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Bulletin

No. A- 08/05

Property & Casualty

– Auto

Elimination of Designated Assessment Centre System, Cost Sanctions at Arbitration for Non-attendance at Insurer Examinations, and Amendment of Unfair or Deceptive Acts and Practices Regulation

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 highlighting three regulation changes dealing with the elimination of the Designated Assessment Centre (DAC) system, additional cost sanctions at arbitration for non-attendance at insurer examinations and an expansion in the list of unfair or deceptive acts and practices.

Elimination of DAC System

Ontario Regulation 403/96, the Statutory Accident Benefits Schedule (SABS), has been amended to eliminate the DAC system effective March 1, 2006, subject to transition provisions.

The regulation will continue to require a claimant to obtain an assessment from his or her own health care provider when applying for benefits. An insurer that wishes to review or challenge the findings of an assessment or an ongoing benefit, will be required to request a separate medical or health care examination from a health care provider of the insurer's choice, prior to making a determination on benefit entitlement. An examination requested by an insurer must be completed within the timeframes set out in the regulation. Benefits that are the subject of the insurer examination review must continue to be paid while the insurer's examination is in progress and until the claimant is notified of the insurer's benefit determination. The regulation requires the insurer to provide a copy of the examination report and insurer's determination to the claimant and the original health care provider.

In the situation where an application or benefit entitlement is rejected following an insurer examination, the claimant may have an opportunity for a further health care assessment from his or her own health care provider, or another health care professional, subject to the conditions set out in the regulation.

A dispute over assessment or examination findings or benefit determinations will proceed directly to the dispute resolution system at FSCO.

Other SABS Amendments

Additional amendments to Regulation 403/96 include:

- a pre-claim examination that can be undertaken by an insurer with the consent of the claimant to assist in determining benefit eligibility and expediting the provision of goods and services following an accident and in situations where a claimant has been admitted to a hospital or is being discharged;
- prior insurer approval not being required for certain assessments or examinations from a claimant's health care provider if they do not exceed $200; and
- the extension in duration of attendant care benefits paid to a claimant beyond 104 weeks following an accident to include additional time pending the completion of a catastrophic impairment assessment.

Transition

DAC assessments will continue under the provisions of the current regulation until February 28, 2006. A DAC assessment will only take place on or after March 1, 2006 if it was already in progress, scheduled or requested prior

to March 1, 2006. This run-off period may take several months before all DAC assessments are completed. Further details on these transition provisions are set out in the regulation amendments.

Non-Attendance at an Insurer Examination

The SABS has been amended to remove the prohibition on filing for mediation because of non-attendance by a claimant at an insurer examination. Under amendments to Regulation 664, claims involving non-attendance at insurer examinations will instead be subject to cost sanctions at arbitration. A claimant that does not attend an insurer examination will continue to be subject to the suspension or stoppage of benefit payments during the non-attendance period.

Expansion of Unfair or Deceptive Acts and Practices Regulation

Regulation 07/00 has been amended to expand the list of unfair and deceptive acts and practices. Many of these changes are aimed at preventing delays or the possible misuse of insurer examinations. These changes include:

- the failure or refusal of an insurer, without reasonable cause, to pay a claim for goods or services or the cost of an assessment within the time periods prescribed for payment;
- the determination that a person is not entitled to a benefit before obtaining an insurer examination report as required in the regulation;
- the making of a statement to adjust or settle a claim that the insurer knows or ought to know misrepresents or unfairly presents the findings or conclusions of an insurer examination;
- the requirement by an insurer to attend an insurer examination conducted by a person the insurer knows, or ought to know, is not reasonably qualified for the purposes of examination;
- the requirement by an insurer that a claimant attend an insurer examination where the insurer knows, or ought to know, that it is not reasonably required under the regulation;
- the failure of an insurer to obtain written and signed consent of a claimant before an insurer pre-claim examination; and
- the expansion in the application of certain unfair or deceptive acts or practices to persons who: provide towing services or own a tow truck, engage in the provision of vehicle repair or automobile storage services.

Accident Benefit Form Changes

New and amended accident benefit claim forms will be issued to reflect these regulation amendments.

Training and Education

Insurance companies should ensure that claims staff and adjusters are informed of the regulation changes and that procedures are developed to meet new requirements and specified timeframes for the completion of insurer examinations.

Copies of the Regulation

These regulation amendments were filed as O. Reg 546/05, O. Reg 547/05, and O. Reg 548/05 on October 28, 2005 and will be published in a future edition of *The Ontario Gazette*. They can be downloaded from the Ontario e-laws website at www.e-laws.gov.on.ca. The e-laws website can also be accessed from FSCO's website at www.fsco.gov.on.ca.

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