

# Superintendent of Insurance

## Interpretation Bulletin

<b>Bulletin Number:</b>	<b>04-2020</b>
<b>Title:</b>	<b>Additional Automobile Insurance Reform Measures</b>
<b>Date:</b>	<b>December 16, 2020</b>
<b>To:</b>	<b>All Insurers Licensed for Automobile Insurance in Alberta</b>

## Purpose

Further to Superintendent of Insurance [Interpretation Bulletin 02-2020](#), this Bulletin will advise all insurers licensed for automobile insurance in Alberta of the additional reform measures the Government of Alberta has implemented to improve the province's automobile insurance system.

The [Insurance Act](#) (Act) has been amended by [Bill 41: Insurance \(Enhancing Driver Affordability and Care\) Amendment Act, 2020](#). An [Order in Council](#) was also passed that amends the [Automobile Insurance Premiums Regulation](#) (AIPR).

In addition, pursuant to section 792.1 of the Act, this Bulletin provides the Superintendent's interpretation of the clarification of treatment visits to a health care practitioner provided by section 1(3) of the [Diagnostic and Treatment Protocols Regulation](#) (DTPR).

## Reform Measures

### 1. Insurance Act

The Act was amended as follows:

- A. The number of expert witnesses that can be called in an action involving loss or damage from bodily injury or death arising from the use of an automobile has been limited to:
  - one expert, if the claim value is less than \$100,000; and
  - three experts if the claim value is \$100,000 or more.

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Each expert may also tender no more than one report. Exceptions to these limits are permitted in the event of joint experts, consent of the other party, or discretion of the court to allow further experts if certain conditions are met. The Court also retains the jurisdiction to appoint its own experts. These rules apply to actions started on or after January 1, 2021.

- B. Enable direct compensation for property damage (DCPD) (to come into force on January 1, 2022).
- Insured drivers will be compensated directly by their own insurer for property damages resulting from an automobile collision caused by another party.
  - Recovery for an insured's automobile and its contents, and for loss of use of the insured's automobile and its contents, will be based on the degree of fault of the insurer's insured as determined under the fault determination rules to be prescribed by the regulations.
    - o Government will develop fault determination rules in the coming months.
- C. Prejudgment interest (PJI) for non-pecuniary damages (pain and suffering) arising from an automobile collision is changed from the fixed four per cent to the same as the rate set annually for pecuniary damages (out-of-pocket expenses) under the *Judgment Interest Act*, which is set annually by regulation and is based on the Bank of Canada's interest rate.
- Additionally, prejudgment interest will only start to accumulate the earlier of the day on which a statement of claim is served on the defendant or the day on which plaintiff provides written notice to the defendant of intent to file a claim.
  - These provisions come into force on Bill 41 receiving Royal Assent.
  - Regardless of whether a cause of action arose before, on or after the coming into force date of the amendment to the rate of prejudgment interest, for judgments given on or after the coming into force date, the prejudgment interest on non-pecuniary damages or losses arising from an automobile collision will be calculated in accordance with section 4(2) of the *Judgment Interest Act*.
- D. The Automobile Insurance Rate Board's (AIRB) mandate has been increased by:
- Removing the requirement for the AIRB to receive Cabinet's approval to appoint an expert to provide it information;
  - Allowing the AIRB to make rules governing the approval of rating programs and changes to rating programs;
  - Permitting a rating program filed with the AIRB be deemed approved by the AIRB in the circumstance, if any, set out in the rules established by AIRB under section 599(14)(a) of the Act;
    - o Insurers are still required to demonstrate to the AIRB that their rates are reasonable and justifiable, and that they are set in order to achieve but not exceed AIRB benchmarks.

- Allowing the AIRB to establish written interpretations of words and expressions, which will facilitate its new responsibility for publishing, reviewing and revising the Grid; and
- Giving the AIRB authority over establishing the written procedures to be followed by insurers in determining the amount payable for basic and additional coverage.

## **2. Automobile Insurance Premiums Regulation**

The AIPR was amended as follows:

- A. The AIRB's mandate has been increased by removing the "Grid" from the regulation and giving the AIRB full authority over it;
- B. The AIRB will have the authority to permit pay-per-kilometre rating programs and to allow automobile insurers to surcharge in their usage-based insurance (UBI) and pay-per-kilometre rating programs. Please note that authorization for these changes will be subject to guidelines developed by the AIRB; and
- C. Administrative efficiency has been increased by removing the President of Treasury Board and Minister of Finance's approval of the AIRB's policies and procedures.
  - This change will reduce administrative inefficiency, as one regulatory body, the AIRB, is now responsible for approving insurers' rating variables and rating programs.

The changes to the AIPR will come into effect on January 1, 2021.

## **3. Treatment Visits Under the Diagnostic and Treatment Protocols Regulation**

On November 1, 2020, the DTPR was amended to clarify that an in-person visit to a health care practitioner constitutes a single treatment visit, irrespective of the number of injuries treated during the visit. This amendment was implemented as a patient protection measure, so that patients do not unknowingly utilize multiple treatment visits during one in-person visit. It was not adopted as a cost containment measure that would limit health care practitioners to billing for one treatment visit per day, nor was it designed to interfere in any way with the proper and appropriate clinical care of a patient by a health care practitioner.

Section 1(3) of the DTPR is to be applied so that a single booked appointment or visit with a patient is to be billed under the DTPR as one treatment visit, regardless of the number of injuries treated or the number or types of modalities utilized during that visit.

Section 1(3) does not preclude a health care practitioner from booking a patient for two or more treatment visits consecutive in time, if such a booking is necessary for the appropriate clinical treatment and care of the patient and if such booking is done with

the full knowledge and consent of the patient. This means that patients would not have to return to the clinic multiple times to receive the needed treatment.

If you have any questions regarding this Bulletin, please contact my office at (780) 643-2237 or [tbf.insurance@gov.ab.ca](mailto:tbf.insurance@gov.ab.ca).

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