



## *Information Bulletin No. 2011 – 9*

**For insurers and administrators of employee benefit plans**

### **Risk Pooling in Prescription Drug Insurance: The Spirit of the Law, Compliance with the Rules and the Mechanisms of Supervision**

The objective of the risk pooling system managed by the Quebec Drug Insurance Pooling Corporation is to preserve accessibility to coverage for the reimbursement of prescription drug costs despite the risk of high costs, as provided by the *Act Respecting Prescription Drug Insurance*.

The Quebec Drug Insurance Pooling Corporation oversees the good functioning of the pooling process and ensures that it remains fair for all participants and continues to receive the support of the life and health insurance industry.

This bulletin explains the mechanisms the Quebec Drug Insurance Pooling Corporation uses for this purpose. It also recaps the importance of complying with the terms and conditions of pooling established by the Quebec Drug Insurance Pooling Corporation.

### **Supporting an understanding of the terms and conditions of pooling**

In order to oversee the good functioning of the risk pooling system and ensure adherence to the purpose of the process (maintaining accessibility to coverage for the reimbursement of prescription drug costs despite high costs), the Quebec Drug Insurance Pooling Corporation (the Corporation) relies on three measures:

1. First, the Manager of the pooling process sends a letter each year to all participants detailing the rules to be observed when submitting to the Corporation the data necessary for compensation.
2. With this letter, the Process Manager includes a detailed Compliance Certificate that each participant must complete annually to certify the authenticity and accuracy of the information submitted to the Corporation.
3. In addition, the Corporation undertakes an annual review and, if necessary, an adjustment of the terms and conditions of risk pooling (pooling factors and thresholds, group sizes) so that they will match market requirements closely. In addition, the Corporation has just completed an in-depth review enabling it to update the system which has been in place since 1996. In this way, the Corporation works to maintain industry support for this unique mechanism and ensure that it is fair for all participants.

These measures seek to reduce to a minimum the risk that participants will misinterpret the rules of pooling, which could compromise the success of the process.

### **An overview of recent changes**

The in-depth review of the terms and conditions of pooling that was undertaken by the Corporation in concert with the industry and its players led to the following changes:

- Since January 2009, groups with fewer than 10 certificates and from 10 to 24 certificates have been combined and the pooling threshold for drug costs was adjusted.
- Since January 2011, the terms and conditions of pooling extend to all insured and non-insured administrative service only (ASO) plans with fewer than 1,500 certificates. However, non-insured plans of the Cost Plus type are still ineligible for pooling.

Thus, all insurers and administrators of private plans meeting the criteria must submit to pooling the cost of medications exceeding the threshold established for the size of their group. To this end, they must pay their contribution to the Compensation Table based on the pooling factors in effect. All plans of 1,500 certificates or more, whether insured or not, are left to the free market.

These changes are explained in more detail in the Corporation's *Information Bulletin 2011 – 5* ([www.pooling.ca](http://www.pooling.ca)).

### **Mechanisms of Supervision**

When it receives the information that is to determine participant compensation, the Corporation uses two tools to ensure the accuracy of the data that has been submitted. These tools are explained in greater detail in *Information Bulletin No. 2010 – 7* ([www.pooling.ca](http://www.pooling.ca)).

#### **❖ Audit on the participant's premises**

In 2010 the Corporation introduced a policy allowing it to perform an audit of data in a participant's own offices. This audit involves a few participants each year and is done according to a predetermined schedule.

#### **❖ The Compliance Certificate**

The duly completed Compliance Certificate remains an important control measure since, once signed, it certifies that the information provided is accurate and complete and the participant's responsibility becomes binding.

### **Possible sanctions**

#### **❖ For interveners**

Interveners in the pooling process, whether policyholders, intermediaries, third-party administrators or insurers, are bound in their general everyday professional relationships to adhere to the principle of good faith codified in the *Civil Code of Quebec* under Article 1375, which reads as follows:

*"The parties shall conduct themselves in good faith both at the time the obligation is created and at the time it is performed or extinguished."*

More specifically, intermediaries are also regulated by the *Act Respecting the Distribution of Financial Goods and Services* and its associated regulations. The spirit of this act and its regulations is that intermediaries must always act with dignity, moderation and integrity. Thus, declarations or representations that are incomplete, false, misleading or likely to deceive may be sanctioned by the specific authorities that control the interveners subject to the *Act Respecting the Distribution of Financial Goods and Services*.

In addition, specific provisions of the *Act Respecting Prescription Drug Insurance* (sections 84 and 85) provide minimum fines of \$1,000 up to a maximum of \$10,000 for failure to meet the obligations incumbent upon interveners in the pooling process.

Participation in the pooling process rests upon a legal basis and any failure to fulfil the obligations arising from the process can be sanctioned.

### ❖ **For the Corporation**

The Corporation was created in the wake of the adoption of the *Act Respecting Prescription Drug Insurance* (the Act), which has been in effect since January 1, 1997. Its implementation allowed the industry to enjoy the privilege of managing the terms and conditions of pooling the risks related to the cost of medications rather than having this process be regulated by the government.

If the objective of risk pooling – namely maintaining accessibility to drug insurance for all – is not reached, the government could intervene under section 43 of the Act, and regulate the process.

#### **A reminder**

Because of the adoption of the *Act Respecting Prescription Drug Insurance* in effect since January 1997, the life and health insurance industry and administrators of employee benefit plans (e.g. employers) are now required to offer coverage for medications included in the basic prescription drug insurance plan to any person eligible for a group insurance plan or a non-insured employee benefit plan that includes supplementary sickness or disability insurance, without regard to the individual's state of health.

Since offering prescription drug coverage could have repercussions on group insurance rating or increase the financial burden in the case of a non-insured employee benefit plan, and since the consequences could be unbearable for some covered individuals, section 43 of the Act requires insurers and administrators of employee benefit plans to pool the risks arising from the cost of medications.

#### **Section 43 of the *Act Respecting Prescription Drug Insurance***

*"All insurers transacting group insurance and all administrators of employee benefit plans who provide coverage for the cost of pharmaceutical services and medications must pool the risks arising from the basic plan coverage they provide according to the terms and conditions they determine.*

*The terms and conditions must be communicated by the representatives of the insurers and administrators, in writing, to the Minister not later than 1 November each year. Failing that, the terms and conditions shall be determined by government regulation for the period it indicates."*

## Examples of problematic situations

The pooling process takes place in three phases:

1. The Process Manager obtains the relevant data from insurers and plan administrators;
2. He determines the assessments;
3. He proceeds to compensation.

That being the situation, variations in the application of the rules of pooling can take place during the first phase, namely the communication of data to the Corporation, and more specifically the declaration of the size of the group or groups for which claims are being submitted to pooling.

Modifying the group size, through splitting or clustering in order to pool certain risks differently or simply to avoid pooling, would take into account only the group's current situation. This way of working could be advantageous in the short term for those doing it, because the assessment (or the pooling factor) collected is less than it would be if the data reflected the true size of the group.

However, participants who misinterpret the rules in order to reduce their share in risk pooling would expose themselves to a refusal on the part of the Corporation to compensate them when they do have a major claim. The objective of the risk pooling process (maintaining the accessibility to drug insurance coverage) could thus be compromised, since the participants would have to assume the shortfall.

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Ed. Note: this information bulletin does not have the force of law. It represents the point of view of the Quebec Drug Insurance Pooling Corporation on various subjects, based on the *Act Respecting Prescription Drug Insurance*.