

**Insurers Admitted to  
"Expensive Care Unit"**  
A practical analysis of Bill 22, BC's new  
*Health Care Costs Recovery Act*

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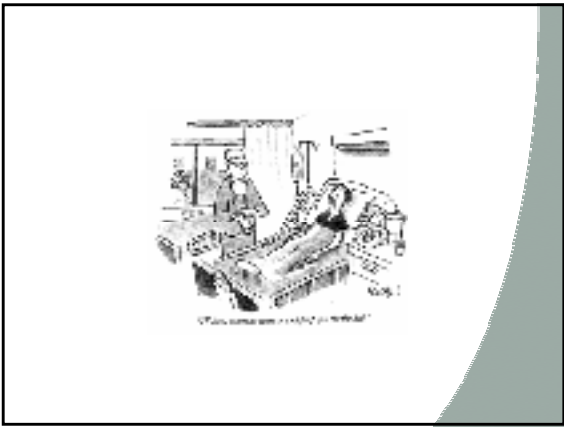
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**From the Government of BC's  
"Conversation on Health"**

Cost of providing health care – today and tomorrow:

- **\$12.83 billion:** cost of providing health care across government, 2006/07
- **\$35 million:** estimated cost to the province of operating the BC health care system for one day
- **42%:** the percentage of total gov't spending that goes to health care in 2008
- **70%:** the percentage of total gov't spending that health care could consume by 2017

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### **Beneficiary's right to recover**

2(1) If, as a direct or indirect result of the negligence or wrongful act or omission of a wrongdoer, a beneficiary suffers a personal injury for which the beneficiary receives or could reasonably be expected to receive one or more health care services, the beneficiary may recover from the wrongdoer:

- (a) the past cost of health care services, and
- (b) the future cost of health care services.

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### **Beneficiary's right to recover**

- Subsection (1) applies whether or not the personal injury was caused in whole or in part by the wrongdoer

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### **Obligation to claim**

3(1) If a beneficiary or his/her legal representative commences a legal proceeding against a person alleged to be the wrongdoer for damages, the beneficiary or his/ her legal representative must include a health care services claim in that legal proceeding.

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**Requirement to notify government of claim**

4(1) Within 21 days after commencing a legal proceeding, written notice must be given to government

(a) by the beneficiary or his/her personal or legal representative, or

(b) by the lawyer for the beneficiary's or beneficiary's legal representative

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**Final disposition of claim or legal proceeding**

5(1) A legal proceeding must not be discontinued or dismissed by consent unless the consent of the minister is filed with the court.

(2) The court must not set aside or dismiss a claim unless the court is satisfied that the government has been given a reasonable opportunity to appear and make representations

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**Final disposition of claim or legal proceeding**

5(3) The court must not make an order finally disposing of a legal proceeding unless it is satisfied that the government has been given both of the following:

(a) the written notice required under section 4

(b) written notice of the application for the order of final disposition

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### **Government intervention**

6(1) The government may do any of the following:

- (a) intervene in the proceeding
- (b) on written notice, assume conduct of the health care services claim portion of the proceeding

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### **Government – subrogated right**

7(1) The government is subrogated to any right of the beneficiary to recover costs of health care services

- (2) It may commence legal proceedings to recover costs
- (3) Consolidated legal proceedings

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### **Government has independent right to recover**

8(5) The government must not commence a proceeding until after the later of the following two dates:

- (a) 6 months after the expiration of the limitation period that applied to the beneficiary's right to commence a proceeding against the alleged wrongdoer
- (b) the earliest of the following dates:
  - (i) 6 months after the gov't receives notice under section 4...

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**Information from insurer**

10(1) This section applies to an insurer of a person if an act or omission of the insured person has or may have caused or contributed to the personal injury or death of a beneficiary.

(2) An insurer must, within 60 days after learning of the matter, notify the minister of those circumstances in the prescribed form.

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**Information from insurer**

10(3) The minister may request the following from the insurer:

- (a) a copy of the insured's policy
- (b) a copy of the police report (if any)
- (c) a copy of any related affidavits, pleadings or application

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**Beneficiary's duty to give notice**

12 At least 21 days before a beneficiary or his/her legal representative enters into any settlement, he or she must give notice to the minister in the prescribed form and in accordance with the regulations, if any, under section 25(2)(d).

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**Settlement of claims**

13 (1) A claim against a person alleged to be the wrongdoer for damages must not be settled unless

- (a) the person who would be liable to make payments gives the minister notice of the proposed terms of settlement
- (b) the minister consents in writing to the proposed settlement

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**Settlement of claims**

13 (5) If the person does not give notice in accordance with the provision

- (a) the government has the right to recover from that person the total amount of the health care services relating to the injury
- (b) the total amount may be recovered as a debt due to the government

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**Settlement of claims**

13 (6) The person liable to make payments must submit the full payment within the time period provided under subsection (7)

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## Settlement of claims

13 (8) Any release given in relation to a claim is void unless

- (a) the person to whose benefit the release is given gives to the minister written notice of the proposed terms of the release, and
- (b) the minister consents in writing to the release

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## Minister's certificates

16 (1) A certificate

(a) purporting to have been issued by or on behalf of the minister for the purposes of

- (i) a health care services claim, or
- (ii) recovery under section 13 (5) and
- (iii) setting out the health care services that have been received ...

is proof of those health care services

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## Minister's certificates

16 (2) A certificate

(b) setting out the past or future cost of health care services, or both, attributable to personal injury suffered by a beneficiary or a class of beneficiaries,

is conclusive proof of the past or future cost of health care services, or both, as the case may be.

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### Joint and several liability

17 If it is determined in a legal proceeding that the personal injury of a beneficiary was caused, in whole or in part, by the negligence or wrongful act or omission of 2 or more wrongdoers, those wrongdoers are jointly and severally liable for the percentage of the past and future costs of health care services attributable to the injury

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### Application of this Act

24 (1)... this Act applies in relation to any personal injury suffered by a beneficiary, whether before or after this subsection comes into force.

(2) The requirements of sections 3, 4 and 5 do not apply in relation to legal proceedings commenced before this subsection comes into force.

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### Application of this Act

24 (3) This Act does not apply in relation to health care services that are provided or are to be provided to a beneficiary in relation to [personal injury or death arising out of or in relation to]

- (a) ...the *Insurance (Vehicle) Act*,
- (b) ...the *Tobacco Damages and Health Care Costs Recovery Act*, or
- (c) ...the *Workers Compensation Act*.

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*This material was originally presented at the Harper Grey LLP Insurance Law Seminar in May 2008.*

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