

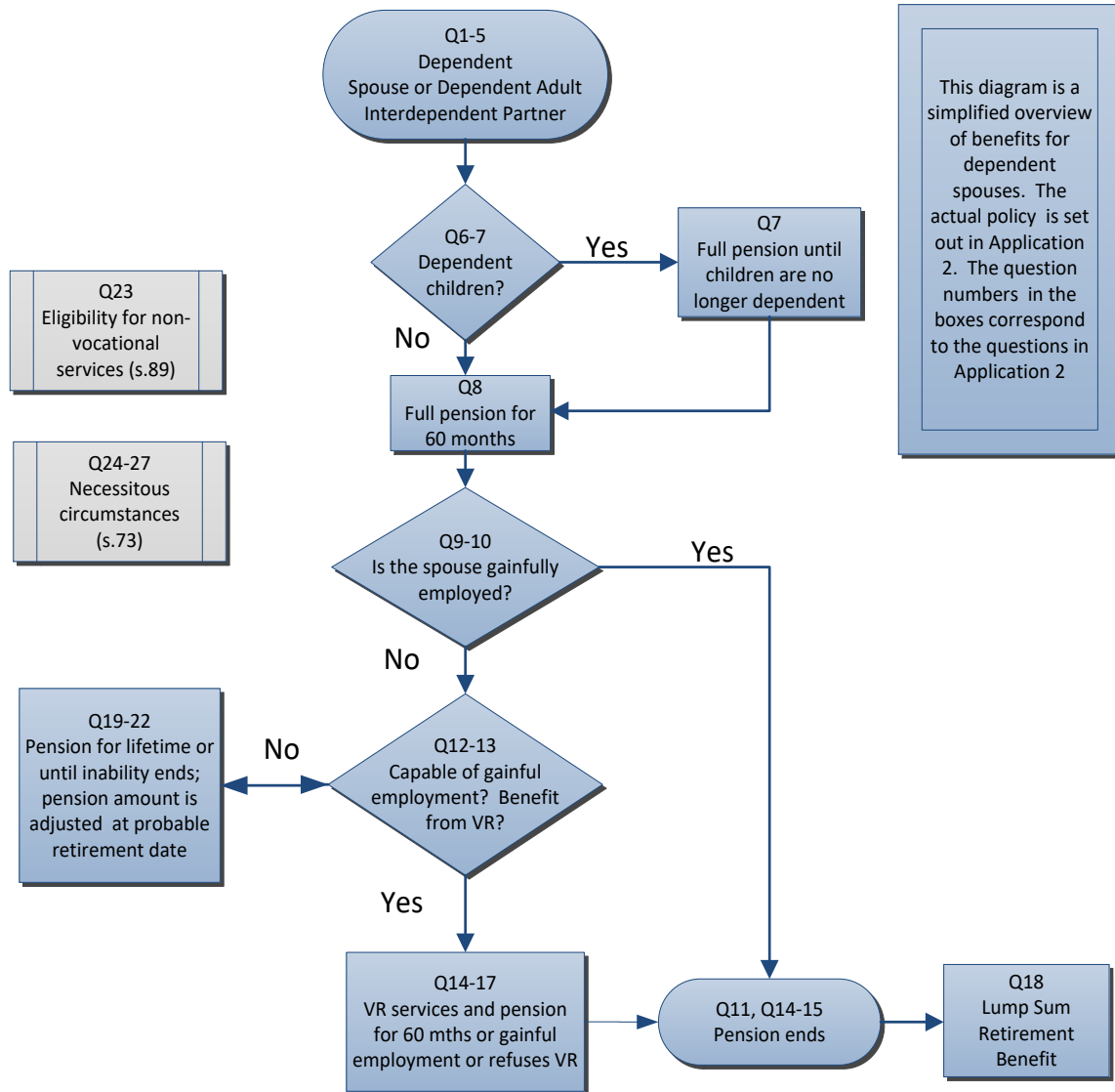
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Information**

Chapter:  
**BENEFITS**  
Subject:  
**FATALITIES**

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Date:  
**February 21, 2018**

**APPLICATION 2: ACCIDENTS ON OR AFTER SEPTEMBER 1, 2018 – DEPENDENT SPOUSES AND DEPENDENT ADULT INTERDEPENDENT PARTNERS**



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**1. *What is the purpose of the benefit structure for dependent spouses and dependent adult interdependent partners?***

The benefit structure for dependent spouses and dependent adult interdependent partners has four main purposes:

- 1) provide financial support to the worker’s dependent spouse or dependent adult interdependent partner and dependent children until the children are no longer dependent (see Questions 7 and 8)
- 2) provide transitional financial support to the worker’s dependent spouse or dependent adult interdependent partner after the worker’s death (when there were no dependent children living with the spouse) or after the children are no longer dependent (see Questions 6 and 7)
- 3) help the dependent spouse or dependent adult interdependent partner become gainfully employed by providing vocational services and financial support during the vocational training period (see Questions 10-17)
- 4) provide ongoing financial support to spouses or adult interdependent partners who are not capable of becoming gainfully employed (see Questions 19-22)

**2. *Who is a dependent spouse?***

A dependent spouse for workers’ compensation purposes is usually the worker’s legal spouse at the time of death (see also Question 3).

**3. *Who is a dependent adult interdependent partner?***

For workers’ compensation purposes a person is the dependent adult interdependent partner of another if:

- a) the person has lived with the other person in a relationship of interdependence
  - i. for a continuous period of not less than three years, or
  - ii. of some permanence, if there is a child of the

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*Dependent adult  
interdependent partner  
(continued)*

relationship by birth or adoption, or

- b) the person has entered into an adult interdependent partner agreement with the other person.

Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement as provided for in the *Adult Interdependent Relationships Act* and *Adult Interdependent Partner Agreement Regulation*.

There can be only one dependent spouse or partner. If at the time of the worker’s death there is both a spouse and an adult interdependent partner of the worker, then if the spouse is a dependent spouse, the spouse is entitled to the workers’ compensation benefits that are payable. If the spouse is not a dependent spouse, the worker’s adult interdependent partner is entitled to the said benefits.

**4. What is a relationship of interdependence?**

A “relationship of interdependence” means a relationship outside marriage in which any two persons

- i. share one another’s lives,
- ii. are emotionally committed to one another, and
- iii. function as an economic and domestic unit.

The *Adult Interdependent Relationships Act* provides for a number of circumstances, all of which must be taken into account, when determining whether two persons function as an economic and domestic unit. Please refer to the Glossary for a definition of these circumstances.

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**5. *Who determines if the worker had a dependent adult interdependent partner on the date of accident?***

It is WCB’s responsibility to determine if the worker was in a relationship of interdependence with an adult interdependent partner on the date of accident.

Section 3 of the *Adult Interdependent Relationships Act* outlines the conditions that must be met for one person to be considered the adult interdependent partner of another person.

**6. *What if the worker had a dependent spouse but no dependent children?***

When there are no dependent children, the dependent spouse or dependent adult interdependent partner is paid a full pension for 60 months (five years) following the worker’s death. At the end of the term pension, the services and benefits available will depend on whether the spouse is gainfully employed (see Question 9) and, if not, whether the spouse is considered capable of becoming gainfully employed (see Question 13).

**7. *What if the worker had dependent children as well as a dependent spouse or dependent adult interdependent partner?***

If the worker’s dependent children live with the dependent spouse or dependent adult interdependent partner, WCB pays the dependent spouse or dependent adult interdependent partner a full pension during the children’s dependency and for 60 months following the date when dependency has ended for all the children (Note: the 60 months may not be consecutive if a child over age 18 returns to school after the term pension has started – see below).

A child’s dependency normally ends when the child reaches age 18, but is extended if the child is under age 25 and is registered in and attending a secondary or post-secondary school acceptable to WCB [see s.1(1)(i)(ii)]. When dependency is extended past age 18, it ends when the child reaches age 25 or is no longer enrolled in secondary or post-secondary education, whichever comes first.

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*Dependent children and dependent spouse/partner (continued)*

Registration and attendance at an approved school does not have to be full time in order to meet the criteria. Part-time students may also be considered dependent. However, registration and attendance must be more than casual (for example, registering in and attending one class a semester is unlikely to meet the criteria unless there are special circumstances, such as medical reasons, that prevent the child from doing more).

Once the children are no longer considered dependent, the intent of the legislation is to help the dependent spouse or dependent adult interdependent partner become gainfully employed (see Question 9). The process and benefits are explained in the following questions. With only minor exceptions, they are the same as the process and benefits for spouses or adult interdependent partners who had no dependent children when the worker died. Any exceptions are explained in the specific question(s).

See Application 3 for benefit information for dependent children who do not live with a dependent spouse or dependent adult interdependent partner.

*Child over age 18 returns to school*

The status of a child who is not considered a dependant (over age 18 and not attending school) may change if he or she registers in and attends a qualifying school while still under age 25. If this happens while the dependent spouse or dependent adult interdependent partner is receiving the 5-year term pension, WCB will suspend the 5-year term pension and pay the normal full pension until the child is no longer attending school or reaches age 25, whichever comes first. At that time, WCB will reinstate the five-year term pension for the remaining time (for example, if 25 months of the five-year term pension had been paid before the child

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*Child over age 18 returns to school (continued)*

started school, there will be 35 months remaining when the child’s dependancy ends). See Application 3, Question 7 for information about breaks in attendance.

If the five-year term has ended before the child registers in and attends school, the spouse is not eligible for additional benefits, but may still be eligible for vocational services or other benefits as described in the following questions.

**8. What is a full pension?**

A full pension is the pension the worker would have received if the work accident had resulted in permanent total disability instead of death. It includes any adjustments for which the worker would have been eligible (see Policy 04-01, Part II, Application 3).

**9. What is gainful employment?**

“Gainful employment” is a proportion of the worker’s full pension. To be considered gainfully employed, the dependent spouse or dependent adult interdependent partner must have net employment earnings that equal or exceed:

- a) 75% of the worker’s full pension, or
- b) the minimum pension for permanent total disability (see Appendix F),

whichever is more.

The dependent spouse or dependent adult interdependent partner’s net employment earnings are calculated in accordance with the *WCA* and *WC Regulation*.

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**10. *When does WCB review whether the dependent spouse or dependent adult interdependent partner is gainfully employed?***

WCB reviews whether the dependent spouse or dependent adult interdependent partner is gainfully employed at the conclusion of the 60-month term pension (see Questions 6 and 7).

WCB may re-review the dependent spouse or dependent adult interdependent partner’s status as needed, at any time while the dependent spouse or dependent adult interdependent partner is still receiving benefits.

**11. *What if the dependent spouse or dependent adult interdependent partner is gainfully employed?***

If, at the end of the 60-month period described in Question 10, the dependent spouse or dependent adult interdependent partner is gainfully employed, he or she is not eligible for additional pension benefits. At the conclusion of the pension, WCB will pay the spouse/partner a lump sum retirement benefit (see Question 18).

Although pension benefits end, the dependent spouse or dependent adult interdependent partner may still be eligible for benefits if the spouse/partner is later in necessitous circumstances because of illness (see Questions 24-27).

**12. *What if the dependent spouse or dependent adult interdependent partner is not gainfully employed?***

If the dependent spouse or dependent adult interdependent partner is not gainfully employed, WCB must consider whether the dependent spouse or dependent adult interdependent partner is capable of becoming gainfully employed or benefiting from vocational services (see Question 13).

If the dependent spouse or dependent adult interdependent partner is considered capable of becoming gainfully employed, WCB may offer vocational services to help the dependent spouse or dependent adult interdependent partner achieve gainful employment (see Questions 14-17).

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*Dependent spouse/partner not gainfully employed (continued)*

Although WCB generally makes an offer of vocational services at the end of the 60-month term pension, the dependent spouse or dependent adult interdependent partner may request that vocational services begin at an earlier date.

If the dependent spouse or dependent adult interdependent partner is considered to be an invalid or incapable of benefiting from vocational services or becoming gainfully employed, WCB pays the dependent spouse or dependent adult interdependent partner a pension under s.70(10) of the WCA (see Questions 19-22).

**13. What does WCB consider when determining whether a dependent spouse or dependent adult interdependent partner is an invalid or incapable of benefiting from vocational services or becoming gainfully employed?**

WCB considers all relevant factors, including:

- age
- medical condition
- education
- employment history
- skills
- employment opportunities where the dependent spouse or dependent adult interdependent partner lives
- worker’s earnings
- cost of vocational services

**14. What benefits does a dependent spouse or dependent adult interdependent partner receive during vocational training?**

If the dependent spouse or dependent adult interdependent partner accepts WCB’s offer of vocational services, the dependent spouse or dependent adult interdependent partner is entitled to a full pension (see Question 8) until the earlier of the following:

- the dependent spouse or dependent adult interdependent



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*Benefits during vocational training (continued)*

partner becomes gainfully employed\*, or

- 60 months following the conclusion of the 60-month term pension referred to in Questions 6 and 7, or
- the worker would have reached age 65 or the spouse reaches age 65, whichever is later.

\*If the dependent spouse or dependent adult interdependent partner has requested early vocational services and becomes gainfully employed before the end of the 60-month term pension, benefits continue until the conclusion of the 60-month term pension.

At the conclusion of all the pension benefits, WCB will pay the spouse/partner a lump sum retirement benefit (see Question 18).

**15. *What if a dependent spouse or dependent adult interdependent partner refuses to accept vocational services?***

If WCB offers vocational services and a dependent spouse or dependent adult interdependent partner refuses the services when offered or neglects or refuses the services at any point during the 60-month vocational services period referred to in Question 14, the dependent spouse or dependent adult interdependent partner’s full pension ceases at the end of the month in which he/she neglected or refused the services.

At the conclusion of the pension, WCB will pay the spouse a lump sum retirement benefit (see Question 18).

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**16. *What is considered ‘neglecting or refusing to accept vocational services’?***

A dependent spouse or dependent adult interdependent partner is considered to have neglected or refused to accept vocational services if, for example, the dependent spouse or dependent adult interdependent partner:

- refuses to participate in developing a vocational plan, or
- has poor attendance or withdraws from scheduled training courses without good reason, or
- after completing the training, does not make reasonable efforts to obtain gainful employment.

**17. *What if a dependent spouse or dependent adult interdependent partner’s status changes after beginning vocational services?***

The dependent spouse or dependent adult interdependent partner’s medical condition and ability to become gainfully employed may be reconsidered at any point before the spouse or adult interdependent partner’s full pension ends (see Question 13).

If the dependent spouse or dependent adult interdependent partner’s status has changed and the dependent spouse or dependent adult interdependent partner is now an invalid or is considered incapable of becoming gainfully employed, vocational services are suspended or terminated. The dependent spouse or dependent adult interdependent partner may be eligible for a pension under s.70(10) of the WCA (see Questions 19-22).

**18. *What is the lump sum retirement benefit, and how is it calculated?***

The lump sum retirement benefit is an amount paid to all dependent spouses and dependent adult interdependent partners when their pension benefits end. It is paid to compensate the dependent spouse or dependent adult interdependent partner for reduced opportunities to contribute to retirement plans during the period the spouse/partner was receiving a pension.

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*Lump sum retirement benefit (continued)*

The retirement benefit amount is 2% of the total pension benefits the spouse/partner received from the date of the worker’s death to the date the full pension ended.

The spouse/partner has full control over its use; WCB does not invest or manage the lump sum for the spouse/partner.

Spouses/partners receiving a pension under s.70(10) are not eligible for the lump sum retirement benefit because their pension is adjusted at retirement and continues for their lifetime (see Question 20).

**19. What benefits are paid to a dependent spouse or dependent adult interdependent partner who is an invalid or incapable of substantially benefiting from vocational services or becoming gainfully employed?**

These dependent spouses or dependent adult interdependent partners are paid a pension under s.70(10) of the WCA.

The pension amount is based on the worker’s full pension (see Question 8). Usually, the initial pension is 100% of the worker’s full pension and will not be more than that amount or less than the minimum pension for permanent total disability (see Appendix F).

This initial pension is paid until the dependent spouse or dependent adult interdependent partner’s status changes (see Question 22) or until the retirement adjustment (see Question 20), whichever comes first.

**20. What is the retirement adjustment and how is it calculated?**

At retirement, the impact on earnings loss is reduced as the worker’s wages would normally have been replaced by pension/retirement income. Consequently, the s.70(10) pension is adjusted to reflect this. The formula used estimates the probable loss of retirement pension income resulting from lost opportunity to contribute to a retirement pension plan.

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*Retirement adjustment calculation (continued)*

The retirement adjustment is made when:

- the worker would have reached retirement age, or
- the dependent spouse or dependent adult interdependent partner reaches age 65

whichever is later.

The formula used to adjust the pension is similar to the retirement age adjustment for Economic Loss Payments (Policy 04-04, *Permanent Disability*, Part II, Application 3, Question 16). It is, however, based on a combination of the worker and spouse or adult interdependent partner’s compensation history, as follows:

1. The dependent spouse or dependent adult interdependent partner’s age is used to ensure that the pension will not be adjusted until the dependent spouse or dependent adult interdependent partner has reached the usual qualification age for other retirement benefits such as federal Old Age Security benefits.
2. The worker’s retirement age is considered age 65 or the fifth anniversary of the date of accident, whichever is later, unless there is sufficient and satisfactory evidence to indicate the worker would have continued to work past that age. Evidence may include such things as the normal retirement age in the worker’s occupation, agreements reached with the worker’s employer before the worker’s accident, or the age of the worker’s dependent children (see also Policy 04-04, Part II, Application 3, Question 13).
3. The annual retirement adjustment is 2% of the total amount of periodic compensation paid to the worker (temporary wage loss benefits, TEL, ELP) and

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*Retirement adjustment calculation (continued)*

spouse/partner (pension) from the date of accident to the retirement adjustment date. Periodic payments paid to the worker and spouse are both included so that the retirement adjustment reflects the loss during the entire claim. As these spouses/partners are not capable of gainful employment, they do not have the same opportunities as other spouses to mitigate their loss.

- 4. The resulting amount is the annual retirement benefit, which is normally divided into 12 equal monthly payments. The adjusted pension is paid for the remainder of the dependent spouse or dependent adult interdependent partner’s lifetime.

**21. *What if the dependent spouse or dependent adult interdependent partner is not gainfully employed but has some employment earnings?***

Spouses or dependent adult interdependent partners may have some employment earnings and still be considered incapable of gainful employment. WCB considers whether it is likely that the dependent spouse or dependent adult interdependent partner will ever have sufficient earnings to meet the definition of gainful employment (see Question 9). If not, the dependent spouse or dependent adult interdependent partner is eligible for a pension under s.70(10).

WCB does not deduct these earnings or any other income from the pension payable under s.70(10).

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**22. *What if the dependent spouse or dependent adult interdependent partner’s status changes?***

The pension under s.70(10) applies only while the dependent spouse or dependent adult interdependent partner is an invalid or is unable to substantially benefit from vocational services or become gainfully employed.

The dependent spouse or dependent adult interdependent partner’s status can be reviewed at any time. If the dependent spouse or dependent adult interdependent partner’s status changes, the s.70(10) pension may end and WCB may consider the dependent spouse or dependent adult interdependent partner’s eligibility for vocational services (see Questions 12-17).

**23. *What other benefits may dependent spouses or dependent adult interdependent partners be eligible for?***

Section 89(2) of the *WCA* provides that dependent spouses and dependent adult interdependent partners are “entitled to receive the same benefits and services as would have been available to the worker under subsection (1) had the worker lived.” Section 89(1) of the *WCA* authorizes vocational services benefits (see Questions 12-17) and other rehabilitation services that WCB considers necessary to lessen or eliminate any handicap resulting from a worker’s injury.

WCB provides several benefits under s.89(1) to assist seriously and severely injured workers. These benefits include psychological services, home maintenance allowances, housekeeping allowances, and home and vehicle modifications. When determining a dependent spouse or dependent adult interdependent partner’s eligibility for any of these benefits, **all** of the following criteria must be met:

- The need for a specific benefit must result from the worker’s death. For example, a dependent spouse may need assistance with home maintenance because the

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*Other benefits under s.89  
(continued)*

worker is no longer there to do those tasks. On the other hand, a dependent spouse who needs home modifications to accommodate his or her wheelchair would have needed those modifications regardless of the worker’s death, and would therefore not be eligible for that benefit under s.89.

- The dependent spouse or adult interdependent partner must meet the same eligibility criteria as would an injured worker for a specific benefit. For example, to be eligible for a Home Maintenance Allowance Level 1, the spouse or adult interdependent partner must have a permanent impairment that prevents him or her from performing the maintenance tasks. As is the case with injured workers, WCB would first consider whether the spouse or adult interdependent partner could perform the tasks independently with the help of training and/or assistive aids or devices.
- The need for the benefit must arise while the spouse or adult interdependent partner is also eligible for pension benefits under s.70 of the WCA. Provided that is the case, WCB will continue the benefit for as long as the spouse or adult interdependent partner continues to meet the eligibility criteria for the benefit, even if the spouse or adult interdependent partner ceases to be eligible for continuing benefits under s.70. Spouses and adult interdependent partners are not eligible for s.89 benefits if the need arises after conclusion of the full pension.

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**24. *What if the dependent spouse or dependent adult interdependent partner is in necessitous circumstances because of illness?***

If, at any time, a dependent spouse or dependent adult interdependent partner is in necessitous circumstances because of illness, WCB may pay any additional amount it considers appropriate (s.73 of the WCA).

**25. *What is meant by “necessitous circumstances”?***

WCB uses a similar definition to that generally applied by the courts when determining whether an individual is in necessitous circumstances. For WCB’s purposes it means that the person is unable to afford basic necessities such as food, clothing, shelter, and additional things necessary for the maintenance of an individual left without support. A person is not in necessitous circumstances simply because of an inability to maintain a particular lifestyle that the person is accustomed to.

**26. *When will WCB consider paying benefits under s.73?***

WCB must first determine whether the conditions of s.73 are met:

- Confirmation is required that the spouse or adult interdependent partner is, in fact, in necessitous circumstances. This will usually require a review of the person’s finances and expenditures, and
- If the spouse or adult interdependent partner is in necessitous circumstances, WCB must also confirm that the circumstances are due to illness.

Once the above determination is made, WCB will consider each case on its own merits and determine benefits on a case-by-case basis. As any benefit paid under s.73 is over and above usual entitlements under the WCA, WCB will also consider the individual’s eligibility for non-WCB services. The provisions of s.73 are not intended to substitute WCB funding for services already available in the community.



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**27. *For how long will WCB pay benefits under s.73?***

There is no specific time limit for s.73 benefits paid to spouses or adult interdependent partners. WCB will periodically review the claim and will end benefits if the spouse or adult interdependent partner no longer meets the criteria of s.73 (that is, he or she recovers from the illness that caused the necessitous circumstances OR, although still suffering from the illness, is no longer in necessitous circumstances).

**28. *When is this policy application effective?***

This policy application (Application 2 – Accidents on or after September 1, 2018 – Dependent Spouses and Dependent Adult Interdependent Partners) is effective September 1, 2018, and applies to all claims with a date of accident on or after that date, except when noted otherwise in a specific policy section(s).

[Document History](#)