RAMQ Modifies Interpretation of Prescription Drug Plan Eligibility Requirement

Plan sponsors across Canada have for many years had to ensure that their plan complies with the unique drug plan regulations in Quebec. In early April 2012, an updated bulletin from the Regie de l'assurance maladie du Quebec ("RAMQ") provided clarification on several plan requirements that may affect employers. It will be important for all plan sponsors with employees in Quebec to ensure that their plans conform to the items in the bulletin.

Background

In Quebec, prescription drug insurance is compulsory and compliance is governed by the Régime général d'assurance médicaments. Two kinds of insurance plans may offer coverage: a public plan sponsored by RAMQ, and plans from private insurers whose contracts and claims adjudication processes must comply with established legal requirements.

Traditionally, the insurance sector has been of the opinion that drug insurance benefits offered under the RAMQ sponsored plan are "minimum benefits" only. Private insurance plans could therefore offer a "greater benefit", which might include elements like additional drug coverage or broadened eligibility criteria. RAMQ’s interpretation on broadened eligibility was different and enforced strict eligibility criteria under the Act respecting drug insurance ("the Act"). As a result, individuals not complying with these eligibility criteria but insured by a private drug plan have been charged penalties by the Minister of Revenue.

Given the significant administrative costs involved, insurance carriers have not generally modified contract definitions to conform to eligibility requirements under the Act. Because very few members have been subject to penalties by the Minister, they have elected to simply reimburse individual members for the amount of the fine.
Modified Interpretation

For many years the Canadian Life and Health Insurance Association (“CLHIA”) lobbied the Quebec government for changes to RAMQ’s legislative structure to bring it in line with the insurance industry’s position that the law specifies minimum requirements only. An exhaustive RAMQ Info Assurance médicaments dated March 2012, that was published on the RAMQ internet site at the beginning of April, confirms a greater tolerance in the interpretation of the legal requirements.

For example, this Info assurance médicaments stipulates that even though legislative definitions of eligibility have not been modified, RAMQ now considers that the obligation to be insured for drugs has been satisfied if a spouse, child or person suffering from a functional impairment is insured under a private drug insurance plan, even where eligibility rules are more generous than requirements under the Act.

RAMQ will therefore consider that the following persons have satisfied legal obligations according to the guidelines outlined above:

- children over age 18 who are not full-time students (in practice, many insurance contracts extend eligibility to children up to age 21);
- a common law spouse who has been living with the insured member for less than 12 months;
- a spouse who is no longer living with the insured member; and
- dependent survivors if premiums are fully paid by the plan sponsor (up to now, drug coverage could be maintained for a maximum of 24 months if premiums were fully paid by the plan sponsor)

Until now, self-employed individuals were not considered eligible for coverage under employer-sponsored plans. Going forward, these individuals have the option to participate if there is sufficient evidence of a "subordination link". A subordination link, such as an exclusive contract agreement with an “employer”, would make the relationship between a self-employed individual and employer very similar to that of a salaried employee. It should be noted that unlike eligible employees who are under age 65, it would appear as though self-employed workers need not be party to their employer’s plan. Should the self-employed worker decline coverage under the employer’s plan, the employer may have the right to make this decision irrevocable.

Outstanding Issues

There are ongoing discussions between RAMQ and insurance carriers over whether or not prescription drug insurance should be mandatory in cases where a health spending account (“HSA”) or critical illness coverage is offered. On behalf of these insurance carriers, the CLHIA has taken the position that an HSA is a fixed allocation rather than insurance against unpredictable and significant financial risk and, therefore, should not be bundled with principles governing drug insurance. It is unclear at this stage where these discussions will lead.
Action Items for Plan Sponsors

For employers sponsoring prescription drug insurance plans in Quebec, it is important to remember that the existing legislative structure remains in place. However, a more tolerant RAMQ interpretation of the Act has changed things namely by:

- Eliminating the need for insurers to modify contracts to conform with RAMQ eligibility criteria in Quebec if the contract is more generous than the minimum requirement;
- Allowing private drug plans to cover dependents and self-employed workers who, up to now, were considered non eligible

The changes outlined above, along with confirmation of RAMQ’s interpretation of the Act, warrant a thorough review of:

- Plan design provisions around drug coverage, specifically eligibility;
- Insurance contracts;
- Financial impacts resulting from a plan sponsor’s legal obligation superseding the plan parameters; and
- Employee communication materials that apply to Quebec members.

This review would ensure that plan design elements satisfy newly interpreted requirements for Quebec employees and the plan sponsor’s objectives.

Should you wish additional information on this topic, please contact your local Aon Hewitt Consultant, or send an email to info@aonhewitt.com.