

Questions and Answers for Industry

Automobile Insurance Reform: Phase 2

April 1, 2013

General Questions about Phase 2 Reforms

What are the major reforms planned for Phase 2?

The second phase of reforms includes:

- Direct Compensation for Property Damage, sometimes referred to as DCPD (means that individuals may recover property damages from their own insurer)
- Limited liability and new priority of pay rules for rental companies
- No-Fault diagnostic and treatment protocols for minor injuries

When will the Phase 2 reforms become effective?

All Phase 2 reforms will be effective on April 1, 2013.

Where can I find out more about the reforms to automobile insurance?

General information, including links to the applicable legislation and regulations, can be found at www.novascotia.ca/finance/en/home/insurance.

Are more reforms coming?

No further reforms are contemplated at this time. The next mandated seven year review of automobile legislation will be conducted in 2018.

Direct Compensation for Property Damage (DCPD)

What does Direct Compensation for Property Damage mean for drivers?

Direct Compensation for Property Damage will allow insured drivers to be compensated by their own insurer for property damages resulting from an automobile collision caused by another party. Introducing DCPD will not change a consumer's right to sue for other damages, for example, damages relating to injuries resulting from an automobile accident.

How will Direct Compensation for Property Damage benefit drivers?

Direct Compensation for Property Damage means that drivers will work with their own insurer to complete the claims process for property damage, rather than dealing with the at-fault party's insurer. This is a more streamlined process for consumers, who will have the advantage of dealing with a representative of a familiar insurance company to process their claim. It should allow the claims process to function more efficiently, resulting in claimants receiving appropriate compensation more quickly.

Limited Liability and new Priority of Pay Rules for Rental Companies

Whose liability will be limited under these changes?

The liability for companies that rent motor vehicles, as well as leasing companies that do not offer the option to purchase the vehicle at the end of the lease, will be limited to damages of up to \$1 million. Damages above \$1 million will be the responsibility of the individual at fault. The individual who rents the vehicle is the primary person responsible. The rental company only responds if the renter does not have underlying coverage.

Why aren't all leased vehicles subject to the new limitation?

In Nova Scotia, leased vehicles whose leases offer the option to purchase the vehicle at the end of the lease are not currently liable for damages. The lease to own option is considered more of a financing agreement than a traditional lease. This is not being affected by the reform coming into effect on April 1, which is intended to address the unfairness faced by car rental companies which are currently held responsible for drivers over whom they have no control and whom they cannot rate accurately from an insurance perspective.

What are the new priority of pay rules?

Under new priority of pay rules, if a rental vehicle is at fault in an accident, insurance held by the person renting the vehicle will respond first, followed by that of the driver (if the driver is not the same person who rented the vehicle), followed by the car rental company's insurance (up to a total of \$1 million). For damages beyond \$1 million, that are not covered by insurance, the person renting the vehicle and the driver would be personally liable.

What if an individual is driving a rental vehicle as part of his/her job?

If an individual were driving a rental vehicle in connection with employment and were at fault for an accident, and if the individual is named in their employer's standard automobile policy, then the employer's policy would respond first. If that policy does not fully cover damages, the individual's own automobile policy would respond, and then the car rental company's policy up to a total of \$1 million.

What was happening before the reforms were introduced?

Car rental companies, as the vehicle's owner, were vicariously liable for damages caused by renters (persons who rent a vehicle). Liability was unlimited. Insurance under the owner's policy was a first loss insurance and insurance attaching under any other valid motor vehicle liability policy (eg the rentee or driver's policy) was excess insurance only.

Are any rental vehicles excluded from the new limit on liability?

Yes. The *Non-Owned Automobile Insurance Liability Regulations* contain an exemption for all public passenger vehicles (ie: taxis, buses, etc).

What is the relationship of the new priority of pay rules for rental vehicles and Direct Compensation for Property Damage?

The priority of pay rules for rental situations and DCPD should not be in conflict because the rules for rental situations relate to situations where the insured is at-fault, whereas DCPD relates to situations where the insured is not at-fault.

In order to ensure there are no conflicts between the two, the *Non-Owned Automobile Insurance Liability Regulations* contain a provision that states that the priority of pay rules that apply to rental vehicles do not apply to an insured's right of recovery for direct compensation for property damage.

Diagnostic and Treatment Protocols for Minor Injuries

Have regulations for the *Automobile Insurance Diagnostic and Treatment Protocols* been finalized?

The protocol regulations were made by Order in Council 2013-21 on January 22, 2013. They can be found on the Registry of Regulations website at www.gov.ns.ca/just/regulations/rq2/2013/fe0813.pdf

Have fees for the services provided under the Protocols Regulations be established?

Yes, maximum fees for certain services have been established. They can be found on our website at www.novascotia.ca/finance/en/home/insurance in a Bulletin entitled "Notice of Fees and Disbursements under the *Automobile Insurance Diagnostic and Treatment Protocols Regulations*".

Why are diagnostic and treatment protocols for minor injuries being implemented?

The introduction of diagnostic and treatment protocols for minor injuries will mean Nova Scotians who are injured in an automobile collision will have direct access to physiotherapy and chiropractic treatment without waiting for approval from an insurer or a physician's referral.

This reform is patient-focused and delivers better care sooner in order to promote healthier outcomes for automobile accident victims. Diagnostic and treatment protocols will promote consistency and quality of care for minor injuries.

What about other alternative care providers, such as massage therapists? Will the new protocols cover those groups?

Under the protocols, treatment can be provided by a massage therapist, an acupuncturist, or an occupational therapist if it is authorized by the physiotherapist, chiropractor or doctor delivering care to the patient.

It may be possible for a patient to access alternative therapies, such as osteopathy, through employment benefits or through their no-fault "Section B" benefits of their

automobile insurance policy. However, treatment under Section B benefits would need to be pre-approved by their insurance company.

What is a minor injury?

A minor injury includes strains, sprains and certain types of whiplash injury (mild to moderate). These terms are defined in the *Automobile Insurance Diagnostic and Treatment Protocols Regulations*. Please see the regulations for the precise definitions.

Are the treatments provided under the *Automobile Insurance Diagnostic and Treatment Protocols Regulations* in addition to the \$50,000 no-fault benefits available for medical and rehabilitation expenses under Section B of automobile insurance policies?

No, the treatment provided under the protocols regulations comes out of the \$50,000 in no-fault Section B benefits that are available. It is important to note that for the purposes of the protocols, the order in which insurance policies respond has been amended. While the public health plan (MSI) continues to respond first, for the purposes of the protocols automobile insurance will respond next. Any privately-held insurance (eg through employment health benefits) would need to be accessed once treatment under the protocols regulations is completed.

Historically the public health plan (MSI) would respond first, followed by an individual's private benefit plan, if they have one, and then the no-fault benefits under "Section B" of their automobile insurance would respond. Should the health care practitioner and/or the patient choose not to follow the protocols, their private plan, if any, will continue to respond, followed by the Section B benefits in their automobile policy. Should the maximum number of treatments be exhausted but therapy is still required, the same would apply - coverage under a private benefit plan, if any, would provide coverage followed by the auto policy.

What is the maximum number of treatments allowed?

A maximum of 10 or 21 treatments are standard depending on the severity of injury. The protocols regulations provide detailed guidance on this.

Is there an approved list of providers?

Individuals may choose any licensed physiotherapist, chiropractor or physician to provide treatment.

If an injury is not resolved at the end of the maximum number of treatments, what coverage is provided?

The majority of minor injuries are expected to resolve within the treatment limits provided under the protocols regulations. If an injury is not resolved after the treatment limits are reached, the patient may access any coverage provided through privately-held insurance (eg through employment health benefits) or, if none is available, request that their automobile insurer provide further coverage through no-fault "Section B" medical and rehabilitation benefits.

How much will my treatment under the protocols cost me?

You should not have to pay out of pocket for your treatment under the protocol regulations. In general, cost of treatments provided under the diagnostic and treatment protocols may not exceed maximum limits set by the Superintendent of Insurance.

These limits can be found at

www.novascotia.ca/finance/en/home/insurance/bulletins.aspx

and will be billed directly to your automobile insurer.

Optional Full-Tort

Will the optional full-tort product proceed?

We have decided to defer implementation of the optional full-tort product. Both industry and consumers will be seeing significant changes in the automobile insurance product as a result of the other reforms we are implementing and we recognize that the timing is not ideal to introduce additional complexity.

We are not setting a target for implementation at this time. We recognize that industry would need 9 to 12 months of lead time to implement the product and will ensure that, if the deferral is lifted, industry has the time it needs for a smooth introduction of the product.