Regulations and other Acts

Gouvernement du Québec

O.C. 468-2011, 4 May 2011

An Act respecting Héma-Québec and the haemovigilance committee
(R.S.Q., c. H-1.1)

Héma-Québec
— Conditions for compensation to victims of a product

Regulation respecting the conditions for compensation to victims of a Héma-Québec product

WHEREAS, under section 54.11 of the Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., c. H-1.1), introduced by section 4 of chapter 45 of the Statutes of 2009, the Government must, by regulation, determine the conditions that must be met by a person claiming compensation and determine which adverse effects are not bodily injuries;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting the conditions for compensation to victims of a Héma-Québec product was published in Part 2 of the *Gazette officielle du Québec* of 17 November 2010 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS the 45-day period has expired and no comments were made following that publication;

WHEREAS, under section 17 of that Act, a regulation comes into force 15 days after the date of its publication in the *Gazette officielle du Québec* or on any later date indicated in the regulation or in the Act under which it is made or approved;

WHEREAS it is expedient to make the Regulation without amendment;

IT IS ORDERED, therefore, on the recommendation of the Minister of Health and Social Services:

THAT the Regulation respecting the conditions for compensation to victims of a Héma-Québec product, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the conditions for compensation to victims of a Héma-Québec product

An Act respecting Héma-Québec and the haemovigilance committee
(R.S.Q., c. H-1.1, s. 54.11; 2009, c. 45, s. 4)

1. For the purposes of section 54.1 of the Act, the following immunological and hemodynamic reactions, associated with the normal constituents of blood products in relation to the standards in force when a Héma-Québec product is administered, are adverse effects not constituting a bodily injury:

— haemolytic reaction;

— allergic reaction;

— anaphylactic reaction;

— febrile non-haemolytic transfusion reaction;

— circulatory overload;

— graft disease against the secondary host following transfusion or graft;

— transfusion-related acute lung injury (TRALI);

— post-transfusion hypertensive or hypotensive reactions;

— post-transfusion alloimmune thrombocytopenia or neutropenia;

— erythrodermia;

— hemochromatosis;

— transient transfusion-related acute dyspnea;

— cephalgia;

— aseptic meningitis;

— vagal shock;

— post-transfusion purpura;

— development of irregular antibodies;

— post-transfusion thrombotic and vascular events;

— complications associated with a massive transfusion, such as metabolic acidosis, hypocalcemia, hypomagnesemia and hyperkalemia,

2. A person claiming compensation under the compensation plan for victims of a Héma-Québec product must apply to the Minister of Health and Social Services by means of a written declaration indicating

(1) the name, date of birth and address of the victim who suffered the bodily injury, as well as the victim's health insurance number;

(2) the person's name, address and quality, if acting as the victim's representative or as a person entitled to a death benefit;

(3) the name or nature of the Héma-Québec product giving rise to the application, the place and date of the medical act, and the name of the person who performed the medical act, if known to the applicant;

(4) the date of the first manifestation of symptoms of the bodily injury suffered by the victim;

(5) the date of the victim's death in the case of an application for a death benefit.

3. The applicant must sign the declaration which must be accompanied by a medical certificate stating the bodily injury suffered by the victim and assessing the causal link between the bodily injury and the product received by the victim and distributed by Héma-Québec.

Where the applicant is acting as the representative of the victim, the applicant must also attach to the declaration proof of his or her right to act in that capacity.

In the case of an application for a death benefit, the applicant must also attach to the declaration the death certificate and proof of status as a person entitled to a death benefit.

4. Upon request by the Minister or, as the case may be, the public body to which the Minister entrusted the management of this compensation plan under section 54.10 of the Act, the applicant must also provide the particulars required under the Automobile Insurance Act (R.S.Q., c. A-25) and its regulations for the purposes of calculation of the compensation.

If the applicant fails to provide those particulars, the applicant must give the Minister or public body, as the case may, the authorization necessary to obtain the particulars from third persons concerned.

5. Upon request by the Minister or the public body, as the case may be, the applicant must furnish proof of any fact establishing entitlement to compensation.

The Minister or public body may accept any form of proof that the Minister or public body considers useful for the purposes of justice.

The Minister or public body may also require the submission of any document the Minister or public body considers necessary.

6. An application for compensation is duly filed with the Minister if it is filed at one of the Minister's offices in Québec or Montréal or is mailed to one of those offices within the time prescribed by section 54.4 of the Act.

7. Upon receipt of an application for compensation, the Minister sends an acknowledgment of receipt to the applicant.

8. An application for compensation may be withdrawn or amended at any time by means of a notice in writing signed by the applicant.

9. Any application submitted under this Regulation is examined by an evaluation committee made up of 3 physicians on the roll of the Collège des médecins du Québec, except in the cases referred to in the second and third paragraphs of section 20.

The committee consists of a physician appointed by the Minister and of a physician appointed by the applicant; it is chaired by a third physician appointed by the first two.

Where a member of the committee is absent or unable to act before the committee has made its recommendations to the Minister, the member is replaced as soon as possible in the manner provided for in the second paragraph.

10. The Minister assumes the cost of the services rendered by the members of the evaluation committee and by any person added to the committee when required, and the cost of any services rendered by any expert physician consulted by the committee.

11. The evaluation committee's functions are

(1) to examine the cases submitted to it and assess the bodily injury suffered in each case;

(2) to evaluate if there is a probable causal link between the bodily injury suffered by the victim and the Héma-Québec product;

(3) to evaluate, with the assistance of the Société de l'assurance automobile du Québec, the compensation, if any, to be paid pursuant to the Automobile Insurance Act and its regulations; and

(4) to make recommendations to the Minister on the matters referred to in paragraphs 1 to 3.

12. The evaluation committee or one of its members may examine the victim.

Such examination must be performed taking into consideration the victim's clinical history, including

(1) a statement of relevant antecedents;

(2) physical and mental disorders and their development;

(3) intercurrent difficulties and illnesses; and

(4) drug history.

The examination must also include a physical examination with particular emphasis on the system affected by the medical act that gave rise to the bodily injury.

13. From indications obtained by examination of the victim and from any other relevant indication, the evaluation committee or the committee member who performed the examination must

(1) make a diagnosis; and

(2) determine the disability and the non-pecuniary damage suffered by the victim, having regard to the provisions of the Automobile Insurance Act pursuant to which the victim could be paid compensation.

The committee or the committee member must also mention any special consideration that could affect the victim's disability and the nature and duration of any proposed treatment.

14. Where the victim's disability cannot be determined in a definitive manner, a provisional determination must be made. In such case, the evaluation committee sets a date when it will meet again to make a final recommendation on the application.

Sections 10 to 13 and 16 to 21 apply in such a case, with the necessary modifications.

No reimbursement may be claimed by virtue of the fact that the definitive disability of the victim is less than his or her provisional disability.

15. Sections 11 to 13 do not apply to an application for a death benefit.

16. The evaluation committee may ask Héma-Québec any information necessary for the carrying out of its mandate. Héma-Québec must cooperate with the committee to that end.

17. The evaluation committee must, in addition, request the opinion of an expert physician where, in the opinion of a member of the committee, the opinion is required for medical evaluation of the victim or to establish the probability of the causal link between the bodily injury suffered and the Héma-Québec product.

18. The evaluation committee must give the victim or applicant the opportunity to provide all relevant information or documents to complete his or her file.

19. The recommendations of the evaluation committee must be adopted by a majority vote and reasons must be given.

Any dissenting member may attach his or her own recommendations and reasons to the majority recommendations.

The evaluation committee then sends all the recommendations to the Minister so that the latter may take cognizance of them.

20. The Minister renders a decision in writing, after examining the recommendations of the committee and of any dissenting member.

Despite the foregoing, where an application appears, however, on its face, to be prescribed or inadmissible for a reason other than a reason of a medical nature, the Minister may render a decision without the application having been examined by an evaluation committee.

The same applies where the Minister must render a new decision or an additional decision on a case and the decision does not involve any reason of a medical nature.

21. The Minister sends the decision to the applicant by mail and sends a copy to the members of the committee.

The decision has effect from the date of its notification.

22. Any compensation unpaid at the time of the victim's death is to be paid to the victim's successors.

23. Where the prescription period provided for in section 54.4 of the Act expires on a day on which the Minister's offices are close, the time period is extended to the next working day, and the application for compensation may be validly made on that day.

24. No proceeding under this Regulation may be considered void and disallowed for defect of form or procedural irregularity.

25. If there is an interruption in postal service, the Minister may accept or use any other method of filing or service.

26. This Regulation comes into force on 31 May 2011.

1432

Gouvernement du Québec

O.C. 470-2011, 4 May 2011

Health Insurance Act
(R.S.Q., c. A-29)

Insured visual aids
— Amendment

Regulation to amend the Regulation respecting visual aids insured under the Health Insurance Act

WHEREAS, under subparagraph *h*.1 of the first paragraph of section 69 of the Health Insurance Act (R.S.Q., c. A-29), the Government may, after consultation with the Board or upon its recommendation, make regulations to determine the visual deficiencies, the services and the sets or subsets of visual aids that must be considered to be insured services for the purposes of the sixth paragraph of section 3 of that Act, fix the age of the insured persons referred to therein and determine classes of insured persons, determine the cost reimbursed by the Board to an institution recognized by the Minister in respect of an insured person with a visual deficiency and the cases and conditions in and on which the Board reimburses the cost of the insured services and in and on which the services are furnished, and prescribe the cases and conditions in and on which such visual aids may or must be recovered;

WHEREAS the Government made the Regulation respecting visual aids insured under the Health Insurance Act by Order in Council 1403-96 dated 13 November 1996;

WHEREAS it is expedient to amend the Regulation;

WHEREAS the Régie de l'assurance maladie du Québec has been consulted with respect to the amendments;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation to amend the Regulation respecting visual aids insured under the Health Insurance Act was published in Part 2 of the *Gazette officielle du Québec* of 22 December 2010, with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation to amend the Regulation respecting visual aids insured under the Health Insurance Act;

IT IS ORDERED, therefore, on the joint recommendation of the Minister of Health and Social Services and the Minister for Social Services:

THAT the Regulation to amend the Regulation respecting visual aids insured under the Health Insurance Act, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting visual aids insured under the Health Insurance Act*

Health Insurance Act
(R.S.Q., c. A-29, s. 3, 6th and 9th pars., and s. 69, 1st par., subpar. *h*.1)

1. The Regulation respecting visual aids insured under the Health Insurance Act is amended by replacing its title by "Regulation respecting insured visual aids and related services".

2. The following is inserted before section 1:

"**CHAPTER I**
GENERAL

0.1. In this Regulation, the word "tariff" refers to the Tariff for insured visual aids and related services, made by the Régie de l'assurance maladie du Québec under section 72.1 of the Health Insurance Act (R.S.Q., c. A-29).".

* The Regulation respecting visual aids insured under the Health Insurance Act, made by Order in Council 1403-96 dated 13 November 1996 (1996, *G.O.* 2, 4725), was last amended by the regulation made by resolution No. C.A.410-04-11 dated 18 May 2004 of the Régie de l'assurance maladie du Québec (2004, *G.O.* 2, 1645). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2010, updated to 1 October 2010.