

## SCHEDULE “E”

### Claims Monitoring and Resolution Mechanism

#### Preamble

In May 2013, the DHW and DNS jointly commissioned Mr. John Carter, FCA to review the claims monitoring and resolution mechanisms that were in place in Nova Scotia at that time. The resulting report, *The Physician Audit and Appeal in Nova Scotia*, recommended a number of improvements based on best practices across the country to ensure appropriate accountability, while at the same time reducing claims payment wait time in some areas.

An implementation team was struck to execute the report’s recommendations, and was comprised of representatives from DNS, the DHW and Medavie Blue Cross (the claims administrator for Medical Services Insurance or MSI), as well as Mr. Carter. This collaborative process has resulted in a new appeal process (Schedule E) that will guide future audit and pre-payment assessment appeals.

All parties agree that it is the physician’s responsibility to ensure claims are appropriate and consistent with the MSI Physician’s Manual and clarifications articulated in the Physicians’ Bulletins and that they meet required minimum standards for billing purposes. To assist the physicians and in the spirit of ongoing collaboration DNS and DHW acknowledge that education of physicians about appropriate billing is a joint responsibility and that together, all parties will continue to work on mechanisms to educate physicians.

1. For the purposes of this Schedule “E”:
  - a) **Audit Period** is limited to the twenty-four (24) months prior to the commencement of the audit, unless otherwise extended pursuant to Article 20;
  - b) **Claims** means both fee for service and shadow service claims;
  - c) **Days** means business days;
  - d) **Implementation Date** means thirty (30) calendar days after Schedule “E” is fully executed by both DNS and DHW;
  - e) **MSI** means Medical Services Insurance as administered by Medavie Blue Cross and any successor organization operating on behalf of the Province of Nova Scotia in respect of the payment to physicians for insured medical services;
  - f) **Monitoring** includes both pre-payment assessment of Claims and post payment audit of Claims;
  - g) **Party** means DHW or the physician;
  - h) **Post payment audit of Claims** includes any automated and/or manual systems and process in place to review Claims submitted by physicians after a Claim has been paid; and

- i) **Pre-payment assessment of Claims** includes any automated (rules in the billing system) and/or manual systems and processes in place to review Claims submitted by physicians prior to payment.
2. DHW, through MSI, shall conduct Monitoring of Claims intended to determine whether:
  - a) the service was an insured service in Nova Scotia;
  - b) the service was performed;
  - c) the service was medically necessary;
  - d) the service was correctly represented in the Claim for payment; and
  - e) the service meets the requirements set out in:
    - i. the Preamble of the MSI Physician's Manual, and
    - ii. any relevant clarification provided to physicians in the MSI Physicians Bulletin
3. DHW, through MSI, shall ensure that the Claims monitoring and resolution process as outlined herein is followed.

### **Pre-Payment Assessment**

4. If a physician's Claims are adjusted or rejected as the result of a Pre-Payment Assessment, the physician will be notified electronically by MSI through the adjudication response (the "MSI Result").
5. The physician is deemed to receive the MSI Result five (5) days after the day the MSI Result is sent.
6. If Pre-Payment Assessment results in adjustment or rejection of a Claim due to rules that are in the billing system, it cannot be disputed by an individual physician. In this circumstance, DNS has the authority, as the sole bargaining agent for physicians in Nova Scotia, to raise the issue with the Master Agreement Management Group, if DNS in its sole discretion determines that the subject matter requires further consideration.
7. If Pre-Payment Assessment results in adjustment or rejection of a Claim for any other reason (including but not limited to Claims assessed as part of the pre-payment assessment of multiple Claims [same patient, same day, same provider] or Claims assessed as part of a random pre-payment assessment process), the physician can dispute the adjustment and/or rejection as provided herein.
8. In order to dispute a MSI Result, the physician must, within ten (10) days after receipt of the MSI Result, contact MSI in writing to initiate the Request for Pre-payment Assessment Review. If the physician fails to contact MSI within that time, he/she is deemed to agree with the MSI Result and forfeits further rights to Facilitated Resolution or Arbitration.

9. Once a Pre-Payment Assessment Review is initiated this will be considered by both the DHW Medical Consultant and the DNS Medical Consultant within fifteen (15) days of receipt of the Request for Pre-Payment Assessment Review.
10. If both the DHW and DNS Medical Consultants determine that the dispute involves a policy decision the MSI Result cannot be disputed by an individual physician and that physician will be notified by DHW, with a copy to DNS. A policy decision includes but is not limited to items specifically negotiated by DNS and DHW. In this circumstance, DNS has the authority, as the sole bargaining agent for physicians in Nova Scotia, to raise the issue with the Master Agreement Management Group, if DNS in its sole discretion determines that the subject matter requires further consideration. The physician will have no further access to the Schedule "E" process for the Pre-Payment Assessment, and no further right of appeal.
11. If one or both of the DHW and DNS Medical Consultants determines that the dispute does not involve a policy decision then the pre-payment assessment will move directly to Facilitated Resolution, commencing at Clause 31.
12. If both the DHW and DNS Medical Consultants agree that the Claims being submitted by a physician indicate a pattern of deliberate non-compliance with the MSI Physician's Manual and/or MSI Bulletins, that physician will have no further access to the Schedule "E" process for the Pre-Payment Assessment, and no further right of appeal on that matter.

### **Post-Payment Audit**

13. A physician may be identified for post-payment audit (the "Audit") in a variety of ways, including but not limited to:
  - Service Verification Letters;
  - Case Mix Grouping - Peer Profiling;
  - Referral;
  - Periodic Random Selection;
  - Use of New Fee Codes;
  - Specific Fee Codes identified for audit.
14. An Audit may occur by way of periodic review of MSI data (periodic review) and/or an on-site visit.

### **Periodic Review**

15. A physician will not be notified in advance of an audit conducted by way of periodic review of MSI data.
16. The results of the Audit will be provided to the physician in writing (the "Audit Result") where, in the auditor's opinion, the periodic review showed the physician's billing to be inappropriate.

## **On-Site Audits**

17. Any physician identified for an on-site Audit will be notified in writing that an Audit will occur and which fee codes will be included in the Audit. The Audit will be scheduled at a mutually agreeable time. The auditor may require inspection of any books, accounts, documents, reports, invoices and patient records in any form, including electronic that are maintained by or on behalf of the physician (the "Records") to clarify or verify services for which Claims have been submitted.
18. The results of the Audit will be provided to the physician in writing (the "Audit Result").

## **Audit Scope**

19. The auditor may, acting objectively and with reasonable notice, extend an audit of a physician's practice to cover fee codes that were not originally selected if the audit results suggest potential for additional incorrect billings. The reasons for extending the fee codes audited must be provided to the physician with the notice of the extension and cannot be challenged as a part of the Audit and Appeal process.
20. The Audit Period may be extended in exceptional circumstances.

## **Notification of Audit Results**

21. For the purposes of Clauses 16 and 18, notice of the Audit results will include:
  - a) a detailed summary of each Claim deemed to be inappropriate with explanatory comments as to the nature of the deficiency;
  - b) the financial implications of the Audit; and
  - c) details on what steps may be taken to resolve the matter, which will include a link to an electronic copy of this Schedule E.
22. The physician is deemed to receive the Audit Result five (5) days after the day it is sent by regular post.
23. A cover letter that identifies the physician, and states that a notice of the Audit Result has been issued, will be copied to DNS; the notice itself, as well as any additional details, will be sent to the physician alone.

## **Audit Review**

24. Where the physician disagrees with the Audit Result, the physician will, within twenty (20) days of receipt of the findings, contact MSI in writing to initiate the Audit Review (Notice of Audit Review). The Notice will include the basis for the disagreement and provide documentation, including all relevant clinical documentation, to support that position. If

the physician fails to provide the Notice to MSI within that time, s/he is deemed to agree with the Audit Result and forfeits further rights to Audit Review, Facilitated Resolution, or Arbitration. If deemed to agree with the Audit Result then any associated recovery shall be made from future payments to the physician. The purpose of the Audit Review is to ensure that MSI has all information/documentation relevant to the Audit.

25. MSI will review all information and documentation provided as part of the Notice of Audit Review. After the Review, the MSI Medical Consultant may do one of the following:
  - a) In order to ensure an efficient and effective Audit Review process, if, in the sole discretion of the MSI Medical Consultant, the Notice provided by the physician does not provide any new information that may change the Audit Result, the MSI Medical Consultant will issue a Notice of Determination and the matter may be referred directly to Facilitated Resolution (without an Audit Review meeting between the MSI Medical Consultant and the physician).
  - b) Request a meeting with the physician, either by telephone or in person, to facilitate the documentation review process; such meeting to be scheduled within fifteen (15) days of receipt of the Notice of Audit Review.
26. Upon review of all additional information/documentation provided to MSI by the physician, MSI will issue a Notice of Determination.
27. The Notice of Determination shall include:
  - a statement of the findings of the Audit, including any adjustments made as a result of the Audit Review;
  - detail of all outstanding issues that have not been resolved; and
  - a form that may be used by the physician to object to the Notice of Determination.
28. A cover letter that identifies the physician, and states that a Notice of Determination has been issued, will be copied to DNS; the Notice itself, as well as any additional details, will be sent to the physician alone.
29. If the physician disagrees with the Notice of Determination, the physician may, by notice in writing, within twenty (20) days from the date he/she receives the Notice of Determination, submit an objection in writing to MSI (the "Notice of Dispute"). In the Notice of Dispute, the physician may only make representations related to matters referred to in the Notice of Determination, or which are related directly thereto. If the physician fails to contact MSI within that time, he/she is deemed to agree with the Audit Result and forfeits further rights to Facilitated Resolution or Arbitration. Any associated recovery shall be made from future payments to the physician.
30. The physician is deemed to receive the Notice of Determination five (5) days after the day it is sent by regular post.

### **Facilitated Resolution**

31. When MSI receives a Notice of Dispute, or where either the DHW Medical Consultant or the DNS Medical Consultant determines that a pre-payment assessment dispute does not

involve a policy decision per Clause 11, the Facilitated Resolution stage will begin. MSI will notify both the DHW and DNS Medical Consultants.

32. DHW and DNS will agree upon a list of Facilitators in a separate document. The Facilitator will be chosen from that list by starting at the top and moving down until a non-conflicted Facilitator is located that is available to begin the Facilitated Resolution within sixty (60) days. In the event none of the Facilitators are available within sixty (60) days' time, the next available non-conflicted Facilitator will be chosen. For each subsequent Facilitated Resolution, the search for available Facilitators will commence at the point on the list that is immediately after the Facilitator most recently chosen to participate.
33. The Facilitated Resolution will proceed on a "without prejudice" basis and will commence on a date agreed upon by DNS and DHW that is no later than sixty (60) days after appointment of a Facilitator; if agreement on a Facilitated Resolution date is not reached, the Facilitated Resolution will commence on the first business day following expiry of the sixty (60) days.
34. The Facilitated Resolution will proceed in accordance with Schedule C of the *Commercial Arbitration Act*, S.N.S. 1999, c.5, (CAA) with the exception of CAA Clauses 2, 15 and 16, and with the Facilitator having the same duties and powers as a CAA mediator.
35. The Facilitated Resolution will involve only the DHW Medical Consultant, the DNS Medical Consultant, MSI audit personnel, the physician, and the Facilitator. For the sake of certainty:
  - legal representatives will not attend the Facilitated Resolution;
  - agreement may only be reached with consensus between the DHW Medical Consultant and the physician;
  - if agreement is reached, the Facilitator will document the terms of the agreement (the Agreement) and the DHW Medical Consultant and the physician will sign the Agreement, at which time the Agreement will become binding on both Parties;
  - if agreement is not reached, the physician has thirty (30) days to provide notice of intent to proceed to Arbitration as outlined herein. If no notice is provided, the physician is deemed to agree with the Audit Results and forfeits further rights to Arbitration.
36. Each Party is responsible for its own legal costs. The Parties will each bear half of all other expenses related to the Facilitated Resolution, unless DHW and DNS agree on an alternative arrangement.
37. If either DHW or the physician do not participate in the Facilitated Resolution, the non-participating party is deemed to have forfeited its claim against the other and the matter is concluded, excepting however where both the DHW and the physician, acting reasonably, agree to reschedule the Facilitated Resolution, it may be rescheduled to a date that is no later than thirty (30) days after the originally scheduled date.

#### **Arbitration by Resolution Panel**

38. Upon receipt of notice to proceed to Arbitration, the dispute will be finally determined by Arbitration presided over by a Resolution Panel (the "Panel"). The Arbitration will proceed in accordance with the *Commercial Arbitration Act*, S.N.S. 1999, c.5, (CAA) except as specifically altered herein. The parties agree that only matters contained in the Notice of Determination which are contested in the Notice of Dispute will be subject to Arbitration.
39. The Panel will be comprised of three individuals, one from each of the Lawyer, Non-Physician, and Physician Categories, as set out in a document agreed upon by both DNS and DHW, and once constituted, shall be an arbitrator under the CAA. All three individuals will be chosen to form the Panel by starting at the top of each Category's list and moving down until a non-conflicted Member from each Category is located that is available to participate in the Arbitration within sixty (60) days' time. In the event none of the Members in a particular Category are available within sixty (60) days' time, the next available non-conflicted Member in that Category will be chosen. For each subsequent Panel, the search for available Members will commence at the point on each Category list that is immediately after the Member most recently chosen to participate on a Panel. The Panel Member chosen from the Lawyer Category will serve as Chair of the Panel.
40. For the Lawyer Category, there will be a roster of no less than three lawyers jointly appointed by DNS and DHW. Each lawyer will serve on the roster for a period of three (3) years, and will be eligible for a second three (3) year term if approved by both DNS and DHW.
41. For the Non-Physician Category, there will be a roster of no less than three non-physicians jointly appointed by DNS and DHW. Each non-physician will serve on the roster for a period of three (3) years, and will be eligible for a second three (3) year term if approved by both DNS and DHW.
42. For the Physician Category, there will be a roster of no less than ten physicians jointly appointed by DNS and DHW. The physicians will serve on the roster for a period of three (3) years, and will be eligible for a second three (3) year term if approved by both DNS and DHW.
43. The physician is entitled to have legal counsel present at the Arbitration. If the physician elects to do so, DHW may also have legal counsel present.
44. The Panel will determine the dispute based on the Physician's Manual, including the Preamble thereto and MSI Bulletins. Relevant written correspondence/documents between MSI and the physician may be considered. Only that version of the Manual and those Bulletins that were in effect at the time the services in dispute were provided will be considered.
45. The Panel will determine the dispute by majority vote.
46. The decision of the Resolution Panel shall be final and binding on the physician and DHW. The Chair will provide a written decision, signed by all members of the Panel, within ten (10) days of the conclusion of the Arbitration.

47. Each Party is responsible for its own legal costs. The Parties will each bear half of all other expenses related to the Arbitration, unless DHW and DNS agree on an alternative arrangement. Notwithstanding the above, the Panel may apportion non-legal expenses as it sees fit.
48. Any amounts owing to either the physician or DHW as a result of the decision of the Panel will be due and payable on the date of the Decision, and will bear interest from that day at the prime rate as calculated by the Minister of Finance from time to time, based upon the variable reference rates of interest declared by the five largest Canadian financial institutions or their successors as their rates for Canadian dollar consumer loans, plus an additional 2%. The prime rate is calculated by ignoring both the highest and the lowest of those five rates and taking the average of the remaining three rates.
49. DHW and DNS agree to review the process one (1) year after its implementation, and agree that, unless the Parties agree otherwise, Schedule “E” will terminate upon termination of the Physician Services Master Agreement.
50. Without limiting the generality of the foregoing, if after one (1) year the Facilitated Resolution phase does not successfully resolve 65% of the files it receives, specifically excluding the files which reach Facilitation by way of the Transition Process, the Facilitated Resolution phase will be removed from Schedule “E”, unless both DHW and DNS agree otherwise.
51. Any clause in this Schedule may be altered or waived with the agreement of the DHW Medical Consultant and the DNS Medical Consultant.

### **Transition Provisions**

52. With the exception of any Arbitrations that are already scheduled as of the Implementation Date of the revised Schedule E, any portion of the claims monitoring process as defined herein that remains outstanding at the Implementation Date shall be governed by the revised Schedule E.
53. With the exception of any Arbitrations that are already scheduled as of the Implementation Date, each physician for whom any portion of the claims monitoring process is ongoing will be notified fifteen (15) days in advance of the Implementation Date.
54. Within twenty (20) days of the Implementation Date, each physician must communicate a request to proceed to the next step in the claims monitoring process, otherwise any outstanding Audit or Pre-payment assessment will be confirmed.
  - a) For greater certainty:
    - i. a physician who has received and disagrees with an Audit Result shall submit to MSI a Notice of Audit Review to initiate Audit Review as outlined herein;
    - ii. a physician who has received and disagrees with a Notice of Determination shall submit a Notice of Dispute in writing to MSI, and Facilitated Resolution shall proceed as outlined herein;



iii. a physician who has submitted a Notice of Dispute but has not yet had Arbitration scheduled shall proceed with Facilitated Resolution as outlined herein.

55. Any dispute that ceases to follow the processes set out in this Schedule E, or the initiation of any insolvency steps by the Physician, will result in the commencement of collection procedures as outlined herein.
56. DNS and DHW agree that, pursuant to s. 7 of the Doctors Nova Scotia Act, this Schedule E is an agreement which DNS may enter into that binds its members.
57. Physicians are only permitted to challenge pre-payment assessment of claims and/or post-payment audit of claims through the processes outlined in this Schedule.
58. The results of any arbitration, facilitated resolution or decision pursuant to clauses 6, 10, 12, 19, 20, and 25(a) are final and conclusive, and are not open to question or review by a court or other body on any grounds, including by way of judicial review.