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No. A-12/98

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Insurers' responsibilities on SAB processing after 104 weeks under Bill 59, specially authorized Disability DACs to be appointed

To the attention of all insurance companies licensed

to transact automobile insurance in Ontario

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is reminding property and casualty insurers about their rights and responsibilities in the processing of Statutory Accident Benefits claims under the Statutory Accident Benefits Schedule (SABS) - Accidents on or after November 1, 1996, a regulation issued under Bill 59 (the Automobile Insurance Rate Stability Act, 1996).

The SABS has now been in effect for two years. As claimants that are receiving income replacement or caregiver benefits will start to reach the 104 week mark, insurers should be aware that although the test for entitlement changes, the benefit payable after 104 weeks is not a separate or distinct benefit. In other words, it is not comparable to the conversion of an income replacement benefit to a loss of earning capacity benefit under the Bill 164 SABS. Therefore, the process that is used to discontinue benefits before 104 weeks continues to apply after 104 weeks. A discontinuation of the benefit would be a "stoppage" within the meaning of Section 37(1)(b), and the remaining provisions of Section 37 would apply, including informing the claimant of his or her right to require an

assessment at a Designated Assessment Centre (DAC).

Claimants receiving caregiver benefits after 104 weeks of disability must demonstrate they suffer a complete inability to carry on a normal life. Existing Disability DACs are qualified to evaluate this disability.

Claimants receiving income replacement benefits (IRB) after 104 weeks of disability must demonstrate they suffer a complete inability to engage in any employment for which they are reasonably suited by education, training or experience. If insurers cite this reason for terminating benefits, then this is the issue the Disability DAC will evaluate. Disability DACs from the existing roster that are qualified to conduct this type of assessment are currently being identified. These DACs will be noted on the DAC Roster which can be found in FSCO's Internet website at www.fsco.gov.on.ca

Procedure for assessment of IRB claimants after 104 weeks by authorized Disability DACs

The tasks of the Disability DAC in making an assessment of continued disability from employment include the following:

- Determine whether the claimants have a complete inability to engage in their pre-accident employment;
- Identify if there is any other employment suitable to the claimant by education, training or experience (if necessary);
- Determine whether the claimant suffers from a complete inability to perform any of the other identified employment (if necessary).

Should there be a continuing disagreement about the payment of income replacement benefits by the insurer to a claimant after the Disability DAC has presented its assessment report of the claimant, either party may apply for dispute resolution at FSCO in accordance with Sections 279 to 288 of the Insurance Act to resolve the conflict.

Insurers' Responsibilities

Insurers may find it useful in identifying cases where income replacement benefits may be terminated by arranging vocational assessments and transferable skills analyses as the 104-week mark approaches. If necessary, the insurer and the claimant should identify any rehabilitation to assist the claimant in returning to the workforce.

Distribution of this Bulletin to your DR Coordinators, Claims and Adjusting Departments

Because of the importance of the information contained in this Bulletin, FSCO urges insurers to ensure that copies of this Bulletin are provided to their claims and adjusting staff as well as to their dispute resolution coordinators.

Dina Palozzi

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November 19, 1998

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