

Practicing Within the New Auto Insurance Scheme: Pitfalls and Strategies



Introduction

“An increase of nearly 800 per cent in insurance company profits for 2003 was ‘a surprise,’ especially after repeated claims the industry was in financial trouble, Ontario Premier Dalton McGuinty said yesterday.”

The Hamilton Spectator, March 25, 2004

Introduction

“According to the Insurance Bureau of Canada’s newly released quarterly analysis, the industry made \$466-million in profit in the first quarter and \$644-million in the second – an increase of nearly 500 per cent over last year.”

The Globe and Mail, September 18, 2003

Introduction

- Office of the Superintendent of Financial Institutions
- www.osif-bsif.gc.ca

Introduction

- Response from the Insurance Bureau of Canada:
 1. More than 200 property and casualty insurers in Canada
 2. Many products make up the property and casualty market

Earnings for 2003

10. The Dominion of Canada General Insurance Company:	\$31,238,000
9. Economical Mutual Insurance Company:	\$52,293,000
8. Co-operators General Insurance Company:	\$86,402,000
7. Allstate (including Pembridge) Insurance Company:	\$110,272,000
6. Royal Sun Alliances:	\$139,839,000
5. Wawanesa Mutual Insurance Company:	\$155,739,000
4. Lombard General Insurance Company of Canada:	\$156,259,000
3. ING Insurance Company of Canada:	\$253,943,000
2. Liberty Mutual Insurance Company:	\$297,005,000
1. Aviva Insurance Company of Canada:	\$314,337,000
TOTAL:	\$1,597,327,000

Introduction

- 10 insurance companies made 60% of the profits
- All of these insurers hold a significant portion of the auto insurance policy market in Ontario

Introduction

- So what has the government done?
- Starting October 1, 2003, 25 major changes to auto insurance in Ontario
- The changes are expected to save insurance companies approximately \$1 billion
- Cost saving measures will start to have a positive effect on insurance companies' profits in 2004 and beyond

Changes

- SABS
 - ~ Medical and rehabilitation
 - ~ IRB
 - ~ D.A.C.
 - ~ E.A.N.
- Tort
 - ~ Threshold
 - ~ Deductable
 - ~ Threshold assessments
 - ~ F.C.C.
- Conclusion: only the strong will survive and do medical/legal reports

SABS

Medical/Rehabilitation Benefits

- s.24
- Treatment plans
- Fees

s.24

- January 1, 2004: psychologists started using the OCF22
- Insurer has 5 days to respond
- If not, assessment is deemed approved
- Suggestion: Health Care providers should enforce the time limits against the insurance companies

Treatment Plans

- Change as of October 1, 2003
- Insurer has 14 days to respond
- If not, the treatment plan is deemed approved until notified otherwise
- Suggestion: Health Care providers should enforce the time limits against the insurance companies

Professional Services Guideline

Fees as of February 1, 2004

Health Care Profession or Provider	Maximum Hourly Rate <i>except catastrophic impairments</i>	Maximum Hourly Rate <i>catastrophic impairments</i>
Chiropractors	\$95	\$114
Massage Therapy	\$49	\$75
Occupational Therapists	\$84	\$101
Physiotherapists	\$84	\$101
Psychologists and Psychological Associates	\$126	\$ 151
Speech Language Pathologist	\$94	\$113
Registered Nurses, Registered Practical Nurses and Nurse Practitioners	\$77	\$92

Professional Service Guideline

Unregulated Providers

Health Care Profession or Provider	Maximum Hourly Rate <i>except catastrophic impairments</i>	Maximum Hourly Rate <i>catastrophic impairments</i>
Case Managers	\$49	\$75
Kinesiologist	\$49	\$75
Family counsellors	\$49	\$75
Psychometrists	\$49	\$75
Rehabilitation Counsellors	\$49	\$75
Vocational Counsellors	\$49	\$75

Professional Service Guideline

- Excludes:
 - ~ DAC's
 - ~ Medical/Legal reports
 - ~ Physicians and social workers
- Business idea: hire social workers who can charge \$125 per hour

Professional Services Guideline

Psychologists and Psychological Associates	\$126	\$ 151
---	-------	--------

- Give these two professionals the same amount of money
- Apparently your college does not distinguish between the two and neither will FSCO

Professional Services Guideline

- Retroactive application of CAT patient fees
- Problems:
 1. Who is responsible to administer, and
 2. Are the insurers going to have to pay 2% compound interest?

Professional Services Guideline

- Collateral benefits taken off guideline's maximum fee, not off fee you charge:

\$126 Maximum fee
-\$50 Group health insurance
\$76 Accident Benefits insurer

NOT

\$180 Hourly fee
-\$50 Group health insurance
\$130 
\$126 Accident Benefits insurer

Professional Services Guideline

- Fees are flawed
- Should be based on professional designation, experience and/or action which professional is undertaking

Professional Services Guideline: Costs Grid

Fees other than Counsel Fee

	Partial Indemnity Scale	Substantial Indemnity Scale
<ul style="list-style-type: none"> •Law Clerks •Student-at-law •Lawyer (less than 10 years) •Lawyer (10 or more but less than 20 years) •Lawyer (20 years and over) 	<ul style="list-style-type: none"> •Up to \$80 per hour •Up to \$60 per hour •Up to \$225 per hour •Up to \$300 per hour •Up to \$350 per hour 	<ul style="list-style-type: none"> •Up to \$125 per hour •Up to \$90 per hour •Up to \$300 per hour •Up to \$400 per hour •Up to \$450 per hour

Professional Services Guideline

Fees for Forms

Form	Maximum Payable for Completion of Form
Disability Certificate (OCF-3)	\$62
Treatment Plan (OCF-18)	\$62
Form 1 – Assessment of Attendant Care Needs	\$62
Automobile Insurance Standard Invoice (OCF-21)	\$0
Application for Approval of an Assessment or Examination (OCF-22)	\$62

Professional Services Guideline

Fees for Forms

- Physicians and social workers are excluded
- Suggestion: ~ Take time to obtain detailed information before filling out the form to get better results
 - ~ Charge separately for assessment and filling out the form

Income Replacement Benefits

3 Issues

1. Changes in procedure for insured who is cut off IRBs
2. Limitations for WAD I and II
3. Limitations based on income tax returns

Income Replacement Benefits

Changes in procedure for insured
who is cut off IRBs

As of October 1, 2003, once insurer stops IRBs:

- Insured must get a fresh disability certificate within 14 days
- Insured may have to repay IRBs received while waiting for a DAC

Income Replacement Benefits

Suggestion:

Don't send your clients to a disability DAC

Income Replacement Benefits

Limitations for WAD I and II

As of April 15, 2004:

- Injured person will only get 12 or 16 weeks of IRBs
- Send injured person back to work before they are ready
- Barrier to rehabilitation
- Health care providers and lawyers must ensure that all impairments are properly assessed
- Must attempt to avoid classification as WAD I or II

Income Replacement Benefits

Martin v. The Workers' Compensation Board of Nova Scotia (SCC.)

- “Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real.”
- Discrimination against injured persons who suffer chronic pain is not permitted by the Charter of Rights and Freedom

Income Replacement Benefits

Limitations based on income tax returns

As of April 15, 2004:

- To the extent that income is not reported, injured person cannot claim IRBs
- Causes further harm to self-employed persons who are injured

Designated Assessment Center

1. Medical/rehabilitation DAC manual
2. Fast Track DACs
3. DAC assessor fees

Designated Assessment Center

Medical/rehabilitation DAC manual

- Staged DAC assessment
- Paper review DAC where: treatment plan challenged on unit cost, being experimental, or reoccurring/similar treatment plans
- DAC must make specific recommendations regarding future medical and rehabilitation goods
- Trying to avoid multiple DACs
- Danger, no one has a crystal ball
- DAC assessors will be left open to criticism
- Future Health Inc. v. Alfred Cividino

Designated Assessment Center

Fast Track DACs

- Response to OCF-22 (s. 24 request)
- Determine whether injured person fall within the PAF because they fall within the WAD I or II guidelines
 - ~ This determination will also affect ability to claim IRBs (for MVAs after April 15, 2004)

Designated Assessment Center

DAC assessor fees

DAC fees as of March 1, 2004:

1. \$3,900 for a disability designated assessment
2. \$5,600 for a Post-104 week disability designated assessment
3. \$2,000 for a medical/rehabilitation designated assessment
4. \$2,600 for an attendant care designated assessment

Designated Assessment Center

DAC assessor fees

- Not applied to SCI, ABI or CAT DAC
- Continue to do DACs even if you make less
 - ~ It is a loss leader
 - ~ You increase your reputation
- Suggestion: do not sacrifice the quality of your work or your professional reputation because your fees are cut
- Just can't do too many or you'll go broke

Designated Assessment Center

DAC assessor fees

- If you sacrifice quality for quantity, the following will occur:
 1. You'll get to know your college discipline committee
 2. You'll get to know Cam Godden



Designated Assessment Center

3. You'll get killed in court
 - ~ OTLA keeps transcripts for cross-reference
4. You won't get the medical/legal work

Expert Assessor Network

- Consultation paper, March 19, 2004
- Purposely vague document
- Implementation: June to December, 2004

Expert Assessor Network

- Interpret 5 phrases from the consultation document:
 1. “The network will deliver prompt, standardized, cost-effective assessments with conclusions and recommendations based on scientific evidence and best practices”
- Interpretation: cheaper DACs
 - ~ We can be just like WSIB
- Best health care professionals will not conduct assessments for less money

Expert Assessor Network

2. “To reinforce the efficacy of these new medical expert assessments and reduce the burden of assessment on injured persons, this new expert assessor network will replace the need for s. 24 and 42 assessments.”
 - Interpretation: we are going to take away insured person’s ability to obtain assessments by health care practitioner of their choice

Expert Assessor Network

3. “Each Expert Assessor location will offer the assessment service, using physicians with expertise in disability management or occupational health to address the vast majority of cases.”
- Interpretation: doctors run the system, and everyone else is secondary

Expert Assessor Network

4. “These [assessment] protocols will have standardized fees, ensuring stability and predictability for insurance payers.”
- Interpretation: insurance companies master and they will set the price. Pressure on everyone in the system to please their master.

Expert Assessor Network

5. “Reports will be treated as prima facie evidence in arbitration or court cases where no other compelling evidence is introduced to the contrary.”
 - Interpretation: insurers will use these reports to convince injured people to close files for little money.
 - How will most people get evidence to dispute EAN?
 - Only people with help of advocate (i.e. lawyer or health care provider)

Tort Changes

1. Threshold
2. Deductable/monetary threshold
3. Threshold assessments
4. Future costs of care

Tort Changes

Threshold

- In order to claim pain and suffering or future costs of care damages, the injured person must have an impairment which is both serious and permanent
- As of October 1, 2003, the government has defined what is meant by serious, permanent and impairment
- Meant to restrict the number of Tort claims
- No Tort claim usually means no legal representation

Tort Changes

Deductible/monetary threshold

- Before October 1, 2003, \$15,000 on pain and suffering claims
- October 1, 2003, \$30,000 on pain and suffering claims
- Multiple accidents = multiple deductibles
- Cap on pain and suffering damages since 1978

Tort Changes

Effect of New Threshold and Deductible

- Serious effect on ability of most injured people who have chronic pain to claim pain and suffering damages
- Change to the threshold and deductible mean more people will go unrepresented for longer periods
- Bad for health care providers

Tort Changes

Threshold assessments

- As of October 1, 2003, Insurance Act regulations 461/96 states that in order to meet the verbal threshold, you must have the following evidence:
 - ~ s.4.3(2) “The [injured] person shall adduce evidence of one or more physicians, in accordance with this section, that explains,
 - a) the nature of the impairment
 - b) the permanence of the impairment
 - c) the specific function that is impaired; and
 - d) the importance of the specific function to the person”

Tort Changes

Threshold assessments

- These will likely be multi-disciplinary assessments
- Teams with occupational therapists, physicians, etc.
- Every case requires at least one such assessment, thus demand should be high
- You will not start to see the demand for another 1-2 years

Tort Changes

Future costs of care

- If plaintiff's injuries are considered serious and permanent (threshold test), then they can claim costs of care not covered by accident benefit carrier
- Important for health care providers
- Example: ~ Psychologists' real hourly rate = \$180/hour
~ Accident benefit carrier pays = \$126/hour
~ Claim for a Tort action = \$54/hour

Conclusion

- The effect of this new legislation on health care practitioners is analogous to the effect that the Ontario Motorists Protection Plan (Bill 68) had on lawyers
- Many will drop out of the third-party assessment and/or treatment business
- However, the strongest will survive and prosper

Questions

