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Bulletin

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– Auto

Changes to Ontario Regulation 283/95: Disputes Between Insurers

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 recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure compliance by all insurers. The changes are effective September 1, 2010.

Background

Ontario Regulation 283/95 sets out a mandatory process for private arbitration of all disputes between insurers over which insurer is liable to pay accident benefits to a claimant. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a timely fashion while these disputes are being resolved.

Ontario Regulation 283/95 was established in 1995 following several years of experience with the no-fault accident benefits system.

During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed – even if a private insurer was obliged to make the payments.

As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10.

These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate regulatory action.

Key Regulation Changes

1. Deflection of Applications for Accident Benefits

a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2))

Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits Schedule (SABS) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95.

b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5))

When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is required to pay accident benefits.

c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the SABS. (Section 2.1(6))

In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the SABS. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95.

d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7))

Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer.

2. Definitions of "First Insurer" and "Completed Application"

Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application".

a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1)

b) The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6))

A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed).

c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4))

Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer.

3. Time Limitations for Notifying Other Insurers of Liability

a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF, and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b))

Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules.

Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim, but cannot reach a decision within the 90 day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1))

To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed.

Enforcement

Note that in addition to sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the Insurance Act and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices.

Publication of Arbitration Decisions involving Disputes Between Insurers

Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4))

The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty – Auto Bulletin.

Effective Date

The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010. All insurers need to ensure that their claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date.

Copies of Regulations

The Insurance Act and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca.

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