

COMMUNIQUÉ

PASSAGE OF NEW BRUNSWICK'S PRESCRIPTION AND CATASTROPHIC DRUG INSURANCE ACT

On March 26, 2014, Bill 27, the *Prescription and Catastrophic Drug Insurance Act*, was given Royal Assent.¹ The legislation lays the framework for creation of a comprehensive premium-based public drug program for uninsured New Brunswickers in two phases: a voluntary program commencing May 1, 2014, and a mandatory program to take effect April 1, 2015. Of key concern to private plan sponsors, the legislation also establishes mandatory requirements for private plans effective April 1, 2015 and in the interim, establishes a freeze on any private plan changes that would result in the reduction or elimination of drug plan coverage.

Background

In 2011, an advisory committee was established to develop recommendations with respect to the establishment of a prescription drug plan for uninsured New Brunswickers as part of a broader poverty-reduction initiative. The committee's report, tabled in the legislature in December 2012, advocated a comprehensive premium-based drug plan, largely modelled on the Quebec Régie de l'assurance maladie du Québec (RAMQ) program. A key objective cited in the report was to provide a more equitable distribution of drug-spend amongst the estimated 20% of the population which is uninsured.

An implementation committee was established in 2013 to consult with stakeholders and refine the program model. Based on Mercer's discussions with the New Brunswick Department of Health, it is our understanding that the committee made three key recommendations with respect to employer private plan sponsors as follows:

- That private plans be required to offer drug coverage if offering other health or dental benefit programs;
- That private drug plans meet minimum requirements with respect to their drug formulary, eligibility criteria and plan design; and
- That employers contribute to public drug plan funding by means of a tax assessed on the payroll of uninsured employees.

¹ For full text, see: <http://laws.gnb.ca/en/ShowPdf/cs/2014-c.4.pdf>

While the legislation reflects some of the implementation committee recommendations, the government has announced that consideration of employer funding contributions is being deferred pending additional consultation with business stakeholders, a process which will likely not be completed before the provincial election, expected in September 2014.

New Brunswick Drug Plan

The legislation establishes the framework for the creation, administration and oversight of a public universal drug plan (without regard to age or health status) to be launched in two phases:

- Voluntary “early enrolment” program (effective May 1, 2014): voluntary program participation is open to all Medicare eligible uninsured residents.²
- Mandatory program (effective April 1, 2015): program participation will become mandatory for all Medicare eligible residents, subject to exemptions for individuals with proof of private group insurance, qualifying private individual coverage, equivalent government program coverage or other terms prescribed by regulation. Individuals will be required to participate in a private plan if eligible.³

Additional details with respect to plan design, drug formulary and the premium basis are included in the regulations:

Plan Design	The program will provide 70% reimbursement of eligible drug expenses, subject to an individual out-of-pocket co-payment maximum of \$30 per prescription.		
Drug Formulary	The program formulary is posted on the website: www.gnb.ca/drugplan . Some drugs are subject to special authorization.		
Program Funding (annual est.)	Phase 1 = \$50 M (\$23 M by plan members and \$27 M by government) Phase 2 = \$120 - 150 M		
Plan Member Premium	<i>Varies based on Gross Income as follows (Note: no initial premium subsidies).⁴</i>		<i>Rates (–May, 2014):</i>
	Individual Income (single coverage)	Family Income (family coverage)	Per adult*
	\$26,360 or less	\$49,389 or less	\$67 per month (\$800 per year)
	Between \$26,361 and \$50,000	Between \$49,390 and \$75,000	\$117 per month (\$1,400 per year)
	Between \$50,001 and \$75,000	Between \$75,001 and \$100,000	\$133 per month (\$1,600 per year)
	\$75,001 and above	\$100,001 and above	\$167 per month (\$2,000 per year)

*No premium is payable for dependent children under age 19

² The plan will also be available to individuals who are covered by a prescription drug plan, and meet one of the following criteria:

- a) they must have reached an annual or lifetime drug coverage maximum; or
- b) they need a specific drug that is on the New Brunswick Drug Plan formulary, but is not on their prescription drug plan.

³ An exception is provided in the regulations for retirees, individuals age 65 and over, individuals on a leave of absence from employment of at least three months for medical reasons, or on parental leave, who will be provided a choice to participate either in the public or a private plan.

⁴ Based on discussion with the New Brunswick Department of Health, it is our understanding that premium (and co-payment) subsidies, which will vary by family size and income, will be introduced in phase two.

Further information can be found on the New Brunswick Department of Health website at: www.gnb.ca/drugplan

Impact on Private Plans

The legislation imposes mandatory terms on private plans indirectly by imposing obligations on insurers⁵ as follows:

- Phase 1 Program freeze (effective immediately and continuing to March 31, 2015): insurers are prohibited from reducing or eliminating drug coverage during this period.⁶
- Phase 2 Imposition of mandatory coverage terms (effective date April 1, 2015): the legislation establishes the following minimum standards for private plans. As currently drafted, these terms would apply to all private group plans, whether for active employees, inactive employees or retirees:⁷
 - Insurers will be required to offer drug coverage if offering a “private health services plan” as defined in the *Income Tax Act*, with examples provided as follows: vision, dental, medical and health spending account programs;
 - Insurers will be required to cover “services” (a drug, good or service that is determined to be an entitled service under the program) listed as minimum requirements in the New Brunswick Drug Plan formulary;
 - Insurers will be required to extend coverage to the entire “family unit” as defined under the public program with potential expansion of spousal⁸ and child⁹ definitions;
 - Insurers will not be allowed to impose restrictions on eligibility with respect to age, sex or health status of the member or family unit;
 - Insurers will not be permitted to apply differential rating with respect to the age, sex or health status of the member or family unit;
 - There must be no annual or lifetime limit on drug coverage; and
 - For plans with a member co-payment, one of the following out-of-pocket co-payment maximums must be in place:
 - A maximum out-of-pocket for each individual no greater than \$2,000 per year; or
 - No deductible, and a co-payment that is no greater than \$30 per prescription.

In addition, an exception is included in the regulations for flexible benefit plans. Namely, for a plan that provides multiple drug coverage options, only one option must meet all of the mandatory coverage standards, provided that individuals are allowed to change their drug plan flex election annually (without limitations such as staircase rules or lock-in provisions), and within 60 days of an eligible life event (such as birth, death or change in marital status).

⁵ Self-insured plans are also captured under the definition of insurer: “an individual or corporation that self-insures residents ... under a private group drug insurance contract”.

⁶ An exemption from the Director may be available if an insurer makes application and in the opinion of the Director, the change is not for the dominant purpose of transferring the insured person to the public plan.

⁷ Government is further evaluating the potential impacts on retiree plans.

⁸ For common law spouses, the New Brunswick Drug Plan waives the 12 month cohabitation requirement in some cases if there is a child.

⁹ For dependent children, the New Brunswick Drug Plan provides coverage for unmarried financially dependent children under age 19 (or under age 26 for full-time students).

Impact on other Government Sponsored Programs

The future of other government sponsored programs is in question:

- Disease-specific programs: some private plans have removed drugs covered by the New Brunswick Public Drug Program plans for specific medical conditions from their formularies, effectively shifting the costs of these drugs to the government. The new legislation will require that these drugs be covered by private plans, and it is expected that these disease-specific plans will be phased out in future.
- Medavie Blue Cross (MBC) Seniors' Health Program: The government is taking a wait-and-see approach with respect to continuation of the MBC administered Seniors' Health Program (Plan A: Seniors' Prescription Drug Program). For individuals enrolled in the MBC program (currently offered at \$105 per month per individual), the relative attractiveness of the New Brunswick Drug Program may well depend on income. In the short-term, it is our understanding that the program will continue but the future of the MBC program is uncertain.

Considerations for Plan Sponsors

Insurers will need to align private plans with the minimum mandatory requirements effective April 1, 2015. Additional considerations in this regard for plan sponsors and plan members are as follows:

- Retiree Programs: unless special exemptions are created, plan sponsors may be required to offer drug coverage (e.g. those currently offering only health, dental or spending account plans) or expand drug coverage (e.g. by removal of age limits and maximums) for retirees, with potential impact on plan costs and accounting liabilities. While government is reviewing the impact of the legislation on retiree programs, no legislative exemptions from the mandatory terms for private plans (if applicable) are expected to be introduced until October 2014 at the earliest. Potential exemptions may include: permitting age limits/rate differentials for retiree drug coverage, and waiving the requirement to provide drug coverage if offering other health/dental coverage (including spending accounts). As a practical matter, however, even if private plans are exempted from these mandatory terms, retirees participating in non-compliant private programs will not be eligible to decline participation in the public plan. Plan sponsors are encouraged to review their existing drug programs in this light.
- Consumerism-focused design: in light of the formulary and co-payment restrictions that will be imposed on traditional plans, plan sponsors who want to encourage better consumerism may wish to consider adopting a flexible benefit plan.
- Administration: employers are advised to review their current administrative practices in light of the new mandatory participation requirements under the New Brunswick Drug Plan. As a practical matter, employers may need to revisit the wisdom of waiting periods.
- Increased exposure to catastrophic risk: the imposition of a mandatory formulary and prohibition of plan limits (age limits, annual or lifetime maximums) may increase exposure to catastrophic risk and will limit options with respect to risk management. Plan sponsors are advised to review the appropriateness of their funding and pooling arrangements.
- Impact on collective agreements: plan sponsors are advised to assess the impact of the mandatory terms on their collectively bargained plans and allow time for re-opening of agreements, if required.

For more information, contact your Mercer consultant or the following Mercer consultants:

Tara Anstey
902 490 2118
tara.anstey@mercer.com

Kirk Shand
902 490 2125
kirk.shand@mercer.com

Dean Taylor
416 868 2169
dean.taylor@mercer.com

Mercer publishes the *Communiqué* as a general summary and commentary on topical issues. The information in the *Communiqué* in no way constitutes specific advice and should not be used as a basis for formulating business decisions. To determine what implications the information contained in the *Communiqué* will have for your company, please contact your Mercer consultant. Reproduction of the *Communiqué* is permitted if its source is acknowledged.

Mercer Offices:

Calgary
403 269 4945
Edmonton
780 483 5288
Halifax
902 429 7050
London
519 672 9310

Montréal
514 285 1802
Ottawa
613 230 9348
Québec City
418 658 3435
Regina
306 791 4558

Saskatoon
306 683 6950
Toronto
416 868 2000
Vancouver
604 683 6761
Winnipeg
204 947 0055

Mercer Website: www.mercer.ca