

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of April 26 - 30, 2010

Minor Injury under the New SABS: what it isn't!

Statutory Accident Benefits Schedule - Effective September 1, 2010, O.Reg. 34/10

When the *New SABS* comes into effect on September 1, 2010, it will introduce a new concept: minor injuries. Along with that, a Guideline is expected for minor injuries (the MIG) in September. Here is what we know so far:

- There are now 3 categories of impairments:
 - Catastrophic
 - Minor
 - Neither of the above
- Impairment may be comprised of both a minor and non-minor injury. A minor injury is one of a sprain, strain, WAD, subluxation, contusion, abrasion, or laceration and clinically associated sequelae.¹
- Two frameworks govern minor injuries: goods and services payable under the MIG and a cap on med/rehab benefits.
 - The MIG will establish a treatment framework for one or more kinds of minor injury and authorize payments for goods and services.²
 - Med/rehab is capped at \$3,500.00 less amounts paid under the MIG. Applies only where impairment is predominately a minor injury and there is no compelling evidence a pre-existing medical condition would prevent maximal recovery if insured subject to cap or the MIG.
- Treatment Confirmation submitted for minor injury to which MIG applies.
 - Prepared by health practitioner (1) authorized by law to treat impairment and by the MIG to complete form and (2) responsible for providing goods and services. In effect, providers who are not “health practitioners”, ie/ RMT, are unable to treat minor injury.
 - New form to be completed with changes in treatment provider.

¹ Sprain (injury to one or more tendons or ligaments or to one or more of each, including a partial but not a complete tear); Strain (injury to one or more muscles, including a partial but not a complete tear); Whiplash Associated Disorder (injury that occurs to a person's neck following a sudden acceleration-deceleration force that (a) does not exhibit objective, demonstrable, definable and clinically relevant neurological signs, and (b) does not exhibit a fracture in or dislocation of the spine); Subluxation (partial but not a complete dislocation of a joint); Contusion, Abrasion, Laceration and Clinically Associated Sequelae (not defined).

² Applies only to impairments occurring on or after September 1, 2010.

- Insurer and insured can agree goods and services be paid under the MIG without submission of form.
- Fees for forms, assessments, examinations and reports payable in accordance with the MIG to a maximum of \$2,000.00.
- If goods and services not provided in specified time, insured shall submit a plan for benefits to which the MIG would otherwise apply.
- Treatment and Assessment Plans submitted for med/rehab benefits other than those payable in accordance with the MIG.
 - Practitioner must state impairment not predominately minor injury, or pre-existing condition would prevent maximal recovery.
 - Insurer cannot take position insured suffers impairment to which MIG applies, if fails to advise insured of same when plan submitted.

Implications:

Other than perhaps, contusions, abrasions, or lacerations, which are undefined, there is nothing minor about a minor injury. For instance, a partial rotator cuff tear, or shoulder dislocation are considered “minor” injuries. To obtain adequate treatment for “minor” injuries, it will be necessary to escape the MIG. There are several ways to do this:

- **Pre-Existing Injury:** Section 18(2) of the New *SABS* includes an escape clause where there is compelling evidence the insured has a pre-existing medical condition that will prevent achievement of maximal recovery if subject to the \$3,500.00 limit, or limited to MIG.
- **More than One Minor Injury:** We interpret minor injury to mean only one of: sprain, strain, WAD, subluxation, contusions, abrasion, or laceration, and any clinically associated sequelae. Where insured suffers both a shoulder dislocation and partial rotator cuff tear, it is not a minor injury. The \$50,000 limit for non-catastrophic injuries would apply.
- **Minor and Non-Minor Injuries:** The \$3,500.00 cap only applies to impairments that are predominately a minor injury. If there is something else that is not the clinical sequelae of the minor injury, as for instance with PTSD, the limit will not apply.

Health providers can assist injured persons by taking a complete history and assessing how pre-existing conditions impact on recovery; document every injury, impairment, symptom and complaint to create a list of “minor” injuries; and by linking treatment needs to injuries which are not predominately minor.

Accessing the New Regulation:

<http://www.legate.ca/documents/420.pdf>



If you have questions or comments about this edition of the newsletter, contact Carrie Simmons at Legate & Associates: csimmons@legate.ca.