

July 28, 2016

Alberta Government Updating 2004 Auto Insurance Reforms



By [Brian Vail, QC](#)

The Alberta government has announced that it is in the process of updating the regulations involved in the 2004 auto insurance reform, namely the *Minor Injury Regulation*, Alta Reg 123/2004; the *Diagnostic and Treatment Protocols Regulation*, Alta Reg 116/2014; the *Automobile Accident Insurance Benefits Regulations*, Alta Reg 352/1972 (re Section B benefits) and the *Automobile Insurance Premiums Regulation*, Alta Reg 117/2014. The government has published a Consultation Paper with respect to each of these regulations and has invited stakeholders to submit their views with respect to these regulations by August 31, 2016. The Alberta Civil Trial Lawyers Association (representing the local Plaintiffs' Bar) is expected to respond. Insurers may wish to do so as well.

With respect to the Minor Injury Regulation, the issues that are under consideration are:

1. The amount of the minor injury cap – should it be changed and, if so, to what?
2. The Certified Examination (CE) process. The government is asking for recommendations overall as to how the CE process might be improved. More specifically, should the requirement that a CE provide an opinion within 30 days after the assessment be extended? Should there be a requirement that a CE be concluded within a specific time frame? Should there be a protocol with respect to the payment for a CE assessment where a Plaintiff does not attend?
3. The government is considering a cap for non-pecuniary damages for certain additional conditions: post-traumatic stress disorder, chronic pain syndrome/fibromyalgia and temporomandibular disorder.
4. The government is seeking input with respect to possibly excluding third degree strains or sprains requiring surgical intervention from treatment under the DTPR, which would involve excluding such injuries from the definition of "minor injury."

With respect to the DTPR:

1. The government is asking for general suggestions as to how the Injury Management Consultant (IMC) process might be improved. It is considering allowing the insurer to seek an IMC to complete a progress report, development of a certification program for IMCs and requiring mandatory progress reports after a certain period of time.
2. The government is considering clarifying the definition of the term "treatment visit."
3. Along with government's consideration of capping non-pecuniary damages for PTSD, chronic pain/fibromyalgia and TMD, the government is seeking input with respect to amending the DTPR to include protocols for the diagnosis and treatment of these conditions.

With respect to the AAIBR:

1. The government is considering whether or not the concept of a "severe (catastrophic) injury" should be included in the Regulation (as is the case in Ontario). In Ontario, there is a special, defined category of injuries ("catastrophic injuries") for which the limit of accident benefits payable is \$1,000,000. The Alberta government seeks input as to whether or not such a concept should be introduced in Alberta and, if so, how "severe (catastrophic) injuries" should be defined.
2. The government is also considering increasing the weekly total disability amount (currently the lesser of \$400 a week or the average gross weekly earnings less payments for loss of income from occupation/employment) and as to whether or not these payments should be adjusted for inflation.
3. The government is considering increasing the benefit for funeral expenses.
4. The government seeks input to whether or not the current threshold for psychological, physiotherapy and occupational therapy services should be increased from the current \$600.
5. With respect to payments for chiropractic treatment, massage therapy and acupuncture, the government is considering increasing the current limits or, alternatively, replacing those limits with thresholds as is the case with respect to psychological, physiotherapy and OT services.

With respect to the AIPR:

1. The government is thinking of updating Schedule 4 surcharges for the Grid (for at-fault accidents and driving convictions) to add offences currently not on the Schedule.
2. The government is considering removing the responsibility for maintaining and updating Schedule 4 from the Regulation and assigning that to the Superintendent of Insurance. That way, future changes will not require an amendment to the Regulation.
3. In a separate consultation the government will be considering prohibiting negative rate capping by insurers and developing potential options on the appropriate number non-grid territories.

Should you wish any further information with respect to this consultation or advice as to formulating submissions please do not hesitate to contact Brian Vail, QC at 780-423-7691 or bvail@fieldlaw.com.

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400 - 604 1 ST SW
Calgary AB T2P 1M7
403-260-8500

EDMONTON

2000 - 10235 101 ST
NW
Edmonton AB T5J 3G1
780-423-3003

YELLOWKNIFE

601 - 4920 52 ST
Yellowknife NT X1A 3T1
867-920-4542

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