MEDICAL SERVICES COMMISSION

2015/2016

ANNUAL REPORT

BRITISH COLUMBIA

MEDICAL SERVICES COMMISSION

2015/2016

ANNUAL REPORT

BRITISH COLUMBIA

Table of Contents

Mandate

The Medical Services Commission ("MSC" or "Commission") administers the Medical Services Plan ("MSP") to facilitate reasonable access throughout British Columbia to quality medical care, health care and diagnostic facility services for residents of British Columbia, under the *Medicare Protection Act* (the "Act" or "MPA").

The Medical Services Commission

Established under the *Medical Services Act, 1967,* and continued under the current *Medicare Protection Act,* the Medical Services Commission oversees the provision, verification and payment of medical and health services in an effective and cost-effective manner 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 Doctors of BC, three public members appointed on the joint recommendation of the Minister of Health and the Doctors of BC 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 and diagnostic services, the Commission is responsible for managing the Available Amount, a fund which is set annually by government to pay practitioners on a fee-for-service basis for medical services provided to MSP beneficiaries. The MSC is also responsible for enforcing the *Medicare Protection Act* and investigating reports of extra billing; hearing appeals brought by beneficiaries, diagnostic facilities and physicians as required by the Act; and arbitrating disputes that may arise between the Doctors of BC and the Government of British Columbia.

Advisory Committees and Overview of Accomplishments

The Act allows the Commission to delegate some powers and duties and 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 tri-partite representation. The following is a description of the responsibilities and an overview of the 2015/2016 accomplishments of some of the MSC's advisory committees, hearing panels and other delegated bodies.

1. Guidelines and Protocols Advisory Committee ("GPAC")

The Guidelines and Protocols Advisory Committee, an advisory committee to the MSC and a joint collaboration between the Doctors of BC and the Ministry of Health, is mandated to provide recommendations to British Columbia practitioners on delivering high quality, appropriate care to patients. These recommendations are published as easy-to-read clinical practice guidelines under the brand name, *BC Guidelines*, on the website www.bcguidelines.ca. GPAC's overall goal is to maintain or improve the quality of medical care, while making optimal use of medical resources.

Promotion and Education

To further GPAC's strategic goals of increasing the exposure of *BC Guidelines* and supporting evidence-based high quality patient-centred care, GPAC participated in the following promotional activities during 2015/2016:

- BC Nurse Practitioner Association Conference;
- BC College of Family Physicians Fall Conference;
- St. Paul's Hospital Continuing Medical Education for Primary Care Physicians;
- Rural Locum Forum 2016 – Choices and Transformations;
- UBC Undergraduate Curriculum – 4th Year Medical Students Preparation for Medical Practice Course;
- A presentation to a study tour of health care leaders and clinicians from Kazakhstan.

Guidelines Approved by the MSC in 2015/2016

The S*troke and Atrial Fibrillation* series of guidelines included the publication of three separate guidelines – *Stroke and Transient Ischemic Attack – Acute and Long-Term Management (Revised); Atrial Fibrillation – Diagnosis and Management (New);* and *Use of Non-Vitamin K Antagonist Oral Anticoagulants (NOAC) in Non-Valvular Atrial Fibrillation (New)* – that provide recommendations on how to prevent, diagnose and manage strokes, transient ischemic attacks and atrial fibrillation in adults aged ≥ 19 years within the primary care setting.

The *Warfarin Therapy Management (Revised)* and *Warfarin Therapy – Management During Invasive Procedures and Surgery (Revised)* guidelines provide recommendations for the management of warfarin therapy for the long-term care of patients and the safe interruption of warfarin therapy for patients requiring invasive procedures and surgery.

The *Asthma in Adults – Recognition, Diagnosis and Management (Revised)* guideline encourages appropriate recognition, diagnosis and management for all patients ≥ 19 years within the primary care setting with symptoms of asthma and the accompanying *Asthma in Children – Diagnosis and Management (New)* guideline focuses on appropriate diagnosis and management of asthma in patients aged 1 to 18 years.

The *Chronic Heart Failure – Diagnosis and Management (Revised)* guideline provides strategies for the improved diagnosis and management of chronic heart failure in adults aged ≥ 19 years.

The *Diabetes Care (Revised)* guideline describes the care objectives for the prevention, diagnosis and management of diabetes mellitus in adults aged ≥ 19 years.

Guideline Withdrawal

In 2015/2016, the MSC also approved the withdrawal of the *Acute Chest Pain – Evaluation and Triage* guideline, as it contains information that no longer reflects the best available science.

Guidelines Under Development

The following revised guidelines were under development during 2015/2016 – *Chronic Obstructive Pulmonary Disease; Thyroid Function Tests; Vitamin D;* and *Testosterone.* New guidelines under development during this period included *Special Endocrine Testing* and *Lifestyle and Self-Management Supplement.*

2. Advisory Committee on Diagnostic Facilities ("ACDF")

The Advisory Committee on Diagnostic Facilities 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, 2015 and March 31, 2016, the ACDF considered 69 applications related to laboratory medicine, electrocardiography, specimen collection stations, radiology, ultrasound, pulmonary function, electromyography and polysomnography. Twenty-four applications were for new certificates of approval and other applications included requests to relocate existing sites, expand capacity, add services or transfer interest.

Of the total applications reviewed by the ACDF, 60 requests were approved, six were recommended to the MSC for denial and three applications were deferred to the MSC for decision.

Ultrasound Policy Review

The review of the current requirements/policies that govern approval of diagnostic outpatient ultrasound facilities (both public and privately-owned) in British Columbia continued into fiscal 2015/2016. The review identified three areas for potential revision to the ultrasound policies: (1) a general requirement for an ultrasound Certificate of Approval (for privately-owned facilities); (2) a policy that restricts approval of Doppler studies and echocardiography to public facilities/hospitals only; and (3) a telemetry (distance-reading/remote site ultrasound) policy.

A report by Dr. Vicki Foerster – *Review of Ultrasound in BC* – which examined the medical appropriateness of current ultrasound policy, was brought forward, along with a Ministry of Health response detailing a high-level work plan and timeline for completing

the review, to the Commission's April 2015 meeting. The ACDF Secretariat completed stakeholder consultations and finalized its *Diagnostic Ultrasound – Outpatient Facility Policy Report*, including policy recommendations, for submission to the Commission.

Ultrasound Moratorium

In April 2015, the Commission approved an extension to the temporary moratorium on applications for new, expanded or relocated outpatient diagnostic ultrasound facilities, until June 1, 2017. This extension continued to provide for exceptions to the moratorium, based on a criterion of "demonstrated urgent health or safety needs" and in June 2015, the Commission approved a revised process by which it would directly adjudicate requests for exception to the ultrasound moratorium. The Commission began reviewing ultrasound moratorium exception requests at its September 2015 meeting and as of March 31, 2016, had approved four requests and denied one application.

Laboratory Services Act

The implementation of the *Laboratory Services Act* on October 1, 2015, removed all laboratory medicine and specimen collection station facilities from the *Medicare Protection Act.* The authority and oversight for all activities related to laboratory services (including the facility approval process) moved from the Commission to the Minister of Health. One fee item assigned to the Section of Laboratory Medicine, electrocardiography, remained under the *Medicare Protection Act.*

3. Audit and Inspection Committee ("AIC")

The Audit and Inspection Committee is a four-member panel comprised of three physicians (one appointed by the Doctors of BC, 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 its powers and duties under s.36 of the Act to the AIC 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 2015/2016, the AIC received and approved 21 new audit referrals related to medical practitioners. Audit reports from 16 inspections were reviewed by the AIC during this period and 16 cases were recommended for recovery.

- ***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 2015/2016, the Billing Integrity Program conducted 14 onsite medical practitioner audits. It negotiated settlements for 16 cases with dollars equaling $4,776,355. A total of $5,685,819 was recovered by BIP this year (including recoveries negotiated in previous years).

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

The Commission's authority to audit claims from health care practitioners is delegated to Special Committees for each of the following professions: acupuncture, chiropractic, dentistry, massage therapy, midwifery, naturopathy, optometry, physical therapy and podiatry. The Special Committees have been given all of the powers and duties necessary to carry out audits.

The Commission's authority to make orders in regard to practitioners under sections 15 and 37 of the Act is delegated to the Health Care Practitioners Special Committee for Audit Hearings ("HCPSCAH").

In 2015/2016, the HCPSCAH received and approved five new audit referrals related to health care practitioners. Audit reports from three inspections were reviewed by the HCPSCAH during this period and all three cases were recommended for recovery. The Billing Integrity Program did not conduct any onsite health care practitioner audits and negotiated settlements for three cases with dollars equaling $268,124. A total of $395,157 was recovered by BIP this year (including recoveries negotiated in previous years).

4. Patterns of Practice Committee ("POPC")

The Patterns of Practice Committee is a joint committee of the Doctors of BC and the MSC and acts in an advisory capacity to the Commission. The POPC prepares and distributes an annual statistical personal profile summary (mini-profile) to fee-for-service physicians and provides educational information to physicians on their patterns of practice and the audit process. The POPC also provides advice to the Medical Services Plan regarding inappropriate billing and scrutinizes MSP's process of detecting and deterring inappropriate billing. As well, the POPC listens to physicians who wish to raise their concerns about the audit process and provides feedback on the audit practices employed by the Billing Integrity Program and in conjunction with the

College of Physicians and Surgeons of British Columbia, the POPC also nominates medical inspectors and audit hearing panel members.

5. Reference Committee

The Reference Committee acts, on 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 Doctors of BC.

In 2015/2016, MSP received 15 new cases from the Doctors of BC, 18 of which were referred to the Reference Committee. During this time period, the Reference Committee also closed 25 cases.

6. Joint Standing Committee on Rural Issues ("JSC")

The Joint Standing Committee on Rural Issues 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 $117 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 2015/2016, the JSC made enhancements to the Rural Locum Programs including the streamlining of processes for rural physicians to obtain, and other physicians to provide, locum services in rural British Columbia communities. Enhancements include providing coverage for accommodations and car rentals in the more remote communities. It is hoped that this will provide greater access to locum support for rural communities and for rural physicians.

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.

The government assists more than 1.3 million people with payment of their MSP premiums. Regular premium assistance offers five levels of subsidy, based on an individual's net income (or a couple's combined income) for the preceding tax year, less deductions for age, family size, disability and any reported Universal Child Care Benefit and Registered Disability Savings Plan Income.

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

In the Government of British Columbia's *Budget and Fiscal Plan 2016/17-2018/19*, changes to MSP premiums and regular premium assistance were announced that will come into effect January 1, 2017. The changes include: no premiums for children; an increase to the maximum allowable adjusted net income to qualify for 100 percent premium assistance; three new income bands; and an increase to the maximum net income to qualify for some level assistance.

In 2015/2016, the Medical Services Plan paid approximately 18,100 medical and health care providers $3.02 billion dollars relating to nearly 96 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 online at: www.gov.bc.ca/msppublications.

- ***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 56 waiver of the wait period requests between April 1, 2015 and March 31, 2016, and granted six approvals.

Forty-nine waiver requests were denied in 2015/2016 including 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 in advance for the cost of the birth.

One waiver request was undecided in 2015/2016.

In addition, a special waiver of the wait period was approved for Canadian citizens and holders of permanent resident status who returned to British Columbia in the aftermath of the earthquake that struck Nepal on April 25, 2015.

Medical Services Commission 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 *Medicare Protection 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 panels may be judicially reviewed by the Supreme Court of British Columbia.

1. Beneficiary Hearings

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

Eligibility (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 Commission may cancel the MSP enrollment of individuals whom it determines are not residents of British Columbia. Individuals whose MSP coverage is cancelled have the right to appeal to the MSC. 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. The Commission has delegated the responsibility for holding residency hearings to one decision-maker.

The Ministry of Health's Eligibility, Compliance and Enforcement Unit investigated 875 residency cases between April 1, 2015 and March 31, 2016, verifying British Columbia residences for 105 cases. 770 non-resident accounts were identified, resulting in 747 MSP account cancellations, 23 requests for Medical Services Commission hearings and $3,137,000 in potential hospital, MSP and PharmaCare recoveries.

The Commission held 11 residency appeal hearings in 2015/2016, including some cases carried forward from previous fiscal years. Of the 23 hearing requests received by the MSC during 2015/2016, nine hearing dates were scheduled and 14 hearings remain pending.

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.

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, 2015 to March 31, 2016, MSP received 2,630 requests for out-of-country elective treatment. Funding was authorized for 2,495 cases and 135 cases were denied. Panel hearings are currently pending for four 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.

No diagnostic facility appeals were filed or hearings held in 2015/2016.

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.

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 2015/2016, one audit hearing commenced. A final decision is yet to be reached.

De-enrollment of Medical Practitioners for "Cause"

No de-enrollments of medical practitioners for "cause" occurred in 2015/2016.

4. Hearings Related to Health Care Practitioners

Audit hearings and de-enrollment for "cause" are the two types of Health Care Practitioners Special Committee for Audit Hearings ("HCPSCAH") statutory hearings related to health care practitioners.

Audit Hearings

As per s.4 of the *Medicare Protection Act,* the HCPSCAH exercises the MSC's hearing powers over health care practitioners. Under s.37 of the Act, the HCPSCAH may make orders requiring health care practitioners 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 practitioner 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 HCPSCAH. 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, 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 hearings were held by the HCPSCAH in 2015/2016.

De-enrollment of Health Care Practitioners for "Cause"

In 2015/2016, two de-enrollments of health care practitioners for "cause" were reached through settlement.

Other 2015/2016 Commission Highlights and Issues

The Medical Services Commission held eight regular business meetings and one strategic planning session between April 1, 2015 and March 31, 2016.

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

As a result of negotiations between the Government of British Columbia and the Doctors of BC, a comprehensive *2014 Physician Master Agreement* (including five subsidiary agreements) is in effect until 2019. The *Physician Master Agreement* provides a consolidated agreement structure and administrative committees with health authority representation. The Commission is a signatory to the *Physician Master Agreement* and subsidiary agreements.

Copies of the negotiated agreements are available online at: http://www2.gov.bc.ca/gov/content/health/practitioner-professional-resources/msp/negotiated-agreements-with-the-doctors-of-bc.

The Physician Services Committee ("PSC") is the senior body that oversees the relationship between the government and the Doctors of BC and the implementation and administration of the *Physician Master Agreement* and subsidiary agreements. The Chair of the Medical Services Commission regularly attends PSC meetings as a non-voting member.

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

The *Medical Services Commission (MSC) 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 *MSC Payment Schedule* are implemented in the form of signed Minutes of the Commission.

In 2015/2016, 78 Minutes of the Commission related to the *MSC Payment Schedule* were approved, resulting in 13 new fee items, 41 amendments to regular fees, 14 fee item extensions, seven allocation and/or retroactive amount changes, eight amendments to General Practice Services Committee ("GPSC") fees and two revisions to Specialist Services Committee ("SSC") fee items.

In response to a recommendation from the Office of the Auditor General's 2014 *Oversight of Physician Services* report, the Ministry of Health continues to work on developing a framework and process that will see components of the *MSC Payment Schedule* reviewed on an ongoing basis.

- ***MSC Response to Ministry of Health Policy Papers***

The Commission provided the Deputy Minister of Health with its written response to four policy papers released by the Ministry as a means for the Ministry to implement the priorities of its strategic plan – *Primary and Community Care in BC: A Strategic Policy Framework; Future Directions for Surgical Services in British Columbia; Rural Health Services in BC: A Policy Framework;* and *Enabling Effective, Quality Population and Patient-Centred Care: A Provincial Strategy for Health Human Resources.*

The Commission also provided its feedback to Ministry of Health I/T staff following the release of the *Enabling Effective, Quality Population and Patient-Centred Care: A Provincial Strategy for Health Information Management and Technology* policy paper in the fall of 2015.

- ***Ophthalmology***

The Commission held a comprehensive discussion regarding ophthalmology with representatives from the Guidelines and Protocols Advisory Committee, the Patterns of Practice Committee, the Tariff Committee, and Ministry of Health staff from the Billing Integrity Program and the Health Sector Workforce Division and suggested that there is a need for a working group and/or subcommittee to analyze ophthalmology provincially, nationally and internationally to determine the medical necessity, appropriateness and value of all tests, procedures and referrals.

- ***Strategic Planning***

The Commission identified its objectives and priority directions for 2016/2017 at a strategic planning session held in March 2016.

The MSC's objectives for the coming year involve managing the Available Amount; promoting quality, appropriate and accessible patient care; and ensuring that beneficiary services are equitable. Some strategies for the Commission include providing input into the setting of the Available Amount; initiating a fee review process; improving integration of its advisory committees and receiving regular reports on the initiatives the committees undertake throughout the year; promoting an increased supply of sonographers; and reviewing new technology related to genetic testing and point of care testing.

- ***BC Services Card***

The Commission continued to receive regular updates on the BC Services Card program during 2015/2016.

In February 2016, the Minister of Health provided direction to remove the Cancellation for Failure to Renew Enrollment policy from the BC Services Card Phase Two scope. Resulting changes to other BC Services Card policies reflect new approaches to support Medical Services Plan Renewal of Enrollment. Adult beneficiaries, over 19 and under

75 years of age, will continue to be strongly encouraged to renew enrollment by February 10, 2018. Changes to address the downstream effects to policy and programs given the removal of the consequence of Cancellation for Failure to Renew Enrollment policy have also been made. Provisions supporting Cancellation for Failure to Renew Enrollment have subsequently been removed from the Medical and Health Care Services Regulation (B.C. Reg. 92/2016).

Other regulatory amendments remain in support of the BC Services Card program that require new and returning eligible adults, aged 19 and over, to complete two step enrollment. The legislative and regulatory changes that establish a duty for practitioners to verify enrollment prior to charging for MSP services and for practitioners, health authority employees, and diagnostic facility employees who suspect that a person is attempting to obtain MSP benefits to which they are not entitled to report those suspicions to the Commission also continue to remain in force.

MSP policy frameworks, business rules and requirements, and functional requirements for Two-Step Enrollment, Modified Enrollment and Renewal of Enrollment, No Primary Identification and Renewal of Enrollment streams have been developed.

A framework in support of the eligibility and compliance activities that will be required as a result of the new BC Services Card policies and processes has been developed with input from affected Ministry of Health branches (Medical Beneficiary Branch, Audit and Investigations Branch). This operational policy framework is designed to establish criteria and processes for reviewing individual residency and eligibility as well as compliance by trusted third parties and health care professionals.

Stakeholder engagements with affected internal Ministry of Health programs (e.g., PharmaCare, MSP Claims, Acute Care) and key government Ministries (e.g., Ministry of Social Development and Social Innovation, Ministry of Finance) are underway. A public campaign is anticipated to begin in fall 2016.

- ***Presentations to the MSC***

Throughout 2015/2016, the Commission received presentations on several additional issues including:

- An overview of the Population Based Funding Program and capitation funding of medical services;

- An update from Ministry of Health staff regarding health human resources planning and management in British Columbia, specifically related to sonography and polysomnography;

- A discussion with the Chair of the Tariff Committee, who outlined the process with respect to fee requests that are submitted by the various sections of the Doctors of BC. The Tariff Committee is a statutory committee of the Doctors of BC that works collaboratively with MSP. Fee decisions that are ratified by the Board of the Doctors of BC are

forwarded to the MSC for approval as Minutes of the Commission. If the Board of the Doctors of BC disagrees with a Tariff Committee fee decision, the MSC will be asked to arbitrate the matter.

- An overview of the Provincial Surgical Executive Committee ("PSEC"). PSEC is the provincial forum for surgical services that recommends strategies, priorities and timelines to the Ministry of Health as well as policy direction and performance indicators and targets;

- An update from the Ministry of Health regarding its work related to alternative payments for physicians and follow up to recommendations from the Office of the Auditor General's 2014 *Oversight of Physician Services* report;

- Highlights of the Patterns of Practice Committee's 2015/2016 initiatives;

- A report from the Ministry's Health Technology Review Office regarding endovascular laser therapy ("EVLT") for the treatment of varicose veins and the potential for this procedure to become an insured service. The Health Technology Assessment Committee has reviewed the business case and the Ministry is currently in the process of developing findings and recommendations that will be shared with 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 2015/2016.

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 the

Commission the power to seek an injunction from a Court 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 2015/2016, three new cases of suspected extra billing involving clinics charging patients fees for telephone prescription renewals and booking and/or fast tracking appointments online were investigated by the MSC and after receiving confirmation from the clinics that these practices had been discontinued, the cases were closed.

The Commission also investigated and resolved a potential extra billing issue regarding an MSP beneficiary who was in the process of having her coverage backdated when she attended a walk in clinic.

Nine extra billing clinic audits ordered by the MSC between 2008 and 2011 remained pending during 2015/2016.

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,* was ongoing throughout 2015/2016.

In January 2009, legal proceedings were commenced against the Medical Services Commission, the Minister of Health Services of British Columbia, and the Attorney General of British Columbia (the government) alleging that sections 14, 17, 18, and 45 of the *Medicare Protection Act* are in breach of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). Sections 14, 17, and 18 relate to direct and extra billing, and s.45 prohibits private insurance for medical services covered by the Medical Services Plan. The current plaintiffs in this action (there have been several changes over the years) are Cambie Surgeries Corporation ("Cambie"), Specialist Referral Clinic (Vancouver) Inc. ("SRC"), and four individual patients.

The plaintiffs initially sought to prevent the Commission from conducting an audit of Cambie and SRC until the constitutional challenge had been resolved, but were unsuccessful. The audit began in January of 2011. On May 20, 2012, the Ministry of Health auditors presented their completed audit report to the Commission. The audit report identified numerous violations of the *Medicare Protection Act* at both clinics, and supported the Commission's counterclaim for an injunction against the two clinics. In addition, the audit report indicated that some of the physicians at both clinics appear to have been involved in double billing (i.e., billing both the patient and MSP in connection with the same service). The Commission therefore instructed the auditors to undertake a further audit of those physicians, focusing on the issue of double billing.

The Commission sought an interim injunction against Cambie and SRC in the fall of 2012. Procedural delays caused by the plaintiffs caused the Commission to agree to defer the injunction application in favour of a speedy trial of the constitutional claim. The trial, however, has repeatedly been delayed. Originally set for September of 2013, it was adjourned to January of 2014, then to September of 2014, to March of 2015, and finally is scheduled to be heard in early September 2016. The trial is expected to run for approximately 24 weeks, and is unlikely to conclude before the spring of 2017.

The parties have exchanged numerous expert reports, which are expected to be key to the resolution of the litigation. The defendants have produced almost 50,000 documents, and the plaintiffs have produced approximately two thousand. The defendants examined some of the plaintiffs for discovery in the summer of 2013 and in 2014, and were also granted the right to examine under oath several physicians who practice at Cambie and/or SRC. The plaintiffs conducted examinations for discovery of representatives of the defendants in August of 2014, and further examinations for discovery on both sides occurred in the spring of 2016.

Numerous parties have been granted leave by the Court to intervene in this litigation. One group of individuals had earlier petitioned the Court to compel the Commission to enforce the *Medicare Protection Act* provisions against private clinics; their petition has been put into abeyance pending the outcome of the constitutional challenge, but they have been granted the right to intervene. Another group of intervenors includes the British Columbia Health Coalition, Canadian Doctors for Medicare, two physicians, and two patients. The final intervenor is the British Columbia Anaesthesiologists' Society. In March of 2016, the Attorney General of Canada announced her decision to participate in the litigation as well, in accordance with the *Constitutional Question Act*.

Pacific Centre for Reproductive Medicine

In March 2013, the Medical Services Commission denied an application by Pacific Centre for Reproductive Medicine ("PCRM") for approval as a Category IV diagnostic facility under the *Medicare Protection Act* which would enable Maternal Fetal Medicine ("MFM") physicians to bill MSP for certain specified ultrasound services. In June 2013, PCRM filed a petition for judicial review of that decision and in February 2014, after discussions among legal counsel, PCRM discontinued its court proceeding. In April 2014, PCRM submitted a new application to the Commission for a temporary certificate of approval.

After communications between counsel for PCRM and the Commission, the MSC advised PCRM in May 2014 that it would be proceeding with its own investigations regarding MFM physicians and ultrasounds. The Commission also invited PCRM to work with it in order to clarify the exact nature of the application, specifying certain areas of concern.

On May 30, 2014, PCRM renewed its petition for judicial review of the Commission's March 2013 decision.

A hearing was held in November 2014, and on January 16, 2015, the Supreme Court of British Columbia handed down its decision. The court held:

> *I conclude the hearing of the present judicial review application ought to be adjourned. I do so assuming the Commission will proceed in good faith and with reasonable dispatch reflecting the spirit of its letter of May 7, 2014.*

Following this decision, PCRM took up the Commission's offer to work with it (through its Ministry of Health representatives) to clarify and refine its application, resulting in a new application being filed on April 20, 2015.

Prior to the Commission rendering a decision with respect to PCRM's application, it invited PCRM representatives to attend its June 2015 meeting to provide MSC members with additional background information related to the application and to allow an informal opportunity for questions and/or further clarification.

In deciding this matter, the Commission considered all of the common law, statutory and regulatory elements related to PCRM's application and reviewed all relevant information and documentation. The Commission issued its decision on December 9, 2015, denying PCRM's application for a certificate of approval.

Class Action Lawsuit

This is a class proceeding brought against the Province of British Columbia and the Medical Services Commission by Dr. James Halvorson, a Cowichan District Hospital emergency room physician, on behalf of fee-for-service medical practitioners enrolled in the Medical Services Plan claiming payment of fees for services provided to patients whose enrollment as beneficiaries of MSP had been cancelled by the Commission for non-payment of premiums (during the period 1992-1996) or a period of no-contact (for the period from 1996 to the present).

The proceeding was originally filed in 1998 and has a lengthy procedural history. A certification hearing was held in 2012, during which the parties reached an agreement on the terms of a Consent Order, which was approved by a justice of the Supreme Court of British Columbia on July 12, 2012. The Consent Order certified the action as a class action, and certified two threshold legal issues concerning the authority of the Commission to de-enroll beneficiaries for non-payment of MSP premiums.

At a summary trial in April 2013, the Supreme Court found that the Commission did have the power to de-enroll beneficiaries under the statute that governed the Medical Services Plan after July 23, 1992.

The plaintiff applied to certify further issues as common issues and also served the province and the Medical Services Commission with a Notice to Mediate.

On October 27, 2015, Ministry of Justice legal counsel, acting on behalf of the Ministry of Health and the Medical Services Commission, attended mediation of the Halvorson matter and a tentative settlement of up to $7.5 million under the *Crown Proceeding Act*

(subject to Treasury Board and Supreme Court approval) was reached.

Treasury Board and Cabinet approved the settlement in March 2016.

Appendices

Appendix 1: Members of the Medical Services Commission (MSC) as of March 31, 2016

Medical Services Commission representatives and alternate members are appointed by Order of the Lieutenant Governor in Council ("OIC") as per s.3(1) of the *Medicare Protection Act.* The Lieutenant Governor in Council must designate a Commission member who has been appointed to represent the government, as Chair.

Additional information regarding MSC appointments is available on the Board Resourcing and Development Office ("BRDO")'s website at www.brdo.gov.bc.ca.

Government of British Columbia Representatives:

- Dr. Robert Halpenny (Chair)*
- Mrs. Sheila Taylor (Deputy Chair)
- Vacant

- Alternate Members: Ms. Heather Davidson, Ms. Athana Mentzelopoulous**, Ms. Stephanie Power

* New OIC appointment – March 2016
** New OIC appointment – November 2015

Doctors of BC Representatives:

- Dr. Brian Gregory
- Dr. Bryan Norton
- Dr. William Rife

- Alternate Members: Dr. William Cavers*, Dr. Alan Ruddiman*, Mr. Allan Seckel

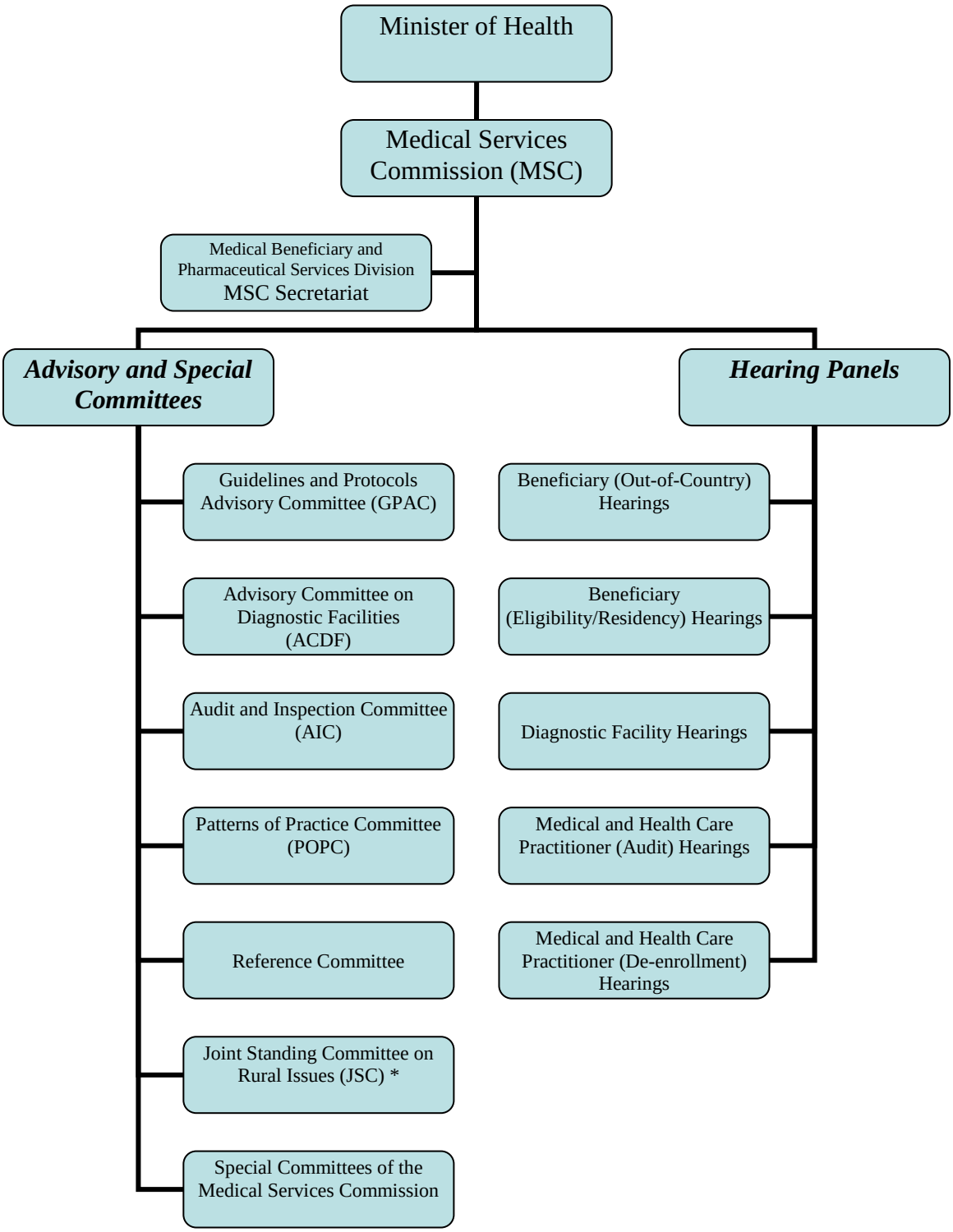
* New OIC appointments – October 2015

Public (Beneficiary) Representatives:

- Ms. Melanie Mahlman
- Ms. Carol Collins
- Ms. Ellen Godfrey*

* New OIC appointment – April 2015

Appendix 2: Medical Services Commission Organizational Chart



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

Appendix 3: Medical Services Commission Mailing Address and Website

1515 Blanshard Street
PO BOX 9652 STN PROV GOVT
Victoria BC
V8W 9P4

Telephone: 250-952-3073
Fax: 250-952-3133

Further information regarding the Medical Services Commission can be found online at: www.gov.bc.ca/medicalservicescommission.

Queen's Printer for British Columbia
Victoria, 2016