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Does the HCCRA apply to your claim?



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Does an insured Alberta resident have an obligation to notify the B.C. government of injuries he causes to a B.C. resident? If an Ontario resident is injured, then moves to B.C. and receives medical care here, does this affect her Ontario personal injury action?

Insurers across Canada need to be cognizant of the effect of B.C.'s *Health Care Costs Recovery Act* (HCCRA), in force since April 1, 2009, on the files they handle.

What is it?

The HCCRA provides the B.C. Ministry of Health with a mechanism to recover money spent on past and potential future health care from the wrongdoer causing the injury, regardless of whether a legal action has been commenced. It aims to redistribute the cost of health care from the taxpayer to the wrongdoer. The legislation harmonizes B.C. with many other provinces which already have subrogation legislation for health-care costs.

What does it include?

An array of health-care costs are covered by the HCCRA. They include medical appointments and hospital stays, respite benefits, nursing and family support and specialized residential services. They also include some professional services paid by regional health boards, including nursing, social work, occupational therapy, speech pathology, physical therapy and prescription drugs.

Who does it apply to?

The HCCRA provides the Ministry of Health with the authority to recover health-care costs incurred on behalf of MSP beneficiaries. "Beneficiary" is

defined in the *Medicare Protection Act* as a resident who makes her home in B.C. and is physically present in B.C. for at least six months.

Even though the HCCRA has been in force since 2009, there are no B.C. cases which deal with its applicability to out-of-province actions; however, the law in other jurisdictions suggests that the underlying tort claim is governed by the legislation of the province in which the tort occurred, and that the governing legislation for the subrogation claim is established by the jurisdiction where the subrogated claim arises. Thus, insurers can be required to reimburse the B.C. government for the health-care costs incurred by injured parties if they are MSP beneficiaries, even if the action occurred outside of B.C. or at a time when the injured party was a resident of another province.

The HCCRA does not apply to motor vehicle accidents when the wrongdoer has insurance under the *Insurance (Ve-*

hicle) Act. But it does apply to out-of-province motor vehicle insurers.

Notice requirements

Pursuant to s.10, an insurer *must* notify the Ministry within 60 days of learning that an act or omission of its insured has or may have caused or contributed to an injury of a beneficiary. The deadline applies even if no action has been commenced. Providing notice normally triggers the Ministry to produce a certificate of costs, which enumerates the past and possible future health-care costs the Ministry will be seeking. This certificate is updated as the beneficiary receives additional medical treatment.

No notice given

Failing to provide notice to the Ministry can expose the insurer of a wrongdoer to two problems. First, the limitation period for the Ministry to commence an independent action against the insured wrongdoer to recover health-care costs does not begin until proper notice has been provided.



The Act allows for the recovery of past, potential and future health-care costs from the wrongdoer, regardless of whether a legal action has been commenced.

Failing to provide notice extends the limitation period. Second, no claim can be settled and no final court order can be entered without the Ministry's approval. Failing to seek approval voids any release signed by the injured party, allows the Ministry to bring an independent action against the wrongdoer for the *entirety* of the health-care costs claim, regardless of the settlement reached, and removes any liability de-

fences which could reduce the value of the health-care cost claim.

For our initial scenarios, the HCCRA requires the insurer of an Alberta resident to notify the B.C. Ministry of the injuries its insured has caused to a B.C. resident, even if the B.C. resident never starts a legal action. Any settlement of the Ontario action can be voided if the Ministry has not approved the settlement.

Every insurer who deals with bodily injury claims needs to be aware of the HCCRA. **IP**

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