

Bill 92 extra billing provisions – Information for Practitioners

Q1. What is extra billing?

Extra billing involves charging a MSP beneficiary or their representative for a benefit covered by MSP, or for any matter related to rendering of a benefit, unless otherwise permitted under the *Medicare Protection Act* or by the Medical Services Commission. Benefits covered by MSP are charged directly to MSP. Extra billing also includes charging for priority access to waitlisted benefits.

Under Section 18 of the *Medicare Protection Act*, a practitioner who is not enrolled in MSP is not permitted to charge for provision of a benefit any more than the rate payable by MSP if they were enrolled, so long as the service is provided in a hospital, a continuing care facility, publicly funded community care facilities or assisted living residences, or a health authority.

Q2. What is changing on October 1, 2018?

Government is amending the *Medicare Protection Act* to bring additional sections into force. These changes include:

Making it an offence to extra bill, and creating significant financial penalties (s. 46(5.1)(5.2))¹;

Creating consequences for practitioners, or others, such as privately-owned medical clinics, who have extra-billed beneficiaries. There will be new offence provisions, including fines of up to \$20,000 for repeat offences of extra billing. The Medical Services Commission will now have cause to cancel the enrolment of practitioner from MSP under certain circumstances (s.15)

Clarifying that selling priority access to medically-necessary care is extra billing (s. 17(1.1));

The amendments provide new protections for beneficiaries and establish that they are not liable to pay for extra billing charges. Under the new provisions, the Medical Services Commission can refund the beneficiary direction and then recover the charge from the person who imposed it (s. 17(1.2), 18(4), 18.1(3), 19(4), 20, 21);

These changes are applicable to both private and public facilities.

Changes to the *Medicare Protection Act* will be in force as of October 1, 2018.

¹ “s.” is short form for section; referring to a specific section of the Legislation.

Q3. Who is affected?

These changes affect medically necessary insured benefits provided by medical practitioners (physicians). Medical practitioners should ensure they are aware of the scope of these changes to ensure they continue billing appropriately as per the *Medicare Protection Act*.

These amendments expand the limitations on direct billing to beneficiaries by non-enrolled medical practitioners.

Q4. Why is this happening now?

These amendments were originally passed by the Legislative Assembly in 2003, but were not brought in to force at that time. Bringing these sections of the *Medicare Protection Act* into force and introducing penalties for non-compliance will ensure that eligible BC residents (beneficiaries) receive quality public health care based on need, not on ability to pay. These changes uphold the fundamental principles of the *Medicare Protection Act* as well as the *Canada Health Act*. With this implementation of Bill 92, the Province is positioned to recover \$15.9 million in fines incurred under the *Canada Health Act* for extra billing by private clinics.

Q5. Where can I find the legislation being referenced?

Bill 92 (i.e. the amendment to the *Medicare Protection Act*) can be found on the BC Laws website at: <http://www.bclaws.ca/civix/document/id/bills/billsprevious/4th37th:gov92-3>

The current version of the *Medicare Protection Act* (which includes the Bill 92 amendments) can be found at: http://www.bclaws.ca/civix/document/id/complete/statreg/96286_01

Q6. Does Bill 92 apply to laboratory services?

In 2015, the *Laboratory Services Act* (LSA) was enacted and replaced the *Medicare Protection Act* and the *Hospital Insurance Act* as the authority for insuring laboratory services in the province. As a consequence, changes to the *Medicare Protection Act* resulting from Bill 92 do not apply to services governed by the LSA.

Q7. What is happening on April 1, 2019?

Section 18.1 of the *Medicare Protection Act* related to limitations on extra billing in diagnostic facilities will come in to force on April 1, 2019.

The six-month extension for the section of Bill 92 applicable to diagnostic services takes into consideration the government's commitment to increase publicly funded MRI exams through new capacity, while making sure that public investments are used to decrease wait lists.

Q8. Will government be pursuing retroactive payments from private clinics that have been extra billing in the past?

No, these changes will apply to benefits delivered from October 1, 2018 onwards.

Q9. What does this mean for enrolled medical practitioners on October 1, 2018?

In general, practitioners are billing appropriately as outlined in the *Medicare Protection Act*; therefore, these amendments should have minimal impact on day-to-day work. The list of insured benefits is not changing as a result of these amendments.

The amendments clarify that no person can be charged for provision of benefits to MSP beneficiaries, or for any matter relating to rendering benefits, unless otherwise permitted under the *Medicare Protection Act* or by the Medical Services Commission. Such charges are considered extra billing.

The new provisions also address arrangements where a clinic (rather than an individual practitioner) charges a person in relation to provision of benefits to an MSP beneficiary. Under the new provisions, this will also be considered extra billing and may be grounds for de-enrollment of the practitioner involved in providing the benefit.

These amendments do not prohibit practitioners from levying legitimate charges for completion of physician's notes for employers and other non-benefits (e.g. elective cosmetic procedures).

Q10. How does this process work – how will this be enforced?

The Ministry of Health will investigate allegations of extra billing brought forward by beneficiaries or other individuals, on behalf of the Medical Services Commission.

In these circumstances, medical practitioners and/or clinics will be notified if it appears they may have extra-billed a beneficiary and may be asked to provide documentation to assist in making a final determination. Practitioners and/or clinics will have the opportunity at this juncture to repay the beneficiary prior to being directed to do so by the Medical Services Commission. Additional information will be provided to practitioners and/or clinics when contacted by the Ministry on behalf of the Medical Services Commission.

A beneficiary (or the person who pays for the benefit) will be entitled to a refund if the Commission determines through investigation that extra billing has occurred. The payment will be refunded at the amount indicated for the benefit in the MSP payment schedule, and may be recovered directly from the practitioner by the Medical Services Commission if the beneficiary (or the person who pays for the benefit) elects to assign their debt to the Commission. The debt may be recovered by way of adjusting a practitioner's future MSP payments or through other available collections processes.

There will be new enforcement provisions in the *Medical Protection Act* related to extra billing, including fines of up to \$10,000 for a first offence and up to \$20,000 for a second or subsequent offence.

The Medical Services Commission will have "cause" to cancel the enrolment of a practitioner who: (a) contravenes; (b) attempts to contravene; or (c) authorizes, assists or allows someone else to contravene, the extra billing provisions in the *Medicare Protection Act*.

Q11. Who can I contact with questions about billing rules?

For questions specific to the implementation of Bill 92, please contact MSC@gov.bc.ca. If you have questions regarding practitioner billing, fee items, or the MSC payment schedule generally, please contact:

Health Insurance BC Billing Support
PO Box 9480 Stn Prov Govt
Victoria, B.C. V8W 9E7
Vancouver: (604) 456-6950
Elsewhere in B.C.: 1-866-456-6950

Q12. What does this mean for non-enrolled medical practitioners on October 1, 2018?

If a non-enrolled medical practitioner renders a service to a MSP beneficiary that would be considered a benefit if rendered by an enrolled practitioner, no person may be charged for the service, or for any matter relating to the rendering of the service, an amount in total greater than the amount that would be paid by MSP to an enrolled practitioner for the rendering of the benefit, provided the service is rendered in:

- A hospital as defined in section 1 of the *Hospital Act*,
- A facility as defined in section 1 of the *Continuing Care Act*,
- A community care facility or assisted living residence as defined in section 1 of the *Community Care and Assisted Living Act* that receives funding for the service through a regional health board, the Nisga'a Nation or the Provincial Health Services Authority (PHSA), or
- A medical or diagnostic facility if the service was contracted by a regional health board under section 4 of the *Health Authorities Act* or by the PHSA.

If the service is provided in any of the above locations and the amount charged is greater than the MSP amount, it is considered extra billing and the person charged is not liable to pay the amount charged.

The new provisions also address arrangements where a clinic (rather than an individual practitioner) charges a person in relation to provision of benefits to an MSP beneficiary. Under the new provisions, this will also be considered extra billing and may be grounds for de-enrollment of the practitioner involved in providing the benefit.

Q13. What does this mean for health care practitioners (non-physician)?

These changes do not affect provision of non-physician health care services that are not insured by either MSP or the *Hospital Insurance Act*. Health care practitioners providing these services will be able to continue billing as done prior to the amendments to the *Medicare Protection Act*.

Q14. What does this mean for private providers in partnership with health authorities?

These amendments do not preclude health authorities from partnering with private care givers or private clinics, so long as these private providers are in compliance with the *Medicare Protection Act* and not engaging in extra billing.

However, for the delivery of health authority-contracted services, private clinics may only use medical practitioners who are enrolled and opted-in under MSP.

Q15. What does this mean for insured benefits provided at private medical or diagnostic facilities?

While private facilities can provide an unlimited number of services to MSP beneficiaries, it is illegal for them to charge for or in relation to services that are insured as benefits through MSP or under the *Hospital Insurance Act*.

The Medical Services Commission may recommend charges that could result in fines up to \$20,000 for extra billing or participating in a scheme to extra bill (e.g. where a facility charges for provision of an benefit to a MSP beneficiary). Medical practitioners may also be ordered to repay MSP or be de-enrolled from the plan.

Q16. What does this mean for non-insured services provided at private clinics?

These changes do not prevent beneficiaries from choosing to pay for services that are not medically necessary and therefore not benefits insured through MSP or under the HIA (e.g. elective cosmetic procedures).