

COMMUNIQUÉ

NEW BRUNSWICK BILL 27 – PRESCRIPTION AND CATASTROPHIC DRUG INSURANCE ACT

On December 10, 2013, Bill 27, the *Prescription and Catastrophic Drug Insurance Act*, was given first reading in the New Brunswick Legislature¹. 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 purports to establish mandatory requirements for private plans effective April 1, 2015 and in the interim, would establish a freeze on any private plan changes that would result in the reduction or elimination of drug plan coverage.

Background

New Brunswick is the only remaining province in Canada without a catastrophic drug program. 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 for 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.

¹ For full text, see: <http://www.gnb.ca/legis/bill/pdf/57/4/Bill-27.pdf>

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.

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 will be included in the regulations; however, the government's press release provides the following details:

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 Based on discussion with the NB Department of Health, it is our understanding that an exception will be made in the regulations for individuals age 65 and over, who will be provided a choice to participate either in the public or a private plan.

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 expected to mirror that of the New Brunswick Prescription Drug program, an existing program for social assistance recipients and other eligible groups.		
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 (est. - 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

Further information can be found on the New Brunswick Department of Health website at: <http://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.
- 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 active employees, inactive employees or retirees⁶:
 - 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 NB 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 spousal⁷ and child⁸ definitions;

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

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 Based on discussions with the NB Department of Health, it is unclear whether special exemptions will be created for retiree plans.

⁷ For common law spouses, the NB Drug Plan waives the 12 month cohabitation requirement in some cases if there is a child.

⁸ For dependent children, the NB Drug Plan provides coverage for unmarried financially dependent children under age 19 (or under age 26 for full-time students).

- 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 allowed to apply differential rating with respect to the age, sex or health status of the member or family unit; and
- Other requirements established by regulation.

Additional requirements which are expected to be included in the regulations are as follows:

- 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 copayment 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 expected to be 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).

Impact on other Government Sponsored Programs

Based on discussion with the New Brunswick Department of Health, it is our understanding that the future of other government-sponsored programs is in question.

- Disease-specific programs: some private plans have removed drugs covered by the NBPDP plans for specific medical conditions from their formularies, effectively shifting the costs of these drugs to government. The new legislation will require that these drugs be covered by private plans.
- 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

Plan sponsors will have until April 2015 to align existing drug plans with the mandatory requirements. 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. Plan sponsors will need to assess the potential impact on plan costs and accounting liabilities.

- 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.

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