



Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario

October 2003

**Conflicts of Interest in the
Designated Assessment Centre (DAC) Selection
Process,
and Reporting Obligations for
DACs Assessing Treatment Plans**

Superintendent's Guideline No. 08/03

Conflicts of Interest in the Designated Assessment Centre (DAC) Selection Process, and Reporting Obligations for DACs Assessing Treatment Plans

Introduction

This Guideline is issued pursuant to section 268.3 (1) of the *Insurance Act* for the purposes of O. Reg. 403/96, *Statutory Accident Benefits Schedule - Accidents on or After November 1, 1996* (SABS), amended to O. Reg. 380/03.

Assessor Conflict of Interest

Amendments to section 53 of the SABS became effective on October 1, 2003 and change the process for selecting a Designated Assessment Centre (DAC) by permitting the claimant and insurer to jointly select a DAC. If the parties are unable to select a DAC within the time frame set out in the SABS, or if the DAC selected cannot begin the assessment within the time frame set out in the SABS, the Superintendent of Financial Services will select a DAC.

This Guideline establishes the following process for identifying, disclosing and resolving a conflict of interest situation when the claimant and insurer are selecting a DAC:

- Insurers and claimants should, where possible, obtain and share information about any potential conflicts of interest before jointly selecting a DAC.
- Where the claimant and insurer have jointly selected a DAC, the SABS does not expressly direct a DAC to determine or disclose a conflict of interest. However, under the SABS, a DAC is in a conflict of interest if an assessor who is to conduct the assessment has previously assessed or treated the claimant.
- In order for a DAC to avoid a conflict of interest situation, and to ensure impartiality in the DAC system, a DAC must assign assessors to the case who are free of any conflict of interest, even in situations where the insured person and the insurer have jointly selected the DAC. A DAC that is unable to do so must declare the conflict before beginning the assessment. If the conflict is not waived, the insured person or the insurer may invoke SABS s. 53 (10) on the basis that the DAC is unable to begin the assessment, and ask for another DAC to be assigned by the Superintendent.

Assessment of Treatment Plans by DACs

Amendments to section 43 of the SABS became effective on October 1, 2003 and change the time frames in which DACs must report to parties.

Where the purpose of the DAC assessment is to determine whether an impairment comes within a *Pre-approved Framework (PAF) Guideline*, DACs are required to complete their assessments and report to parties within 5 business days (SABS subsection 43 (11)). If the assessment determines that the impairment does not come within a PAF Guideline, the DAC report must comment on whether the goods and services to be provided under the treatment plan are reasonable and necessary and include recommendations relating to the future provision of goods and services to the insured person (SABS subsection 43(9)).

This Guideline addresses DAC reporting requirements in situations where the insurer disputes a treatment plan on the ground that the impairment is one which should be covered under a PAF Guideline.

- *Insurer consents to treatment plan if DAC decides impairment does not come within a PAF Guideline.*

The OCF-11 Designated Assessment Centre Referral, Plan, and Summary Form has been revised to enable insurers to specify the exact nature of the dispute that is being sent to a DAC.

The insurer may indicate on the OCF-11 that the insurer will accept that the treatment plan as submitted is reasonable and necessary if the DAC determines that the impairment does not come within a PAF Guideline.

In this situation, if it does determine that the impairment does not come within a PAF Guideline, the DAC could state in its report that it concurs with the parties that the goods or services contemplated under the treatment plan are reasonable and necessary and recommends the provisions of the goods and services outlined in the treatment plan. This would satisfy the DAC's obligations under subsection 43 (9) of the SABS. The DAC would not have to do further investigations into the treatment plan in order to come to this conclusion.

- *Insurer disputes treatment plan*

The insurer may instead indicate on the OCF-11 that, in addition to taking the position that the impairment comes within a PAF Guideline, it also disputes whether the goods and services indicated in the treatment plan are reasonable and necessary.

In these situations, subsection 43 (9) of the SABS requires that the DAC's report state whether the goods or services contemplated in the treatment plan are reasonable and necessary and include recommendations relating to the future provision of goods and services to the insured person for his/her treatment and rehabilitation. This report must be delivered within 5 business days (subsection 43 (11)).

It is recognized that given this time frame, it may not always be possible for DAC assessments conducted under this provision to be as thorough or detailed as other treatment plan assessments, particularly in cases where the DAC determines that it must conduct a direct assessment of the insured person in order to make these recommendations. Nevertheless, the DAC's report must still address the matters referred to in subsection 43(9).