

## **WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE**

For the week of November 2 - 6, 2009

### **Ontario's proposed auto insurance reform: the devil will be in the details.**

#### **News Release: *Ontario's Proposed Auto Insurance Reforms; November 2, 2009***

A news bulletin summarizing the Ontario government's proposed changes to auto insurance was released yesterday. They are expected to come into force in the summer of 2010. This newsletter highlights only some of the proposed changes to SABS benefits and tort deductibles.

#### ***Medical and Rehabilitation Benefits***

The new proposed minimum coverage is \$50,000 for non-catastrophic cases. The minimum coverage remains the same at \$1,000,000 for catastrophic cases. Insureds may purchase optional benefits for increased coverage at two levels, \$100,000 (the current minimum), and \$1,000,000 which was previously available. However, the \$1,000,000 level would include attendant care benefits as well (i.e. combined total of \$1,000,000).

#### ***Attendant Care Benefits***

The new proposed maximum benefit is \$36,000 down from \$72,000 for non-catastrophic cases. Catastrophically impaired insureds would receive maximum of \$1,000,000 as before. Optional benefits of \$1,000,000 for combined attendant care and medical and rehabilitation benefits can be purchased.

#### ***Housekeeping and Home Maintenance Benefits***

There will be no housekeeping and home maintenance benefits for non-catastrophically impaired insureds unless optional benefits are purchased. Catastrophic cases will continue to receive \$100 per week maximum.

#### ***Income Replacement Benefits***

The maximum benefit remains at \$400 weekly; however, coverage will now be calculated as 70% of gross rather than 80% of net. The \$1,000 weekly optional benefit can still be purchased, but the \$800 weekly optional benefit level has been eliminated.

#### ***Caregiver Benefits and Non-Earner Benefits***

These are eliminated in non-catastrophic cases, but remain the same for catastrophic cases. Non-earner benefits are not mentioned in the summary.

#### ***Death and Funeral Benefits***

These remain unchanged.

### ***Tort Deductibles***

Again, it appears that reduced deductibles, to \$20,000 for injured claimants and \$10,000 for Family Law Act claimants, will be available for purchase by the insured.

### **Implications**

Before breathing a sigh of relief for the doubling of the minimum coverage for medical and rehabilitation benefits in non-catastrophic cases compared to the recommendation in the Five Year Review, it is important to note that costs of assessments (both in catastrophic and non-catastrophic cases) are proposed to be “included as part of the person’s medical and rehabilitation accident benefits”. Absent misinterpretation on my part, that wording suggests that the costs of assessments will now be borne by the insured rather than the insurer. While limits on the cost of each assessment are proposed (\$2,000 per assessment both under section 24 and 42), concern remains for the potential for quick erosion of benefits through assessments challenging the reasonableness of proposed goods and services.

The proposed changes substantially reduce benefits available to non-catastrophically injured people who do not purchase optional benefits. Though the definition of catastrophic impairment is proposed to be amended to include single-limb amputees, this will make little difference in the majority of cases which are not catastrophic. Of concern is the illusory protection of optional increased benefits, which, in the experience of members of our office, and according to my own insurance broker, are rarely purchased. Of the various contributing reasons for this, lack of understanding by insureds about SABS coverage and deductibles for tort actions likely plays an important role together with a reluctance, or financial inability, to incur the increased cost. The result: adequate rehabilitation and financial protection for those with the money and the wherewithal to purchase it.

It remains to be seen what the cost of optional benefits will be. If reasonable, the optional benefit may become a standard as it is with the Family Protection Endorsement, where brokers automatically include the benefit unless the consumer asks for it to be removed.

An irony of the package is this: people with good jobs and access to private insurance benefits will be the ones able to afford the optional benefits. Those who work for minimum wage, have part time jobs or families who depend on every dime they bring in, will not likely be able to afford these benefits. Young people, who are unemployed may fare the worst.

The devil is in the details. We will review them as they become available.



## Accessing the News Release

If you would like to read the news release for yourself, it can be found at <http://news.ontario.ca/mof/en/2009/11/ontarios-proposed-auto-insurance-reforms.html>. If you have questions or comments about this edition of the newsletter, contact Joni Dobson at Legate & Associates: [jdobson@legate.ca](mailto:jdobson@legate.ca)