

Interpretation



Effective Date: June 3, 2020

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Statutory Accident Benefits Claims during the COVID-19 Outbreak

Purpose

The purpose of this Guidance is to provide FSRA’s Interpretation of the requirements of subsections 1(9), 3(2)5 and 6(1) of Ontario Regulation 7/00 – Unfair or Deceptive Acts or Practices under the *Insurance Act* (“UDAP”) in the context of a declared emergency under the *Emergency Management and Civil Protection Act* related to an outbreak of the communicable COVID-19 coronavirus disease, or where physical distancing or other similar measures to prevent transmission of COVID-19 are required or recommended by the Chief Medical Officer of Health or local Medical Officer of Health¹ during or after the declared Emergency (the “Emergency”). These provisions of UDAP relate to the adjustment, settlement and charges for, or payment of, goods and services for an automobile insurance claim, including claims for Statutory Accident Benefits (“SABs”) to which this Guidance applies.

¹“Chief Medical Officer of Health” and “Medical Officer of Health” are defined pursuant to the *Health Protection and Promotion Act*.

Rationale and Background

This Guidance applies in the exceptional circumstances of the declaration of Emergency as a result of the COVID-19 coronavirus disease outbreak. Physical distancing and other similar measures required or recommended by public health officials have had an impact on the ability of claimants of SABs to: communicate with their insurer, fulfil requirements for an in-person medical assessment for the determination of initial or ongoing entitlement to SABs, and/or access goods and services related to their recovery. In response to such exceptional circumstances, FSRA will use its regulatory tools and principles-based approach to ensure that consumers (also referred to as “claimants”) are treated fairly through the diligent handling of SABs claims using simple and accessible procedures while enabling insurers and health service providers to meet their obligations to claimants.

In supervising and regulating the insurance sector, specifically auto insurance and those who provide goods or services to a consumer who claims SABs, FSRA is required to administer and enforce the *Insurance Act* and its regulations in a manner that will carry out FSRA’s statutory objects, in particular:

- To contribute to public confidence in the insurance sector²
- To protect the rights and interests of insurance consumers
- To deter deceptive or fraudulent conduct, practices or activities by the insurance sector
- To promote high standards of business conduct in the insurance sector

FSRA’s Interpretation provided in this Guidance is in furtherance of FSRA’s statutory objects.

² Insurance sector includes those who provide goods and services to claimants under an insurance policy.

Interpretation – Reasonable Accommodation

Subsections 1(9) and 6(1) of UDAP serve to protect the rights and interests of consumers as claimants under automobile insurance policies. Under subsections 1(9) and 6(1) of UDAP, respectively, an “unfair or deceptive act or practice” includes “*Any conduct resulting in unreasonable delay in, or resistance to, the fair adjustment and settlement of claims*” and “*the failure or refusal of an insurer without reasonable cause to pay a claim for goods or services or for the cost of an assessment within the time prescribed for payment in the Schedule.*” Both provisions refer to the *reasonableness* of the insurer’s actions in claims management.

In this Guidance, FSRA interprets subsections 1(9) and 6(1) of UDAP to require the reasonable accommodation of SABs claimants during the Emergency where necessary to reasonably address the exceptional circumstances of the outbreak of the communicable COVID-19 coronavirus disease. Reasonable accommodations that are necessary in the context of a SABs claim as a result of the Emergency should be considered for all consumers as claimants. However, the nature and extent of the accommodations required will vary on a case-by-case basis, considering the circumstances of the claim, the needs or concerns of a claimant and the overall need to ensure that SABs claims are handled diligently and fairly.

Reasonable accommodations may include, but are not limited to, accommodation by insurers related to:

- **Communication:** Flexibility in the way insurers obtain the necessary claim information and/or consent from a claimant. For example, allowing a claimant the opportunity to provide information by telephone or email rather than a hard copy prescribed form with a signature.

- **Requirements for determining initial or ongoing entitlement to benefits:** After determining the merits of a SABs claim, waiving or relaxing requirements which would normally be required to determine a claimant’s entitlement to benefits and goods and services, such as medical assessments/examinations, that cannot be reasonably completed during the Emergency, or permitting these requirements to be met through alternative means, such as virtual assessments/examinations, where necessary and appropriate.
- **Access to goods and services related to treatment:** Paying for virtual care delivered by an appropriately licensed healthcare professional where reasonable and necessary during the Emergency to meet the medical/rehabilitation needs of the claimant and where the approach to virtual care is supported by the health service provider’s regulatory college.

Each consumer’s circumstances may be different in terms of what type of reasonable accommodation may be required. Insurers should use their judgement as to how to best fulfill their duty of good faith to the insured, and to provide fair treatment of consumers, by means of reasonable accommodation during the Emergency.

Interpretation – Virtual Care

Like insurers, health service providers are also expected to take additional steps during the Emergency to ensure that consumers are treated fairly when receiving SABs. As set out in clause 3(2)5 of UDAP, an unfair or deceptive act or practice includes “*Charging an amount in consideration for the provision of goods or services to or for the benefit of a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance, where the amount charged unreasonably exceeds the amount charged to other persons for similar goods or services.*”

In this Guidance, FSRA interprets clause 3(2)5 of UDAP to address virtual care provided during the Emergency, which may differ from care a SABs claimant would usually receive in-person. In order to ensure that charges for virtual care do not unreasonably exceed the amount charged to other persons for similar goods and services, which are generally provided in-person, the following conditions should be met for the provision of virtual care to SABs claimants during the Emergency:

- **Virtual care provided should be appropriate and effective:** Virtual care may be provided by licensed professionals in lieu of in-person care, where reasonable and necessary during the Emergency to meet the medical/rehabilitation needs of the claimant and where it is supported by the health service provider's regulatory college and has been approved by an insurer, acting reasonably.
- **Informed consent:** Where virtual care is provided to a claimant in lieu of in-person care, it is important for health service providers to clearly explain what the virtual treatment will involve and its objectives, any limitations of virtual treatment when compared to in-person treatment and how the fees for virtual treatments will impact the claimant's entitlement to future treatment after the Emergency (e.g. to what extent virtual treatment will erode the amount available to them for future treatments).
- **Transparency in requests for pre-approval and billing of goods and services:** When seeking pre-approval or billing for goods and services, health service providers should specify whether services are proposed to be or were provided through virtual care, (e.g. using available *Health Claims for Auto Insurance* attribute billing codes as a proxy to identify care that was delivered virtually, IN–Indirect for services provided by telephone or video conference and SD–Self directed for services provided using tapes, videos, etc.).

Compliance Expectations

Compliance with this Guidance will be reviewed by FSRA as part of its supervisory activities related to auto insurance.

Effective Date and Future Review

This Guidance is effective on June 3, 2020 and remains in effect until it is withdrawn by FSRA.

This Guidance will be reviewed by FSRA on or before June 3, 2022.

About this Guidance

This document is consistent with [FSRA's Guidance Framework](#). As Interpretation Guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that stakeholders are aware that non-compliance can lead to enhanced monitoring, enforcement or supervisory action.