

# MEDICAL SERVICES

## COMMISSION

2008/2009

# ANNUAL REPORT



BRITISH  
COLUMBIA

The Best Place on Earth

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## **Mandate**

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

## **The Commission**

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

## **Organizational Structure**

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

## **Responsibilities of the Commission**

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

## **Advisory Committees and Overview of Accomplishments**

The Act allows the Commission to delegate some powers and duties. As a result, advisory committees and sub-committees as well as hearing panels have been established to assist the Commission in carrying out its mandate and efficiently managing the Available Amount. Appointments to committees and panels reflect the MSC tripartite representation. The following is a description of the responsibilities and an overview of the 2008/2009 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 2008/2009, 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 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.

GPAC continues to achieve its goal of improving utilization of health care services through a series of education and information initiatives, as well as through active promotion of the guidelines at Continuing Medical Education (CME) conferences. A system of guideline renewal and evaluation has ensured that the guidelines reflect the most recent literature and scientific evidence.

The Medical Services Commission approved/updated nine guidelines in 2008/2009.

- The *Frailty in Older Adults – Early Identification and Management* guideline addresses the early identification of patients who are at risk for frailty and the management of patients aged 65 years or older who are identified as frail.
- The *Chronic Kidney Disease – Identification, Evaluation and Management of Adult Patients* guideline provides recommendations for the evaluation, investigation and management of adult patients at risk of chronic kidney disease and those who have already developed chronic kidney disease.
- The *Osteoarthritis in Peripheral Joints – Diagnosis and Treatment* guideline summarizes current recommendations for assessment, diagnosis and treatment of osteoarthritis in peripheral joints for patients 19 years of age and older.
- The *Acute Chest Pain – Evaluation and Triage* guideline's objective is to improve the efficiency and effectiveness of diagnosing acute coronary syndrome in patients with acute chest pain.

- The *Ankle Injury – X-Ray for Acute Injury of the Ankle or Mid-Foot* guideline provides guidance around when X-rays are indicated for ankle injuries.
- The *Gastroesophageal Reflux Disease – Clinical Approach in Adults* guideline outlines the clinical approach to the diagnosis and treatment of gastroesophageal reflux disease (GERD) in adult patients.
- The *Infectious Diarrhea – Guideline for Ordering Stool Specimens* guideline provides guidance around the initial laboratory investigation of diarrhea in ambulatory patients greater than three years of age, where an infectious agent is suspected.
- The *Macroscopic and Microscopic Urinalysis and the Investigation of Urinary Tract Infections* protocol is to avoid unnecessary testing in routine cases of urinary tract infection while supporting physicians to order tests justified by the patient's clinical condition in special cases.
- The *Microscopic Hematuria (Persistent)* guideline deals with investigation of blood on dipstick urine testing and persistent microscopic hematuria in adults.

GPAC continued significant efforts in promotion of its guidelines in 2008/2009.

- Maintenance of the Guidelines Website: [www.BCGuidelines.ca](http://www.BCGuidelines.ca)
- Personal Digital Assistant (PDA): A joint initiative with the Ministry of Health Services, the BCMA and the UBC Division of Continuing Professional Development is ongoing and continues to provide physicians with PDA-based clinical practice guidelines at the point of care.
- Guideline Promotion Opportunities: GPAC continues to promote guidelines through medical conferences.
- Guideline Evaluation Plan: Guideline evaluation work is ongoing with presentations from GPAC to the MSC occurring on a regular basis.
- Medical Education: GPAC initiated early discussion with the medical school and individual sites to explore whether opportunities exist to facilitate use of the guidelines in medical education.

## ***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, 2008 and March 31, 2009, the ACDF considered 114 applications related to laboratory medicine, specimen collection stations, radiology, ultrasound, pulmonary function, polysomnography, nuclear medicine and electrodiagnostics. Twenty-nine applications were for new facilities and other applications included requests to relocate or amalgamate sites, increase capacity, transfer certificates of approval, expand test menus or remove referral base restrictions. Of the total applications

reviewed, 89 requests were approved, 22 were denied and three applications were deferred. The ACDF handled 86.8 percent of all applications within one meeting.

In October 2008, the Medical Services Commission established a Working Group to review the ACDF guidelines that provide the operational framework for approvals. The purpose of the Working Group review was to determine if the ACDF guidelines could be adjusted, within the intent of existing legislation and regulations, to reduce administrative requirements on both facilities and those administering the guidelines, and to report back to the MSC on its findings. The review by the Working Group extended beyond the 2008/2009 fiscal year period.

In 2008/2009, the ACDF reviewed the MSC's echocardiography policy which restricts payment for echocardiography to hospital-based facilities, and conducted an echocardiography waitlist survey. Following an analysis of the survey results, the ACDF recommended to the MSC that the status quo be maintained and noted that the current policy provides a mechanism for public and private facilities to work together to help with the echocardiography waitlist situation where needed.

### ***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 and, as of 2006, clinics. On December 1, 2006, s.10 of the *Medicare Protection Amendment Act 2003* was brought into force. This section expanded the audit and inspection powers of the MSC to include the power to audit clinics as corporate entities, rather than just physicians.

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

In 2008/2009, the AIC received 18 new audit referrals. Eight referrals were from the MSC (related to private surgical centres and cases of potential extra-billing) and the remaining 10 referrals were from the Billing Integrity Program. Audit reports from six on-site inspections were reviewed by the AIC during this period.

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

The Billing Integrity Program provides audit services to the Medical Services Plan and the Medical Services Commission. The MSC is authorized to monitor the billing and payment of claims in order to manage expenditures for medical and health care 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 2008/2009, the Billing Integrity Program completed 14 on-site audits. It negotiated settlements for 17 cases with negotiated dollars equaling \$1,215,960. A total of \$499,100 was recovered by BIP this year (including recoveries negotiated in previous years).

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

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

#### ***4. Patterns of Practice Committee (POPC)***

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

#### ***5. Reference Committee***

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

Membership on the Reference Committee is limited to representatives of the BCMA. In April 2008, the MSC approved amendments to the Reference Committee's terms of reference. During 2008/2009, 33 new cases were referred to the Committee. Of these cases, eight were resolved prior to review and three cases were deferred pending an expert opinion.



## **6. Joint Standing Committee on Rural Issues (JSC)**

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

In 2008/2009, the JSC conducted a review of the rural programs it governs. The purpose of the review was to assess the effectiveness of the rural programs in achieving appropriate levels of physician services in applicable communities. The JSC continues to prioritize and work through the 90 recommendations that were identified from the review. In October 2008, the JSC made changes to enhance the Rural GP Locum Program and Rural Specialist Locum Program to provide additional support to the most vulnerable rural communities.

### **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 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 is Health Insurance BC ("HIBC"). The Commission 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>.

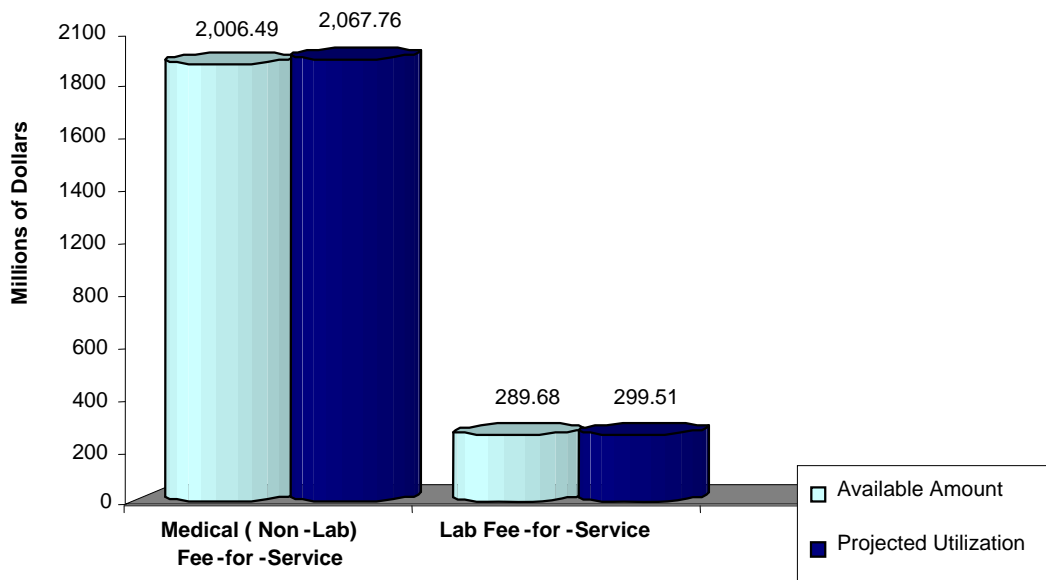
The government assists approximately 1.2 million people with payment of their MSP premiums. Regular premium assistance offers subsidies ranging from 20 percent to 100 percent based on net income for the preceding year less allowable deductions. Temporary premium assistance offers a 100 percent subsidy 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 14,656 medical and health care providers over \$2.4 billion dollars relating to over 80.7 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 *MSC 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 *MSC Financial Statement* are available on the website: [http://www.health.gov.bc.ca/msp/financial\\_statement.html](http://www.health.gov.bc.ca/msp/financial_statement.html).

**2008/2009 Available Amount and Projected Utilization\***



\* Actual expenditures will be reported when MSP finalizes payments for 2008/2009.

- **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 90 requests between April 1, 2008 and March 31, 2009, and granted 20 approvals, including an application to waive the wait period for a student who, due to a gap in her immigration documents, was required to fulfill the wait period before re-qualifying for coverage. The client was pregnant and due to deliver in the wait period and the panel was concerned that the unborn child and/or client could be at risk, as pre-natal care was not being obtained. Another application was approved for a client who unexpectedly contracted a systemic bacterial infection and pneumonia during their wait period and required hospitalization.

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

## **MSC Hearing Panels**

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

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

### ***1. Beneficiary Hearings***

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

#### ***a) Residency Hearings***

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

In 2008/2009, five residency hearings were held.

#### ***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 in 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 payment for out-of-country medical services is based on published criteria available in the *Medical Services Commission Out-of-Province and Out-of-Country Medical Care Guidelines for Funding Approval* (the "Guidelines").

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

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

From April 1, 2008 to March 31, 2009, MSP received 1,530 requests for out-of-country elective treatment. Funding was authorized for 1,418 requests and 112 cases were denied. Of the denied out-of-country cases, five were appealed to the MSC. A panel hearing was held for two of the appeals, and one case was settled prior to a hearing date being set. Two appeal hearings are currently pending.

## ***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.

The MSC recently streamlined its hearing panel procedures to allow ACDF hearings to be conducted before either a single-person or three-person panel. This change has resulted in a more expedient hearing process for clients. Three appeals were reviewed by a single-person MSC panel during 2008/2009. Two of the appeal decision were upheld and one was overturned in favour of the applicant.

## ***3. Hearings Related to Medical Practitioners***

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

### ***a) Audit Hearings***

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

currently done by the MSC. Practitioners are usually represented by legal counsel and the hearings may last one to two weeks.

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

No audit hearings were held by the MSC in 2008/2009.

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

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

## **Other 2008/2009 MSC Highlights and Issues**

The Medical Services Commission held eight regular business meetings and one special meeting between April 1, 2008 and March 31, 2009.

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

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

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

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

- ***Strategic Planning***

The Commission identified its strategic objectives and priority actions for 2008/2009. A primary focus for the MSC was the implementation of its comprehensive integrated strategy regarding extra-billing to ensure full compliance and effective administration of the *Medicare Protection Act*. Continuing objectives included improving the uptake of guidelines and protocols by physicians and measuring the outcomes, and monitoring the effective administration of the Medical Services Plan. The Commission also engaged in dialogue with the Ministry of Health Services and the BCMA regarding expenditure analysis, growth trends and management of the Available Amount and continued to receive regular reports from its advisory committees.

- ***MSC Payment Schedule***

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

In 2008/2009, 138 Minutes of the Commission were approved, resulting in 62 new fee items, 514 amended fee changes and 4 deleted fee items.

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

A copy of the *MSC Payment Schedule* is available on the website:

<http://www.health.gov.bc.ca/msp/infoprac/physbilling/payschedule/index.html>.

- ***Endovenous Laser Therapy***

The Commission considered a request from a beneficiary to fund endovenous laser treatment for varicose veins and discussed a report – *Endovenous Laser Therapy for Varicose Veins – Review of the Evidence* – written for the MSC by Dr. Vicki Foerster. The Commission consulted with the BCMA Section of Vascular Surgery and the Ministry of Health Services provided an analysis of incremental costs and benefits of traditional vein stripping treatment of varicose veins versus endovenous laser therapy. Future policy work and assessment regarding this issue may be undertaken.

- ***Nuclear Medicine in British Columbia***

The Commission reviewed another report by Dr. Vicki Foerster – *Nuclear Medicine in British Columbia – Issues Related to Privately-Owned Non-Hospital Settings* – written in response to a proposal the MSC received regarding wait times in the Lower Mainland for nuclear medicine diagnostic tests and a possible solution based on a public/private partnership framework.

The Commission considered several issues related to providing nuclear medicine services outside hospitals on a privately owned but publicly funded basis, including what other services would be affected, the impact on public facilities and the policy on self-referrals, and concluded that any expansion of nuclear medicine service must align with an overall provincial and regional plan that outlines the current and projected demand for these services.

- ***Presentations to the MSC***

Throughout 2008/2009, the Commission received presentations regarding several issues, including physician supply and health human resources (HHR) planning, General Practice Services Committee (GPSC) initiatives, laboratory transformation and the Ministry of Health Services' framework for health system planning.

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

As part of its oversight of the Medical Services Plan, the Commission monitors legal issues that arise as a result of MSP or Ministry of Health Services-related decisions and is sometimes actively involved in litigation as a named party. In 2008/2009, the following cases were considered and/or participated in by the Commission.

*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.

The Commission made the pursuit of extra-billing cases its primary strategic goal for 2008/2009, and has developed processes for dealing with cases that come to its attention when concerns or complaints of extra-billing arise.

In 2008/2009, the Commission investigated seven new cases of suspected extra-billing in private clinics and/or by practitioners.

- Of the total, four cases involved private clinics and audits were subsequently initiated by the Commission. These cases remain ongoing.
- One of the seven new cases involved a practitioner but was closed, with no further action required, following the Commission's investigation.
- On behalf of several individuals, a Vancouver legal firm representing the British Columbia Nurses' Union (BCNU) requested that the Commission investigate cases of apparent extra-billing related to various clinics and physicians. The MSC sought information regarding the complaints from the clinics and/or physicians involved, some of whom the Commission had already previously investigated.
- In response to reports the MSC received that nearly half of cataract surgeries in a British Columbia community were not being done in hospital but rather in a private, non-hospital surgical facility where the services may have been associated with some private payments by patients, the Ministry of Health

Services conducted a review of cataract surgery services in the Province and presented its findings to the MSC in December 2008. The Commission decided to investigate further, using tools of service verification audits with patients. This process remains ongoing.

In 2008/2009, two extra-billing cases that had previously been closed were re-opened by the Commission for further investigation and subsequently closed, with no further action required.

Four extra-billing cases and audits ordered by the MSC during 2007/2008 remain pending.

On January 28, 2009, in response to the MSC's notification of audits of two private clinics, a number of medical and surgical clinics and the Canadian Independent Medical Clinics Association ("CIMCA"), commenced litigation against the Medical Services Commission, the Minister of Health Services and the Attorney General of British Columbia, seeking a declaration that the prohibition in the *Medicare Protection Act* against extra and direct billing of patients and the prohibition of private insurance coverage for medical procedures covered by the Medical Services Plan are an unconstitutional violation of rights guaranteed under s.7 of the *Canadian Charter of Rights and Freedoms*.

The Commission convened a special meeting in February 2009 to discuss proposed pleadings and strategies with respect to the litigation. Government filed its Statement of Defence and Counterclaim on February 20, 2009. The litigation remains ongoing.

#### *Amendments to s.49 of the Medicare Protection Act*

In March 2009, amendments to s.49 of the *Medicare Protection Act* were put into force and a regulation was passed, allowing the Commission and the Ministry of Health Services the ability to disclose prescribed information regarding extra-billing complaints and investigations.

#### *Waitlist Insurance*

In 2008/2009, the Commission reviewed the issue of waitlist insurance (i.e., medical access insurance) in British Columbia and determined that the sale of this product violates s.45 of the *Medicare Protection Act*.

#### *British Columbia Nurses' Union (BCNU) Litigation*

In 2006, the BCNU filed a petition for judicial review in the Supreme Court of British Columbia, adding the MSC as a respondent and seeking specific relief against the Commission. The petition arose from allegations that government (both the Commission and the Attorney General) was not enforcing the extra-billing prohibitions in the *Medicare Protection Act* to the BCNU's satisfaction.



The Chair of the MSC (among others) provided affidavit evidence in support of the Province's position in response to this petition. A hearing was held in late 2007 and in March 2008, Mr. Justice Kelleher released his Reasons for Judgment in which he found that the BCNU did not have legal standing to pursue the petition. The litigation remained in abeyance until December 4, 2008, when a new petition, based on the same grounds and seeking essentially the same relief as the original BCNU petition, was filed by individual patient petitioners.

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

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

Government experts testified at the hearing that PSA testing is controversial and that there is no scientifically reliable evidence that its use leads to any better outcomes for those with prostate cancer. In a decision released in January 2008, the Tribunal dismissed the complainant's case. The complainant subsequently sought a Supreme Court of British Columbia judicial review of the Tribunal's decision and a five-day hearing was held in March 2009. As of the end of the 2008/2009 fiscal year period, no decision had been rendered regarding this case.

## Appendices

### *Appendix 1: Members of the Medical Services Commission (MSC) as of March 31, 2009*

#### Government of British Columbia Representatives:

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

#### British Columbia Medical Association (BCMA) Representatives:

- Dr. Marshall Dahl
- Dr. Douglas McTaggart
- Darrell Thomson

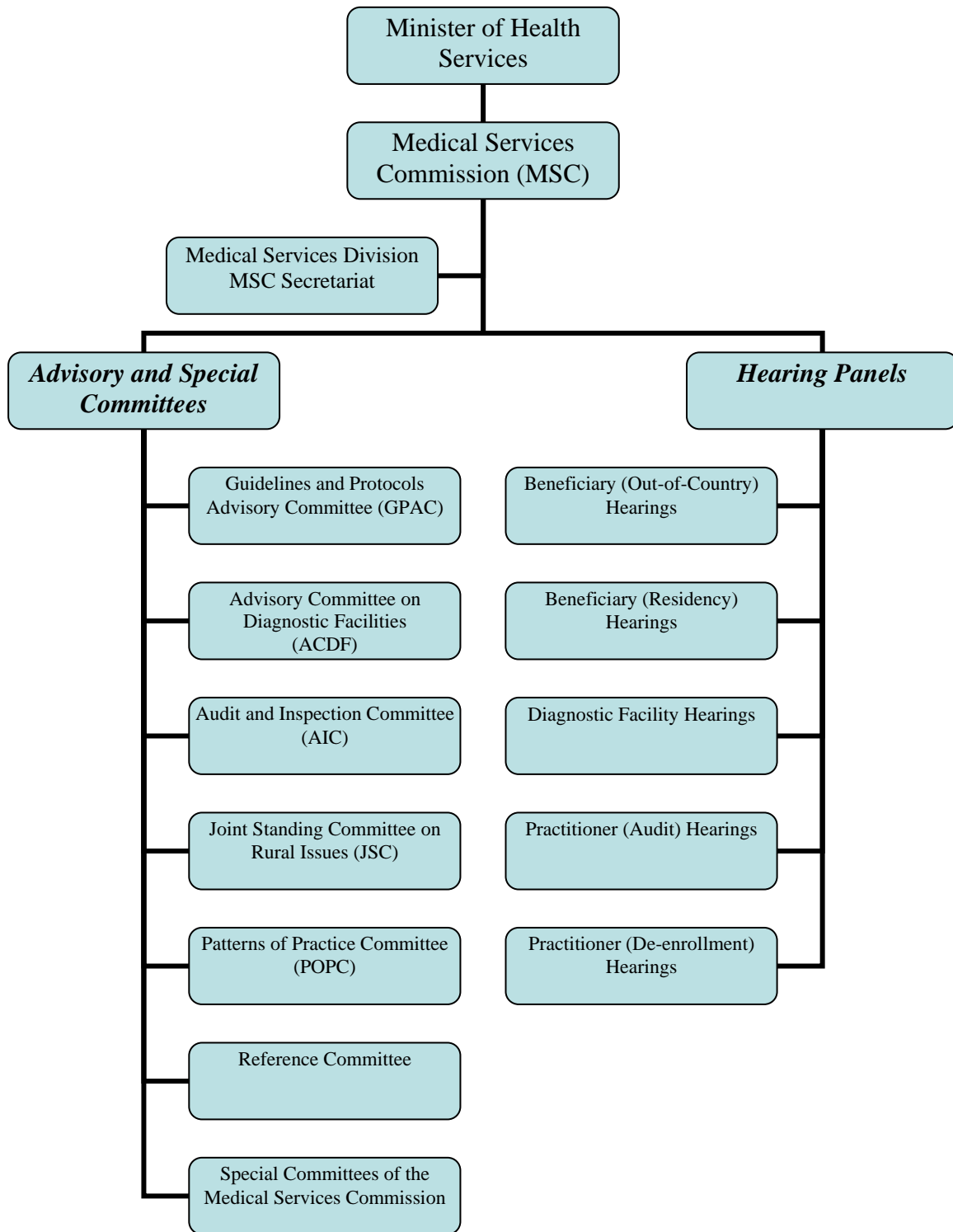
#### Public Representatives:

- Isobel Mackenzie
- Isidor Wolfe
- Melanie McKenzie \*\*

\* New appointment – November 2008

\*\* New appointment – June 2008

**Appendix 2: MSC Organizational Chart**



**Appendix 3: Guidelines and Protocols Approved by the MSC in 2008/2009**

<b>Title</b>	<b>Type (New/Revised)</b>	<b>Date of MSC Approval</b>
<i>Frailty in Older Adults – Early Identification and Management</i>	New	July 14/08
<i>Chronic Kidney Disease - Identification, Evaluation and Management of Adult Patients</i>	Revised	July 16/08
<i>Osteoarthritis in Peripheral Joints – Diagnosis and Treatment</i>	New	July 16/08
<i>Acute Chest Pain – Evaluation and Triage</i>	Revised	September 11/08
<i>Ankle Injury – X-Ray for Acute Injury of the Ankle or Mid-Foot</i>	Revised	December 10/08
<i>Gastroesophageal Reflux Disease – Clinical Approach in Adults</i>	Revised	December 10/08
<i>Infectious Diarrhea – Guideline for Ordering Stool Specimens</i>	New	January 28/09
<i>Macroscopic and Microscopic Urinalysis and the Investigation of Urinary Tract Infections</i>	Revised	March 11/09
<i>Microscopic Hematuria (Persistent)</i>	Revised	March 11/09

**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>
- *MSC Financial Statement* (the “Blue Book”):  
[http://www.health.gov.bc.ca/msp/financial\\_statement.html](http://www.health.gov.bc.ca/msp/financial_statement.html)
- *MSC Payment Schedule*:  
<http://www.health.gov.bc.ca/msp/infoprac/physbilling/payschedule/index.html>
- Guidelines and Protocols Advisory Committee (GPAC):  
<http://www.BCGuidelines.ca>
- British Columbia Medical Association (BCMA): <http://www.bcma.org>
- Health Insurance BC (HIBC): <http://www.health.gov.bc.ca/insurance>

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