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FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

## Amendments to the Statutory Accident Benefits Schedule, Service Provider Regulations, Administrative Penalties and Eligibility for Transportation Expenses

**Bulletin** **No. A-14/14**  
Property & Casualty  
– Auto

### To the attention of all insurance companies licensed to transact automobile insurance in Ontario and all health service providers

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting regulation amendments to the automobile insurance system that are effective December 1, 2014, with one exception noted below.

FSCO is also reminding insurers and stakeholders about obligations concerning transportation expenses. Amendments were needed to effectively operationalize the new service provider licensing regime and implement parts of the Government of Ontario’s Cost and Rate Reduction Strategy.

Amended regulations under the Insurance Act are:

1. Statutory Accident Benefits Schedule – Effective September 1, 2010 (O.Reg.34/10)
2. Unfair or Deceptive Acts or Practices (O.Reg.7/00)
3. Service Providers – Listed Expenses (O.Reg.89/14)
4. Service Providers – Standards For Business Systems and Practices (O.Reg.90/14)
5. Administrative Penalties (O.Reg.408/12)

**NOTE:** The bulletins that are posted on this website are provided for historical reference purposes. The information in these bulletins is accurate on the date the information is published, but is subject to change and may be replaced by more recent bulletins.

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the [Licensing Link](#) section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

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## 1. Statutory Accident Benefits Schedule – Effective September 1, 2010 (O.Reg.34/10)

There were two amendments to the Statutory Accident Benefits Schedule (SABS).

The first SABS amendment is with respect to the service provider licensing regime. Under the new licensing regime both licensed and unlicensed service providers will be able to provide goods and services to auto insurance claimants. However, only licensed service providers will be able to receive payment directly from insurers. Unlicensed service providers will not be able to receive payment directly from insurers and they will need to be compensated by the claimant.

This amendment to the SABS requires an unlicensed service provider to complete the Auto Insurance Standard Invoice (OCF-21) in the Health Claims for Auto Insurance (HCAI) system and provide the completed form in a paper format to the claimant. The claimant must submit the paper form to the insurer and the insurer is expected to pay the claimant directly. The unlicensed service provider will be paid by the claimant.

The second SABS amendment is with respect to the interest rate applied to overdue payments from insurers and is effective January 1, 2015. Prior to this date the interest rate on overdue payments is payable at a rate of one per cent per month, compounded monthly.

This amendment changes the interest rate and its application once a dispute arises. The interest rate of one per cent per month, compounded monthly will continue to apply until a mediation proceeding is commenced. The interest rate will then change to the prejudgement interest rate described in the Courts of Justice Act for past pecuniary loss, to be calculated from the date on which a mediation proceeding is commenced and ending on the date a settlement is reached or a decision is issued. The current prejudgement interest rate is 1.3 per cent per annum.

A transition provision is included in the amendment which provides that if payment of a benefit is overdue on December 31, 2014, that is the day before the amendment comes into force, interest continues to be payable on the overdue amount at the rate of one per cent per month, compounded monthly, until the date on which the overdue amount is paid.

## 2. Unfair or Deceptive Acts or Practices (O.Reg.7/00)

A new unfair or deceptive act or practice (UDAP) is added for a service provider who advertises that they are licensed, when at the time, the service provider was not licensed. It would also be a UDAP where a person makes any false, misleading or deceptive statements about their business and billing practices.

This UDAP is intended to apply to both licensed and unlicensed service providers. An unlicensed service provider may not advertise that they are a licensed provider. A licensed provider that has had their licence suspended or revoked may not continue to advertise that they are licensed.

## 3. Service Providers – Listed Expenses (O.Reg.89/14)

The amendment to the Service Providers – Listed Expenses regulation sets out an exception to the

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definition of what is a "listed expense." An outstanding amount that is still payable after an insurer and claimant have reached a full and final settlement is not a "listed expense" for the purposes of the service provider licence.

This exemption allows licensed service providers to seek direct payment for a listed expense provided under the SABS from anyone other than an insurer. Normally, licensed service providers are paid directly for approved goods and services from insurers. Under this circumstance, the licensed service provider is now able to seek all outstanding amounts directly from the claimant.

#### 4. Service Providers – Standards For Business Systems and Practices (O.Reg.90/14)

The amendments to the Service Providers – Standards for Business Systems and Practices regulation create a requirement for service providers to ensure that the annual information return contains such information that will enable the Superintendent to calculate the amount of the fees payable by the service provider for the relevant period and also require those records to be stored and retained in a form that will enable the Superintendent to verify the fees.

In connection with these amendments, corresponding administrative monetary penalties (AMPs) have been added to the Administrative Penalties (O.Reg.408/12) regulation.

#### 5. Administrative Penalties (O.Reg.408/12)

The amendment to the Administrative Penalties regulation specifies penalties for non-compliance with the newly added requirements under O.Reg.90/14 for service providers. Administrative monetary penalties (AMPs) may be levied in fixed amounts (for low-level, high-volume contraventions) and variable amounts (for other requirements in the regulations).

Fixed AMPs may be levied in instances of non-compliance related to FSCO reporting requirements. An example may be not submitting the annual information return in the form and time required by the Superintendent. Fine amounts range from \$250 to \$1,000. A fixed AMP order of the Superintendent may be appealed to the Financial Services Tribunal (FST).

Variable AMPs are initiated under a notice of proposal process by the Superintendent. Variable AMPs are applied for significant contraventions of the regulations that can involve or potentially lead to improper billing practices. The maximum penalty for licensed service providers is \$25,000. A hearing on a proposed variable AMP order may be requested before the FST.

For a listing of the specified AMP amounts and their corresponding contraventions, please refer to O.Reg.408/12 that is posted on the [e-laws](#) website.

#### Mileage Expenses

FSCO is aware that some health care providers are submitting mileage expenses to insurers to travel to an injured accident victim's location when providing services. Insurers are reminded that "authorized transportation expenses", as defined in the SABS, are intended to apply to expenses incurred by the

insured person and an aide for travel to and from treatment sessions, subject to the Superintendent's Transportation Expense Guideline.

Insurers are also reminded that the Superintendent's Professional Services Guideline states that:


"Expenses related to professional services" as referred to in the SABS and the Professional Services Guideline include all administration costs, overhead, and related costs, fees, expenses, charges and surcharges. Insurers are not liable for any administration or other costs, overhead, fees, expenses, charges or surcharges that have the result of increasing the effective hourly rates, or the maximum fees payable for completing forms, beyond what is permitted under the Professional Services Guideline.

Both guidelines are incorporated by reference into the SABS.

## Effective Date

All regulation amendments referenced in this Bulletin, except for one, are in effect on December 1, 2014. The regulation amendment affecting the interest rate on overdue amounts in the SABS will be effective on January 1, 2015. Please make sure that your claims and underwriting staff, and any other staff who may be affected by these amendments, are informed of these changes.

## Copies of Regulations

The revised the regulations can be downloaded from the e-laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)  and are expected to be published in a future edition of The Ontario Gazette.

Brian Mills  
Chief Executive Officer and  
Superintendent of Financial Services

December 1, 2014