MEDICAL SERVICES COMMISSION

2010/2011

ANNUAL REPORT

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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.

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 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 working groups as well as hearing panels have been established to assist the Commission in effectively carrying out its mandate. Appointments to committees and panels reflect the MSC tripartite representation. The following is a description of the responsibilities and an overview of the 2010/2011 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 2010/2011, 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 11 guidelines in 2010/2011.

- The *Iron Deficiency – Investigation and Management* guideline provides recommendations for the investigation and management of iron deficiency in patients of all ages.

- The *Palliative Care for the Patient with Incurable Cancer or Advanced Disease – Part 1: Approach to Care* guideline presents assessment and management strategies for primary care practitioners caring for adult patients 19 years and over with incurable cancers and end stage chronic disease of many types, and their families.

- The *Febrile Seizures* guideline covers the investigation and management of febrile seizures in children in the emergency department.

- The *Oral Rehydration Therapy (ORT) in Children* guideline addresses the oral rehydration of children age six months to 17 years with mild to moderate dehydration as the result of gastroenteritis.

- The *Diabetes Care* guideline describes the care objectives for the prevention, diagnosis and management of diabetes mellitus in non-pregnant adults and focuses on the approaches and systems that are ideally in place to improve care for the majority of patients the majority of the time.

- The *Asthma – Diagnosis and Management* guideline provides recommendations for the recognition, diagnosis and management of asthma in patients age six and older, within the office setting.

- The *Warfarin Therapy – Management During Invasive Procedures and Surgery* guideline applies to long term management of warfarin therapy in adults, 19 years and over, within the office setting. The guideline describes warfarin initiation, international normalized ratio monitoring with optimal ranges, and warfarin dosage adjustment.

- The *Vitamin D Testing* guideline describes the appropriate use of vitamin D testing within the general adult (19 years and over) population in British Columbia. Recommended vitamin D supplementation is discussed and a patient handout is included.

- The *Chronic Obstructive Pulmonary Disease (COPD)* guideline provides strategies for the improved diagnosis and management of adults with chronic bronchitis and emphysema (COPD).

- The *Problem Drinking* guideline provides practical information on how to conduct screening for problem drinking in adults, 19 years and over. Screening and assessment are also outlined.

- The *Overweight and Obese Adults: Diagnosis and Management* guideline is intended to provide primary care providers with definitions for overweight and obese classifications in non-pregnant adults, 19 years and over. The guideline contains information on the diagnosis and management of obesity.

GPAC continued significant efforts in promotion of its guidelines in 2010/2011.

- Expansion of the BCGuidelines.ca brand, including an updated website and continuity of branding across all products.

- Promotion of the BCGuidelines.ca iPhone application is ongoing and continues to provide physicians with mobile clinical practice guidelines.

- Guideline Promotion Opportunities: GPAC continues to promote guidelines through medical conferences including the Rural Emergency Continuum of Care Conference, the British Columbia College of Family Physicians Scientific Assembly as well as the 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.

- Three GPAC guidelines (*Warfarin Therapy Management*, *Warfarin Therapy – Management During Invasive Procedures and Surgery* and *Vitamin D Testing*) were accepted by the United States National Guideline Clearinghouse in 2010.

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, 2010 and March 31, 2011, the ACDF considered 162 applications related to laboratory medicine, specimen collection stations, radiology, ultrasound, nuclear medicine, pulmonary function, polysomnography and electrodiagnostics. Thirty-two applications were for new facilities and other applications included requests to relocate sites, expand capacity, transfer certificates of approval or expand test menus. Of the total applications reviewed, 144 requests were approved and 18 were denied. The ACDF handled 83 percent of all applications within one meeting.

Throughout 2010/2011, the Medical Services Commission continued its review of the ACDF guidelines that began in 2008, when the MSC established a working group to determine whether the guidelines that provide the operational framework for approvals could be adjusted within the intent of the existing legislation and regulations, to reduce administrative requirements on both facilities and the staff administering the guidelines. The working group's recommendations were presented to the MSC in 2009 and forwarded to the diagnostic facility community in early 2010 for additional review and feedback. A follow up implementation report and action plan was subsequently provided to the Commission and review of the guidelines has continued into the next fiscal period. Meanwhile, the ACDF has already made some changes in its efforts to streamline the application process for its clients.

The Commission continues to apply the motion adopted at its October 2009 meeting to hold denials pertaining to specimen collection stations ("SCS") in abeyance until the ACDF guideline review has been completed and as a result, during 2010/2011, the MSC deferred two laboratory medicine applications and two SCS applications.

In December 2010 the Ministry of Health's Diagnostic Facilities Administration and Medical Services Branch reviewed the MSP payment policy for pulmonary function services performed in public facilities, at the request of some rural hospitals that do not have onsite MSC-approved pulmonary function physicians. The existing policy required that physicians approved to perform pulmonary function services had to be in a facility when testing was being performed on patients by qualified respiratory staff, to be considered benefits billable to MSP. This policy created hardship for those rural communities with no approved physicians onsite and left the communities without an ability to provide necessary outpatient pulmonary function services. After reviewing the Diagnostic Accreditation Program requirements which do not require a qualified pulmonary function physician to be on hand during patient testing, it was agreed to change the MSP payment policy to allow pulmonary function testing to be conducted by qualified respiratory staff in the absence of MSC-approved pulmonary function physicians.

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 *Medicare Protection Act*. The AIC decides whether onsite 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 2010/2011, the AIC received 40 new audit referrals related to medical practitioners, 38 of which were approved. Audit reports from 34 onsite 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 2010/2011, the Billing Integrity Program conducted 16 on-site medical practitioner audits. It negotiated settlements for ten cases with dollars equaling $1,078,738. A total of $701,326 was recovered by BIP this year (including recoveries negotiated in previous years).

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

The Commission has delegated its authority to audit claims from health care practitioners to the Health Care Practitioners Special Committee (HCPSC) for audit. Special Committees have also been established by Order in Council, pursuant to s.4 of the Act, 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.

In 2010/2011, the HCPSC received six new audit referrals related to health care practitioners. Five health care practitioner audits were conducted and negotiated settlements for two cases totalled $180,441.

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 2010/2011, 68 new cases were received, 24 of which were referred to the Reference Committee. During this time period, the Reference Committee also closed 24 cases.

6. Joint Standing Committee on Rural Issues (JSC)

The JSC is not a direct advisory committee to the Medical Services Commission but some of the funding for its work comes from the Available Amount that is managed by the Commission.

The JSC oversees approximately $89 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.

In 2011 the JSC announced a new program, the Rural Emergency Enhancement Fund (REEF), to encourage the provision of reliable public access to emergency services in health authority designated emergency departments in rural British Columbia served by fee-for-service physicians. A total of $10.7 million has been allocated to this program.

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.

MSP's regular premium assistance program was enhanced in 2010 to allow more British Columbians to qualify and to allow persons already receiving a partial subsidy to qualify for a higher level of assistance.

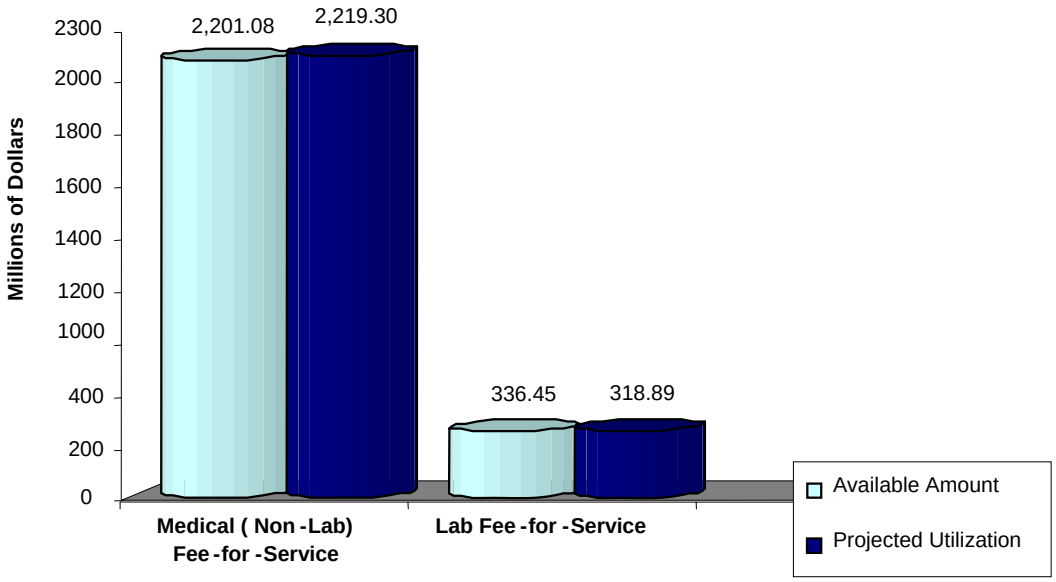
Temporary premium assistance offers beneficiaries a 100 percent subsidy for a short term, based on current unexpected financial hardship.

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 15,668 medical and health care providers over $2.63 billion dollars relating to over 85.8 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.

2010/2011 Available Amount and Projected Utilization*



***** Actual expenditures will be reported when MSP finalizes payments for 2010/2011.

- ***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 102 waiver of the wait period requests between April 1, 2010 and March 31, 2011, and granted 16 approvals, including an application from a client who returned to British Columbia for cancer treatment and was diagnosed as terminal during their wait period. Another application was approved for a client who was experiencing difficulties with her pregnancy and needed costly testing during her wait period. The Committee was concerned that without necessary medical care, the mother and unborn child may be at risk.

In addition, a special waiver of the wait period was approved for Canadian citizens and holders of permanent resident status who moved to British Columbia in the aftermath of the chaos that began in Egypt on January 25, 2011 and in Libya on February 16, 2011, and in the aftermath of the earthquake that hit Japan on March 11, 2011.

The Committee denied several applications in 2010/2011 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 2010/2011, nine residency hearings were held. One case was settled prior to a hearing date being set and three cases remain pending.

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"). In January 2011, the MSC approved revisions to the guidelines.

Additional information regarding out-of-country services and a copy of the updated guidelines may be found 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, 2010 to March 31, 2011, MSP received 1,968 requests for out-of-country elective treatment. Funding was authorized for 1,833 requests and 135 cases were denied. Panel hearings are currently pending for two denied out-of-country cases that have been appealed to the Medical Services Commission.

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.

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

In 2010/2011, two requests for ACDF appeal hearings were received. One request was withdrawn and one appeal hearing is pending and will be held in the next fiscal period.

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.

In 2010/2011, one audit hearing commenced but was subsequently adjourned by order of the panel. The case was settled before it was set to resume.

b) De-enrollment of Medical Practitioners for "Cause"

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

Other 2010/2011 MSC Highlights and Issues

The Medical Services Commission held seven regular business meetings between April 1, 2010 and March 31, 2011.

- ***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 well as a signatory to the *2009 Memorandum of Agreement* that replaces the compensation re-opener provisions in the *Physician Master Agreement.*

An amendment to the *2009 Memorandum of Agreement* was signed in July 2010.

The Commission was also a signatory in 2010 to a *Memorandum of Agreement* with respect to the suspension of the Medical On-Call Availability Program (MOCAP) distribution and distribution dispute resolution processes and to an agreement regarding Medical Consultants funding.

Copies of the negotiated agreements and amendments are available on the website: http://www.health.gov.bc.ca/msp/legislation/bcmaagree.html.

- ***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 2010/2011, 154 Minutes of the Commission related to the *Payment Schedule* were approved, resulting in 116 new fee items, 300 amended fee changes and 65 deleted items.

Representatives from the Ministry of Health and the BCMA established a working group in 2010 to determine ways of simplifying 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.

- ***Multiple Insurers***

At its March 2011 meeting the MSC heard representations from the Ministry of Health and the BCMA regarding a proposed amendment to the Preamble of the *Medical Services Commission Payment Schedule* and the *BCMA Guide to Fees* for payment involving multiple insurers. The Commission encouraged both parties to reach an agreement and as a result two new fixed fee items were established for same day billing for services covered by multiple insurers. The Commission will be responsible for the monitoring of the fee items for a one year period starting on July 1, 2011.

- ***Ordering of Diagnostic and Laboratory Tests by First Nations and Inuit Health Registered Nurses in Certified Practice***

Pending an amendment to s.45 of the *Health Care and Services Regulation* intended to address the issue of referrals by registered nurses in certified practice, the MSC approved a six-month time limited Minute of the Commission authorizing registered nurses employed by the First Nations and Inuit Health Branch of Health Canada, registered in certified practice by the College of Registered Nurses of British Columbia and serving the communities of Port Simpson, Kitkatla and Hartley Bay, to order selected medically necessary diagnostic and laboratory tests for MSP beneficiaries residing in those communities.

- ***Strategic Planning***

The Commission identified its objectives and priority directions for 2010/2011. Strategies included developing and promoting guidelines and protocols to support appropriate patient care, 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 and the BCMA regarding expenditure analysis, utilization and management of the Available Amount and continued to receive regular reports from its advisory committees.

- ***Presentations to the MSC***

Throughout 2010/2011, the Commission received presentations on several issues including information pertaining to proposed Care Card enhancements, details regarding the Ministry of Health's three-year health system plan, an overview of MSP's random audit process and an update on establishing surgical prioritization and wait time targets for all elective surgeries in British Columbia. A presentation on the Divisions of Family Practice (a General Practice Services Committee initiative) was also provided to the Commission.

- ***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-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 2010/2011.

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.

<u>Extra Billing Investigations</u>

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

In 2010/2011, one new case of suspected extra billing in a private clinic and/or by practitioners was referred to the Commission. Investigation of this case continued during the reporting period.

Two extra billing cases from the previous year remained active during 2010/2011 and four cases investigated during 2009/2010 were closed in 2010/2011, with no further action required.

Two extra billing audits ordered by the MSC in 2007 commenced in January 2011 (as per the Extra Billing Litigation section below). Six additional extra billing audits ordered by the MSC prior to 2010/2011 have not yet occurred pending the outcome of these two audits and the ongoing private clinic extra billing litigation in the Supreme Court of British Columbia.

During 2010/2011 the Commission received four extra billing referrals related to three clinics where audits have already been ordered.

Extra Billing Litigation

The private clinic litigation that commenced in the Supreme Court of British Columbia in January 2009 and 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 2010/2011.

In November 2009, Madam Justice Lynn Smith, the case management judge, handed down a number of rulings arising from three interim procedural applications. 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 (BCNU), and later refiled by a number of individual petitioners. She ordered that the BCNU proceeding be stayed pending the outcome of the clinics' action. Madam Justice Smith 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.

On May 25, 2010, the five individual petitioners applied to be added as defendents to the clinics' action, or in the alternative, as intervenors. The BCNU applied at the same time to be added as an intervenor. Madam Justice Smith handed down her decision on July 2, 2010. She granted the individual petitioners intervenor status in the action, with the right to submit evidence as well as legal argument, but with no individual rights of discovery. She denied the BCNU's application for intervenor status.

On June 30, 2010, five of the plaintiffs in the clinics' action filed a Notice of Discontinuance, leaving only one clinic as plaintiff.

A subsequent appeal of Madam Justice Smith's November 2009 decision to permit the audits was heard on June 24, 2010. In a decision rendered on September 9, 2010, the British Columbia Court of Appeal decided that the correct form for the Commission to bring its application was the Provincial Court, before a justice of the peace, seeking a warrant for entry to the clinics to perform the audit. The Court held that it was not a matter that should have been brought before the Supreme Court by way of an injunction application. The Court also held that the statutory provisions for the issuance of a warrant were adequate for the Commission's purpose, and as a result the Supreme Court erred in granting the extraordinary remedy of an injunction. In addition, it held that the question of whether a warrant should be issued is entirely separate from the constitutional litigation, and the application for a warrant ought not to have been brought in the constitutional proceedings.

The Court of Appeal went on to say that it was still open to the Commission to apply for a warrant from a justice of the peace, and that it was still open to the clinics to apply to the Supreme Court (in the context of the constitutional litigation) seeking an exemption from the application of the Act's audit provisions.

Sometime after this decision, the two clinics agreed to permit the audits to take place. The audits commenced on January 24, 2011, with particular emphasis placed on protecting patient confidentiality.

There have been further developments in the private clinic litigation during 2011/2012, as the Commission awaits a final audit report.

Human Rights Challenge re Multiple Sclerosis and the Treatment of Chronic Cerebrospinal Venous Insufficiency

In September 2010 a man suffering from multiple sclerosis ("MS") filed a complaint with the Human Rights Tribunal against the Province of British Columbia (as represented by the Ministry of the Health, the Medical Services Commission, the College of Physicians and Surgeons of British Columbia and the Vancouver Island Health Authority) alleging discrimination in the provision of a service customarily available to the public.

The complainant contended that he was denied access to and funding for a controversial medical procedure promoted by Italian physician Dr. Paolo Zamboni. The procedure, frequently termed "liberation", involves the application of venous angioplasty techniques to persons with MS. According to Dr. Zamboni's theory, chronic cerebrospinal venous insufficiency ("CCSVI") may be a cause of MS and venous angioplasty techniques may be a possible treatment for CCSVI resulting in improved drainage blood flow from the brain. Liberation therapy has been a source of hope and interest for persons in the MS community.

The complainant alleged that although conventional angioplasties are provided by the public health care system and funded by the Medical Services Plan he was denied both MSP-funded screening and diagnostic services and the venous angioplasty procedure itself, because he had MS.

In early 2011 an application to dismiss the complaint was filed by all Respondents. The Respondents denied any discriminatory conduct and submitted affidavits, expert opinions and other supporting documentation.

Proceedings with respect to this case continued during 2011/2012.

Appendices

Appendix 1: Members of the Medical Services Commission (MSC) as of March 31, 2011

Medical Services Commission representatives and alternate members are appointed by Order of the Lieutenant Governor in Council (OIC).

Government of British Columbia Representatives:

- Vacant (Chair)
- Mr. Bob Nakagawa (Deputy Chair)
- Dr. Robert Halpenny

- Alternate Members: Ms. Sheila Taylor, Ms. Phyllis Chuly, Ms. Heather Davidson

British Columbia Medical Association (BCMA) Representatives:

- Dr. Brian Gregory
- Dr. Bryan Norton *
- Mr. Darrell Thomson

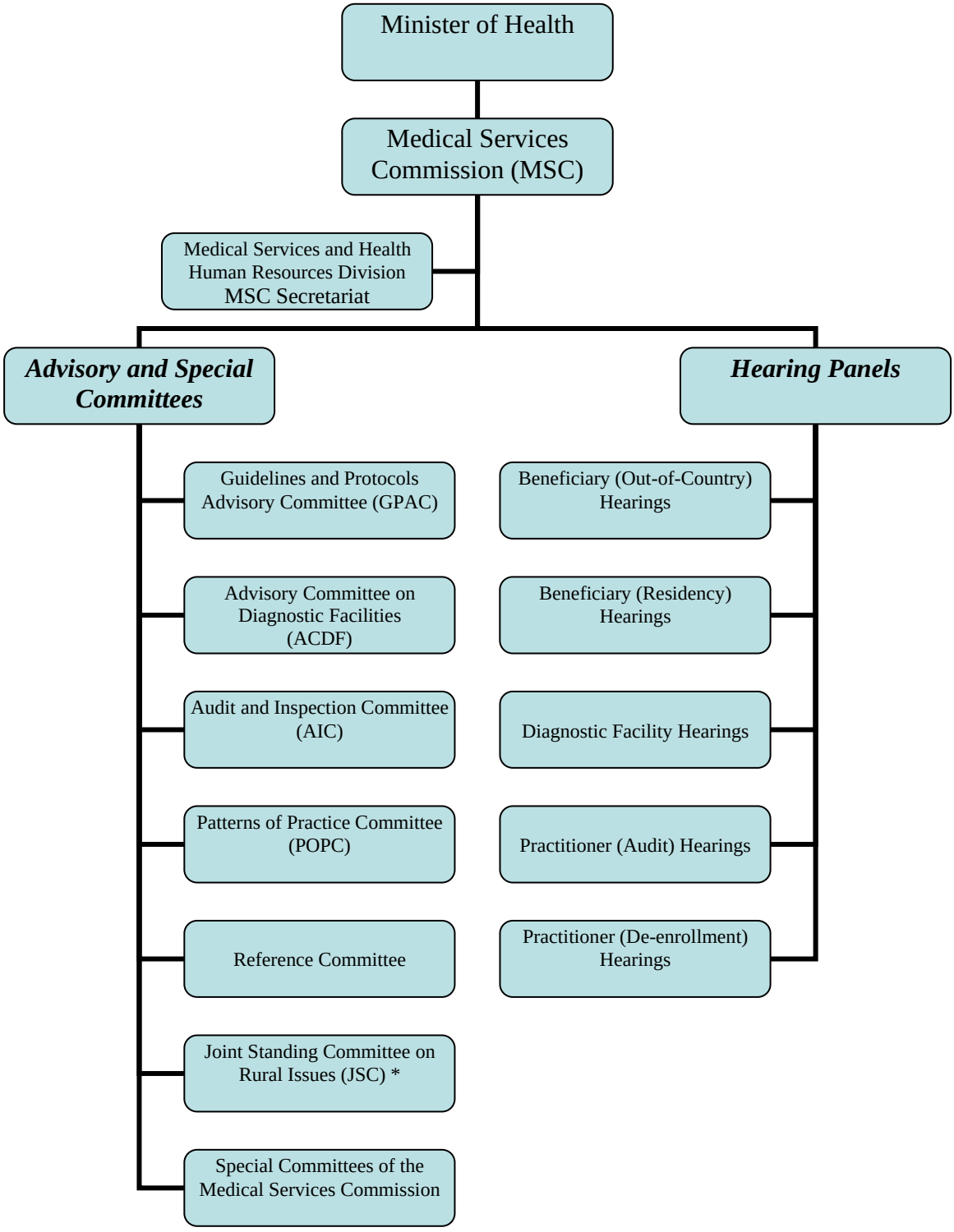
- Alternate Members: Dr. Brian Brodie *, Dr. Nasir Jetha *

Public Representatives:

- Ms. Isobel Mackenzie
- Ms. Melanie McKenzie
- Mr. Isidor Wolfe

* New OIC appointments – October 2010

Appendix 2: MSC Organizational Chart



***** Some of the funding for the work of the JSC comes from the Available Amount managed by the MSC.

Appendix 3: Guidelines and Protocols Approved by the MSC in 2010/2011

Title	Type (New/Revised)	Date of MSC Approval
Iron Deficiency – Investigation and Management	New	May 12/10
Palliative Care for the Patient with Incurable Cancer or Advanced Disease – Part 1: Approach to Care	New	May 12/10
Febrile Seizures	New	June 23/10
Oral Rehydration Therapy (ORT) in Children	New	June 23/10
Diabetes Care	Revised	June 23/10
Asthma – Diagnosis and Management	Revised	June 23/10
Warfarin Therapy – Management During Invasive Procedures and Surgery	New	September 15/10
Vitamin D Testing	New	September 15/10
Chronic Obstructive Pulmonary Disease (COPD)	Revised	December 8/10
Problem Drinking	New	March 2/11
Overweight and Obese Adults: Diagnosis and Management	Revised	March 2/11

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

Medical Services Commission Mailing Address:

3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

Telephone: 250-952-3073
Fax: 250-952-3131

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