



Canadian Life  
and Health Insurance  
Association Inc.

Association canadienne  
des compagnies d'assurances  
de personnes inc.

March 20, 2014

Department of Health – Government of New Brunswick

To: [healthconsultationsante@gnb.ca](mailto:healthconsultationsante@gnb.ca)

**RE: Government of New Brunswick Public Review of Draft Regulations**

On behalf of the Canadian life and health insurance industry, we are providing the following questions and recommendations on the draft *General Regulation- Prescription and Catastrophic Drug Insurance Act* (the "Regulation") for your consideration. We want to commend the Province on requiring that the members of the Drug Insurance Advisory Committee include representatives from several industries, including the medical and insurance industries. This will help to create a collaborative process that will benefit New Brunswick residents by ensuring that the province has input from all stakeholders in the health and benefits industries.

The CLHIA is a voluntary trade association with member companies that account for 99 per cent of Canada's life and health insurance business. In New Brunswick, at the end of 2012, the life and health insurance industry provided some 480,000 New Brunswick residents with prescription drug coverage. During this same period, the industry reimbursed \$292 million for prescription drugs in New Brunswick.

**General Recommendations and Questions:**

- **Dispensing Fee Disclosure and Maximum Prices:**
  - Section 25 of the Regulation sets the amount that will be paid by participating providers that are providing certain entitled services. We suggest that the Province consider requiring that all providers (including non-participating providers) follow the maximum price provisions for the ingredient cost in the Regulation with respect to entitled services. We are concerned that section 25 of the Regulation, in its current form, could indirectly result in situations where pharmacists charge more to individuals with private drug coverage for the ingredient cost, as compared to those covered by the Plan. This could also result in increases in the cost of private drug coverage in comparison to coverage under the Plan encouraging individuals to discontinue private individual coverage or for plan sponsors to discontinue their coverage of drugs covered by the Plan.

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- Sections 20 and 21 of the Regulation require that certain information be provided by providers when they provide an entitled service, including the dispensing fee and mark-up. These requirements would only apply where an entitled service is being provided. We recommend that the Province require all providers (participating or non-participating) to disclose their dispensing fees, regardless of whether it is for an entitled service. This would align with the *CLHIA Report on Prescription Drug Policy* which recommends that pharmacy receipts clearly disclose the dispensing fee charged, as well as the pharmacy mark-up in order to incent a greater degree of consumerism in the market. Of note, Manitoba is also currently considering this as a requirement.
- New Brunswick Drug Plan Formulary:
  - Please confirm when the list of minimum requirements on the formulary for private drug plans will be available.
  - It is our understanding that private plans are required to cover those drugs specified as minimum requirements on the New Brunswick Drug Plan formulary. Please clarify if there will be other drugs included on the New Brunswick formulary beyond the minimum requirements.
  - Please note that some adjudication systems can only accommodate one provincial formulary. If there is a need to accommodate two formularies (i.e. because the New Brunswick formulary contains a list of drugs that must be covered by private plans, as well as a more extensive list of drugs that will be covered by the Plan), this could create significant system changes and cost to insurers.
- Certificate of Insurance:
  - Section 37 of the Regulation specifies information that must be included in a certificate of insurance that is to be provided to each member of a private plan. However, administrative services only ("ASO") benefit plans are not insured, and therefore do not have "certificates of insurance". We also note that section 138 of the *Insurance Act* (New Brunswick) (the "Insurance Act") already specifies information that must be included in a "certificate or other document" that must be delivered by insurers to each group life insured under a plan of group insurance.

To assist in the application of section 37 of the Regulation to ASO plans, and to be more consistent with similar provisions under the Insurance Act, we suggest that the Regulation clarify that a certificate of insurance can be a "certificate or other document".

- We recommend removing the requirement to list all dependents of the plan member on the certificate of insurance. In group insurance, it is frequently the case that insurers will not know all of the plan members' dependents. Further in some cases, insurers may not know the name of the plan member, particularly in self-accounted ASO arrangements where that plan member has not yet made a claim. This information can be provided to the Province, as required, on a case-by-case basis as needed.

- We recommend that insurers be required to provide a certificate of insurance on request. As noted above, section 138 of the Insurance Act already contains requirements for insurers to provide a certificate or other document, and plans will generally be required to comply with the minimum standards when providing drug coverage. Due to the foregoing, we believe that the information required on the certificate of insurance under section 37 of the Regulation will not be useful to plan members generally, but will impose additional administrative costs on insurers; this information is likely to be useful only in flex plan situations where the plan member has opted for drug coverage that does not meet the minimum requirements.
- Coordination of Benefits:
  - Is it the intent that a contract must cover drugs on the Plan for everyone under the contract, and not just for New Brunswick residents? If so, this may create concerns for plan sponsors located outside of New Brunswick. Please confirm.

### **Miscellaneous Recommendations and Questions:**

#### **Citation and Definitions:**

- Insurer: The definition in the Prescription and Catastrophic Drug Insurance Act (New Brunswick) (the "Act") includes ASO arrangements. However, the Act and draft Regulation refer to "insurance contracts". This may be confusing as ASO arrangements are not insured, so there is no contract of insurance. We recommend the Province consider clarifying the wording of the Act and Regulation to make it clear that the requirements apply to both insurance companies and non-insured ASO arrangements.
- Entitled Service: The definition in the Act indicates "a drug, good or service" that is determined by the Minister to be an entitled service. We also note that the definition of "Provider" in the Act refers to "pharmacist who practices in the Province, any other health care professional". Please clarify if the Province's intent is to have the Plan cover items and services other than drugs in the future.
- Co-Payment: The definition in the Regulation indicates that a co-payment is the total cost of an entitled service that is required to be paid by a member of the Plan. We recommend modifying the definition to indicate "co-payment means the portion of the total "allowable cost" . As part of cost-containment, many insurers limit the pharmacist mark-up and dispensing fee to a reasonable and customary charge established by each insurer. This practice needs to remain in place to avoid creating an adverse impact on group plan costs. In addition, the proposed modification would allow the private sector to limit the reimbursement of a brand drug to the total allowable cost of the generic even in the situation where the \$2,000 OOP has been reached.

#### **Members of the Plan:**

- Please confirm the requirements for seasonal employees, part-time, temporary, or casual employees.

#### **Providers:**

- Please confirm this section applies to the Public Plan only.

- In Section 22(2) we recommend modifying the wording to replace reference to "acquisition cost" and "maximum allowable price" with "total allowable cost". This change should also be reflected in other sections of the Regulation such as Section 36(1). This aligns with current administration practices in private plans and will assist in avoiding confusion for plan members.

**Exceptions:**

- Our understanding is that insurers are not required to cover drugs approved as an exception under the Plan. Please confirm.

**Minimum Requirements:**

- Similar to Quebec, the dependent children's OOP amounts should be added to the participants or the spouse as it applies.
- We suggest adding a reference to "entitled services" in paragraph 36(1)(a) of the Regulation to make it more clear that the minimum requirements in that subsection apply only to entitled services. This would be consistent with the reference to "entitled services" in paragraph 36(1)(b).
- In subsection 36(2) of the Regulation, we recommend the removal of the reference to "group" to allow individual plans the same opportunity to provide flexible coverage as allowed for group plans.
- Section 39 of the Act states that a health spending account ("HSA") that satisfies the definition of a private health services plan will require that the relevant insurer provide drug coverage that meets the minimum requirements. However, it is our understanding that the minimum requirements do not allow for an annual or lifetime maximum coverage under the contract. Please clarify the intent as it relates to HSA's since the amount allotted is considered a yearly maximum.
- How will the Province report annual maximum's since individuals on authorized leave may switch between public and private plans within the same year. Please confirm.
- Are there any communities outside of New Brunswick that are covered by the new plan?
- Paragraph 36(2)(b) of the Regulation provides that, where an insured person is under a private plan that provides multiple options, the insured person can change their option within 60 days after a change in family status. To be consistent with industry practices, we recommend changing the 60 day requirement to 31 days.
- If a group plan has an annual deductible of \$100 and a co-pay of 20% and the first claim for the benefit year is \$100, will the entire \$100 accumulate towards the deductible?
- Our understanding is that a private drug plan (as well as the Plan) will only be required to pay up to the price of the generic drug. Please confirm.
- Bill 27 31(1) (b) and 31(2): Please confirm that these sections do not apply to private drug plans as this would add complexity that would be difficult to administer. In Quebec, only pharmacies in Quebec or those listed as designated pharmacies outside Quebec are required to meet the minimum reimbursement criteria of the RAMQ. In particular, we recommend removal of 31(2) as this impacts coverage that may already be provided by private plans as part of the Out of Country benefit.

**Cancellation of an Insurance Contract:**

- In most situations that involve the cancellation of an insurance contract, there is no loss of coverage as the plan sponsor is moving to a new insurer. The insurer will not always

be aware of the plan sponsor's decision, so it will not be possible to notify the Director 30 days' prior to a cancellation. We recommend that insurers notify the Director only in those situations where there is a cancellation of a policy for non-payment of premiums, as we do in Quebec.

- In section 64.1 of the Act, we recommend amending the requirement to limit requests for exemptions from the Director to only those situations where the cancellation or amendment of the drug plan no longer meets the minimum qualification criteria.

Thank you for allowing us the opportunity to comment. We welcome the opportunity to continue to work with New Brunswick on the planning and implementation of the Plan.

Sincerely,

*original signed by*

Stephen Frank  
Vice President, Policy Development and Health