

SCHEDULE "K"

Claims Monitoring and Resolution Mechanism

Preamble

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:
 - a) **Audit Period** is limited to the twenty-four (24) months prior to the commencement of the audit, unless otherwise extended pursuant to Section 20;
 - b) **Claim** means a fee for service or shadow service claim or report, including for any insured medical service or any other fee or charge payable by DHW;
 - c) **Days** means business days;
 - d) **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;
 - e) **Monitoring** includes both pre-payment assessment of Claims and post payment audit of Claims;
 - f) **Party** means DHW or the physician;
 - g) **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
 - h) **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;

- e) the service and Claim met the requirements set out in the MSI Physician's Manual; and,
 - f) the service and Claim were in accordance with the Physician's contractual obligations.
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 Physician 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, the physician 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 Physician 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 process under this Schedule 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 Section 32.

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 processes under this Schedule 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:
 - a) Service Verification Letters;
 - b) Case Mix Grouping - Peer Profiling;
 - c) Referral (e.g, from another physician, a health authority, the College of Physicians and Surgeons of Nova Scotia);
 - d) Periodic Random Selection;
 - e) Use of New Fee Codes;
 - f) 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, or failing agreement, a date and time within normal business hours determined by the auditor, with prior notice in writing to the Physician. 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.

Audit Results

21. If the auditor determines that 5 per cent or more of the Claims audited were inappropriate, the auditor may extrapolate the percentage of inappropriate billings across all of the physician's billings for the code or codes found to be the subject of an inappropriate Claim, and any financial implication of the Audit will be calculated on the basis of the extrapolation.
22. For the purposes of Sections 16 and 18, the Audit Result will include:
 - a) a detailed summary of each Claim found to be inappropriate with explanatory comments as to the nature of the deficiency;
 - b) the financial implications of the Audit, which may include an amount owing to DHW, a reduction in shadow billing reporting, or a reduction of future funding, in respect of any inappropriate Claim; 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.
23. The physician is deemed to receive the Audit Result five (5) days after the day it is sent by regular post.
24. 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

25. Where the physician disagrees with the Audit Result, the physician may, 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 twenty days, the physician is deemed to agree with the Audit Result and forfeits further rights to Audit Review, Facilitated Resolution, or Arbitration, and in addition to any other remedy available, DHW may recover any amount found owing from future payments to the physician.
26. The purpose of the Audit Review is to ensure that MSI has all information/documentation relevant to the Audit. 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.
27. Upon review of all additional information/documentation provided by the physician, MSI will issue a Notice of Determination.
28. The Notice of Determination shall include:
- a) a statement of the findings of the Audit, including any adjustments made as a result of the Audit Review; and,
 - b) a form that may be used by the physician to object to the Notice of Determination.
29. 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.
30. The physician is deemed to receive the Notice of Determination five (5) days after the day it is sent by registered mail.
31. 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 does not deliver a Notice of Dispute within twenty days, the physician is deemed to agree with the Notice of Determination and forfeits further rights to Facilitated Resolution or Arbitration. Without limiting any other remedy available to DHW, DHW may recover any amount found owing from future payments to the physician.

Facilitated Resolution

32. 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 Section 11, the Facilitated Resolution stage will begin. MSI will notify both the DHW and DNS Medical Consultants.
33. 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.
34. 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.

35. 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 Sections 2, 15 and 16, and with the Facilitator having the same duties and powers as a CAA mediator.
36. 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:
 - a) legal representatives will not attend the Facilitated Resolution;
 - b) agreement may only be reached with consensus between the DHW Medical Consultant and the physician;
 - c) 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;
 - d) if agreement is not reached, the physician has thirty (30) days to provide notice of intent to proceed to Arbitration (in writing) as outlined herein. If no notice is provided, the physician is deemed to agree with the Notice of Determination and forfeits further rights to Arbitration.
37. 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.
38. 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.
39. The Parties agree to review by June 30, 2024 and recommend any changes to PAMG regarding the ongoing need for Facilitated Resolution as part of the audit appeal process once the parties have had adequate time to assess the implications of the Qualifying First Time Audit provision in article 10.2 of the Physician Agreement.

Arbitration by Resolution Panel

40. If the physician delivers a Notice of Dispute, 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 provided herein. Only matters contained in the Notice of Determination which are contested in the Notice of Dispute will be subject to Arbitration.
41. The Panel will comprise 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.

42. 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.
43. 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.
44. 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.
45. The Physician and DHW are entitled to be represented by legal counsel at the arbitration.
46. The Panel will determine the dispute based on the MSI Physician's Manual and applicable legislation. Relevant written correspondence/documents between MSI and the physician may be considered. Only the version of the Manual that was in effect at the time the services in dispute were provided will be considered.
47. The Panel will determine the dispute by majority vote.
48. 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.
49. 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.
50. 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.
51. Any dispute that ceases to follow the processes set out in this Schedule, or the initiation of any insolvency steps by the Physician, will result in the commencement of collection procedures as outlined herein.

52. DNS and DHW agree that, pursuant to s. 7 of the *Doctors Nova Scotia Act*, this Schedule is an agreement which DNS may enter into that binds its members.
53. 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.
54. The results of any arbitration or decision pursuant to Sections 6, 10, 12, 19, 20, and 26(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.
55. Any deadline in this Schedule may be altered or waived with the agreement of DHW and DNS.
56. The Parties may amend this Schedule by agreement.