

## **Important Changes to Auto Insurance in Ontario, Effective September 1, 2010**

The Ministry of Finance released new Regulations for Auto Insurance on March 2, 2010. Regulation 34/10<sup>1</sup> will come into effect on September 1, 2010, and will affect the accident benefits insurance system. In addition, amendments to the *Insurance Act* will be made, also effective September 1, 2010, to reflect changes to the tort insurance system.

### **Changes to Tort Deductibles**

These changes will be introduced as an amendment to the *Insurance Act*, and are not part of the Regulations. The changes to the deductibles in the tort system will be as follows:

#### Wrongful Death Deductible

- \$15,000 deductible for the death of a loved one will be eliminated.

#### General Damages Awards

- \$30,000 deductible for pain and suffering awards may be reduced to \$20,000, but only if the insured person purchases the optional endorsement.

#### Family Law Act Damage Awards

- \$15,000 deductible for the loss of care, guidance and companionship awards (FLA) may be reduced to \$10,000 if the insured person purchases the optional endorsement.

### **Changes to Accident Benefits**

Regulation 34/10 come into effect on September 1, 2010. The changes are extensive and significant:

#### “Minor Injuries” Cap Established

Claimants who sustain an impairment that is “predominantly a minor injury” will have access to medical and rehabilitation benefits up to \$3,500 only. This amount will include assessment costs. Anyone who is deemed to have suffered a minor injury is not entitled to attendant care benefits or housekeeping or caregiver benefits. The \$3,500 cap will not apply to a person if their health care practitioner determines and “provides compelling evidence” that the insured person has a pre-existing medical condition that will prevent them achieving maximal recovery from the minor injury. A Minor Injury Guideline will establish a treatment framework for goods and services provided to those with “minor injuries”.

Section 3 of the Regulation defines the following terms:

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<sup>1</sup> Ontario Regulation 34/10 is available at:

[http://www.e-laws.gov.on.ca/html/source/regs/english/2010/elaws\\_src\\_regs\\_r10034\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regs/english/2010/elaws_src_regs_r10034_e.htm)

**“minor injury”** means a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae;

**“sprain”** means an injury to one or more tendons or ligaments or to one or more of each, including a partial but not a complete tear;

**“strain”** means an injury to one or more muscles, including a partial but not a complete tear;

**“subluxation”** means a partial but not a complete dislocation of a joint;

**“whiplash associated disorder”** means a whiplash injury 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;

### Medical and Rehabilitation Benefits

- Reduction from \$100,000 to \$50,000 for non-catastrophic claims, with an option to purchase increased coverage at an additional premium.
- All fees and expenses associated with assessments and reports in connection with accident benefits (excluding income replacement benefits) will be included in the \$50,000 amount and will be applicable to the \$1,000,000 available to catastrophic claimants. The insurer assessments will not reduce the capped amount.

### Caregiver and Housekeeping Benefits

- For all non-catastrophic cases, housekeeping and caregiver benefits will be eliminated in the basic policy, and made optional with the payment of an additional premium.
- For catastrophic cases, housekeeping benefits will only be available if they are “incurred” and there is a “substantial inability” to perform the housekeeping and home maintenance services normally performed before the accident.

### Attendant Care Benefits

- Reduction from \$72,000 to \$36,000 for non-catastrophic claimants, unless the insured purchases additional coverage.
- Payment will only be made when the benefit is “incurred”.

### Income Replacement Benefits

- Will now be calculated based on 70% of gross income, rather than 80% of net income. The maximum payable will remain at \$400 per week, with the option of buying additional coverage of \$600, \$800, or \$1000 per week.

- A limit of \$2,500 is introduced for any accounting reports generated to determine entitlement.

### Assessments

- All assessment costs will be capped at \$2,000.00 per assessment, whether at the instance of the insurer or the insured.
- Payment for rebuttal examinations will be eliminated.
- In-home assessments will be restricted to those who have sustained an impairment that is not a minor injury.

### Definition of “catastrophic impairment”

- The definition will be amended to include single limb amputees.

### “Incurred Expense”

- The claimant will need to establish that the benefit for attendant care, caregiver or housekeeping was “incurred”, which includes the following:
  - (i) the insured person has received the goods or services to which the expense relates,
  - (ii) the insured person has paid the expense, has promised to pay the expense or is otherwise legally obligated to pay the expense, and
  - (iii) the person who provided the goods or services,
    - (A) did so in the course of his or her regular occupation or profession,  
or
    - (B) sustained an economic loss as a result of providing the goods or services to the insured person;

Where, however, the insurer delayed or unreasonably withholds the benefit and entitlement is later determined by a Court or Arbitrator, the expense may be deemed to have been incurred.