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Bulletin

A-04/10
Property & Casualty
– Auto

Transition to the New Statutory Accidents Benefits Schedule - Effective September 1, 2010

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 the transition rules for accident benefit claims under the Statutory Accident Benefits Schedule - Effective September 1, 2010 (New SABS).

Rules for New Accidents

"New accidents" are defined as automobile accidents that occur on or after September 1, 2010.

The New SABS will apply to all new accidents for all purposes. Benefit claims related to new accidents will be made using the revised accident benefit claim forms that will be communicated in an upcoming Property and Casualty – Auto Bulletin.

Rules for Old Accidents

"Old accidents" are defined as automobile accidents occurring on or after November 1, 1996 and before September 1, 2010.

Old SABS Continues to Govern Calculation of Benefit Entitlement Amounts

The Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996 (Old SABS) will continue to apply to the calculation of benefit entitlements for old accidents. For example:

- Income replacement benefits will continue to be calculated at 80 per cent of net income (Old SABS s. 3 (1.4); New SABS s. 2 (2)).
- Coverage limits (e.g., \$100,000 for medical/rehabilitation benefits) will continue to be governed by the Old SABS (Old SABS s. 3 (1.4); New SABS s. 2 (2)).
- Entitlement to caregiver, housekeeping and home maintenance benefits will continue to be governed by the Old SABS (e.g., impairment need not be catastrophic) (Old SABS s.3(1.4); New SABS s. 2 (2) 2).
- Attendant care benefits will continue to be based on the hourly rates that are in effect on the date of the accident (Old SABS s. 3 (1.4); New SABS s. 2 (2) 2).
- The rules in section 3 (7) (e) and section 3 (8) of the New SABS concerning incurred expenses will not apply to old accidents (Old SABS s. 3 (1.4); New SABS s.2(2)2).
- The "minor injury" definition, Minor Injury Guideline and \$3,500 medical and rehabilitation limit referred to in the New SABS will not apply to old

accidents (Old SABS s. 3 (1.4); New SABS ss. 2 (2), 2 (2) 1 and 2 (2) 2).

- For the purposes of old accidents, references to the Minor Injury Guideline in the New SABS will be deemed to be references to the Pre-approved Framework Guidelines under the Old SABS (Old SABS s. 3 (1.4); New SABS s. 2 (2) 1).

New SABS Will Govern Most Claims Processing and Most Calculations of Amounts Payable to Establish Benefit Entitlements

General Rule

As of September 1, 2010, as a general rule the New SABS will govern claims processing relating to old accidents and the determination of amounts payable by insurers on account of expenses paid to establish benefit entitlements arising out of old accidents (Old SABS ss. 3(1.2), (1.5) and (1.6); New SABS s. 2(2)). For example:

- The accident benefit claim forms that are currently in use will no longer be approved. Only the revised forms will be approved (Old SABS ss. 3(1.2), (1.5) & (1.6); New SABS ss. 2 (2) and 66).
- An Application for Determination of Catastrophic Impairment (OCF-19) must be prepared by a physician, or by a physician or neuropsychologist if the impairment is only a brain impairment (Old SABS ss. 3 (1.2), (1.5) and (1.6); New SABS ss. 2 (2) and 45 (3)).
- An Assessment of Attendant Care Needs (Form 1) must be completed by an occupational therapist or a registered nurse (Old SABS ss. 3 (1.2), (1.5) and (1.6); New SABS ss. 2 (2) and 42 (1) (b)).
- Interest on amounts that become overdue on or after September 1, 2010, in respect to old accidents, will accrue at the New SABS rate of one per cent per month and be compounded monthly (Old SABS s.3 (1.2); New SABS s.2(2)).
- Sections 25 (1), (3), (4) and (5) of the New SABS will govern amounts payable by insurers on account of fees invoiced on or after September 1, 2010 for the following:
 - Pre-approved Framework Guideline services;
 - preparation of disability certificates, assessments of attendant care needs, applications for determination of catastrophic impairment and future care and related plans; and
 - reviewing and approving treatment and assessment plans, assessments and examinations.

This includes the new \$2,000 limit on fees for assessments and examinations and applies whether the services were rendered before or after September 1, 2010 (Old SABS s.3 (1.4); New SABS s. 2 (2) 2).

- A revised Treatment and Assessment Plan form (OCF-18) will replace the existing Treatment Plan (OCF-18) and Request for Approval of an Assessment or Examination (OCF-22) effective September 1, 2010. Section 38 of the New SABS will govern processing of the new OCF-18 (Old SABS ss. 3 (1.5) and (1.6); New SABS s. 2 (2)). For old accidents, references in section 38 of the New SABS to the Minor Injury Guideline will be deemed to be references to the Pre-approved Framework Guidelines under the Old SABS (New SABS s.2(2)1).
- A claimant who qualifies for two or more of the income replacement, non-earner or caregiver benefits, and who makes an election after September 1, 2010, cannot change his or her choice later on, except in limited circumstances (Old SABS s. 3 (1.2); New SABS ss. 2 (2) and 35).
- Section 42.1 of the Old SABS concerning rebuttal assessments does not apply after August 31, 2010 (Old SABS s. 3 (1.2)).
- The rules in the Old SABS requiring section 42 insurer examinations with every denial of certain benefits will not apply to denials made on or after September 1, 2010 (Old SABS s. 3 (1.2); New SABS s. 2 (2)).
- For any WAD I or WAD II injury claim that results from an old accident, the revised Treatment Confirmation Form (OCF-23) will replace the existing OCF-23 effective September 1, 2010. Claims processing will be governed by the New SABS, but the existing Pre-approved Framework Guidelines will continue to apply (Old SABS ss. 3 (1.2), (1.5) and (1.6); New SABS ss.2(2), 2(2)1).

Exceptions

There are some exceptions to the general rule related concerning the applicability of the New SABS to claims processing for old accidents and the determination of amounts payable for expenses paid to establish benefit entitlements arising out of old accidents. For example:

- Interest on amounts that become overdue before September 1, 2010, in respect to old accidents, will accrue at the Old SABS rate of two per cent per month and be compounded monthly both before and after September 1, 2010 (Old SABS s.3(1.4); New SABS s.2(2) 2).
- The requirements in subsections 50 (2) - (5) of the New SABS, for insurer delivery of periodic benefit statements, will not apply to old accidents (New SABS s. 2 (2)).
- Section 18 (5) of the New SABS, which deems the cost of conducting examinations and assessments and preparing reports to be included in medical/rehabilitation coverage limits, will not apply to old accidents (Old SABS s. 3 (1.4); New SABS s. 2 (2)).
- Section 25 (2) of the New SABS, concerning amounts payable for in-home assessments and examinations for minor injuries, will not apply to old accidents (Old SABS s.3(1.4); New SABS s.2 (2) 2).

Coverages and Limits on Policies Already In Effect as of September 1, 2010

The coverages and coverage limits that are available in accordance with the Old SABS under any automobile insurance policy already in effect as of September 1, 2010 will remain unchanged until the policy expires or is terminated. The only exception is if the named insured and insurer agree otherwise in writing (New SABS s. 68). The OPCF 25A (Alteration) endorsement, amended to reflect the new coverage choices available under the New SABS, will be available for this purpose.

Copies of Regulations

The New SABS was filed as [Ontario Regulation 34/10](#) and the amendment to the Old SABS that deals with transition to the New SABS was filed as [Ontario Regulation 35/10](#). To download a copy of these regulations, visit the e-laws website at: www.e-laws.gov.on.ca.

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