Employers And Insurers: New Rules On Absence And Disability Management On The Horizon

Introduction

Bill 68, *An Act mainly to reduce the administrative burden of physicians* (the "Act"), which is primarily aimed at reducing non-value-added medical appointments, was assented to by the Lieutenant Governor on October 9.

The Act introduces amendments to the *Act to promote access to family medicine and specialized medicine services* and the *Act respecting labour standards* (the "ALS"), which will significantly change the way both employers and insurers manage absence and disability.

Some provisions will come into force on January 1, 2025, while others will come into force on a date to be determined. This article outlines the key changes introduced by the Act.

Changes that primarily affect insurers and employee benefit plan administrators

In this context, "insurer" means an authorized insurer as defined in the Insurers Act. "Employee benefit plan," as defined in the Act, means a funded or unfunded uninsured employee benefit plan that provides coverage which may otherwise be obtained under a contract of insurance of persons.

A. PROHIBITION ON MEDICAL SERVICE REQUIREMENTS FOR CERTAIN REIMBURSEMENTS

Except in the cases and on the conditions determined by government regulation, the Act provides that no insurer or administrator of an employee benefit plan may require, even indirectly, that an insured, participant or beneficiary receive a medical service in order to obtain:

- reimbursement or payment for services from a health or social service provider;
- reimbursement or payment for a technical aid.

The effective date of these new standards is yet to be determined, but the Act provides that they will come into force on the same date as the first regulation

enacted under section 29.1.

The Act does not define the term “medical service,” as the legislature intended it to be interpreted broadly and liberally to include, in particular, diagnostic, preventive and treatment services.

The term “service provider in the field of health or social services” has been chosen over “health professional” in order to extend the scope of this provision to services provided by professionals not covered by the *Professional Code*, such as kinesiologists and massage therapists.

Finally, the term “technical aid” covers canes, compression stockings, eyeglasses and crutches.

B. PROHIBITION ON DICTATING THE FREQUENCY OF MEDICAL APPOINTMENTS

The Act stipulates that, in order to maintain disability benefits, no insurer or employee benefit plan administrator may require, even indirectly, that an insured, participant or beneficiary receive a medical service **at a predetermined frequency other than that deemed appropriate by the treating physician**. In essence, physicians will determine the frequency of follow-up appointments.

However, the Act allows government regulations to specify instances or conditions for exceptions.

This requirement will come into force on a date or dates to be determined by the government, which may not be earlier than April 9, 2025.

C. SIGNIFICANT FINES FOR NON-COMPLIANCE

The Act provides for administrative penalties and fines of up to $1 million if an insurer or plan administrator contravenes these requirements by mandating medical services.

D. PRESUMED CONTRAVENTIONS IN CERTAIN CASES

Under the Act, if an insurance contract, insurance certificate or employee benefit plan contains a clause that allows the insurer or plan administrator to require an insured, participant or beneficiary to receive a medical service in contravention of the new provisions, the insurer or plan administrator will be deemed to have required such a service.

The effective date of this new provision has yet to be determined, but may not be earlier than October 9, 2027, in order to allow insurers and plan administrators time to amend their relevant contractual clauses and bring them into line with the new standards.

E. STANDARDIZATION AND SIMPLIFICATION OF FORMS

Regulations could be adopted to limit the health and social services information requested from physicians by third parties who have not received medical services from those physicians, including insurers, employee benefit plan administrators and employers.

A standardized form may also be required.

Changes that primarily affect employers

Amendments to the ALS limit the right of employers in certain situations to require a document attesting to the reasons for an employee's absence. These changes come into force on January 1, 2025.

A. EMPLOYEE ABSENCES OF THREE DAYS OR LESS

Under the current ALS provisions, employees must notify their employer of an absence and the reasons for it as soon as possible. Employers may then request a document attesting to the reasons for the absence if justified by the circumstances, in particular the duration or repetitive nature of the absence.

From January 1, 2025, employers will no longer be able to request this document for the first three periods of absence not exceeding three consecutive days in a 12-month period. It should be noted that the calculation of this period starts from the first absence of the year and not from January 1.

B. EMPLOYEE ABSENCES FOR PARENTAL OR FAMILY REASONS

The ALS also provides that an employee may be absent from work for 10 days per year to fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of a relative or a person for whom the employee acts as a caregiver.

If it is warranted, by the duration of the absence for instance, the employer may request that the employee furnish a document attesting to the reasons for the absence.

From January 1, 2025, employers may no longer require employees to provide a medical certificate stating the reasons for the absence, regardless of its duration.

Conclusion

The coming into force of the provisions of the Act will have practical consequences for the management of absence and disability records for employers, insurers and employee benefit plan administrators.

It is expected that a simplified, standardized form will be introduced for doctors to complete.

Employers will also need to adjust their requirements for justifying employee absences to avoid falling foul of the provisions of the ALS.

Insurers and employee benefit plan administrators will need to review their practices in terms of the medical follow-up they require of their insureds, participants and beneficiaries. It will also be imperative to review the content of relevant contractual clauses and make the necessary changes to avoid contravening the new requiremen

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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