond to this request by providing a signed copy of the undertaking, and/or an acknowledgement that they will not be signing the undertaking**. Insurers are reminded that Section 37 of the *Act* gives the OIC the authority to publish such information as the Commissioner considers to be in the public interest. Consideration will be given to publishing the names of insurers who have refused to sign the undertaking.

Contacts

If you have any questions about priority of payment rules governing optional and transitional statutory accident benefits, please call your rate analyst in the Rates and Classifications Branch at the OIC.

D. Blair Tully

Commissioner

December 9, 1996

Attachment :

- OPCF 47, *Agreement Not to Rely on SABS Priority of Payment Rules.*

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AGREEMENT NOT TO RELY ON SABS PRIORITY OF PAYMENT RULES
OPCF 47

Issued to	Policy Number	Effective Date Year Month Day

1. Purpose of This Endorsement

This endorsement is part of your policy. It has been made because persons who are entitled to receive optional statutory accident benefits under this policy may, by the priority of payment rules in Section 268 of the *Insurance Act*, be required to claim under another policy that does not provide them with the optional statutory accident benefits that have been purchased under this policy.
This endorsement allows these persons to claim Statutory Accident Benefits (SABS) under this policy including the optional statutory accident benefits provided by this policy, provided they do not make a claim for SABS under another policy.

2. What We Agree To

If optional statutory accident benefits are purchased and are applicable to a person under this policy, and the person claims SABS under this policy as a result of an accident and agrees not to make a claim for SABS under another policy, we agree that we will not deny the claim, for both mandatory and optional statutory accident benefits coverage purchased, on the basis that the priority of payment rules in Section 268 of the *Insurance Act* may require that the person claim SABS under another insurance policy.

All other terms and conditions of the policy remain the same.