



Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

June 21, 2007

Personal Health information Task Force
Department of Health
Health Planning, Policy and Legislation Branch
PO Box 5100
Fredericton, NB
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Dear Sir / Madam:

The Canadian Life and Health Insurance Association Inc. (CLHIA) welcomes this opportunity to provide input to the Personal Health information Task Force on its May 2007 Consultation Guide and Background Paper regarding Personal Health Information Access and Privacy.

Established in 1894, CLHIA is a voluntary association with member companies accounting for 99 per cent of the life and health insurance in force in Canada. The industry is a significant economic and social contributor in New Brunswick. Life and health insurance products protect 610, 000 New Brunswick residents and benefits paid to them last year were \$1.1 billion. Over 2,800 New Brunswick residents are employed in the industry and the industry's investments in the province total \$8.1 billion. A large majority of life and health insurers that carry on business in Canada are licensed to operate in New Brunswick and some of them have their head offices in the province.

We are writing to you at this time to provide comments on three issues that arise from the Consultation Guide and Background Paper issued by the Task Force: (i) the relationship between custodians (e.g., dentists, pharmacists) and life and health insurers, in the context of electronic submission of information for payment purposes; (ii) the protection of genetic information; and (iii) the possible application of the proposed legislation to "employers who hold some health information about their employees".

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Electronic Submission of Information for Payment Purposes

Electronic submission of information for payment purposes is a tool that is now used by such custodians as dentists and pharmacists. It is expected to become a much more prevalent tool that will be used by other custodians (e.g., physiotherapists, chiropractors) going forward. Consequently, it is important that the proposed legislation contain the provisions necessary to ensure that consumers can take advantage of this expanding tool. Under that part of the Consultation Guide and Background Paper on disclosure of personal health information, the consent of the individual is required for a disclosure, including when a custodian discloses personal health information to a non-custodian (such as a life and health insurer). While life and health insurers obtain consent (either express or implied) in order to collect information from custodians, in the past the specific casting of some provincial health information protection legislation has resulted in some uncertainties as to the ability of custodians to provide information to life and health insurers for the purposes of payment. Consequently, in order to provide clarity and certainty, we are writing to recommend that the proposed legislation provide a clear authority for custodians to disclose for purposes of payment in the context of electronic submission of information.

Let me indicate how electronic submission for payment purposes works by discussing the specific example of 'pay direct drug card' claims. An individual walks into a pharmacy, requests a prescription drug and presents the benefit card (provided to him/her by the insurer that will be paying) as evidence that s/he consents to the pharmacist submitting the information about the purchase to the insurer for payment purposes. The information that is provided includes: the date of the transaction, the name of the patient, the identification number of the plan member, the drug identification number, and the group insurance plan number. The claim is then adjudicated electronically and the insurer pays to the pharmacist the amount of the claim provided for under the benefit plan. The individual walks out with her/his prescription and no paperwork is required on the individual's part.

Pay direct drug card transactions have other advantages that are not available with paper claims. For example, without the card, some individuals would not have access to prescriptions because they cannot afford to pay for them up front and then wait for the reimbursement. As well, individuals can find out from the pharmacist right away whether a drug is covered under the particular plan and, if it isn't, can ask their doctor whether there is an equivalent drug that is covered by the plan. Without the card, an individual would not find out that the prescription s/he is purchasing is not covered by the plan until after s/he has paid for the purchase and submitted the paper claim.

Another important advantage of pay direct drug card transactions is drug utilization review. If the cardholder tries to fill a prescription for a drug that would interact negatively with another drug that s/he has already been prescribed, or if the prescription is being filled too early (which may indicate that the individual may be taking the

medication incorrectly – i.e., too much at one time), the electronic system alerts the pharmacist to the problem. This is provided even if the individual is filling her/his prescriptions at different pharmacies. The fact that information may be disclosed for these purposes is indicated on the drug card or otherwise made available to the cardholder.

Under New Brunswick's proposed legislation, as noted above, custodians (such as pharmacists) will need the individual's consent in order to provide life and health insurers (i.e., non-custodians) with personal health information (e.g., in the context of pay direct drug cards, the number that identifies the drug). Depending on how the provisions of the proposed Act are cast, if the disclosure provisions of the proposed legislation do not provide a clear authority to disclose for purposes of payment in the context of electronic submission of information (e.g., pay direct drug card transactions) to non-custodians (e.g., life and health insurers), the ability of pharmacists to continue the convenient service that they now provide through the individual's use of a pay direct drug card could be hampered. It is interesting that the Background Paper does provide that custodians can disclose personal health information for payment of health care and related purposes without the consent of the individual.

You may be interested to know that this issue arose previously in at least two other jurisdictions. In Ontario, the matter was clarified in relation to pay direct drug cards – in a somewhat complex way – by the inclusion of ss. 1(6), s. 8, and ss. 21(2) to the regulations under the Personal Health Information Protection Act, 2004. The province of Alberta also faced this issue and corrected it in 2006 as part of its three-year review of the its Health Information Act by adding clause 35(1)(r) to that Act as follows:

"A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

(r) for the purpose of obtaining or processing payment for health services provided to the individual by a person that is required under a contract to pay for those services for that individual".

This is a straightforward and clearer approach and is supported by the industry.

In summary of the first issue, given the current use of electronic submissions for payment purposes and given the trend toward increase in this use, we strongly recommend that a provision be added to the proposed legislation **to provide a clear authority to disclose for purposes of payment in the context of electronic submission of information** (e.g., pay direct drug card transactions) **to non-custodians** (e.g., life and health insurers). This is important in order to ensure that, once the proposed legislation is passed, consumers can continue to take advantage of this efficient and effective tool. In this regard, the Alberta approach of providing disclosure without consent for payment purposes would serve as a most useful precedent.

Protection of Genetic Information

The Background Paper asks (at page 13) whether additional measures should be required to ensure confidentiality and protection of genetic information. As the Background Paper points out, genetic information is generally seen in the same light as health information. The result is that the proposed legislation would provide the same protection for genetic information as it would for other personal health information.

Please note that developments in the area of human genomics are undergoing constant, rapid change. Consequently, it is not clear just how prudent it would be to put specific detailed rules in place at this time, particularly given that genetic information has the protections that apply to all personal health information.

[Finally, for your information, let me note that information regarding genetic information and the life and health insurance industry is available in a document called “CLHIA Position Statement on Genetic Testing”. It is available on the CLHIA website (www.clhia.ca), under Publications/Industry Submissions.]

Possible Application to Employers

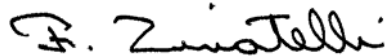
The possibility that the legislation would apply to “employers who hold some health information about their employees” raises some interesting points / questions that we would like to bring to your attention for consideration.

Employers are not the same as other possible data custodians listed in the Background Paper in that, generally speaking, the core activity of employers does not relate to the provision of health care. As well, it is worth noting that health information statutes in other provinces do not apply to employers.

As well, given that the federal Personal Information Protection and Electronic Documents Act applies to federally-regulated employers / organizations in terms of their employees and to all employers carrying on commercial activities in the province, in relation to personal information and personal health information, careful consideration must be given to any proposed provision in order to avoid overlapping application and not complicate compliance for employers. Any ‘lack of uniformity’ would be particularly relevant to employers that carry on business on a national basis.

Thank you very much for this opportunity to provide comments on the May 2007 Consultation Guide and Background Paper regarding Personal Health Information Access and Privacy. My colleagues and I are at your disposal to provide any additional information that you may require and to help in any way we can.

Yours very truly,

A handwritten signature in black ink that reads "F. Zinatelli". The signature is written in a cursive style with a large, stylized initial "F".

Frank Zinatelli
Vice President and Associate General Counsel