

## **Fair Drug Prices for New Brunswickers**

Submitted By: The New Brunswick Union of Public and Private Employees

15 August 2011

The New Brunswick Union of Public and Private Employees (the New Brunswick Union), representing 8,500 working New Brunswickers, welcomes the opportunity to make a submission on such an important initiative. Our members are not only consumers but our union, as bargaining agent, is frequently confronted with escalating drug plan costs in our partnerships with employers. The New Brunswick Union believes that addressing these costs in a meaningful way is critical public policy.

### **The Government and Minister Dubé are to be Commended**

1. On July 20, 2011, the provincial government initiated a public consultation to inquire into the various ways to “..make drugs more affordable and accessible for New Brunswick families”. In announcing the public consultation, Health Minister Madeleine Dubé said: “*...New Brunswickers expect that prescription drugs be affordable and that prices paid here be similar to those paid elsewhere, we need to ensure that our drug programs are sustainable -- now and for the future...*”. Minister Dubé also noted that during the last few years, several provinces, including British Columbia, Alberta, Saskatchewan, [Manitoba], Ontario, Quebec, [Newfoundland and Labrador], and Nova Scotia, have implemented legislation or other measures to reduce the prices of generic drugs. It appears that New Brunswick and Prince Edward Island are the only provinces still without a public policy measure of any kind to make generic drugs more affordable or accessible.
2. Minister Dubé's action is reminiscent of another woman who pushed to make drugs more affordable and more accessible, an American, Agnes Varis. Ms Varis was once a leading figure in the American generic drug industry. She was the founder of Agvar Chemicals Inc., a supplier of ingredients to international pharmaceutical companies -- in particular the makers of generic drugs. Ms Varis' chief concern in life was to put low price prescriptions in the hands of those who need them, a goal that is also espoused by Minister Dubé. In an interview with the New York Times as early as 2003, Ms Varis said “*...the only way to make drugs affordable is to stop brand people from being greedy.*”
3. While greedy may be too strong a term, since the price of patented drugs are regulated while those for generic drugs are not, the pricing of generic drugs has become a lightning rod for the issue of drug affordability. A study by the Patented Medicine Price Review Board (PMPRB) found that “*...generic drug costs less in foreign markets than in Canada. These price differences are substantial: mean or median foreign prices are, on average, only about two-third of corresponding prices...The price differentials are broadly based, for the majority of drugs and nearly all therapeutic classes...*” (See:..

Generic Drug in Canada: Prices Trends and International Price Comparisons, 2007. Patented Medicine Price Review Board, December 2010, page iii).

4. Prescription drugs are a critical component of health care. Mr. Smokey Thomas (Pres. Ont. Pub. Serv. Emp. Union), recently observed that: "... *Canadians now spend more on drugs than they do physicians, and drugs are rapidly catching up to hospitals as the number one health care expense...*" In this light the New Brunswick Union strongly commends and supports Minister Dubes initiative in making drugs more affordable and accessible to New Brunswickers. It is our sincere hope that this submission helps in her deliberations.

### **General Background**

5. Total Canadian pharmaceutical sales in 2009 amount to C\$21 billion, with 88% sold to retail drug stores and 12% sold to hospitals. Government pays for 42% and private sector (private drug plan coverage and individuals who have no plans and have to pay from their own pockets) pay 58%. (Source: Industry Canada, see: [http://www.ic.gc.ca/eic/site/lsg-pdsv.nsf/eng/h\\_hn00021.html](http://www.ic.gc.ca/eic/site/lsg-pdsv.nsf/eng/h_hn00021.html))
6. According to IMS Health, the world's leading source for prescription drug information, in 2009 generic drugs were dispensed to fill more than 54% of all prescriptions in Canada, but only accounting for only 24% of the \$21.5 billion sales of prescription medicines.
7. The use of generic drugs by provincial drug plans in Canada is considerably higher than generic drug use by private sector payers. According to data from IMS Health and Brogan Consulting, generic drugs are dispensed to fill more than 60% of prescriptions paid for by public programs but only 47% of private sector prescriptions. (Source: Canadian Generic Pharmaceutical Association submission to the Health Council of Canada, July 08, 2010).
8. In the U.S., IMS Health reports that generic drugs are dispensed to fill fully 75% of all prescriptions, 1/4 more than in Canada.

### **Situation in New Brunswick**

9. As noted above, New Brunswick and Prince Edward Island are the only provinces still without a public policy measure to make generic drugs more affordable or accessible.
10. The expenditures for the New Brunswick's Prescription Drug Program (NBPDP) are estimated to be about \$190 million in FY 2011-12, accounting for 7.5% of the provincial health budget of \$2.5 billion.

Drug costs in New Brunswick grew by 9.5% last year, up to just over \$180 million. Drug costs have doubled since 2000-01 and have increased at an average of 10% per year over the past 10 years.

11. Almost 105,000 people are now registered beneficiaries under NBPDP. Enrolment in the Program has increased at an average of 2.8% per year.
12. In 2010, the NBPDP helped pay for close to 4 million prescriptions, up from 2.5 million prescription 5 years earlier, representing a growth rate of 10% a year.
13. NBPDP beneficiaries received an average of 40 prescriptions in 2010-11 (4,000,000/105,000  $\approx$  40), compared to 27 prescriptions in 2005-06, an annual growth rate of 8%.
14. New Brunswickers pay more for generic drugs than people in many other provinces. Generic drugs in New Brunswick are currently priced between 50% and 70% of the brand name price. In other provinces, generic drugs are priced as low as 25% to 35% of the brand name price; in other words, generic drugs in New Brunswick are on average twice as expensive as these other provinces.
15. A statistical summary for New Brunswick is shown in Table 1 and Table 2 below:

<b>Table 1: Drug Coverage In New Brunswick, 2010</b>					
		%	Population	-- Drug Expenditures --	
		Distribution	Coverage	\$ Million	Per Capita
=====					
		[d]	[e]	[f]	
7	Private Drug Plan (Employer Sponsored Plans)	52.5%	394,000	710.0	
8	No Coverage	27.5%	206,000	370.0	
9	New Brunswick Prescription Drug Program	14.0%	105,000	190.0	
10	Federal Government	3.0%	23,000	40.0	
11	Medavie Blue Cross Seniors Premium Paying Program	3.0%	23,000	40.0	
=====					
13	Total	100.0%	750,000	1,357.1	1,800
=====					
16	General Remarks:				
17	- The NB Prescription Drug Program funds 4,500+ drugs and helps pay more than 4 million prescription.				
18	- On average, the cost to the Program amounts to \$47.50 (\$190,000,000/4,000,000) per prescription.				
19	- If the New Brunswick Prescription Drug Program spends \$190 million to serve a client base of 105,000,				
20	the cost of prescription drugs to cover the entire 750,000 population of New Brunswick is estimated to				
21	be \$1.36 billion (\$190 Million x 750,000 / 105,000).				

<b>Table 2: Selected Price Comparisons</b>			
1			
2			
3			
4		Fosamax	Lipitor
5	=====	=====	=====
6		[d]	[e]
7	Generic	alendronate	atorvastatin
8	Treatment	Osteoporosis	High Cholesterol
9	Brand Price	\$173.04	\$161.24
10	NB Generic	\$100.58	\$91.86
11	BC Generic	\$64.44	\$62.12
12	Ontario Generic	\$49.68	\$46.68
13	=====	=====	=====
14	Comparison		
15	NB Generic/Brand Name	0.58	0.57
16	BC Generic/Brand	0.37	0.39
17	Ont Generic/Brand	0.29	0.29
18	BC Generic/NB Generic	0.64	0.68
19	Ont Generic/NB Generic	0.49	0.51
20	=====	=====	=====
21			
22	Source: NB Dept of Health.		

### **Pricing of Patented Drugs in Canada**

16. The PMPRB, an independent quasi-judicial body created in 1987 under the federal Patent Act, regulates the price at which patentees or their licensees sell patented medicines to wholesalers, hospitals or pharmacies to ensure that a patented drug is not priced excessively. The Board does not, however, have jurisdiction to regulate the prices of patented drugs further down the supply chain. For example, it does not regulate the prices of patented medicines from the wholesaler to pharmacies, or to the eventual customer, the patient. Nor does the Board have jurisdiction to review the prices negotiated with the federal, provincial or territorial drug plans.
17. In ensuring that a patented drug is not priced excessively, when a new brand name drug is allowed onto the Canadian market after meeting all other compliance requirements, the PMPRB reviews the prices for the new drug in seven comparator countries (namely France, Germany, Italy, Sweden, Switzerland, the United Kingdom and United States) and then publishes a median price and establishes this median price as a ceiling price for Canada.

Provinces may negotiate better prices or adopt this published median price as their price. In order to get a better price, some provinces may subsequently layer on other policies and practices as they deem appropriate. For example:

- Ontario will negotiate with a drug company to arrive at a package cost for all that company's drugs currently on the provincial plan.
- Saskatchewan uses open tendering.
- Most favoured nation (MFN) clauses are used by Quebec and Newfoundland and Labrador. Under these MFN clauses, patented drug manufacturers are required to provide a brand name drug at the lowest price they offer in any other provinces.

### **Pricing of Generic Drugs in Canada**

18. As noted above, price regulation by the PMPRB ensures that Canadian prices for patented drugs are not excessive, and are close to the international median price for the same drugs. However such is not the case for generic drugs. As noted above, a study by the PMPRB found that generic drugs cost less in foreign markets than in Canada. Not only are these price differences substantial -- Canadian prices are 15% - 77% higher than international comparators, these price differentials are broadly based, for the majority of drugs and nearly all therapeutic classes.
19. An understanding of the evolution of the market structure for generic drugs will greatly help in understanding why generic drug prices are exorbitantly higher in Canada. As noted by the Canadian Medical Association Journal, the generic market is characterized by "*...murky and hidden practices that contribute to those high prices...*" (See CMAJ 2006; 175[4]: 342-3). Understanding, exposing and correcting these murky and hidden practices would therefore go a long way towards achieving lower and fairer drug prices.
20. Until as recently as 2006, the pricing of generic drugs in Canada was not regulated. Pricing in the generic market was primarily driven by provincial drug plans. These plans traditionally reimbursed generic drugs by paying a percentage of the price of the corresponding brand name drug or by paying a price quoted by a generic drug manufacturer.
21. In the early 1990s, government drug plans set prices for generic drugs at a relatively high percentage of the price of the brand name drugs they emulated. Naturally, pharmacies typically billed governments the maximum allowable amounts. Generous (or maybe even excessive) profits in the supply chain benefited generic drug manufacturers and encouraged the proliferation of retail pharmacies.
22. Initially, the manufacturers held sway over the retail pharmacies, and encouraged their purchasing loyalty by offering discounts, rebates or professional allowances (subsequently referred to collectively as professional allowances in this submission) to stock their products. Retail pharmacies reaped the benefits of reduced drug-acquisition

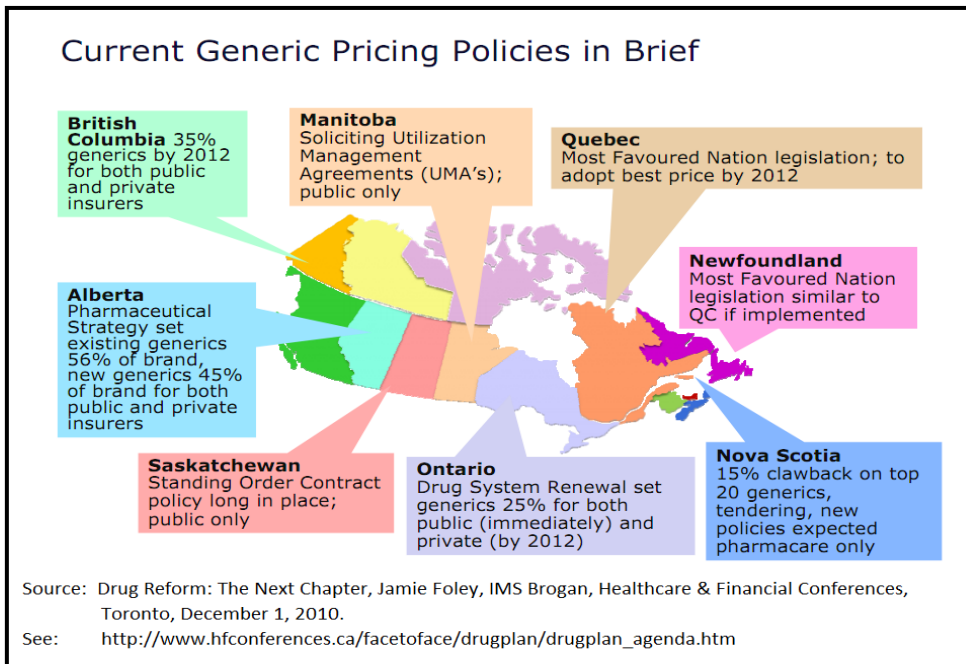
costs and these became an integral part of their retail business model, allowing the number of retail pharmacies to grow.

23. Over time, the agglomeration of retail pharmacies into franchises and retail pharmacy chains shifted the balance of power away from the manufacturers to the retail pharmacies. These retail pharmacies were now in a position to exercise market power and drive their drug-acquisition costs further down by demanding ever-richer professional allowances from the manufacturers of generic drugs.
24. The Canadian Competition Bureau estimated that on average professional allowances amount to 40% of the invoiced price of the generic drugs. (see: Canadian Generic Drug Sector Study, October 2007, page 17. [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Competition%20Bureau%20Generic%20Drug%20Sector%20Study.pdf/\\$FILE/Competition%20Bureau%20Generic%20Drug%20Sector%20Study.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Competition%20Bureau%20Generic%20Drug%20Sector%20Study.pdf/$FILE/Competition%20Bureau%20Generic%20Drug%20Sector%20Study.pdf)). These professional allowances had become the primary lever through which generic firms competed for retail pharmacy shelf space. These rebates flowed directly to the bottom of the retail pharmacies and did not get translated into reduction of retail prices of generic drugs as they were set by government drug plans. As the following calculations illustrate, professional allowances made generic drugs were very profitable indeed: (ibid, page 29)

	Branded (\$)	Generic (\$)
Invoice Price	40.00	25.20
Allowable Markup(10%)	4.00	2.52
Dispensing Fee	6.54	6.54
Total (=Retail Price)	50.54	34.26
Rebates (40% of invoice)		10.08
Return (mark-up+dispensing fee+rebate)	10.54	19.14

25. Professional allowances, which were often opaque and murky, also frustrated price discovery initiatives by government in an effort to reduce generic drug prices. Because of retail pharmacies' high profit margins made possible by professional allowances, generic manufacturers were under pressure from their retail pharmacy customers not to alter these allowances for fear of losing their shelving rights.
26. Thus, the market dynamics in the generic drugs market that provincial governments themselves had a hand in creating ultimately became a source of frustration for them. Realizing they were allocating too much profit to the supply chain, beginning in 2006, Ontario became the first province to introduce legislative measures aimed at reducing its drug plan costs by "*...exposing and correcting some of the murky and hidden practices that contributed to those high costs...*" (CMAJ, 2006; 175[4]: 342-3)

## Current Generic Pricing Policies, In Brief



## Regulation of Generic Drug Prices, the Case of Ontario

27. As noted above, in formulating measures to reduce generic drug prices, provincial governments were severely handicapped by the opaqueness as to how profits in the supply chain were distributed. They were faced with the challenge of not knowing how much profit could be squeezed from the supply chain through reductions in reimbursement levels before damaging the chain and thereby putting the provision of pharmacy services at risk.

It is therefore instructive to examine in detail the legislative measures implemented by the Ontario Government to reduce generic drug prices, the first province to do so. Ontario is the largest pharmaceutical market in Canada; indeed, with an expenditure of over \$4 billion on prescription drugs, the Ontario Drug Benefit Plan is the second largest single payer in North America. The Ontario drug reform program is the most comprehensive among the provinces. And the results most impressive, as witnessed by the following:

- *Fair Drug Prices, Affordability and Sustainability.* Prices of most generic drugs under the publicly-funded drug plan have been reduced by at least 50% to a maximum of 25% of the reference brand price. As a result, the annual growth rate in the cost of



prescription drugs under the public drug plan has also been cut by half -- from 10% down to 5%.

- Elimination of "The Doughnut Hole". Similarly, the cost of generic drugs purchased through private employers drug plan or by individuals without any drug plans were reduced by at least 50 per cent over a three year period, thereby eliminating the "doughnut hole" that had existed between the public and the private drug plans. Thus, public drug plans, private drug plans and individuals without any drug plans enjoy the same price protection. It also prohibits pharmaceutical companies from offsetting government savings by passing their revenue losses to private plans. This is very important in NB since more than one half of coverage is private.
- Enhancing Drug Access and Pharmacy Services. Savings under the drug reform program go directly back into the health care system. A large portion of drug savings has been used to add new prescription drugs to the public drug plan - such as adding four new cancer drugs and 11 brand new drugs.

Access to pharmacy services is also improved. Instead of pharmacy closures as originally feared, the number of pharmacies has actually increased by 63 one year after the reform.

28. Professional Allowances. In 2006, regulations were introduced to ban or otherwise restrict the provision and receipt of professional allowances generic drug manufacturers often offered to a retail pharmacy in order to be retained as its exclusive generic suppliers for a variety of medications. The allowances offered were not to exceed 20% of the value of the drugs so dispensed, and could only be used for direct patient care as defined under the Ontario Drug Benefit Act (ODBA), such as producing disease management brochures for patients and holding smoking cessation clinics at the pharmacy.

There was however no limit imposed on the amount of professional allowances a manufacturer could provide to a retail pharmacy for drugs dispensed to cash paying customers or individuals covered by employers' drug plans, though the allowances could only be used for the same direct patient care purposes as defined under the ODBA.

Under the 2006 regulations, both manufacturers and pharmacies were required to report the amount and intended use of the professional allowances on a semi-annual basis. The results had been unsatisfactory however, and non-compliance with the professional allowance regulations was widespread. As a result, the regulations governing professional allowances were amended in April 2010. Under the new regulations, (i) the 20% cap under the publically-reimbursed system has been eliminated, and (ii) a cap of 50% on professional allowances on sales by manufacturers

to pharmacies for private sales has been imposed effect May 2010, to be reduced to 35% (25%) beginning April 2011 (2012), and eliminated completely by 2013.

29. Pricing. In addition to the complete banning of professional allowances, the Ontario Government has also introduced regulations to reduce the maximum prices for generic products listed on the public drug plan from 50% to 25% of the price of the corresponding brand name drug, effective May, 2010. The price cap for cash paying customers or employers' drug plans will be phased in over 3 years -- a 50% cap beginning in May, 2010, to be reduced to 35% (25%) beginning in April 2010 (2011). Previously, there was no price protection for cash paying customers or employers' drug plans.

There are two important exceptions to these price caps: (i) the "Single Source Pricing Exemption", which applies to drugs where there is only a single generic source available, and (ii) the "Raw Material Cost Increase Exemption", which applies when substantial raw material costs have increased for the manufacturers.

In putting forward these two exemptions, the Ontario government appears to be prescient of the potential for supply shortages or disruptions that may arise. As reported by the New York Times on August 6, 2011: "*...of the 34 generic cancer drugs on the market, as of this month, 14 were in short supply. They include drugs that are the mainstay of treatment regimens used to cure leukemia, lymphoma and testicular cancer...The sad fact is, there are plenty of newer brand-name cancer drugs that do not cure anyone, but just extend life for a few months, at costs of up to \$90,000 per patient. Only the older but curative cancer drugs — drugs that can cost as little as \$3 per dose — have become unavailable. Most of these drugs have no substitutes, but, crazy as it seems, in some cases these shortages are forcing doctors to use brand-name drugs at more than 100 times the cost...*"

30. Other Changes.

- a change in the maximum permitted pharmacy mark-up depending on the location of the pharmacy,
- an increase of at least \$1 (up to \$4 in rural and underserved areas) in the dispensing fees paid by the government to the pharmacists.
- \$100 million to compensate pharmacy owners for professional services pharmacists provide, including new services allowed pursuant to the expansion of the scope of practice of pharmacists in Ontario -- such new services as: allowing pharmacists to prescribe certain drugs, authorize refills, and modify prescriptions without the need for physician involvement.

## Recommendations

31. In exploring measures to achieve its twin goals of lowering generic drug prices and enhancing pharmacy services in New Brunswick, the New Brunswick Union recommends that the provincial government consider the drug reform measures implemented by the Ontario Government in 2006 and 2010. As discussed above, compared to other provinces, Ontario's drug reform program is the most comprehensive, and the results most impressive.
32. The features that make the Ontario approach so desirable are:
- A price cap has proven effective, by reducing generic drug costs in public and private plans by 50%.
  - It applies to generic drugs in both public and private programs.
  - It gives price protection to those not in drug plans.
  - Government savings go directly back to the health care system.
  - It has resulted in expansion of pharmacy services.
  - Professional allowances will be eliminated, thereby removing another major source of cost escalation.
  - The plan is flexible when it comes to single source suppliers and substantial raw material cost increases for manufacturers.
33. The Ontario Drug Reform Program has been in effect for over a year and is widely praised and endorsed by most stakeholders. For example:
- The Canadian Association of Retired Persons (CARP). CARP, which has 350,000 members across Canada, two-thirds of whom live in Ontario, says: "*...it strongly supports the generic drug pricing reforms because savings in health care dollars would be used to expand services and cover more medications for Ontarians. CARP members will be very encouraged by the results, and will be looking for the same political membership nation-wide to face down opposition to much needed reforms including bulk purchasing of drugs and ensuring equitable and affordable access to needed drugs and treatment...*" (Source: New Release, Ontario Ministry of Health and Long-Term Care, June 7, 2011.  
[http://www.health.gov.on.ca/en/news/release/2011/jun/nr\\_20110607\\_1.aspx](http://www.health.gov.on.ca/en/news/release/2011/jun/nr_20110607_1.aspx)
  - The Ontario Public Service Employees Union (OPSEU). Warren (Smokey) Thomas, President of OPSEU, which has a membership of 130,000, says: "*..... The Ontario Public Service Employees Union is pleased to see the government take action to curb*

*the fastest growing cost centre for health care – drugs. Canadians now spend more on drugs than they do physicians, and drugs are rapidly catching up to hospitals as the number one health care expense. It's about time Ontario turns its attention to areas within the health system where public money is being inefficiently turned into private profits..."* (Source: ibid)

- *The Canadian Life and Health Insurance Association.* The Association "...congratulates the Ontario Government on its leadership in taking decisive action one year ago to reduce the cost of generic drugs for all Ontarians. According to the Canadian Institute for Health Information, 2010 saw the smallest increase in drug costs to private payers in Ontario in over a decade. This represents a significant saving for plan sponsors and helps to ensure the continued availability of quality supplementary health plans for Ontario workers and their families..." (Source: ibid)
- *The Canadian Cancer Society.* The Canadian Cancer Society ".. applauds the Ontario government on the changes announced today that will enable greater access to funded drugs in Ontario. The Canadian Cancer Society strongly believes all Ontarians should have access to the cancer drugs they need without financial burden. The Society will be monitoring to ensure that the money saved through these initiatives will result in greater access to cancer drugs..." Rick Perciante, Acting Chief Executive Officer, Canadian Cancer Society, Ontario Division. See <http://news.ontario.ca/mohltc/en/2010/04/expanding-access-to-affordable-drugs.html...>

### **Forecast Savings if New Brunswick Adopts Ontario Drug Reform Measures**

34. *New Brunswick Prescription Drug Plan.* The Ontario Drug Reform Measures have resulted in the prices of generic drugs reduced by 50%. Such measures, if adopted by New Brunswick, would result in an annual savings of around \$26 million, estimated as follows:

$$\$190 \times 0.24 \times (1 - 0.25 / 0.6) = \$26 \text{ million}$$

(i) the NBPD's FY 2011/12 budget is set at \$190 million, (ii) generic drugs were dispensed to fill more than 54% of all prescriptions in Canada yet accounting for only 24% of the \$21.5 billion spent on prescription medicines, (ii) 25% is the price cap in Ontario, 60% in New Brunswick.

35. *Private Drug Plans.* If the savings to the New Brunswick Prescription Drug Plan amount to \$26 million, the savings to the private drug plans would be significantly higher. With

a coverage of 394,000 which is 3.75x that of the New Brunswick Prescription Drug Plan, the total savings to the private drug plans are estimated to be:  $26 \times 3.75 = \$98$  million.

36. Other Considerations. These changes still do not address the problem of the 27.5% of our fellow New Brunswickers who still do not belong to a drug plan. It is our guess that most of them may be the working poor whose employers will not or cannot contribute to a private plan but who fail to qualify for the Provincial plan. The New Brunswick Union realizes that the Province needs savings to help alleviate its deficit but we also recommend that the Province consider using some of its savings to expand eligibility. We also suggest that the Province do research to ascertain whether expanding such coverage can in fact produce a net benefit by reducing critical care costs in other sectors of the health care system.

Information made available by the Health Ministry reveals that the number of prescriptions per patient have increased by 148% in 5 years. No explanation is given for this increase. Action on generic pricing should also provide an opportunity to identify reasons and to initiate corrective efforts. If such increases are largely the result of over prescribing or even criminal leakage. Some provinces have, for example, called for a stronger educational role for pharmacies in exchange for higher dispensing fees.

As noted previously, The New Brunswick Union strongly endorses the Government's initiative in seeking to make drugs more affordable and accessible. We hope that the above assists in your deliberations. Representatives of our union are available to discuss our submission at any time convenient for the Department of Health.