Highlights From The Ontario Budget For Insurers And Personal Injury Lawyers

April 16, 2019

On April 11, 2019, the Government of Ontario released its provincial budget which contained a “Blueprint for Ontario’s Auto Insurance System.” This blueprint contains a number of changes to Ontario’s automobile insurance system of interest to insurers and personal injury lawyers. Most of the changes involve the accident benefits system, pricing and policy options and the administration of claims. The only change that will affect the tort system is the intention to reduce the availability of civil jury trials in simplified rules cases and to expand the availability of simplified rules claims to larger cases. There are six categories of reforms.

First, the province announced that it will work with the new Financial Services Regulatory Authority of Ontario (FSRA) to overhaul the licensing system for health service providers to reduce the regulatory burdens, fraud and to lower the costs charged by treatment providers. There will also be “reforms” to the medical assessment process. The specifics of those reforms are unknown. The medical assessment process received attention in the 2017 Marshall Report which included a recommendation that hospital-based independent examination centres be established to diagnose claimants and recommended treatment plans, and are to be followed without dispute (eliminating the need for competing expert opinions). The extent of the medical assessment process reforms should be followed closely for those engaged in motor vehicle litigation.

Second, the province stated an intention to work with the newly established “Serious Fraud Office” to develop fraud reduction strategies and to improve the delivery of health care benefits. Examples of actions to be taken in this regard include: (a) the use of data analytics to help detect fraud and new rules on “unfair or deceptive acts or practices,” and (b) the establishment of an online claims process for viewing the use of their accident benefits funds and to discourage fraud.

Third, the province will allow insurers to offer discounts to consumers on their premiums after consideration of their credit history and by consumers agreeing to use insurer approved providers for both automobile repairs and health care services after an accident.

Fourth, legislation will be introduced which will allow insurance companies to use electronic communications and electronic commerce to do business with their customers and to allow consumers to have an electronic proof of insurance. Similarly, the province had indicated that it will simplify insurance forms, policies and "related documents."

Fifth, a series of reforms announced under a new "Driver Care Plan" which has the stated purpose of providing consumers with faster access to treatment after a collision. This plan includes the development of a "Driver Care Card" to streamline access to healthcare services and a "care, not cash" default clause to ensure that insurance proceeds "will pay for treatment instead of costly legal fees while giving the driver the option to be eligible to receive cash settlements if they so choose." The default language has not been disclosed. The Driver Care Plan also promises an "early treatment system for common injuries, including mental health treatment" and a return to the default benefit limit of $2 million for claimants with catastrophic impairments.

Finally, the budget announced measures to increase innovation and modernization of the system including supporting innovative business models (such as pay-as-you-go insurance), reducing regulatory burdens for rate approvals, updating the Insurance Act and the Statutory Accident Benefits Schedule and working with the Civil Rules Committee to both increase the limit for simplified procedure matters (currently set at $100,000) and to reduce the availability of civil juries in simplified procedure trials.

We will continue to monitor reforms to Ontario's automobile insurance system and provide further updates of legislative changes that affect our clients.

By

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