

MEDICAL SERVICES

COMMISSION

2009/2010

ANNUAL REPORT



BRITISH
COLUMBIA

The Best Place on Earth

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Mandate

The mandate of the Medical Services Commission (“MSC”) is to facilitate reasonable access, throughout British Columbia, to quality medical care, health care and diagnostic facility services for residents of British Columbia under the Medical Services Plan (“MSP”).

The Commission

Established under the *Medical Services Act, 1967*, and continued under the current *Medicare Protection Act* (the “Act” or “MPA”), the Medical Services Commission is responsible for managing the provision and payment of medical services through the Medical Services Plan on behalf of the Government of British Columbia. The MSC is accountable to government through the Minister of Health Services.

Organizational Structure

In early 1994, the Commission was expanded from one member to a nine-member body. It consists of three representatives nominated by the British Columbia Medical Association (“BCMA”), three public members appointed on the joint recommendation of the Minister of Health Services and the BCMA to represent MSP beneficiaries, and three members from government. This tri-partite structure represents a unique partnership among physicians, beneficiaries and government. It ensures that those who have a stake in the provision of medical services in British Columbia are involved.

Responsibilities of the Commission

In addition to ensuring that all British Columbia residents have reasonable access to medical care, the Commission is responsible for managing the Available Amount, a fund which is set annually by government to pay practitioners for medical services for beneficiaries. The MSC is also responsible for investigating reports of extra billing and hearing appeals brought by beneficiaries, diagnostic facilities and physicians, as required by the Act.

Advisory Committees and Overview of Accomplishments

The Act allows the Commission to delegate some powers and duties. As a result, advisory committees and sub-committees as well as hearing panels have been established to assist the Commission in carrying out its mandate and efficiently managing the Available Amount. Appointments to committees and panels reflect the MSC tripartite representation. The following is a description of the responsibilities and an overview of the 2009/2010 accomplishments of some of the MSC’s advisory committees, hearing panels and other delegated bodies.

1. Guidelines and Protocols Advisory Committee (GPAC)

The mandate of GPAC is to support the effective utilization of medical services, principally through guidelines and protocols. The overall goal is to maintain or improve the quality of medical care, while making optimal use of medical resources.

In fiscal year 2009/2010, GPAC continued its proactive leadership role in providing relevant and up-to-date clinical practice guidelines to general practitioners and, increasingly, to specialists and practitioners in the hospital sector. The guidelines have focused, too, on engaging individuals and patients as partners in their own care.

As a strategy, GPAC has built upon existing partnerships with professional associations and established new partnerships across the broader medical community, including health authorities. This strategy is consistent with one of the Commission's key priorities of pursuing collaborative opportunities with physicians to promote the use of the guidelines and protocols.

From a population/patient perspective, GPAC has targeted improvement in patient outcomes through the timely provision of high-quality, evidence-based guidelines, especially through the increased use of electronic media and tools.

GPAC has implemented strategies to measure and evaluate its success in achieving this goal, and a systematic review of the effectiveness of each guideline is in progress. In addition, a system of guideline renewal and evaluation has ensured that the guidelines reflect the most recent literature and scientific evidence.

The Medical Services Commission approved/updated nine guidelines in 2009/2010.

- The *Stroke and Transient Ischemic Attack – Management and Prevention* guideline focuses on the management and prevention of stroke and transient ischemic attack in adults in the ambulatory and in-patient settings.
- The *Dyspepsia with or without Helicobacter pylori Infection – Clinical Approach in Adults* guideline applies to non-pregnant adult patients with dyspepsia and provides advice in the management and prevention of dyspepsia. The search for and eradication of *Helicobacter pylori* (*H. pylori*) is also discussed.
- The *Anxiety and Depression in Children and Youth – Diagnosis and Treatment* guideline presents recommendations for early diagnosis, intervention and maintenance treatment of depression and anxiety disorders in children and youth.
- The *Osteoarthritis in Peripheral Joints – Diagnosis and Treatment* guideline summarizes current recommendations for assessment, diagnosis and treatment of osteoarthritis in peripheral joints for adult patients. The guideline also includes patient education, rehabilitation, medications, and surgical choices as viewed within the chronic disease management context.

- The *Otitis Media: Acute Otitis Media (AOM) and Otitis Media with Effusion (OME)* guideline applies to otherwise healthy children over the age of six months presenting with AOM or OME.
- The *Thyroid Function Tests: Diagnoses and Monitoring of Thyroid Function Disorders in Adults* guideline applies to the detection of thyroid dysfunction in adults and the monitoring of patients treated for thyroid function disorders.
- The *Chronic Obstructive Pulmonary Disease (COPD)* guideline provides strategies for the improved diagnosis and management of adults with chronic bronchitis and emphysema.
- The *Gastroesophageal Reflux Disease (GERD)* guideline outlines the clinical approach to the diagnosis and treatment of gastroesophageal reflux disease in adult patients.
- The *Cardiovascular Disease – Primary Prevention* guideline describes the prevention of heart disease, stroke, peripheral vascular disease, congestive heart failure and kidney disease in adults with no known cardiovascular disease as well as the management of elevated cholesterol.

GPAC continued significant efforts in promotion of its guidelines in 2009/2010.

- Expansion of the BCGuidelines.ca brand, including designs for an updated website and rebranding of guidelines and other products to reflect this initiative.
- Release and promotion of the BCGuidelines.ca iPhone application is ongoing and continues to provide physicians with PDA-based clinical practice guidelines at the point of care.
- Guideline Promotion Opportunities: GPAC continues to promote guidelines through medical conferences including the World Medical Association Conference and St. Paul's Hospital Continuing Medical Education (CME) Conference.
- Guideline Evaluation: Guideline evaluation work is ongoing with presentations from GPAC to the Medical Services Commission occurring on a regular basis.

2. Advisory Committee on Diagnostic Facilities (ACDF)

The ACDF provides advice, assistance and recommendations to the MSC in the exercise of the Commission's duties, powers and functions under s.33 of the Act. The ACDF reviews applications from existing and proposed diagnostic facilities and makes recommendations to the MSC to approve or deny the requests.

Between April 1, 2009 and March 31, 2010, the ACDF considered 84 applications related to laboratory medicine, specimen collection stations, radiology, ultrasound and pulmonary function. Seventeen applications were for new facilities and other

applications included requests to relocate sites, expand capacity, transfer certificates of approval, expand test menus or change hours. Of the total applications reviewed, 65 requests were approved, nine were denied and 10 applications were deferred pending further information. The ACDF handled 68 percent of all applications within one meeting.

In 2008, the Medical Services Commission established a Working Group to review the ACDF guidelines that provide the operational framework for approvals. The purpose of the Working Group review was to determine if the ACDF guidelines could be adjusted, within the intent of existing legislation and regulations, to reduce administrative requirements on both facilities and those administering the guidelines.

The Working Group's recommendations were presented to the MSC in October 2009 and the Group's final report was forwarded to the diagnostic facility community, including the Medical Directors of all MSC-approved laboratories in British Columbia and the ACDF, for additional review and feedback. Representatives of the Working Group subsequently met with the ACDF to discuss options for moving forward and the review of the guidelines has continued into the next fiscal period.

In 2009/2010, the ACDF assisted the Medical Services Branch of the Ministry of Health Services with a review of the Doppler Vascular Ultrasound policy. Based on the findings of a waitlist survey it was recommended that Doppler Vascular Ultrasound services continue to be restricted to hospital-based facilities.

The ACDF is currently reviewing the Telemetry policy and that outcome will carry into the next fiscal period.

3. Audit and Inspection Committee (AIC)

The AIC is a four-member panel comprised of three physicians (one appointed by the BCMA, one appointed by the College of Physicians and Surgeons of British Columbia and one appointed by government) together with one member who represents the public. The Commission has delegated to the AIC its powers and duties under s.36 of the Act to audit and inspect medical practitioners. On December 1, 2006, s.10 of the *Medicare Protection Amendment Act 2003* was brought into force. This section expanded the audit and inspection powers of the MSC to include the power to audit clinics as corporate entities, rather than just physicians.

The AIC has responsibility for two types of audits. Patterns of practice audits are done to ensure that services billed to MSP have been delivered and billed accurately. Extra billing audits focus on whether beneficiaries are being charged for services in contravention of the Act. The AIC decides whether on-site audits are appropriate, and it outlines the nature and extent of the audits. It also reviews the audit results and makes recommendations to the Chair of the Medical Services Commission for further appropriate action.

In 2009/2010, the AIC received 17 new audit referrals. Audit reports from 13 on-site inspections were reviewed by the AIC during this period.

- ***Billing Integrity Program (BIP)***

The Billing Integrity Program provides audit services to the Medical Services Plan and the Medical Services Commission. The MSC is authorized to monitor the billing and payment of claims in order to manage medical and health care expenditures on behalf of MSP beneficiaries. BIP monitors and investigates billing patterns and practices of medical and health care practitioners to detect and deter inappropriate and incorrect billing of MSP claims. In cooperation with the professions, BIP develops and applies monitoring, case finding and audit criteria, and assists the MSC in the recovery of any funds billed inappropriately. It carries out the audit and inspection function on behalf of the Audit and Inspection Committee.

In 2009/2010, the Billing Integrity Program completed 22 on-site audits. It negotiated settlements for six cases with dollars equaling \$442,201. A total of \$683,332 was recovered by BIP this year (including recoveries negotiated in previous years).

- ***Special Committees of the Medical Services Commission***

Special Committees have been created by Order in Council, pursuant to s.4 of the Act, to audit claims from health care practitioners to the Health Care Practitioners' Special Committee for Audit. Special Committees have also been established for chiropractic, dentistry, massage therapy, naturopathy, optometry, physical therapy, podiatry and most recently, acupuncture and midwifery. The Special Committees have been given all of the powers and duties necessary to carry out audits of health care practitioners under s.36 of the Act.

4. Patterns of Practice Committee (POPC)

The POPC is a committee of the BCMA that acts in an advisory capacity to the Medical Services Commission. The POPC prepares and distributes an annual statistical personal profile summary (mini-profile) to fee-for-service physicians, provides educational information to physicians on the audit process and their patterns of practice, listens to physicians who wish to raise their concerns about the audit process, is informed of, and provides feedback on, the audit practices employed by the Billing Integrity Program and jointly, with the College of Physicians and Surgeons of British Columbia, nominates medical inspectors and audit hearing panel members.

5. Reference Committee

The Reference Committee acts, upon requests from physicians, in an advisory capacity to the Medical Services Commission, on the adjudication of billing and payment disputes between physicians and the Medical Services Plan. The Committee does, on occasion, perform a similar service for patients billed directly by a physician and physicians providing services to third parties, such as insurance companies. Membership on the Reference Committee is limited to representatives of the BCMA.

In 2009/2010, 52 new cases were received, 27 of which were referred to the Reference Committee. During this time period, the Reference Committee also closed 83 cases.

6. Joint Standing Committee on Rural Issues (JSC)

The JSC oversees approximately \$69 million annually in rural incentive programs to sustain patient care and continuity of access in communities falling under the *Rural Practice Subsidiary Agreement*. The goal of the JSC is to enhance the availability and stability of physician services in rural and remote areas of British Columbia by addressing some of the unique, demanding, and difficult circumstances encountered by rural physicians and to enhance the quality of the practice of rural medicine. Some of the funding for the work of the JSC comes from the Available Amount managed by the Medical Services Commission.

The JSC conducted a review of the rural programs it governs in 2008/2009. The purpose of the review was to assess the effectiveness of the rural programs in achieving appropriate levels of physician services in applicable communities and it identified 90 recommendations. In 2009/2010, the JSC worked through many proposals and options which included enhancing the Rural Continuing Medical Education Program, the Rural GP Locum Program weekend component, and the Recruitment Incentive Fund. Implementation of changes to these programs was effective April 1, 2010.

Other Delegated Bodies

- ***Medical Services Plan (MSP)***

The Commission delegates day-to-day functions such as the processing and payment of claims, to the Medical Services Plan.

In 2004, the Medical Services Commission supported MAXIMUS BC's signing of an agreement with the Ministry of Health Services to manage MSP and PharmaCare administrative services on behalf of the Government of British Columbia. Medical Services Plan and PharmaCare operations were transferred to MAXIMUS BC effective April 1, 2005. The new program name became Health Insurance BC ("HIBC"). The MSC receives regular updates regarding HIBC's service level requirements and program performance.

For more information, visit HIBC's website at <http://www.health.gov.bc.ca/insurance>.

The government assists more than 1.2 million people with payment of their MSP premiums. Regular premium assistance offers subsidies ranging from 20 to 100 percent, based on an individual's net income (or a couple's combined income) for the preceding tax year, less deductions for age, family size and disability.

Effective January 1, 2010, the regular premium assistance program was enhanced to allow more British Columbians to qualify and to allow persons already receiving a partial subsidy to qualify for a higher level of assistance.

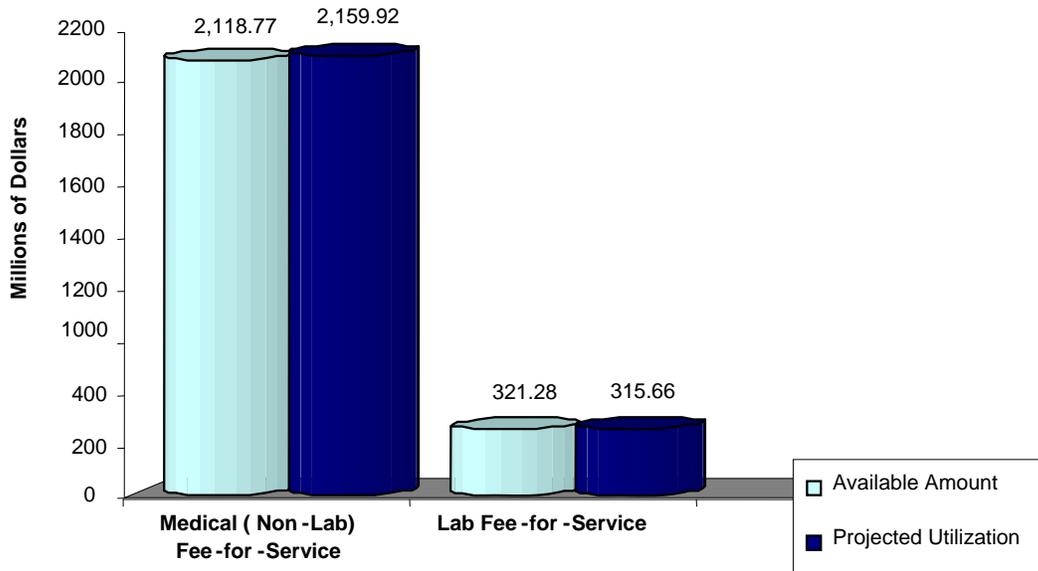
Temporary premium assistance offers beneficiaries a 100 percent subsidy for a short term, based on current unexpected financial hardship.

Additional information regarding regular premium assistance and temporary premium assistance is available on the MSP website at <http://www.health.gov.bc.ca/msp/infoben/premium.html>.

The Medical Services Plan pays approximately 15,147 medical and health care providers over \$2.53 billion dollars relating to over 83.5 million services, rendered on a fee-for-service basis. Medical practitioners can also be paid for services using alternative payment methods including salaries, sessional contracts and service contracts. The *Medical Services Commission Financial Statement* (the “Blue Book”) contains an alphabetical listing of payments made by the MSC to practitioners, groups, clinics, hospitals and diagnostic facilities for each fiscal year.

Copies of the *Medical Services Commission Financial Statement* are available on the website at http://www.health.gov.bc.ca/msp/financial_statement.html.

2009/2010 Available Amount and Projected Utilization*



* Actual expenditures will be reported when MSP finalizes payments for 2009/2010.

- **Coverage Wait Period Review Committee**

The *Medicare Protection Act* requires individuals to live for at least three months in British Columbia to be eligible for MSP coverage. However, there are exceptional cases based on individual circumstances where the MSC waives this requirement and enrolls new residents before the coverage wait period has expired. The MSC has delegated the power to investigate and decide cases to the Coverage Wait Period Review Committee.

The Committee reviewed 108 waiver of the wait period requests between April 1, 2009 and March 31, 2010, and granted 22 approvals, including an application from a client who was 27 weeks pregnant and entered the hospital with the H1N1 flu virus and pneumonia. She was on life support and required a prolonged hospital stay. Another

application was approved for a client who was diagnosed with leukemia during their wait period and required urgent and intensive medical treatment.

A special waiver of the wait period was approved for Canadian citizens and holders of permanent resident status who moved to British Columbia from Haiti, in the aftermath of the earthquake that struck that country on January 12, 2010. To qualify, a person had to establish residency in British Columbia between January 12, 2010 and June 30, 2010. Although Health Insurance BC did not record whether any waivers were sought during this period, it is believed that requests were either negligible or non-existent.

In 2009/2010, the Committee denied several applications from new residents expecting babies during their wait periods, as the onus is on families to have medical insurance in place before arrival in British Columbia, or to budget for costs of birth.

MSC Hearing Panels

Commission members, or delegates of the Commission, may conduct hearings related to the exercise of the MSC's statutory decision-making powers.

Some hearings are required by the Act, and some have been implemented by the Commission to afford individuals affected by its decisions the opportunity to be heard in person. Hearings are governed by the duty to act fairly. Decisions of the MSC hearing panels may be judicially reviewed by the Supreme Court of British Columbia.

1. Beneficiary Hearings

Residency hearings and panel reviews of claims for elective (non-emergency) out-of-country medical care funding are the two types of beneficiary hearings currently conducted by the Medical Services Commission.

a) Residency Hearings

A person must meet the definition of resident in s.5 of the Act to be eligible for provincial health care benefits. As per s.7 of the Act, the MSC may cancel the MSP enrollment of individuals whom it determines are not residents. Section 11 of the Act requires that prior to making an order cancelling a beneficiary's enrollment, the MSC must notify the beneficiary that he or she has a right to a hearing. Individuals whose MSP coverage is cancelled have the right to appeal to the Commission. Residency hearings are conducted by a single-person MSC panel.

In 2009/2010, nine residency hearings were held. One case was settled prior to a hearing date being set.

b) Out-of-Country Hearings

The Medical Services Plan will reimburse medically necessary services performed outside of Canada when the required services are not available within Canada.

Appropriate British Columbia specialists recommending these services must obtain prior approval on behalf of their patients for subsequent medical claims to be considered for payment. The decision to approve MSP payments for out-of-country medical services is based on published criteria available in the *Medical Services Commission Out-of-Province and Out-of-Country Medical Care Guidelines for Funding Approval* (the “Guidelines”).

More information regarding out-of-country services is available on the MSP website at <http://www.health.gov.bc.ca/msp/infoben/leavingbc.html>.

An MSC appeal process is in place for beneficiaries who are denied funding for elective (non-emergency) out-of-country medical care. The Act does not impose a duty on the Commission to hear and decide requests to review MSP’s decisions regarding claims for out-of-country medical care, but rather, it is the Commission’s choice to offer beneficiaries the option for review hearings.

From April 1, 2009 to March 31, 2010, MSP received 1,743 requests for out-of-country elective treatment. Funding was authorized for 1,587 requests and 156 cases were denied. Of the denied out-of-country cases, three were appealed to the MSC. One case was settled prior to a hearing date being set and two appeal hearings are currently active. Out-of-country hearings are conducted before a three-person MSC panel.

2. Diagnostic Facility Hearings

Under s.33 of the Act, the MSC may add new conditions or amend existing ones to an approval of a diagnostic facility. This may be done either on application by the facility owner, or on the Commission’s own initiative. Before taking action, the Commission is required to provide the owner of the facility an opportunity to be heard [s.33(4)]. A hearing before the MSC is usually requested for one of the following two reasons:

- The Advisory Committee on Diagnostic Facilities (ACDF) has recommended to the Commission that an application to amend or add conditions to an existing approval be denied; or
- The ACDF has recommended to the Commission that an approval be suspended, amended or cancelled because the facility owner is alleged to have contravened the Act, the regulations, or a condition on the approval.

ACDF hearings are conducted before either a single-person or three-person MSC panel, depending on the type of appeal.

In 2009/2010, one applicant’s request for an appeal hearing was withdrawn prior to a hearing date being set.

3. Hearings Related to Medical Practitioners

Audit hearings and de-enrollment for “cause” are the two types of MSC statutory hearings related to medical practitioners.

a) Audit Hearings

Under s.37 of the Act, the Commission may make orders requiring medical practitioners or owners of diagnostic facilities to make payments to the MSC in circumstances where it determines, after a hearing, an amount due to (a) an unjustified departure from the patterns of practice or billing of physicians in this category; (b) a claim for payment for a benefit that was not rendered; or (c) a misrepresentation about the nature or extent of benefits rendered. These hearings are the most formal of all the administrative hearings currently done by the MSC. Practitioners are usually represented by legal counsel and the hearings may last one to two weeks.

Since the introduction of the Alternative Dispute Resolution (ADR) process in 2000, fewer billing matters proceed to formal hearings. The ADR process employs both unassisted and assisted (with a mediator) negotiation to encourage medical practitioners and the MSC to reach a negotiated settlement of s.37 disputes.

No audit hearings were held by the MSC in 2009/2010.

b) De-enrollment of Medical Practitioners for “Cause”

In the reporting period, no de-enrollment hearings were held by the MSC.

Other 2009/2010 MSC Highlights and Issues

The Medical Services Commission held eight regular business meetings between April 1, 2009 and March 31, 2010.

- ***Physician Master Agreement and Subsidiary Agreements***

Negotiations between the Government of British Columbia and the BCMA have resulted in a comprehensive *Physician Master Agreement* (including five subsidiary agreements) that is in effect through to at least 2012. The Commission is a signatory to the *Physician Master Agreement* that provides a consolidated agreement structure and new administrative committees (e.g., the Physician Services Committee) with health authority representation. As per a requirement in the *Physician Master Agreement*, the Chair of the Medical Services Commission consulted with the Physician Services Committee in July 2009, regarding the management of the Available Amount.

The Commission is also a signatory to the *2009 Memorandum of Agreement* that replaces the compensation re-opener provisions in the *Physician Master Agreement*.

Copies of the negotiated agreements are available on the website:

<http://www.health.gov.bc.ca/msp/legislation/bcmaagree.html>.

- ***Strategic Planning***

The Commission identified its objectives and priority directions for 2009/2010. Strategies included improving the uptake of guidelines and protocols by physicians and

measuring the outcomes, monitoring the effective administration of the Medical Services Plan, and responding to extra billing complaints pursuant to the *Medicare Protection Act*. The Commission also engaged in dialogue with the Ministry of Health Services and the BCMA regarding expenditure analysis, growth trends and management of the Available Amount and continued to receive regular reports from its advisory committees.

- ***Medical Services Commission Payment Schedule***

The *Medical Services Commission Payment Schedule* is the list of fees approved by the MSC payable to physicians for insured medical services provided to beneficiaries enrolled with the Medical Services Plan. Additions, deletions, fee changes or other modifications to the *Payment Schedule* are implemented in the form of signed Minutes of the Commission.

In 2009/2010, 137 Minutes of the Commission related to the *Payment Schedule* were approved, resulting in 60 new fee items, 256 amended fee changes and two deleted items.

The Commission also reviewed proposed revisions to the General and Specialty Preambles of the *Payment Schedule*.

A copy of the *Medical Services Commission Payment Schedule* is available on the website at <http://www.health.gov.bc.ca/msp/infoprac/physbilling/payschedule/index.html>.

- ***H1N1 Flu Virus***

In anticipation of the H1N1 flu outbreak, the Commission implemented two temporary GP fee items in October 2009 – one for an office visit and one for telephone advice. As of February 28, 2010, claims for 95,372 office visits had been paid and 35,805 telephone claims had also been processed.

- ***Information Sharing Agreements***

Medical Services Commission approval is required for the transfer of any MSP data. As a result, the MSC signed new Information Sharing Agreements for several projects in 2009/2010, including an agreement with the Ministry of Healthy Living and Sport related to the evaluation of early childhood dental and vision screening programs delivered by public health staff in the health authorities and an agreement with the BC Vital Statistics Agency regarding the integrated birth registration and MSP enrollment application service.

An Information Sharing Agreement that provides a framework for data access between the MSC, the Ministry of Health Services and the Ministry of Finance and enables Finance to perform revenue management services with respect to MSP/Fair PharmaCare claims recovery and the Practitioners Audit Recovery Program, was also renewed in 2009/2010.

- ***Presentations to the MSC***

Throughout 2009/2010, the Commission received presentations regarding several issues, including an update on the Temporary Premium Assistance Program administered by the Ministry of Finance on behalf of the Ministry of Health Services, an overview of initiatives undertaken by the Joint Standing Committee on Rural Issues (JSC), and information pertaining to proposed CareCard enhancements. The Deputy Minister of Health Services also provided the Commission with an overview of the Ministry's strategic priorities and directions and discussed opportunities for change in the health system.

- ***MSC-Related Legal Cases***

As part of its oversight of the Medical Services Plan, the Commission monitors legal issues that arise as a result of MSP or Ministry of Health Services-related decisions and is sometimes actively involved in litigation as a named party.

The following cases were considered and/or participated in by the Commission during 2009/2010.

Extra Billing/Private Clinic Issues

The purpose of the *Medicare Protection Act* is to preserve a publicly managed and fiscally sustainable health care system for British Columbia in which access to necessary medical care is based on need and not on an individual's ability to pay. Extra billing occurs when an MSP beneficiary receives a medically necessary benefit from an enrolled physician and is charged for it or for services in relation to that benefit by a person or entity (e.g., a clinic). Extra billing violates the *Medicare Protection Act*. Section 17 of the Act prohibits a person from charging a beneficiary for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit.

Sections 10 and 11 of the *Medicare Protection Amendment Act 2003* were brought into force through regulation on December 1, 2006. These sections contained an expansion of the audit and inspection powers in s.36 of the MPA and included a new s.45.1 giving injunctive powers to the Medical Services Commission regarding contravention of certain stated provisions including the prohibition against extra billing.

Extra Billing Investigations

The Commission has developed processes for dealing with cases that come to its attention when concerns or complaints of extra billing arise.

In 2009/2010, nine new cases of suspected extra billing in private clinics and/or by practitioners were referred to the Commission.

- Of the total, investigation of five cases remained ongoing during the reporting period.

- Four of the nine new cases were closed, with no further action required, following the Commission's investigation.

One private clinic extra billing case that had been closed in 2008 was re-opened by the Commission in 2009/2010 for further investigation and subsequently closed again, with no further action required.

Eight extra billing audits ordered by the MSC between 2007 and 2009 have not yet occurred, pending the outcome of the ongoing private clinic extra billing litigation in the Supreme Court of British Columbia.

Extra Billing Litigation

The private clinic litigation commenced in the Supreme Court of British Columbia in January of 2009, which raised a *Canadian Charter of Rights and Freedoms* challenge to the validity of the extra billing prohibition in the *Medicare Protection Act*, has been ongoing throughout the year. Madam Justice Smith was appointed as case management judge, and various interlocutory applications have taken place. On November 17, 2009, Madam Justice Smith handed down a number of rulings arising from applications that took place from October 14 through 16, 2009. She held that the Constitutional issues will be heard in the private clinics' action, as opposed to the proceeding originally commenced by Petition by the British Columbia Nurses' Union, and later refiled by a number of individual petitioners. She ordered that proceeding to be stayed pending the outcome of the clinics' action. She also granted the Commission an injunction to permit the audits of two private clinics to proceed, and granted intervenor status to a number of parties.

There have been further developments in this litigation during 2010/2011.

Human Rights Challenge re Prostate-Specific Antigen (PSA) Testing

In 2006, the Human Rights Tribunal held a hearing into the complaint of a man who alleged that the Province's funding of Pap testing and mammography as screening tests for cervical cancer and breast cancer, while not funding prostate-specific antigen (PSA) testing as a screening test for prostate cancer, constitutes discrimination on the basis of sex.

Government experts testified at the hearing that PSA testing is controversial and that there is no scientifically reliable evidence that its use leads to any better outcomes for those with prostate cancer. In a decision rendered in January 2008, the Tribunal dismissed the complainant's case. The complainant subsequently sought a Supreme Court of British Columbia judicial review of the Tribunal's decision. In June 2009, the Supreme Court remitted the complaint back to the Tribunal for reconsideration. Government filed an appeal and in February 2010, the Court of Appeal upheld the original Human Rights Tribunal decision that the Ministry of Health Services' decision not to fund universal PSA testing was lawful.

Delegation of Powers Under the Hospital Insurance Act

Under the *Medicare Protection Act*, the Medical Services Commission has the delegated authority to determine the medical necessity for elective out-of-country medical services and whether physician services will be paid for by the province. However, the Commission did not have the authority to determine whether out-of-country hospital or facility services would be reimbursed.

Upon the MSC's recommendation and pursuant to s.4(2) of the *Ministry of Health Act*, the Minister of Health Services delegated authority to the Commission under the *Hospital Insurance Act* and Regulations to determine provincial funding for elective out-of-country hospital services.

Appendices

Appendix 1: Members of the Medical Services Commission (MSC) as of March 31, 2010

Government of British Columbia Representatives:

- Bob de Faye (Chair)
- Bob Nakagawa (Deputy Chair)
- Dr. Robert Halpenny

British Columbia Medical Association (BCMA) Representatives:

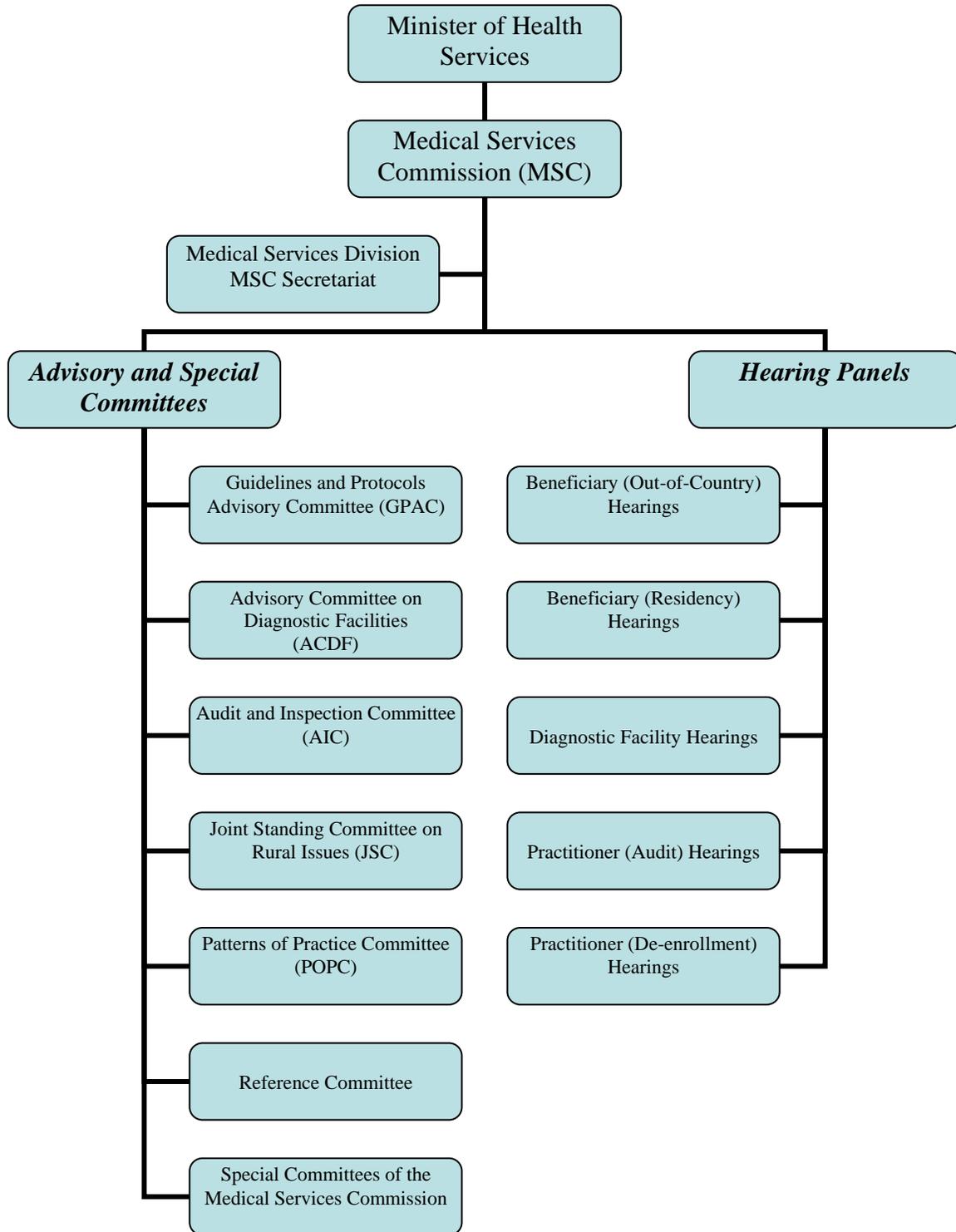
- Dr. Douglas McTaggart
- Dr. Brian Gregory *
- Darrell Thomson

Public Representatives:

- Isobel Mackenzie
- Isidor Wolfe
- Melanie McKenzie

* New appointment – October 2009

Appendix 2: MSC Organizational Chart



Appendix 3: Guidelines and Protocols Approved by the MSC in 2009/2010

Title	Type (New/Revised)	Date of MSC Approval
<i>Stroke and Transient Ischemic Attack – Management and Prevention</i>	New	July 15/09
<i>Dyspepsia with or without Helicobacter pylori Infection – Clinical Approach in Adults</i>	Revised	September 16/09
<i>Anxiety and Depression in Children and Youth – Diagnosis and Treatment</i>	New	October 28/09
<i>Osteoarthritis in Peripheral Joints – Diagnosis and Treatment</i>	Revised	October 28/09
<i>Otitis Media: Acute Otitis Media (AOM) and Otitis Media with Effusion (OME)</i>	New	December 9/09
<i>Thyroid Function Tests: Diagnoses and Monitoring of Thyroid Function Disorders in Adults</i>	Revised	December 9/09
<i>Chronic Obstructive Pulmonary Disease (COPD)</i>	Revised	December 9/09
<i>Gastroesophageal Reflux Disease (GERD)</i>	Revised	December 9/09
<i>Cardiovascular Disease – Primary Prevention</i>	Revised	March 31/10

Available at <http://www.BCGuidelines.ca>

Appendix 4: List of Useful Websites and Addresses

- Medical Services Commission (MSC) (Legislation and Governance; Advisory Committees; Negotiated Agreements with the BCMA; *Medicare Protection Act* and Regulations): <http://www.health.gov.bc.ca/msp/legislation/msc.html>
- Medical Services Plan (MSP): <http://www.health.gov.bc.ca/msp/index.html>
- *Medical Services Commission Financial Statement* (the “Blue Book”): http://www.health.gov.bc.ca/msp/financial_statement.html
- *Medical Services Commission Payment Schedule*: <http://www.health.gov.bc.ca/msp/infoprac/physbilling/payschedule/index.html>
- Guidelines and Protocols Advisory Committee (GPAC): <http://www.BCGuidelines.ca>
- British Columbia Medical Association (BCMA): <http://www.bcma.org>
- Health Insurance BC (HIBC): <http://www.health.gov.bc.ca/insurance>

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