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Bulletin

No. A-08/97

Property & Casualty

- Auto

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Conflict of Interest Guideline, New Residual Earning Capacity Assessment DAC, Reminder About Case Management Costs

To the attention of all insurance companies in the Province

of Ontario licensed to transact auto insurance

With this Bulletin, the Ontario Insurance Commission (OIC) is providing insurers with a copy of the new *Guideline Respecting Conflict of Interest in the Provision of Medical and Rehabilitation Services*; announcing the appointment of a new residual earning capacity designated assessment centre (DAC); and issuing a reminder note about how to deal with the costs associated with case management of claimants who have suffered personal injuries in motor vehicle accidents.

A. NEW GUIDELINE

To clarify what constitutes a conflict of interest in decisions about medical and rehabilitation services, the Ontario Insurance Commission (OIC) released the [Guideline Respecting Conflict of Interest in the Provision of Medical and Rehabilitation Services](#) (guideline).

The guideline was developed in consultation with the industry, and is in response to the need among insurers,

health care providers and lawyers for a clearer understanding of the *Statutory Accident Benefits Schedule* (SABS) conflict of interest provisions.

The guideline first appeared in the August 23, 1997 edition of The Ontario Gazette and was issued by the Commissioner of Insurance who is authorized under section 268.3 of the *Insurance Act* to issue guidelines on the interpretation and operation of the SABS.

Distribution of Guideline to DR Co-ordinators, Claims and Adjusting Departments

Because of the importance of this and other guidelines, the OIC urges insurers to ensure that copies of this guideline are provided to their claims and adjusting staff as well as to their Dispute Resolution co-ordinators who should note that the attached guideline becomes B 10-1 of the Dispute Resolution Practice Code.

The OIC will also be providing copies of this guideline to all DACs as well as to associations representing professional health care providers.

B. APPOINTMENT OF NEW RESIDUAL EARNING CAPACITYASSESSMENT DAC.

The OIC has appointed the Ontario March of Dimes, South Central Region, in Hamilton as an additional residual earning capacity assessment DAC, effective August 18, 1997. The appointment is the result of a public tendering process to meet residual earning capacity assessment needs in the south central region of the province. Although this appointment falls under the SABS of the previous automobile insurance system (Bill 164), the Commissioner of Insurance sought the recommendations of the Minister's Committee on the DAC system prior to making this appointment.

The full details of the appointee are:

South Central Ontario Region:

-

Ontario March of Dimes, South Central Region

225 King William Street, 5th floor

Hamilton, ON L8L 1B1

Tel: (905) 522-2253

Fax: (905) 522-2351

The last edition of the OIC-published Designated Assessment Centre Revised Roster, dated November, 1996, will be updated and released in the near future.

C. REMINDER NOTE ON CASE MANAGEMENT EXPENSES

Insurers are reminded that the costs associated with case managers, retained or hired directly by an insurance company to assist in managing a claim file, should be allocated as an expense and not as a rehabilitation benefit.

Case management services that are recommended in a treatment plan and approved by the insurer, and/or where explicit approval for these services is obtained from the claimant, should be allocated to the rehabilitation benefit.

Dina Palozzi

Commissioner

August 26, 1997

Attachment:

- [Guideline Respecting Conflict of Interest in the Provision of Medical and Rehabilitation Services](#)

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Financial Services Commission of Ontario
5160 Yonge Street
Toronto, ON M2N 6L9
1-800-668-0128
(416) 250-7250





**Ontario
Insurance
Commission**

**Commission des
assurances de
l'Ontario**

August 26, 1997

Guideline Respecting Conflict of Interest in the Provision of Medical and Rehabilitation Services

Commissioner's Guideline No. 1/97

Guideline Respecting Conflict of Interest in the Provision of Medical and Rehabilitation Services

[This Guideline is issued pursuant to section 268.3 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.]

The Treatment Plan

The *Statutory Accident Benefits Schedule - Accidents on or after November 1, 1996* (SABS) sets out a new procedure for insured persons to follow when applying for medical and rehabilitation benefits.

The insured person must submit a Treatment Plan completed by a member of a health profession before incurring expenses for medical or rehabilitation services. For the purposes of the SABS, the Treatment Plan form is the application form for medical and rehabilitation benefits. The Commissioner has approved OCF-18/59 as the Treatment Plan form to be used under the SABS.

When an insured person applies for medical and rehabilitation benefits, the insurer will review the Treatment Plan and decide what goods and services it is prepared to pay for. However, an insurer may waive the requirement for a Treatment Plan where the insurer has agreed to pay for the goods or services.

In addition, an insurer is required to pay for chiropractic or physiotherapy treatment within the first six weeks following the accident, pending the outcome of any dispute over such services. The insured person can attend up to 15 treatments, during the initial six week period, provided that the insured person has submitted a Treatment Plan to the insurer before commencing treatment.

Obligation to Disclose Conflicts of Interest

There are obligations in respect to conflicts of interest imposed on three different groups: health professionals; lawyers, or other persons representing claimants; and insurers.

The obligations with respect to conflicts of interest for health professionals arise in the preparation and signing of the Treatment Plan for the claimant. The obligations are as follows:

- The health professional must disclose any conflict of interest he or she may have in relation to the treatment plan.

- In cases where another person has referred the insured to the persons who will be providing the goods and services under the plan, the health professional must make reasonable efforts to determine whether the person who made the referral has a conflict of interest.
- If the other person who referred the insured person to the treating facility has a conflict of interest in relation to the treatment plan, the health professional must disclose the conflict of interest in the treatment plan.

The OCF-18/59, the form to be used in the preparation of a treatment plan, includes a disclosure statement to be signed by the health professional; this satisfies the requirements.

The obligations of a lawyer or other representative of the claimant is to disclose any conflict of interest to the insurer at the time the application for benefits is submitted.

The insurer is required to disclose any conflict of interest to the claimant within 14 days of receiving the application, unless it has already rejected the application because of a conflict of interest disclosed by the health professional or the claimant's lawyer or other representative.

Conflict of Interest Defined

Section 38(24) of the SABS defines "conflict of interest":

- (a) *A person has a conflict of interest relating to a treatment plan if,*
 - (i) *the person or a member of the person's family may receive a financial benefit, directly or indirectly, as a result of the provision, by a member of the person's family or another person, of goods or services contemplated by the treatment plan, and*
 - (ii) *the person who may receive the financial benefit is not the employee of the person who will provide the goods or services and does not have a contract with the person who will provide the goods or services under which goods or services of that kind are provided; and*
- (b) *An insurer has a conflict of interest relating to goods or services to which an insured person is referred by the insurer if the insurer may receive a financial benefit, directly or indirectly, as a result of the provision of the goods or services.*

Member of a Person's Family Defined

Section 38(25) of the SABS defines "member of a person's family":

"member of the person's family" means, in the case of a person who is not a corporation, any other person connected with the person by blood relationship, marriage or adoption, and

- (a) persons are connected by blood relationship if one is the child or other descendent of the other or one is the brother or sister of the other,*
- (b) persons are connected by marriage if one is the spouse of the other or of a person who is connected by blood relationship to the other, and*
- (c) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected by blood relationship (otherwise than as a brother or sister) to the other.*

Commentary

Purpose of Disclosure

The purpose of this provision is to identify situations where referrals for profit are likely to exist and where a party is in a position to unduly influence the course of treatment to their own pecuniary advantage.

Where a conflict of interest exists, the possibility arises that the interests of the insured person might not always be paramount. Therefore, where a conflict of interest does exist, the party having the conflict is required to disclose it. Some typical situations that arise are set out below as guidance:

Self-Referrals

- The conflict of interest provisions indicate that the person who receives a financial benefit would have to profit from services provided by another person. Therefore, if the health professional who prepares the Treatment Plan is the person who will treat the insured person, no conflict of interest exists.

Referrals within a Facility

- The conflict of interest provisions are also not intended to extend to co-workers within a facility. If the person completing the Treatment Plan is employed by or is under contract with the same facility that provides the treatment, no conflict of interest exists.

Referrals for Profit

- If the person who prepares the Treatment Plan receives a financial benefit for referring the insured person to a treatment facility, a conflict of interest exists. However, no conflict of interest exists if

the person who prepares the Treatment Plan is an employee of the same facility that will be carrying out the treatment.

- If the insured person is referred to a treatment facility by another person who will receive a financial benefit, a conflict of interest exists. However, no conflict of interest exists if the person making the referral is an employee of the same facility.

Financial Benefit

The regulation provides that a conflict of interest exists if the health professional, lawyer or representative of the insured, or a member of their family, or the insurance company receives a financial benefit, either directly or indirectly, as a result of a referral.

A financial benefit can consist of any thing of value. For the purposes of this regulation, the following types of arrangements would result in a financial benefit being received:

- any benefit received by the person for the referral in the form of a referral fee, commission, rebate, or gift;
- the sharing of profits;
- the expectation of cross referral;
- obtaining or providing goods or services at prices that are substantially higher or lower than the fair market value;
- an agreement between an insurance company and a provider to limit the quantity of services to be provided to insureds who are referred to the provider by the company.

The above examples are illustrative and are not an exhaustive list of the types of arrangements that could result in a financial benefit being received by a health provider, the insured person's lawyer or representative, or the insurance company.

Disclosure by a Health Professional

The regulation places the onus on the health professional completing the Treatment Plan form to make inquiries and disclose any conflicts of interest on the form. The regulation does not require the health professional to provide any other statement respecting conflicts of interest. In particular, the health

professional is not required to provide an insurance company with documented proof that no conflict of interest exists.

Disclosure by the Insurance Company When the Treatment Plan is Waived.

If the insurance company waives the requirement for a Treatment Plan, the company has an obligation to notify the insured in writing of any conflict of interest that the company has with respect to the goods or services provided to the insured.

When a Conflict of Interest is Disclosed

If a conflict of interest is disclosed by the health professional who prepared the Treatment Plan, or by the insured person's lawyer or representative, the insurance company may refuse the Treatment Plan, provided that it notifies the insured person within 14 days of receiving the plan. In this case, the insured person would have to submit a new Treatment Plan that recommends providers who did not have a conflict of interest.

The conflict of interest provisions are not intended to prohibit treatment when a conflict exists but rather require disclosure of such situations. It is intended to eliminate the ability of one of the parties to influence the course of treatment for their pecuniary advantage. Therefore, the insurance company may approve a Treatment Plan despite the existence of a conflict and should exercise discretion before denying plans based on a conflict of interest.

When a Conflict of Interest is Not Disclosed, but is Discovered After the Commencement of Treatment

If an insurance company discovers that a conflict of interest exists with respect to goods or services provided under a Treatment Plan, the company may give the insured person notice that the insured has 14 days to amend the Treatment Plan to remove the conflict of interest. This would mean that the insured person would

have to be referred to another health provider who did not have a conflict of interest. The insured would receive goods or services from the new health provider.