

Bill 41 Regulations – Issue and Options Analysis

Issue #9: Inducements



Date: September 10, 2009 (revised)

Introduction and Background

PricewaterhouseCoopers LLP (“PwC”) has been engaged to work with the Manitoba Pharmaceutical Association (“MPhA”) and the Manitoba Society of Pharmacists (“MSP”) to assist with building consensus around thirteen issues, which were identified by the Steering Committee (see Appendix A), and which relate to the Bill 41 Regulations, thereby facilitating progress towards approval of the Regulations.

On March 5, PwC facilitated a Stakeholder Mapping Workshop that was attended by members of the Steering Committee and a representative of Manitoba Health and Healthy Living (“MHHL”). This workshop resulted in validation of the key stakeholders and a documented understanding of which stakeholder organizations/groups were perceived to be most interested in being engaged in consultations regarding each of the thirteen issues.

On April 7, 2009, PwC facilitated a full-day retreat (“Retreat”) involving several representatives of MPhA and MSP, and a representative of MHHL. During the retreat, PwC facilitated a series of discussions regarding twelve of the thirteen identified issues; the “Distance Care” issue was not addressed during the retreat because it was deemed too complex for productive discussion within the time available. During the Retreat, MSP and MPhA agreed upon specific action plans for seven of the twelve issues that were discussed; MSP and MPhA also agreed that further facilitated consultation was merited in relation to the remaining five issues.

At the Retreat, MPhA and MSP agreed to the following Action Plan regarding the regulations pertaining to inducements:

- MPhA and MSP generally agree that implementing regulatory control over inducements is difficult due to the many competing interests and the lack of evidence regarding any implications to patient safety; however, MPhA and MSP need to come to an agreement on the wording of the regulation;
- MPhA will review the regulation based on feedback received at Retreat;
- Overall, there is lots of interest around Inducements outside of MPhA and MSP;
- It is important to recognize that there is strong public opposition to restrictions on inducements; and
- MPhA and MSP would like to see pharmacy license holders be responsible for resolving this issue.

On August 27, 2009, PwC facilitated a Focus Group with representatives from key stakeholder groups to this issue. The objectives of the Focus Group were as follows:

- To ensure that the Option Paper accurately reflects significant perspectives held by key stakeholders;
- Where necessary, to improve common understanding of the intent of the Regulations and/or stakeholder concerns;
- To build consensus around the most popular/preferred options for resolving stakeholder concerns, which will be presented to MPhA members in a Town Hall Meeting on September 16; and
- To help facilitate subsequent approval of a (revised) Bill 41 Regulations document by the MPhA membership.

See Appendix B for material that was located in the body of this Option Paper when this Paper was provided to the Focus Group participants prior to the event. This material was moved from the body to the Appendix after the Focus Group event when the report was updated to reflect the insight and directional recommendations from the Focus Group.

Overview of Issue

The term *inducements* refers to the offering or providing of incentives by a member or a pharmacy owner; inducements are defined to include the following types of incentives: points, loyalty points, bonus point events or rewards which can be redeemed for a gift or other benefit

N.B. incentives that are offered or provided by a third party, such as incentives provided by a credit card/debit card issuer are excluded from this regulation; the regulation applies only to incentives over which the dispensing pharmacist or pharmacy’s owner has control.

Presently, the offering and/or providing of inducements while engaging in the practice of pharmacy is not prohibited (i.e. is allowed) in the province of Manitoba); however, if approved, the draft Regulations would impose restrictions on inducements: *with the exception of the retail sale of a drug not pursuant to a prescription, a member or owner must not offer or provide a patient or his or her agent any of the following in the course of performing any activity described under section 2(1) of the Act:*

- (a) *points, loyalty points, bonus point events or rewards which can be redeemed for a gift or other benefit for the portion of the cost of the dispensed drug or service provided when paid by a third party insurer; or*
- (b) *any promotion or event that would provide an increase in the usual amount of points, loyalty points or reward.*

PwC conducted a jurisdictional review of the practices and policies that have been adopted by four other Provincial Pharmacy Colleges. The jurisdictional review found that the Ontario College has prohibited inducements, whereas the Colleges in British Columbia, Alberta, and Saskatchewan currently allow inducements. However, the Colleges in both Alberta and Saskatchewan have indicated that they are continuing to study inducements and are giving further consideration to restricting inducements.

Stakeholders that are opposed to restrictions on inducements have asserted that there is no evidence that inducements pose a material risk to patient care or safety. Stakeholders who support restrictions on inducements assert that inducements can result in the following adverse effects:

- “bonus days” for inducements could cause an unmanageable increase in workload for the on-duty pharmacists on the bonus day, which could increase the propensity for error;
- “bonus days” could also encourage a patient to defer filling a prescription until the next “bonus day” even when the prescription should be filled immediately in the interest of safety and care; and
- inducements could encourage a patient to procure drugs that the patient doesn’t require to obtain the associated inducements.
- the risk of a patient acquiring unnecessary drugs, which the patient doesn’t require, to benefit from the inducements is much greater when a significant portion of the cost of the drugs is paid or reimbursed by a third-party.

Options Paper

The remainder of this document provides information and background related to this issue, which may help you in preparing for the focus group. Specifically, the following information has been provided:

- **Issue Analysis and Suggested Course of Action:** A summary analysis of the issue and suggested course(s) of action that reflect the concerns, perspectives, and directional recommendations that evolved in the Focus Group on this issue and from prior consultations, and research.
- **Summary of Positions:** A summary of the positions of MPhA Council, the MSP (Board), MHHL, the Inducements Sub-committee, and CACDS and other retail store stakeholders has been provided. This summary identifies each stakeholder’s high-level concerns and/or current opinion regarding the issue.
- **Jurisdictional Comparison:** A high-level summary of how other jurisdictions in Canada address the issue has been provided; and
- **Background:** The background document provides additional detail regarding the issue, including pertinent sections of the proposed draft regulations, detailed information on stakeholder concerns and/or positions; and a detailed summary of how key jurisdictions within Canada address the issue.

Issue Analysis and Suggested Course(s) of Action

The following table breaks the issue down into a number of constituent concerns, articulates key perspectives associated with each of the concerns, and advocates one or more course of action to address the concerns. Please note the following points regarding the manner in which information has been organized and presented within the table:

- The **Situation** column contains information that PwC understands to be factual and is necessary to understand the corresponding *concerns*.
- The listed **Concerns** were identified through the work conducted prior to the Focus Group and/or during the Focus Group itself. Listing of a concern does not imply that the concern has been validated, nor does it imply that the concern is widely held; listing of a concern simply acknowledges that the concern has been expressed by one or more stakeholders. The *concerns* were grouped according to commonality of the respective *situation*, *perspectives*, and *suggested course of action*.
- The **Perspectives** are arguments, claims, and assertions, which may be based on facts, anecdotal information, and/or opinions. Inclusion of a *perspective* does not imply that the underlying assertion has been validated. Concerns relate to the situation and concerns are either supported or refuted by the *perspectives*.
- The **Suggested Course of Action** reflects PwC’s analysis of the respective *situation*, *concerns*, and *perspectives*. In most cases, the *suggested course of action* aligns very closely with the directional recommendations from the Focus Group; in some cases the *suggested course of action* also reflects additional research and analysis that PwC conducted after the Focus Group.

Situation	Concerns	Perspectives	Suggested Course of Action
<p>MPHA modified the manner in which the draft Regulations documents define inducements between the July 2007 document and the December 2007 document:</p> <ul style="list-style-type: none"> • Specifically address bonus days; • Remove references to gifts, rebates, and bonuses and add a reference to rewards; and • Associate inducements with payment by a third party. <p>These definitions are provided below for reference.</p> <p>Draft Pharmaceutical Regulations Policy Document, July 30th, 2007:</p> <p>(a) a gift;</p> <p>(b) a rebate;</p>	<ul style="list-style-type: none"> • What are inducements and how should they be defined in relation to the practice of pharmacy? • Are the terms that have been used in the draft Regulations self-evident, or are they open to interpretation? • Who will have the authority to determine whether certain promotions qualify as inducements? • Why were the terms “gift”, “rebate” and “bonus” removed from the draft Regulations? How does a “gift” or “rebate” differ from a “reward” or “loyalty points”? 	<ul style="list-style-type: none"> • Both definitions of inducements that have been proposed in the draft Regulations are open to interpretation (i.e. interpretation of the terms “gift”, “rebate”, “rewards”, etc). • It is difficult to craft a robust definition for inducements; it is difficult to craft a definition that is immune to disagreements and challenges to the definition. • The reasons why the definition of inducements was changed between the two draft versions of the Regulations are not fully evident. • Stakeholders may challenge the meaning/definition of the terms used in the definition, e.g. what 	<ul style="list-style-type: none"> • Remove all restrictions on inducements from the Regulations, replacing the restrictions with a reference to a (future) Practice Direction that could facilitate future restrictions on inducements. This approach would likely facilitate approval of the Regulations, allow MPhA to monitor other jurisdictions positions and approaches to inducements, and to place restrictions on inducements at some future time when greater consensus on this matter has evolved. • N.B. The recommendation to accommodate regulation of

Situation	Concerns	Perspectives	Suggested Course of Action
<p>(c) a bonus; (d) points, loyalty points or rewards which can be redeemed for a gift or other benefit; or any other inducement of a similar nature.</p> <p>Draft Pharmaceutical Regulations Policy Document, December 2007:</p> <p>(a) points, loyalty points, bonus point events or rewards which can be redeemed for a gift or other benefit for the portion of the cost of the dispensed drug or service provided when paid by a third party insurer; or (b) any promotion or event that would provide an increase in the usual amount of points, loyalty points or reward.</p>		<p>constitutes a “reward”?</p>	<p>inducements through a Practice Direction is predicated on adoption of formalized, good-practice processes for development of Practice Directions. This would include fair and transparent consultation processes, clear documentation of the rationale for the Practice Direction, and a transparent appeal process. Recommendations regarding Practice Directions are discussed in more detail in the Option Paper that deals specifically with Practice Directions.</p>
<p>The premise for placing restrictions on inducements is that inducements may promote patient behaviors that are detrimental to patient safety and/or care.</p>	<ul style="list-style-type: none"> Do inducements pose a risk to public safety and/or patient care? 	<ul style="list-style-type: none"> Inducement programs result in pharmacists having to spend time answering patients’ questions regarding inducements, which is valuable time that pharmacists would rather spend providing counseling. Some patients are preoccupied with understanding and monitoring the inducement offers during the time when pharmacists are providing counseling, which may detract from the value of the counseling. Will offering of inducements detract from the perceived professionalism of pharmacists, especially under scenarios of an expanded role for pharmacists? 	<ul style="list-style-type: none"> Remove all restrictions on inducements from the Regulations, including instead a reference to a Practice Direction. This approach would likely facilitate approval of the Regulations, allow MPhA to monitor other jurisdictions positions and approaches to inducements, and to place restrictions on inducements at some future time.

Situation	Concerns	Perspectives	Suggested Course of Action
		<p>For example, would it appear unprofessional for an Extended-practice Pharmacist to offer inducements?</p> <ul style="list-style-type: none"> • If inducements are not prohibited, will there be a conflict of interest issue when pharmacists begin to initiate prescriptions? • There is no statistically significant data that has been brought forward that clearly demonstrates that inducements pose material risks to patient safety or care; however, there are a number of anecdotal examples of detrimental impacts from inducements. There is acknowledgement that patients may not disclose detrimental impacts relating to inducements, so the any detrimental impacts would be extremely difficult to quantify, which tempers the significance of the lack of data. • There is no clear precedent established by other jurisdictions regarding inducements. Some have prohibited inducements, some have not; some of the jurisdictions that have not prohibited inducements are continuing to analyze the issue with interest in possibly imposing restrictions. • There is majority support amongst pharmacists to ban inducements; however, it is not clear whether this support is derived from concerns regarding patient safety/care or whether it is derived 	

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		<p>from pharmacists' preference not to be burdened with discussing the particulars of inducement programs with patients.</p> <ul style="list-style-type: none"> • Pharmacies that are currently offering inducements believe that the inducements are not problematic and they should not be restricted; however, if they were restricted, the result would be a leveling of the competitive field, which is not unfair from a competitive perspective. Note: leveling of the competitive field falls outside the mandate of the MPhA; i.e. MPhA is not responsible for, and does not have a mandate to, level the competitive field; the assertion is only included to acknowledge that imposing the restrictions would not cause or introduce unfairness in the competitive environment. • The stakeholder that is most likely to be the most strongly opposed to restrictions on inducements is the public. • MHHL has indicated that the Government of Manitoba might exercise its veto power over any regulations that restrict inducements, if it deems the regulations to be contrary to public interest. • When inducements were banned in Ontario, it caused a number of issues to develop, including an increase to the amount of time that pharmacists had to spend 	

Situation	Concerns	Perspectives	Suggested Course of Action
		<p>discussing the loyalty program with patients (e.g. why the patient would no longer earn points on drugs); however, the issues and commotion subsided after about six months.</p> <ul style="list-style-type: none"> Inducements may provide patients with incentive to split their prescriptions between pharmacies, which is sub-optimal from a patient care perspective; however, there are many factors that contribute to the use of multiple pharmacies. 	
<p>The premise for placing restrictions on inducements is that inducements may promote patient behaviors that are detrimental to patient safety and/or care.</p>	<ul style="list-style-type: none"> If inducements do pose a risk to public safety and/or patient care, is the risk only material (i.e. significant) when a substantial portion of the cost of the respective service or product is paid or reimbursed by a third party (i.e. substantial coverage or reimbursement by a third party creates a value proposition that encourages a patient to behave in a way that is contrary to safety and/or good care). 	<ul style="list-style-type: none"> Under some circumstances, the benefits to the patient from an inducement program might outweigh the cost of the drug or service if the inducements are provided in proportion to the total value of the product or service. By restricting the provision of inducements such that they are provided only in proportion to the cost borne by the patient, excluding the portion paid by a third party, this may greatly reduce any incentive to acquire drugs or services that are not required. Third party payers can and are placing restrictions on inducements. For example, third payer agreements from organizations ESI Canada and NIHB prohibit inducements (third party payers). Therefore, perhaps restrictions on inducements relating to costs paid by third party payers rest with the third party 	<ul style="list-style-type: none"> If restrictions are placed on inducements, do not limit the restriction to only the cost borne by third party payers.

Situation	Concerns	Perspectives	Suggested Course of Action
		<p>payers, not the pharmacy regulator?</p> <ul style="list-style-type: none"> Pharmacies will not be able to prevent patients from paying the full value of a prescription up front and the recovering a portion of the cost from the third party payer in a separate transaction; thus there is an easy means for patients to defeat the purpose of the proposed restriction. Placing a restriction on inducements that are associated with costs paid by third parties is administratively complex and may result in pharmacists having to spend even more time explaining the “rules” to patients, taking more time away from counseling. Pharmacies are opposed to the administrative complexity of a restriction that applies only to costs paid by third parties. 	
<p>The number of prescriptions that are processed by a pharmacy may be significantly higher on bonus days than what is typical to the pharmacy.</p>	<ul style="list-style-type: none"> Do bonus days impose an unacceptable risk to public safety and/or patient care? 	<ul style="list-style-type: none"> Volume increases that result from bonus days are considerably more predictable than volume fluctuations that result from other factors (e.g. weather); because the volume impacts of bonus days are predictable, pharmacy managers may be better able to plan staffing levels to accommodate bonus days than they are able to plan to accommodate other factors that affect business volume on a given day. Some pharmacy managers have indicated that they consider the 	<ul style="list-style-type: none"> Remove the control/restriction on bonus days, replacing it with a requirement that Pharmacy managers must keep records that demonstrate that staffing levels are increased appropriately on bonus days to handle the higher than typical volume.

Situation	Concerns	Perspectives	Suggested Course of Action
		<p>increased volumes that occur on bonus days when preparing their staff schedules; conversely, other pharmacists, who have worked in pharmacies that offered bonus days, indicated that they have experienced situations where staffing levels were not increased on bonus days; some pharmacists also indicated that they had experienced very stressful working conditions on bonus days because staffing levels were not increased or not increased sufficiently to accommodate the higher volume of prescriptions dispensed on the bonus days.</p> <ul style="list-style-type: none"> • Bonus days result in pharmacists having to spend time discussing the bonus day reward with the patients; pharmacists would rather spend this time on counseling. • There is no known statistical data that demonstrates that bonus days result a greater number of errors or compromise patient care. 	

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Summary of Positions

MPhA Council	MSP (Board)	MHHL
<ul style="list-style-type: none"> ▪ MPhA Council believes that inducements could have implications on patient safety. ▪ MPhA Council notes that bonus days were eliminated/prohibited by the release of the December (revision) document. ▪ MPhA Council believes that this is the most they can do: removal of bonus days and can't accumulate points (i.e. inducements) if drugs are paid for by third party ▪ MPhA Council is primarily concerned with inappropriate use or accumulation of drugs. 	<ul style="list-style-type: none"> ▪ MSP (Board) prefers the original wording of the Draft Regulations (dated July 30, 2007) over the revised wording introduced the Dec. 3, 2007 Draft Regulations because the original wording included a clearer definition of inducements. (See Options for more detail). ▪ MSP (Board) is most concerned with ensuring that Bonus Day inducements continue to be prohibited. ▪ MSP (Board) would like to see better clarifications of the definition of loyalty points (gifts and benefits). 	<ul style="list-style-type: none"> ▪ MHHL identified two main issues: (i) struggle with the regulator telling the business how to operate their business (marketing strategy) and (ii) if inducements jeopardize patient care/safety. ▪ MHHL believes it is inappropriate for any statement on whether inducements jeopardize patient care to be stated in the regulations. ▪ This is a business issue and should not be regulated.

CACDS and Retail Store Stakeholders	Inducement Sub-committee
<ul style="list-style-type: none"> ▪ CACDS stated that loyalty programs, discounting, bonuses, incentives, or other marketing programs do not need to be regulated; nor do they diminish the image of the profession of pharmacy, and consumers have embraced a high level of acceptance and participation in loyalty programs. ▪ CACDS and most (if not all) retailers do not believe there is a need for the regulations. ▪ Retailers noted that inducements go beyond the restrictions noted (e.g., Aeroplan Credit Cards that offer extra points for pharmacy purchases, free parking, etc.) Current Draft Regulations do not consider the full picture. 	<ul style="list-style-type: none"> ▪ Sub-committee voted 11-3 in favor of the following regulation to be forwarded to council: <i>With the exception of the retail sale of a drug not pursuant to a prescription, a member or owner must not offer or provide a patient or his or her agent any of the following in the course of performing any activity described under section 2(1) of the Act:</i> <ul style="list-style-type: none"> (a) <i>Points, loyalty points, bonus point events, coupons, or rewards redeemable for cash, goods, or services.</i> (b) <i>Prescription delivery is exempt from this regulation.</i>

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Proposed Action Plan:

The MPhA Council and the MSP Board agreed upon the following Action Plan at the April 7, 2009 Retreat:

MPhA and MSP generally agree that implementing regulatory control over inducements is difficult due to the many competing interests and the lack of evidence regarding any implications to patient safety; however, MPhA and MSP need to come to an agreement on the wording of the regulation. MPhA to review the regulation based on feedback received at Retreat. Overall, there is lots of interest around Inducements outside of MPhA and MSP; it is important to recognize that there is strong public opposition to restrictions on inducements. MPhA and MSP would like to see pharmacy license holders be responsible for resolving this issue.

Jurisdictional Comparison

Criteria	Ontario	Saskatchewan	Alberta	British Columbia
Inducements Permitted?	<ul style="list-style-type: none"> ▪ No. 	<ul style="list-style-type: none"> ▪ Yes. 	<ul style="list-style-type: none"> ▪ Yes. 	<ul style="list-style-type: none"> ▪ Yes.
Regulatory Instrument	<ul style="list-style-type: none"> ▪ Policy on Loyalty Points Programs (Council Decision). 			
Limitations	<ul style="list-style-type: none"> ▪ Council policy restricts: <ul style="list-style-type: none"> – Bonus points, loyalty points or air miles may not be awarded on pharmaceuticals or related services. – Points or awards may not be redeemed for the purchase of prescriptions. – Services may be purchased using credit cards linked to loyalty programs. 	<ul style="list-style-type: none"> ▪ Any complaint of inducements which interfere with public safety may result in a professional misconduct investigation. 		<ul style="list-style-type: none"> ▪ If a pharmacist advises a patient to act in a manner that could cause harm to the patient, it is considered professional misconduct (e.g. advising a patient to defer filling a prescription to take advantage of an upcoming Bonus Day, etc.).
Future Changes			<ul style="list-style-type: none"> ▪ Some public and College stakeholders (e.g., members, etc.) have indicated that inducements are inappropriate. As a result, council is working towards stricter legislation. 	<ul style="list-style-type: none"> ▪ The Regulator’s current strategic plan includes an initiative to investigate the College’s legal authority to impose restrictions on the use of inducements.
Key Challenges				<ul style="list-style-type: none"> ▪ Legal opinion received to-date has indicated that restrictions imposed on inducements through By-laws would be rendered ineffective by senior legislation.

Background

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Draft Pharmaceutical Regulations: Policy Document, December 3, 2007	
Inducements	<p>73(1) With the exception of the retail sale of a drug not pursuant to a prescription, a member or owner must not offer or provide a patient or his or her agent any of the following in the course of performing any activity described under section 2(1) of the Act:</p> <p>(c) points, loyalty points, bonus point events or rewards which can be redeemed for a gift or other benefit for the portion of the cost of the dispensed drug or service provided when paid by a third party insurer; or</p> <p>(d) any promotion or event that would provide an increase in the usual amount of points, loyalty points or reward.</p>
Inducements: Previous Wording from Draft Pharmaceutical Regulations Policy Document, July 30th, 2007	<p>73 (1) With the exception of the retail sale of a drug, a member or owner may not offer or provide a patient or their agent any of the following in the course of performing any activity described under section 2(1) of the Act:</p> <p>(a) a gift;</p> <p>(b) a rebate;</p> <p>(c) a bonus;</p> <p>(d) points, loyalty points or rewards which can be redeemed for a gift or other benefit; or any other inducement of a similar nature.</p>
Positions	
MPhA Position / Comments	<p>Meeting: Retreat: April 7, 2009</p> <ul style="list-style-type: none"> ▪ MPhA Council believes that inducements could have implications on patient safety. ▪ MPhA Council notes that bonus days were eliminated/prohibited by the release of the December (revision) document. ▪ MPhA Council believes that this is the most they can do: removal of bonus days and can't accumulate points (i.e. inducements) if drugs are paid for by third party ▪ MPhA Council is primarily concerned with inappropriate use or accumulation of drugs.
MSP Position / Comments	<p>Meeting: Retreat: April 7, 2009</p> <ul style="list-style-type: none"> ▪ MSP (Board) prefers the original wording of the Draft Regulations (dated July 30, 2007) over the revised wording introduced the Dec. 3, 2007 Draft Regulations because the original wording included a clearer definition of inducements. (See Options for more detail).

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	<ul style="list-style-type: none"> ▪ MSP (Board) is most concerned with ensuring that Bonus Day inducements continue to be prohibited. ▪ MSP (Board) would like to see better clarifications of the definition of loyalty points (gifts and benefits). <p>Document: MSP Position Statement: February 27, 2009</p> <p>The Manitoba Society of Pharmacists has conducted extensive consultation with the membership and has concluded that the majority of members support restricting certain inducements. The Society, in representing the membership, supports the general intention of section 73 of the MPhA Discussion Document and believes that the regulations must address the following:</p> <ol style="list-style-type: none"> 1) Terms such as "gift", "rebate", "bonus point events", "loyalty points" and "rewards" must be clearly defined in the regulations; 2) Eliminate the collection of a "gift ... rebate", "bonus point events". or "points", "loyalty points" and "rewards" in relation to the practice of pharmacy and the sale of medications by prescription 3) Section 73 as drafted in the July 30th, 2007 Discussion Document more effectively addresses the inducement issue than the amended wording included in the December 3rd, 2007 Discussion Document.
Government	<p>Meeting: Retreat: April 7, 2009</p> <ul style="list-style-type: none"> ▪ MHHL identified two main issues: (i) struggle with the regulator telling the business how to operate their business (marketing strategy) and (ii) if inducements jeopardize patient care/safety. ▪ MHHL believes it is inappropriate for any statement on whether inducements jeopardize patient care to be stated in the regulations. ▪ This is a business issue and should not be regulated.
Surveys	<p>Document: MSP Questionnaire 9 – Inducements</p> <ul style="list-style-type: none"> ▪ More than 77 percent of total respondents (99) agreed with the restrictions contained in the July 30, 2007 Draft Regulations. ▪ More than 80 percent agreed that each term (e.g., gift, loyalty program, etc.) needed to be defined in the regulations. <p>MPhA Explanation Document February 6th, 2008 Section 73 Inducements</p> <p>This section has received a lot of attention in the meetings and written responses. Council has suggested changing this section to allow for inducements to be offered in all areas of the "practice or pharmacy", including the included practices under section 2(2) of the Act. Inducements, therefore, can be</p>

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	<p>offered and provided for the:</p> <ul style="list-style-type: none"> ▪ retail sale of all drugs, ▪ sale of drugs pursuant to a prescription, ▪ prescribing of drugs, ▪ administration of drugs, ▪ the interpretation of patient-administered automated tests, and, ▪ the ordering and receiving of reports of screening and diagnostic tests. <p>Inducements cannot be offered or provided:</p> <ul style="list-style-type: none"> ▪ for the portion of the cost of the dispensed drug (pursuant to a prescription) or service that is paid by a third party, or, ▪ during a promotion event that would provide an increase in the usual amount of inducement provided. <p>April 2007: MPhA Discussion Document Membership Response¹</p> <ul style="list-style-type: none"> ▪ Section 73: 67% (143) in favour <p>July 2007: MPhA Discussion Document Membership Response¹</p> <ul style="list-style-type: none"> ▪ Section 73: 70% (74) in favour <p>March 2008: MPhA Membership Vote on December 2007 Discussion Document¹</p> <ul style="list-style-type: none"> ▪ Section 73: 32% (157) in favour
Inducement Sub-committee	<ul style="list-style-type: none"> ▪ Sub-committee voted 11-3 in favor of the following regulation to be forwarded to council: <i>With the exception of the retail sale of a drug not pursuant to a prescription, a member or owner must not offer or provide a patient or his or her agent any of the following in the course of performing any activity described under section 2(1) of the Act:</i> (c) <i>Points, loyalty points, bonus point events, coupons, or rewards redeemable for cash, goods, or services.</i> <i>Prescription delivery is exempt from this regulation.</i>
MPhA Standards of Practice Committee	<p>Document: MPhA Standards of Practice Committee: Review of Draft Bill 41 Regulations (March 27, 2007)</p> <ul style="list-style-type: none"> ▪ 100 percent of the Committee felt that Bonus Points were a safety and health care issue and that Bonus Points should not be an option; ▪ Approximately 1/3 believed there should be allowance for inducements as long as Bonus point

¹ It is noteworthy that the surveys conducted by MPhA asked members whether they were in favor of the *intent* of the referenced section.

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	<p>were not allowed;</p> <ul style="list-style-type: none"> ▪ Approximately 2/3's believed that that inducements should not be allowed, without exception. It was expressed that section 73 should be made "ironclad" for prescriptions; ▪ The 1/3 in favour of inducements but without bonus points believed that points were a business issue and should remain acceptable. ▪ It was believed that delivery and parking were part of the dispensing process and were not inducements
CACDS and Retail Stakeholders	<ul style="list-style-type: none"> ▪ CACDS stated that loyalty programs, discounting, bonuses, incentives, or other marketing programs do not need to be regulated; nor do they diminish the image of the profession of pharmacy, and consumers have embraced a high level of acceptance and participation in loyalty programs. ▪ CACDS and most (if not all) retailers do not believe there is a need for the regulations. ▪ Retailers noted that inducements go beyond the restrictions noted (e.g., Aeroplan Credit Cards that offer extra points for pharmacy purchases, free parking, etc.) Current regulations do not consider the full picture.
Jurisdictional Review	
Ontario	<p>Policy on Loyalty Points Programs</p> <ol style="list-style-type: none"> 1. Bonus points, loyalty points or air miles may not be awarded on prescriptions, prescription services, or other professional services related to the practice of pharmacy in Ontario. 2. Points may not be redeemed, or used as legal tender, for the purchase of prescriptions. 3. Prescriptions, prescription services, or other professional pharmacy services may be paid by a major credit card that is linked to awards, loyalty points or air miles through special agreements with financial institutions, except where directly or indirectly, a special gift, bonus, or other inducement is offered for prescriptions, prescription services or other professional pharmacy services.
Saskatchewan	<p>At the current time there is acceptance for the offering of inducements on prescriptions and prescription services in Saskatchewan, so long as it does not interfere with public safety.</p> <p>Pharmacists are to exercise their professional judgment in the offering of inducements. Complaints whereby these inducements have a negative effect on public safety are investigated; disciplinary action is taken if appropriate.</p>

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Alberta	<p>Presently, there are no regulations in Alberta specifically prohibiting inducements on prescription services. The Alberta College of Pharmacists determined not to submit legislation changes on the topic in the most recent changes presented; however, there continues to be discussions on the topic.</p> <p>In June 2008, Council assigned a high priority to efforts to work towards stricter legislation governing the provision of inducements or incentives by pharmacies in exchange for goods or professional services provided by a pharmacist. Some members of the public and some of the College’s key stakeholders (e.g., members, etc.) have indicated that the offering of inducements is inappropriate considering the nature of ACP submission to Alberta Health and Wellness on Alberta’s Provincial Pharmaceutical Strategy (July 2008) recommended that:</p> <p>7. Legislation should be enacted, placing the following conditions on the use of inducements exchanged in return for professional goods and services provided by pharmacists, pharmacy owners, or any other regulated health professional:</p> <ul style="list-style-type: none"> ▪ Inducements shall not be provided in return for prescribing any treatment; ▪ “Bonus” inducements shall not be provided in return for any drug prescribed or dispensed in a pharmacy; and, ▪ Inducements shall only be awarded based on the amount personally paid by the client.
British Columbia	<p>It is a part of the College of Pharmacists of British Columbia current strategic plan to investigate the College’s authority in the offering of inducements. A legal opinion obtained by the College indicated that any restrictions imposed on inducements through the College’s By-Laws would be superseded and rendered ineffective by senior legislation.</p> <p>Currently in British Columbia, inducements on prescriptions and prescription services are permitted.</p> <p>If a pharmacist advises a patient to act in a manner that could cause harm to the patient, it is considered professional misconduct (e.g., advising a patient to defer filling a prescription to take advantage of an upcoming Bonus Day, etc.).</p>

Appendix A - Brief Overview of the 13 Issues

- 1. Pharmacy Manager Qualifications:** requirement to satisfy a number of practice hours as a pharmacist or a training program in order to be eligible to become a pharmacy manager;
- 2. Professional Liability Insurance:** requirement for both pharmacists and pharmacies to carry professional liability insurance.
- 3. Pharmacy Technicians:** the ability of the Regulations to establish qualifications, experience and other assessments that must be held by a pharmacy technician and the role and duties they can perform.
- 4. Pharmacist Profiles:** the development of a profile for certain health care professionals (i.e., in this case, for each Pharmacist) – a record which includes personal, professional, and other information for the purpose of being made available to the public.
- 5. Pharmacist Prescribing:** the ability of pharmacists to prescribe medication and /or treatment. .
- 6. Tele-pharmacy:** the provision of pharmacy services to residents in remote communities that do not have reasonable access to pharmacy services. (See section 37 of draft)
- 7. Central Fill Component:** the ability of Hospital and Community Pharmacies to package medication and fill prescriptions for another pharmacy.
- 8. Extended Practice Pharmacists & Specialty Care Practice:** the establishment of extended practice pharmacists, and the role of the Extended Practice Advisory Committee.
- 9. Inducements:** the offering or providing of gifts, rebates, bonuses, or inducements while engaging in the practice of pharmacy.
- 10. Practice Directions / Standards of Practice:** the ability of the Council to make practice directions in over 20 discrete areas.
- 11. Distance Care Component:** the standards required to provide services to patients who do not attend the pharmacy in person. This can involve International Pharmacy Services (“IPS”), inter-province services, and intra-province services.
- 12. Personal Health Identification Number (“PHIN”):** a prescription may not be dispensed unless a patient profile made and retained; in cases where the patient is a Manitoba resident that has been assigned a PHIN, the PHIN of the patient shall be recorded in the profile in accordance with the appropriate practice directions.
- 13. Record Keeping:** the need for Pharmacists to maintain records and documentation related to work conducted.

Appendix B – Focus Group Preparation Materials

This Issue and Options Analysis has been developed to provide context and structure to the Focus Group concerning Inducements.

The *Inducements* issue is composed of the following concerns:

- i. Do inducements pose a risk to public safety and/or patient care? If so, is the risk only material (i.e. significant) when a substantial portion of the cost of the respective service or product is paid or reimbursed by a third party (i.e. substantial coverage or reimbursement by a third party creates a value proposition that encourages a patient to behave in a way that is contrary to safety and/or good care);
- ii. Do bonus days impose an unacceptable risk to public safety and/or patient care?

N.B. the purpose of the above list is to acknowledge concerns that have been expressed some stakeholders and to provide structure for the Focus Group discussions; inclusion of a concern in this list does not imply that the concern has been validated. Furthermore, inclusion of a concern does not imply that the concern is common to the majority of Manitoba Pharmacists.

Purpose

The purpose of this focus group is to discuss the concerns that have been raised by stakeholders and to identify the preferred option to resolve the above noted concerns.

Discussion Questions

In order to foster a knowledgeable and fruitful discussion of this issue during the focus group, the following questions are being provided for your thoughtful consideration when you prepare to participate in the Focus Group.

1. Under what circumstances could inducements provide a patient with adequate incentive to purchase something that they don't need or to defer purchasing something they need immediately (e.g. third party payor)?
2. What examples or evidence can you cite that support or refute the assertion that inducements impose risks to public safety and patient care? Given available information, which types of inducements are problematic?
3. If inducements are to be restricted in the Regulations, how would you define inducements? How could the definitions used in the discussion documents and/or draft Regulations be improved?
4. What do you perceive the public's attitude to be in relation to inducements and the imposition of restrictions on inducements (in relation to pharmacy services)?
5. Should bonus days be prohibited in relation to the practice of pharmacy?

Potential Options

#	Concern	Option 1	Option 2	Option 3
i.	Do inducements pose a risk to public safety and/or patient care? If so, is the risk only material (i.e. significant) when a substantial portion	Maintain the wording from the December 2007 draft Regulations, which allows inducements to be offered/provided on the portion of the	Permit inducements to be offered/provided on the full cost of drugs/services, regardless of what portion of the cost is paid by the patient	Prohibit the offering/providing of inducements by the member or pharmacy owner on any portion of the cost of drugs/services

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	of the cost of the respective service or product is paid or reimbursed by a third party (i.e. substantial coverage or reimbursement by a third party creates a value proposition that encourages a patient to behave in a way that is contrary to safety and/or good care);	cost of the drugs/services that are paid by the patient, while prohibiting inducements on the portion of the cost that is paid by a third party	and what portion is paid by a third party.	provided through the practice of pharmacy.
ii	Do bonus days impose an unacceptable risk to public safety and/or patient care?	Prohibit bonus days, consistent with the Dec 2007 draft regulations.	Permit bonus days.	