Itemized invoices: a new obligation for pharmacists

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Since September 15, 2017, pharmacists have been obliged to provide itemized invoices not just to their clients but also to third parties such as insurers who are involved in the process of paying the cost of drugs.

In response to this new obligation, the Association québécoise des pharmaciens propriétaires ("**AQPP**") petitioned the Superior Court of Quebec in an attempt to limit the distribution of itemized invoices only to individuals who are their customers.

On February 26, 2018, the Court rejected each of the arguments made by the AQPP.[1]

New obligation

On December 7, 2016, Bill 92, whose purpose was to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions,[2] was passed.

Another goal of this legislation was to amend the *Act respecting prescription drug insurance*[3]("**APDI**") and introduce section 8.1.1, which now requires owner pharmacists to provide an itemized invoice to the person paying when a prescription drug is sold or a pharmaceutical service is provided. The invoice must provide an itemized list of the following:

- The pharmacist's professional fees for every service provided;
- The price paid by the basic plan for every medication or product supplied;
- The wholesaler's profit margin;

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- Any other information required by the relevant regulations.

Pharmacists or wholesalers who violate this new provision face a fine of between $2,500 and $25,000.[4]

Consequences for individuals with private prescription drug insurance

Controlling the cost of prescription drugs is a major issue when it comes to ensuring the sustainability of publicly funded prescription drug plans. This is why the Minister of Health and Social Services negotiates the prices and terms for prescription drugs and pharmaceutical supplies and services, based on the recommendations of the Régie de l'assurance maladie du Québec ("RAMQ").

The Minister is also responsible for negotiating with the AQPP to determine the fees that may be charged to patients covered by the public plan. There is also a regulation[5] that requires pharmacists to provide the RAMQ with other information, including the cost of professional fees, when they request payment for a patient insured under the public plan.[6] However, there is no similar oversight in respect of the fees that may be charged to individuals who have private prescription drug insurance, meaning that pharmacists have the discretion to charge fees that are different from those negotiated by the Minister. These fees are added to the cost of the drugs.

Positions of the parties

The parties do not agree on the extent of pharmacists' obligations regarding the itemized invoices. In the opinion of the AQPP, the obligation applies only to individuals (customers) who arrange for their own pharmaceutical services and does not include the insurers who pay. Meanwhile, the RAMQ believes that insurers that are required to pay must also be given a copy of the itemized invoices.

The decision

The Court did not agree with the AQPP's arguments.

In order to interpret section 8.1.1 APDI, the Court first examined the ordinary and grammatical meaning of the text and concluded that there was no difficulty, in the context of the provision requiring that itemized invoices be provided, in extending the obligation of pharmacists to include corporate persons.

The Court rejected the AQPP's second argument, which was that an insurance policy is a contract between the insurer and the client to which the pharmacist is not a party. A more thorough analysis of how insurance policies are applied, and how the claims made by pharmacists to third party payers work, may be more complex, since a client may believe that he or she is paying a portion of the invoice and the insurer is paying the other part.

The Court then analyzed the object, spirit and purpose of the Act, recalling that the APDI is public social policy legislation, the purpose of which is to provide Quebeckers with reasonable and fair access to medications. More specifically, the aim of section 8.1.1 is to provide greater transparency so that payers are informed of the cost of medications and are then able to shop by comparing prices. The competition generated by this new provision means that in broad terms, it is easier to control costs, which is also beneficial for the viability of the prescription drug insurance plan. In the

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opinion of the Court, the transparency sought would be more likely to be achieved if more rather than fewer people received invoices, which is intrinsically more compatible with the purpose of the APDI.

Finally, the Court considered the intention of the legislature by examining the legislative debates. In its opinion, there was no doubt as to the intention underlying the amendment, since the objectives of transparency, openness to competition and cost control were expressly stated in some of the remarks of the Minister of Health and Social Services during the consideration of Bill 92.[7] The Court held that the new section 8.1.1 confirms the intention of the legislature to mandate that itemized invoices be provided to insurers that cover a portion of the payment, to enable them to perform a more effective cost comparison than an individual could.

Conclusion

Pharmacists must comply with section 8.1.1 APDI and provide members of the public, insurers and third-party payers with itemized invoices. Any failure to do so means that they will face fines.[8]

However, the debate is not over, because the AQPP has appealed this decision.[9] Lavery will be watching this case closely and will keep you informed of developments.

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1. *Association québécoise des pharmaciens propriétaires* v. *Régie de l'assurance maladie du Québec,* 2018 QCCS 806.
2. *An Act to extend the powers of the Régie de l'assurance maladie du Québec, regulate commercial practices relating to prescription drugs and protect access to voluntary termination of pregnancy services*, Bill 92 (Assented to on December 7, 2016), 1st Sess., 41st Leg. (QC).
3. CQLR c. A-29.
4. Section 80.5 APDI.
5. *Regulation respecting forms and statements of fees under the Health Insurance Act*, CQLR, c. A-29, r. 7.
6. *Id.* s. 9.
7. *Supra*, note 2.
8. *Supra,* note 4.
9. *Association québécoise des pharmaciens propriétaires* v. *Régie de l'assurance maladie du Québec*, 2018 QCCS 806, application for leave to appeal *de bene esse*, April 3, 2018, n°200-09-009737-187.

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