

# MEDICAL SERVICES

## COMMISSION

2014/2015

## **ANNUAL REPORT**



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BRITISH  
COLUMBIA

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## **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 2014/2015 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’s mandate supports both the effective utilization of medical services and high quality, appropriate patient care. This mandate is achieved through the development, publication and promotion of clinical practice guidelines. These guidelines are published under the brand BC Guidelines, and are available on [www.bcguidelines.ca](http://www.bcguidelines.ca), a mobile friendly site.

In fiscal year 2014/2015, GPAC continued its leadership role in producing high quality evidence-based clinical practice guidelines and protocols for British Columbia’s primary care practitioners. GPAC also continued to meet its goals and objectives as outlined in its 2012/2013 strategic framework and 2014/2015 work plan.

### **Improved Health Outcomes:**

GPAC enhanced its Evaluation Plan by implemented quarterly web trend reporting to measure the uptake of guidelines from the BC Guidelines website.

The top five BC Guidelines viewed on the website by British Columbia users are:

- 1) *Thyroid Function Tests in the Diagnosis and Monitoring of Adults* (2010)
- 2) *Cardiovascular Disease – Primary Prevention* (2014)
- 3) *Cognitive Impairment: Recognition, Diagnosis and Management in Primary Care* (2014)
- 4) *Colorectal Screening for Cancer Prevention in Asymptomatic Patients* (2013)
- 5) *Iron Deficiency - Investigation and Management* (2010)

### **Promotion and Education:**

To further GPAC’s strategic goals of increasing the exposure of BC Guidelines and supporting evidence-based quality patient-centred care, GPAC participated in the following:

- Rural Emergency Continuum of Care Conference;
- BC College of Family Physicians Fall Conference’
- St. Paul’s Hospital Continuing Medical Education for Primary Care Physicians;
- UBC Medical Alumni and Friends Golf Tournament;
- Canada-India Network Initiative Conference;
- UBC Postgraduate Family Medicine Residents’ Research Day;
- UBC Undergraduate Curriculum 4<sup>th</sup> Year Medical Students Preparation for Medical Practice Course;
- International Medical Graduates Talks.

### **Optimized Clinical Care:**

GPAC continued with its mandate of publishing guidelines that promote appropriate utilization of health care resources with the goals of providing high quality patient-centred care while supporting the sustainability of British Columbia’s health care system.

**The MSC approved the following GPAC guidelines in 2014/2015:**

The *Cardiovascular Disease – Primary Prevention* guideline provides recommendations on the primary prevention of cardiovascular disease (“CVD”) in adults aged  $\geq 19$  years without clinical CVD.

The *Genital Tract Cancers in Females* guideline suite was a collaborative effort between the Family Practice Oncology Network and GPAC and included the publication of the following three guidelines:

- The *Human Papillomavirus Related Cancers (Cervical, Vaginal and Vulvar)* guideline provides recommendations for the screening, diagnosis, and follow-up care of human papillomavirus related cancers, including cervical, vaginal and vulvar, in females aged  $\geq 19$  years.
- The *Endometrial Cancer* guideline provides recommendations for the screening, diagnosis, and follow-up care of endometrial cancer in females aged  $\geq 19$  years.
- The *Ovarian, Fallopian Tube and Primary Peritoneal Cancers* guideline provides recommendations for the screening, diagnosis, and follow-up care of ovarian, fallopian tube and primary peritoneal cancers in females aged  $\geq 19$  years.

The *Cognitive Impairment - Recognition, Diagnosis and Management in Primary Care* guideline provides recommendations for the recognition, diagnosis and management of cognitive impairment in adults aged  $\geq 19$  years. The guideline focuses on Alzheimer's disease and encourages its early recognition and assessment within the primary care setting.

The *Chronic Kidney Disease - Identification, Evaluation and Management of Adult Patients* guideline provides recommendations for the investigation, evaluation and management of adults aged  $\geq 19$  years at risk of or with known chronic kidney disease, including care objectives and patient self-management.

The *Hypertension – Diagnosis and Management* guideline provides recommendations on how to diagnose and manage hypertension in adults aged  $\geq 19$  years.

**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, 2014 and March 31, 2015, the ACDF considered 96 applications related to laboratory medicine, specimen collection stations, radiology, ultrasound, pulmonary function, electromyography and polysomnography. Twenty-seven 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, 70 requests were approved, 15 were denied and four applications were deferred. An additional seven applications were deferred as a result of the December 2012 general moratorium on applications for new, expanded or relocated diagnostic outpatient services and subsequent moratorium on applications for laboratory medicine and specimen collection station facilities.

The three-phased ACDF Modernization Project that extended over an 18-month period and aimed to simplify and standardize the ACDF's operational policies and processes and build on recommendations for revisions to the ACDF guidelines by previous MSC working groups for both new and existing public and private laboratories, specimen collection stations and diagnostic facilities, concluded with the revised *ACDF Policies and Guidelines for Diagnostic Facilities* coming into effect June 1, 2014 and the ACDF being reconstituted as a panel (pursuant to sections 5 and 6 of the *Medicare Protection Act*) in October 2014. The ACDF's Terms of Reference outlining the duties and powers of the Committee and providing detailed information regarding membership, voting, decision making and other essential ACDF processes were subsequently revised and approved by the MSC.

At its February 2015 meeting, the Commission approved the ACDF's Concurrent Like-Applications Policy developed to assist with assessing and ranking applications for the same diagnostic service within the same catchment area reviewed at the same ACDF meeting.

A medical consultant's review of the appropriateness of the current rules pertaining to the use of ultrasound in the delivery of patient care in British Columbia, including telemetry and distance reading of ultrasound scans, concluded this fiscal year, with both the report and the Ministry of Health's response submitted to the Commission.

The Commission's general moratorium on applications for new, expanded or relocated diagnostic outpatient services was removed in June 2014. An ultrasound-specific moratorium continued throughout 2014/2015 and the Commission extended the laboratory medicine and specimen collection station facilities moratorium to March 2016.

### ***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 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 2014/2015, the AIC received and approved 23 new audit referrals related to medical practitioners. Audit reports from 27 inspections were reviewed by the AIC during this period and 26 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 2014/2015, the Billing Integrity Program conducted 22 onsite medical practitioner audits. It negotiated settlements for 29 cases with dollars equaling \$5,953,805. A total of \$5,333,863 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 2014/2015, the HCPSCAH received and approved seven new audit referrals related to health care practitioners. Audit reports from six inspections were reviewed by the HCPSCAH during this period and all six cases were recommended for recovery. The Billing Integrity Program conducted seven onsite health care practitioner audits and negotiated settlements for four cases with dollars equaling \$3,435,685. A total of \$539,671 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 2014/2015, MSP received 29 new cases from the Doctors of BC, 14 of which were referred to the Reference Committee. During this time period, the Reference Committee also closed five 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 \$110 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 2014, the JSC announced a new program, the Supervisors of Provisionally Licenced Physicians Program (“SPLP”). This program is designed to support rural physicians who promote, supervise and facilitate provisionally licenced physicians' transition in British Columbia's rural communities. Most of the provisionally licenced physicians are International Medical Graduates (“IMGs”) and Canadians Studying Abroad (“CSAs”). A total of \$6.2 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.

The government assists more than 1.2 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 2014/2015, the Medical Services Plan paid approximately 17,557 medical and health care providers over \$2.9 billion dollars relating to over 93 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](http://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 54 waiver of the wait period requests between April 1, 2014 and March 31, 2015, and granted eight approvals, including an application from a client who was diagnosed with colon cancer 16 days prior to the end of his wait period and incurred hospital bills in excess of \$50,000. The client’s private insurance company denied the claim and the panel concluded that the diagnosis occurred during the wait

period and the cost was financially devastating. Another application was approved for a client who, at 30 weeks pregnant, was hospitalized with a spontaneous membrane rupture. The baby was safely delivered and the panel determined that the hospitalization was medically necessary and the client had been diagnosed within the wait period.

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.

The Committee denied several applications in 2014/2015 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.

## **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 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 (eligibility) 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.

#### **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.

From April 1, 2014 to March 31, 2015, the Commission received 15 requests for residency appeals and 13 hearings were held. An additional nine hearings are 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, 2014 to March 31, 2015, MSP received 2,713 requests for out-of-country elective treatment. Funding was authorized for 2,553 and 160 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.

No diagnostic facility appeals were filed or hearings held in 2014/2015.

## ***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 2014/2015, one audit hearing commenced. A final decision is yet to be reached.

#### **De-enrollment of Medical Practitioners for “Cause”**

In 2014/2015, two de-enrollments were reached through settlement.

### ***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**

The HCPSCAH under s.4 of the *Medicare Protection Act* 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 in 2000, fewer billing matters proceed to formal hearings. The ADR process employs both unassisted and assisted (with a mediator) negotiation to encourage practitioners and the MSC to reach a negotiated settlement of s.37 disputes.

No hearings were held by the HCPSCAH in 2014/2015.

#### **De-enrollment of Health Care Practitioners for “Cause”**

In 2014/2015, four de-enrollments were reached through settlement.

## Other 2014/2015 Commission Highlights and Issues

The Medical Services Commission held eight regular business meetings, one teleconference meeting and one strategic planning session between April 1, 2014 and March 31, 2015.

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

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

In February 2015, the Commission was also a signatory to an agreement between the Government of British Columbia and the British Columbia Osteopathic Association.

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>.

- ***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 2014/2015, 108 Minutes of the Commission related to the *MSC Payment Schedule* were approved, resulting in 37 new fee items (36 regular fees and one General Practice Services Committee/“GPSC” funded item). Amendments were made to 14 regular fee items and three GPSC fees. One regular fee item was deleted and the provisional status was extended for 148 fee items.

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

- ***Ophthalmic A-Scan***

A proposal the Commission received from an ophthalmologist that the fee item for an Ophthalmic A-Scan be renamed to include a newer Intraocular Lens (“IOL”) Master Measurement procedure was referred to the Ministry of Health and the Doctors of BC and subsequently approved by the Tariff Committee and the Board of the Doctors of BC.

- ***Out-of-Hospital Dental Surgery Claims***

The Commission made a recommendation to the Ministry of Health that the Medical and Health Care Services Regulation be amended to formalize the provision of insured dental surgery in private facilities.

- ***Strategic Planning***

The Commission identified its objectives and priority directions for 2015/2016 at a planning session held in March 2015.

Some strategies for the coming year include providing input into the Available Amount and all other payments authorized by the Commission; developing and promoting guidelines and protocols to support appropriate patient care; enforcing the *Medicare Protection Act* extra billing prohibition; providing feedback on the Ministry of Health's policy papers; and assisting in implementing new policy where and when appropriate. In addition, the Commission will continue to support its advisory committees and receive regular reports on the initiatives the committees undertake throughout the year.

- ***BC Services Card***

The Commission continued to receive regular updates on the BC Services Card program during 2014/2015.

Changes to the *Medicare Protection Act* and the Medical and Health Care Services Regulation in support of the BC Services Card program have resulted in the requirement for all eligible adult residents aged 19 and over to complete two steps in order to enroll in the MSP. The new *Two-Step Enrollment* process consists of submitting an application to Health Insurance BC with proof of status in Canada, and visiting an ICBC office or appointed agent to confirm residency and prove identity (showing a piece of primary and secondary ID, having a photo taken and providing a signature).

Adult beneficiaries aged 19 to 74 have a new requirement to renew enrollment by February 10, 2018. For most adult beneficiaries renewal is completed by attending an ICBC office or appointed agent to confirm residency and be identity proofed.

The legislative and regulatory changes also establish a duty for practitioners to verify enrollment prior to charging for MSP services. A second duty was established 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.

MSP policy frameworks for Two-Step Enrollment, Modified Enrollment and Renewal of Enrollment, No Primary Identification, and Renewal and Cancellation for Failure to Renew Enrollment, have been developed. 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) have commenced to determine the downstream impacts resulting from the changes to MSP policy.

- ***Presentations to the MSC***

Throughout 2014/2015, the Commission received presentations on several additional issues including:

- A discussion with the Deputy Minister of Health regarding the four policy papers released by the Ministry – *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 policy papers will be a means for the Ministry to implement the priorities of its strategic plan and the Commission provided the Deputy with a written response to the papers.
- An update on the current status of surgical wait times in British Columbia and an overview of Ministry of Health initiatives to improve access to surgical services across all specialties;
- Highlights of the new *Laboratory Services Act* (“LSA”) that was passed in the Legislature in 2014, establishing a framework to strengthen and standardize British Columbia’s clinical laboratory system, and the *Laboratory Services Regulation* signed in March 2015, that will bring the LSA into force on October 1, 2015;
- A discussion with the College of Physicians and Surgeons of British Columbia regarding private facility accreditation;
- Background on preventing, detecting and recovering double billings under the Fee-for-Service (“FFS”) and Alternative Payments Program (“APP”) physician payment systems;
- An overview of the Ministry’s Health Information Management Framework project, related to the need for standalone health information legislation to enable timely, seamless and appropriate information flow to maximize patient outcomes and improve the health system.

The Commission also invited the co-chairs of the General Practice Services Committee (“GPSC”), the Specialist Services Committee (“SSC”) and the Shared Care Committee (“SCC”) to update on their committees’ various collaborative initiatives in 2014/2015.

- ***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 2014/2015.

### ***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 2014/2015, one new case of suspected extra billing regarding pre-operative testing associated with cataract surgery was referred to the Commission. Investigation of this case continued during the reporting period and was resolved.

Nine extra billing audits ordered by the MSC between 2008 and 2011 remained pending during 2014/2015.

### **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 2014/2015.

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 the MSP in connection with the same service). The Commission therefore instructed the auditors to undertake a further audit of those physicians, focused 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, then to March of 2015, and finally until sometime in early 2016.

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 a thousand. The defendants examined some of the plaintiffs for discovery in the summer of 2013, 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, but it is expected that further examinations for discovery will occur later in 2015.

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; its petition has been put into abeyance pending the outcome of the constitutional challenge, but it has 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.

### ***Pacific Centre for Reproductive Medicine***

The Medical Services Commission, on March 11, 2013, denied an application by Pacific Centre for Reproductive Medicine (“PCRM”) for approval as a diagnostic facility under the *Medicare Protection Act*. On June 28, 2013, PCRM filed a petition for judicial

review of that decision. On February 24, 2014, after discussions among legal counsel, PCRМ discontinued its court proceeding, and on April 11, 2014, submitted an application to the Commission for a temporary certificate of approval.

After communications between counsel for PCRМ and the Commission, the Commission, in a letter dated May 7, 2014, advised PCRМ that it would be proceeding with its own investigations regarding Maternal Fetal Medicine (“MFM”) physicians and ultrasounds. The Commission also invited PCRМ to work with it in order to clarify the exact nature of the application, specifying certain areas of concern.

On May 14, 2014, PCRМ advised the Commission that, if it did not receive a decision on the merits regarding its second application quickly, it would renew its petition for judicial review.

On May 30, 2014, PCRМ issued a new petition for judicial review.

There was a hearing in November, 2014, and on January 16, 2015, the Supreme Court 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, PCRМ 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.

### ***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 July, 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. However, the plaintiff still has leave to apply to certify further common issues.

The plaintiff has indicated an intention to apply to certify further issues as common issues and has also served the Province and the Medical Services Commission with a Notice to Mediate, requiring the defendants to attend a mediation. The mediation has been scheduled for October 26 and 27, 2015.

The next steps will be to prepare for and attend the mediation, and to schedule a certification hearing once the plaintiff files his application to certify further common issues.

## Appendices

### *Appendix 1: Members of the Medical Services Commission (MSC) as of March 31, 2015*

Medical Services Commission representatives and alternate members are appointed by Order of the Lieutenant Governor in Council (“OIC”). Additional information regarding MSC appointments is available on the Board Resourcing and Development Office (“BRDO”)’s website at [www.brdo.gov.bc.ca](http://www.brdo.gov.bc.ca).

#### **Government of British Columbia Representatives:**

- Mr. Tom Vincent (Chair)
- Mrs. Sheila Taylor (Deputy Chair)
- Dr. Robert Halpenny
  
- Alternate Members: Ms. Nichola Manning, Ms. Heather Davidson, Ms. Stephanie Power

#### **Doctors of BC Representatives:**

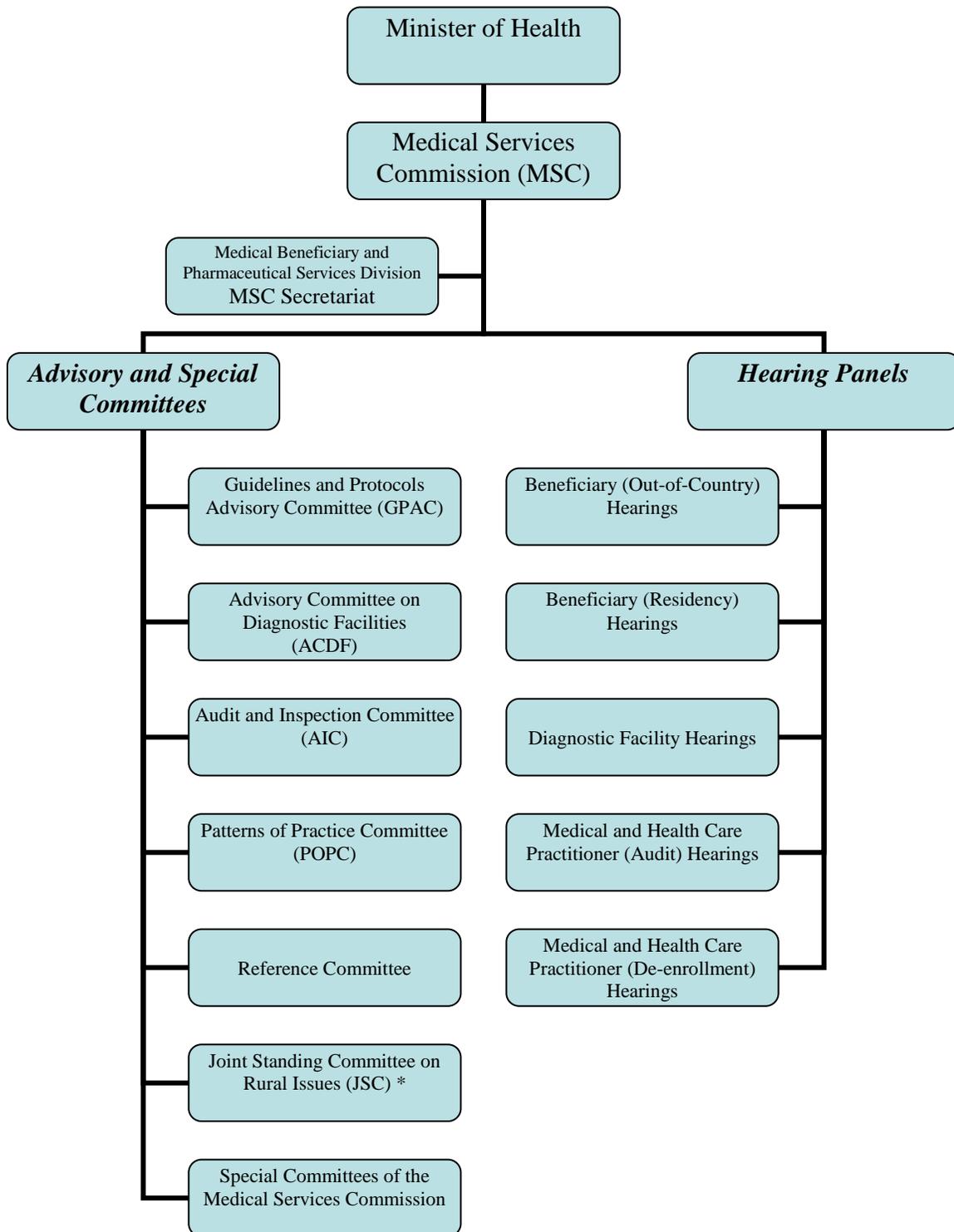
- Dr. Brian Gregory
- Dr. Bryan Norton
- Dr. William Rife
  
- Alternate Members: Dr. William Cunningham\*, Dr. Charles Webb\*, Mr. Allan Seckel

\* New OIC appointments – October 2014

#### **Public Representatives:**

- Ms. Melanie Mahlman
- Ms. Carol Collins
- Vacant

**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](http://www.gov.bc.ca/medicalservicescommission).

