

# Agreement Between NBCA and WHSCC FOR CHIROPRACTIC SERVICES

This AGREEMENT, entered into the 14th of October, 2015

**BETWEEN:** **THE WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION OF NEW BRUNSWICK** (hereinafter called “WorkSafeNB”) of the First Part:

**AND:** **THE NEW BRUNSWICK CHIROPRACTORS’ ASSOCIATION** (hereinafter called the “NBCA”) of the Second Part:

## A. NON-ECONOMIC COMPONENT

### 1. Statement of Principles

- a) The *Workers’ Compensation Act* mandates the Commission (hereafter referred to as WorkSafeNB) to determine the “necessity, character and sufficiency” of treatment.
- b) Both organizations acknowledge the importance of timely and quality chiropractic reporting in the adjudication and management of a claim.
- c) A Chiropractor may be the claimant’s sole primary care provider. As such:
  - (i) Injured workers do not require a referral to see a chiropractor; and
  - (ii) A Chiropractor’s first report (Form 8C) can initiate or open a claim for an injured worker.
- d) Both organizations recognize WorkSafeNB’s internal research on low back soft tissue injuries (1999), which identified desirable outcomes for chiropractic treatment.
- e) Both organizations recognize the minimum of seven (7) years of post-secondary education required to become a Doctor of Chiropractic able to make a diagnosis, treat patients on a primary contact basis without referral and diagnose conditions not within the scope of chiropractic, making referral to the appropriate profession.
- f) Both organizations acknowledge that chiropractors are often able to treat injured workers without putting them off work by delivering immediate, effective and non-invasive treatment. Effective acute treatment/care (see “Appendix A: Definitions” for a definition of “acute treatment/care”) restores function to the maximum rehabilitation potential, which may be at or below the pre-accident level of function. Effective maintenance treatment/care maintains the progress achieved during the acute treatment,

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and promotes treatment independence through a trial of discharge from maintenance care.

- g) Both organizations acknowledge that prolonged time off work increases the likelihood of never getting back to gainful employment, which in turn can lead to increased rate of morbidity and mortality.
- h) In cases where time off work is necessary, both organizations recognize the importance of a safe and early return to work.
- i) Both organizations recognize that continuity of patient care after return to work is beneficial in managing flare-ups, enhancing home exercise compliance, and addressing patients' concerns to help injured workers remain at work.
- j) Both organizations recognize that employers have a legal duty to accommodate injured workers. To assist WorkSafeNB and employers in return-to-work planning, chiropractors identify limitations and restrictions. WorkSafeNB may use the assistance of occupational therapists to identify work capacity (see "Appendix A: Definitions" for definitions of "work restriction", "work limitation" and "work capacity").

## 2. Ongoing Communications

- a) The NBCA and WorkSafeNB would address issues of mutual interest formally through a joint committee that would meet semi-annually, and informally on a more frequent basis as required, through a subcommittee that may be composed of 1 representative from each organization. Items for discussion would include:
  - (i) Update material in the "Chiropractor's Information Binder" as required.
  - (ii) Discuss the implementation of electronic communication when such systems are available.
- b) The NBCA and WorkSafeNB will work together to provide a reasonable amount of training and support to chiropractors and WorkSafeNB staff on appropriate issues of care for injured workers, which may include conferences on diagnostic, treatment and rehabilitation.
- c) WorkSafeNB will make available its "physician enquiry line" (1-877-647-0777) as an option for chiropractors to contact the Commission on any questions regarding a claim.

## 3. Quality of Care

- a) The Chiropractic profession is a self-governing, self-regulating, primary contact health profession in New Brunswick (*The Chiropractic Act, 1997*) and across Canada. Through on-site peer review and annual continuing education requirements, the NBCA establishes and maintains a professional standard of care. Chiropractors' x-ray equipment is inspected bi-annually by

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a licensed x-ray technologist. The NBCA accepts only those applicants who have graduated from a Chiropractic college accredited by the Council on Chiropractic Education (Canada), and have successfully completed both parts (cognitive skills and clinical skills) of the National Board Examinations set by the Canadian Chiropractic Examining Board. Each year, the NBCA provides WorkSafeNB with a list of members in good standing and informs the Commission if there is ever a member that ceases to hold his/her good standing status.

- b) The Canadian Chiropractic Association has distributed the following clinical practice guidelines to Canadian Chiropractors:
  - (i) Clinical Guidelines for Chiropractic Practice in Canada (1993);
  - (ii) Evidence-based treatment of adult neck pain not due to whiplash (2005);
  - (iii) Practice Guide for the Management of Whiplash-Associated Disorders in Adults (2010); and
  - (iv) The Canadian Chiropractic Association is currently developing the next clinical practice guideline and it will be distributed when released.
- c) The members of the NBCA may refer patients to WorkSafeNB approved healthcare professionals for further opinion on diagnosis and/or treatment. Prior approval is required to ensure that WorkSafeNB will pay for the referral. Chiropractors are encouraged to use either the enquiry line (see 2.c), or submit a separate note to communicate the request to WorkSafeNB.

### **4. Operational Guidelines**

- a) The Commission pays for treatment that is effective. WorkSafeNB defines effective treatment as treatment that restores function (see “Appendix A: Definitions” for a definition of “function”).

#### **Definition acute versus maintenance care**

- b) Acute treatment is care that involves at least 2 sessions per week. Maintenance chiropractic treatment is care in which the frequency of sessions is 1 per week or less, and the purpose of which is to maintain the progress achieved during the acute treatment.

#### **Acute care**

- c) Acute treatment is authorized in sets of up to 21 treatments for claims that are accepted.
  - (i) There is no requirement for prior approval of the initial set of 21 treatments, where a claim has been accepted.
  - (ii) There is a six-month time limit for the delivery of the initial 21 treatments.

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- (iii) Prior approval is required for additional sets of active treatment, which may be from 1 to 21 treatments.
- (iv) WorkSafeNB requires evidence of meaningful progress towards functional goals, set by the claimant's chiropractor in the current authorized set of treatments, to authorize an additional set of active treatment.

### **Maintenance care**

- d) The treating chiropractor can decide when maintenance care can begin and acute care can stop. However, prior approval is required if WorkSafeNB is to pay for maintenance care. WorkSafeNB authorizes approval of maintenance care based on evidence of meaningful progress towards functional goals, set by the claimant's chiropractor in the acute phase of treatment.
  - (i) Acute treatment does not have to be completed prior to initiating maintenance care. Initiation of maintenance care cancels out unused acute treatments.
  - (ii) The initial maintenance care is to a maximum of 3 months.
  - (iii) If indicated, a second maintenance program of maintenance care for up to 3 months may be requested, which is to be used as a weaning off period (i.e., decreasing frequency of treatment) in preparation for a trial discharge, which is to take place at the end of the program. If there is demonstrable loss of functionality during a discharge of a reasonable length of time, then this must be documented and sent for review.
  - (iv) If continuation of maintenance care is indicated based on functional deterioration, authorization is for a block of up to **26** treatments over the next year. The frequency of the **26** treatments is determined by the attending chiropractor.
- e) Orthotics:
  - (i) If a Chiropractor recommends an orthotic, the chiropractor must obtain authorization for payment prior to prescribing the orthotic.
  - (ii) WorkSafeNB may also refer claimants to a chiropractor for an orthotics assessment.
- f) WorkSafeNB manages chiropractic treatment on a case-by-case basis. WorkSafeNB may ask for the assistance of a chiropractor, identified by WorkSafeNB, to provide consulting services. The NBCA would assist WorkSafeNB by identifying chiropractors with unique skills appropriate to functional restoration and return to work.

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## **5. Reporting**

- a) The chiropractor's initial report (Form 8C) is to be submitted within 5 working days of the initial assessment. WorkSafeNB considers an initial assessment to be the first visit for a new injury, or the first visit for a recurrence of a previous injury occurring at least 3 months after discharge from care for that injury. This does not apply to maintenance care or block treatment (see 4.g).
- b) Progress reports (Form 10C) should be submitted at least monthly during acute care and at least every 3 months during maintenance care.
- c) Reports must be legible and complete. Illegible and incomplete reports will be returned and payment of services may be withheld until a complete and legible report is received.
- d) Where the chiropractor provides treatment to a claimant for more than one claim during the course of a visit, the chiropractor will submit a separate Form 8C or 10C for each claim. This ensures that costs are allocated to the correct claim; and avoids the appearance of overcharging for a visit.
- e) WorkSafeNB will pay a premium for complete and legible Form 8C reports that are received within 5 working days of initial assessment, as described in section "B: Economic Component". WorkSafeNB may withhold payment for the initial assessment until it receives a complete and legible report, as noted in 5 (c) above. The completed, legible form must be received within 5 working days of the initial assessment to qualify for the report premium.
- f) WorkSafeNB will pay the Form 8C report fee for no action and denied claims, provided the report is complete and legible.
- g) WorkSafeNB will pay a premium for complete and legible Form 10C reports in the form of an additional fee added to the treatment fee, as described in section "B: Economic Component". WorkSafeNB may withhold payment for treatments until it receives a complete and legible report, as noted in 5 (c) above.
- h) The NBCA and WorkSafeNB will make revisions to Form 8C and Form 10C as needed.
- i) The NBCA encourages fax reporting (1-888-629-4722) as an option or when expediency is an issue. The original form does not have to be sent in if the report is faxed.
- j) The NBCA and WorkSafeNB will discuss the implementation of e-communication when such systems are available.

## **6. Protection From Suit**

When WorkSafeNB authorizes and reimburses the chiropractor for a professional service, the chiropractor shall be deemed to be a contractor,

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sub-contractor or worker(s) of a contractor or sub-contractor pursuant to subsection 70(3) of the *Workers' Compensation Act*.

## **7. Consent To Release Information To WorkSafeNB**

Section 18 of the Personal Health Information Privacy and Access Act of NB (Sep. 1, 2010) provides authority for the chiropractor to release information to WorkSafeNB under subsections 41(10) and 44(2) of the *Workers' Compensation Act* without consent of the patient/claimant. In completing a request to file a claim by completing a Form 6/7, the worker provides express permission for any chiropractor involved in the claim to provide information to the Commission and to the employer related to the compensable condition.

## **8. Term**

1. The term of this Agreement shall be open-ended from July 1, 2015, but comes into effect, without retroactivity, on the date of execution by both parties.
2. The annual year, for the purpose of adjusting fees, shall be October 1 to September 30 of the following year.
3. The parties will reconvene 6 months prior to the 4-year anniversary of the Agreement to assess the Agreement.

## **9. Termination**

This Agreement may be terminated by either of the parties to this Agreement at any time for any reason, by giving six (6) months written notice to the other party at the address and in accordance with the process set forth in section/clause 11 herein. The notice of termination shall outline the reasons for termination. Each party shall attempt to meet the other party as soon as possible and attempt to address the issues outlined in the notice of termination with a view to enter into a new agreement before this Agreement is terminated.

## **10. Amendments**

The terms of this Agreement may be modified by the mutual agreement of the Chiropractic Association and WorkSafeNB. Any such amendment, modification or supplement must be in writing and signed by the parties.

## **11. Notice**

Any notice required to be given hereunder shall be deemed to have been properly given if delivered personally or sent by pre-paid registered mail as follows:

- i) To WorkSafeNB:

WorkSafeNB  
P.O. Box 160

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Saint John, New Brunswick  
E2L 3X9

Attention: Shelly Dauphinee  
Vice-President, WorkSafe Services

ii) To the New Brunswick Chiropractors' Association:

New Brunswick Chiropractors' Association  
944 Prospect Street, Suite 206  
Fredericton, NB  
E3B 9M6

Attention: Mohamed El-Bayoumi  
Chief Executive Officer

And if sent by registered mail, shall be deemed to have been received on the 4<sup>th</sup> business day of uninterrupted postal service following the date of mailing. Either party may change its address for notice at any time by giving notice to the other party pursuant to the provisions of this Agreement.

## **12. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada in force therein.

## **13. Invalidity Of Provision**

The invalidity or unenforceability of any provision of this Agreement or any covenant in it shall not affect the validity or enforceability of any other provision or covenant in it and the invalid provision or covenant shall be deemed to be severable.

## **14. No Implied Or Collateral Obligations**

The parties acknowledge that there are no representatives, warranties, agreements or conditions, expressed or implied, collateral to or otherwise forming part of or in any way affecting or relating to this Agreement except as specifically set forth or referred to in this Agreement and that this Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements, undertakings, negotiations and discussions.

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## B. ECONOMIC COMPONENT

1. The duration of this contract is open-ended from July 1 2015 as noted in “8. Term”.
2. The annual year, for the purpose of adjusting fees, shall be October 1 to September 30 of the following year.
3. The fees in effect on June 30 2015 shall be increased by 1.43% (the inflation rate applied to physicians for the period October 1 2014 to September 30 2015) for the period of July 1 2015 to September 30 2015 with such increases in fees to come into effect on the date of execution of this Agreement
  - a) \$45.00 + 1.43% Office call/treatment
  - b) \$40.00 + 1.43% Initial assessment consultation, examination and diagnosis
  - c) \$12.00 + 1.43% Form 8C that is complete, legible and received within 5 working days of initial assessment for no action claims, claims denied and claims accepted
  - d) \$45.00 + 1.43% for 1 set of x-rays
  - e) \$75.00 + 1.43% for 2 sets of x-rays
  - f) Up to \$300 + 1.43% for orthotics. Requires prior authorization and evidence of medical effectiveness (see Item #6).
  - g) \$100.00 + 1.43% per page for narrative reports requested by the Commission. Narrative reports are specially requested reports and do not include Form 8C and Form 10C.
4. The fee for completion of an F10C report is calculated by increasing the office call/treatment fee by an amount equal to the F8C report fee divided by the average number of services per F10C report.
  - a) The average number of services per F10C report in 2014 was 4.
  - b) The F8C report fee for July 1 2015 to September 30 2015 is  $\$12.00 + 1.43\% = \$12.17$
  - c) The office call/treatment fee for July 1 2015 to September 30 2015 is  $\$45.00 + 1.43\% = \$45.63$ . This would be increased by \$3.04 ( $\$12.17 \div 4$ ) to cover the F10C reporting fee. This would give a total treatment fee of \$48.67.
  - d) Henceforth, the “office call/treatment” fee will be understood to include the reporting fee; and annual adjustments will apply to the combined fee.
5. Fees shall thereafter be adjusted annually on October 1, starting in 2015.
  - a) The annual fee increase is based on the announced annual inflation rate used by WorkSafeNB to adjust the NB Industrial Aggregate Earnings for the next year, as set out in Section 38.1(1) of the WC Act of NB (2009).
    - (i) This inflation rate is the percentage increase in “Consumer Price Index” for Canada for all items for the twelve month period ending the thirtieth day of June in each year as determined by WorkSafeNB in August of each year on the basis of monthly reports published in that respect by Statistics Canada for that period”.

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- b) The annual fee increase for October 1 2015 is 1.49%. This will be in addition to the July 1 2015 fee increase of 1.43%.
6. **Prostheses, orthoses, and assistive devices:** WorkSafeNB approves and shall pay reasonable fees for prostheses, orthoses, and assistive devices only if they are medically effective in the treatment or ongoing care of a compensable injury (WorkSafeNB Policy No. 25-014 – Medical Aid Decisions, and Policy No. 25-007 – Prostheses, Orthoses and Assistive Devices). Requires prior authorization and evidence of medical effectiveness. Medically effective devices are ones that:
- improve functioning;
  - are sufficient to meet rehabilitative goals;
  - minimize the risk of further injury or aggravation of the original injury; and,
  - are appropriate given the physical characteristics of the injured worker.
7. The fees represent the full charge for Chiropractic services to WorkSafeNB clients. The Chiropractor may not extra-bill WorkSafeNB clients, as per section 41(9) of the *Workers' Compensation Act*.

IN WITNESS whereof, the parties hereto have caused this Agreement to be executed on the day and year first above written under "Term".

Signed, Sealed and Delivered  
In the presence of

**Workplace, Health, Safety and Compensation  
Commission**  
Per:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Gerard Adams, CA  
President and CEO, WHSCC

\_\_\_\_\_  
(Date)

**The New Brunswick Chiropractors'  
Association**  
Per:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Dr. Norm Skjonsberg  
President, NBCA

\_\_\_\_\_  
(Date)

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## Appendix A: Definitions

1. **Active treatment:**
  - a. From a chiropractor's perspective refers to the frequency of treatments per week.
  - b. From the Commission's perspective refers to whether the patient/claimant takes an active role (e.g., exercise) versus a passive role (e.g., manipulation).
2. **Acute treatment/care:** is care that involves at least 2 sessions of chiropractic treatment per week versus "maintenance treatment/care" in which the frequency of sessions is 1 week or less.
3. **Disability duration guideline:** that interval of time following injury or surgery after which 70-75% of persons are able to return to work. The Commission bases its guidelines primarily on Presley Reed's "The Medical Disability Advisor". The Commission's disability duration guidelines (DDGs) are posted on (1) its website at [www.worksafe.ca](http://www.worksafe.ca) under "Health Care Providers", and (2) through Dalhousie CME (<http://cme.medicine.dal.ca>) website – go to "Online Courses" under "Programs in Detail", then "The Gozma MSK Files" (to be changed in the fall of 2012 to "Occupational Health Courses and Resources"), and then select "Disability Management" from the drop-down list in the "OccMed Resources for Clinicians" tab.
4. **Function:** from the Commission's perspective, the basic goal of care is to restore the injured worker to all possible functional activities as soon as possible after the injury or onset of industrial disease (WorkSafeNB Medical Aid Principles Policy 25-001). Functional activities include: activities of daily living, family activities, social activities, recreational activities, and work activities.
5. **Return to work program:** refers to an individualized program in the workplace designed to ease an injured worker back to pre-accident, modified or alternate duties by altering how work is done, what is done and/or the work schedule. It involves the coordinated effort of relevant stakeholders [e.g., employer, worker, WHSCC, healthcare provider(s)] to address individual needs, workplace conditions and legal responsibilities.
6. **Work limitations** are what the claimant cannot do based on objective pathology (e.g., because of a loss of an arm).
7. **Work restrictions** are what the claimant could do but should not do based on objective pathology (e.g., should not drive because of recent seizures).
8. **Work capacity** refers to the claimant's strength, flexibility and endurance when maximally conditioned through physical activity.
9. **Work tolerance** is the non-measurable, non-objective factors that impact on a claimant's return-to-work (e.g., fatigue, pain).