MEDICAL SERVICES COMMISSION

2021/22

ANNUAL REPORT

BRITISH COLUMBIA

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Preamble

The Medical Services Commission (the Commission) has prepared this report to represent the 2021/22 fiscal year.

Function

The function of the Commission is to facilitate reasonable access throughout British Columbia, to quality medical care, health care, and prescribed diagnostic services for residents of B.C., under the Medical Services Plan (MSP) in the manner provided in the *Medicare Protection Act* (MPA).

The Medical Services Commission

Established under the *Medical Services Act, 1967,* and continued under the current MPA, the Commission oversees the provision, verification, and payment of medical and health services in an efficient and cost-effective manner, through the MSP, on behalf of the Government of B.C.

The Commission must have regard to the principles outlined in the *Canada Health Act*, as well as the principle of sustainability. Consistent with these principles is the fundamental belief that access to necessary medical care be solely based on need and not on an individual's ability to pay.

The Commission reports to the Minister of Health.

Organizational Structure

Under appointment by the Lieutenant Governor in Council, the Commission consists of three persons nominated by the Doctors of BC (DoBC), three public members appointed on the joint recommendation of the Minister of Health and the DoBC to represent MSP beneficiaries, and three members to represent the government. This tri-partite structure represents a unique partnership among physicians, beneficiaries, and government. It ensures that all those who have a stake in the provision of medical services in B.C. are involved.

Responsibilities of the Commission

In addition to ensuring that all B.C. residents have reasonable access to medical care and prescribed diagnostic services, the Commission is responsible for monitoring 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 Commission is also responsible for:

- establishing payment schedules for practitioners;
- administering the MPA;
- investigating reports of extra billing;
- investigating unjustifiable departure from billing patterns of practice;
- hearing appeals brought by beneficiaries, diagnostic facilities, and physicians as required by the MPA; and
- arbitrating disputes that may arise between the DoBC and the Government of B.C. under the Physician Master Agreement (PMA).

Advisory Committees and Overview of Accomplishments

The MPA allows the Commission to delegate some powers and duties to special committees, advisory committees, and hearing panels established to assist the Commission in effectively carrying out its function.

The following provides description of the responsibilities and an overview of the 2021/22 accomplishments of the advisory committees, hearing panels, and other delegated bodies of the Commission.

1. Guidelines and Protocols Advisory Committee

The Guidelines and Protocols Advisory Committee (GPAC) is a joint committee of the DoBC and the Ministry of Health (MOH). It is mandated to provide recommendations to B.C. practitioners focused on primary care on delivery of high quality, appropriate care to patients while making optimal use of medical resources. These recommendations are published as concise, evidence-based clinical practice guidelines under the brand name BC Guidelines, on the website www.BCGuidelines.ca.

Guidelines Approved by the Commission in 2021/22:

New Guidelines:

- Fall Prevention
- Managing Pain in Primary Care
- Suspected Lung Cancer in Primary Care
- Obstructive Sleep Apnea

Updated Guidelines:

- High Ferritin and Iron Overload
- Cardiovascular Disease
- Diabetes Care
- Cataract
- Viral Hepatitis Testing

Guidelines Under Development in 2021/22:

New Guidelines:

- Adverse Childhood Experiences and Trauma Informed Practice
- Venous Thromboembolism

Updated Guidelines:

- Osteoporosis
- Heart Failure Care
- High Risk Drinking and Alcohol Use Disorder
- Infectious Diarrhea
- Atrial Fibrillation
- Colorectal Cancer Screening
- Cobalamin (Vitamin B12) and Folate
- Asthma in Children
- Asthma in Adults
- Hormone Testing
- Testosterone Testing
- Novel Oral Anticoagulants in Atrial Fibrillation
- Warfarin Therapy
- Warfarin Therapy: Invasive Procedures and Surgery
- Stroke and Transient Ischemic Attack
- Follow-Up of Colorectal Cancer and Precancerous Lesions (Polyps)

Guidelines retired in 2021/22:

- No GPAC guidelines were retired in 2021/22.

New Partner Guidelines

Partner guidelines are developed by other stakeholders independent of the GPAC.
The GPAC recognizes the high quality of these guidelines and provides web links to them for informational purposes on our Partner Guidelines web page at: www.BCGuidelines.ca.

- No new Partner Guidelines were added to the BC Guidelines website in 2021/22.

Promotion and Education

To further the strategic goals of the GPAC, to increase the exposure of BC Guidelines and supporting evidence-based high-quality patient-centered care, the following list outlines the promotional activities undertaken by The GPAC during 2021/22:

- **BC Guidelines Website:**
  BC Guidelines are promoted online and available for review and download at www.BCGuidelines.ca. BC Guidelines website traffic is analyzed annually, including ranking of guideline popularity based on visits to the HTML website.

  In 2021, the BC Guidelines website received over 284,000 visits from more than 219,000 unique users. This represented a 19% and a 27% increase in total web visits compared to 2020 and 2019, respectively. Most users accessed the BC Guidelines website from the lower Mainland area of BC, though there was a significant increase in users from Ontario in 2021. Of note, the average daily website visits nearly doubled between 2020 and 2021.

- **BC Guidelines eBulletin:**
  The e-newsletter promotes new BC Guidelines publications and external review opportunities. New clinical practice tips are embedded in the e-newsletter as "key updates" from recently published guidelines.

  Six e-newsletter editions were published in 2021/22, reaching approximately 4,100 subscribers. Subscribers represent a community of primary care practitioners, regional health authority representatives, academics, and health system partners. The GPAC promotes the e-newsletter at conferences and other events to increase awareness.

- **Medical/Research Conferences and Promotional Presentations:**
  Conference participation enables the GPAC team to connect with a broader range of primary care practitioners and increase awareness of BC Guidelines and participation in external review periods for guidelines under development. The GPAC participated in the following events during 2021/22:
  - UBC Nanaimo Residency Program
  - BC Rural Health Conference
  - Nurse and Nurse Practitioner Conference
  - BC Centre for Substance Use Conference
  - 34th Annual Chronic Pain Management Conference
  - Therapeutics Initiative Conference: Bringing Best Evidence to Clinicians
  - Infectious Diseases Update
  - Family Medicine Forum
  - St. Paul's Hospital Continuing Medical Education Conference
  - Type 2 Diabetes Dialogue 2021 – Emerging Innovations in Diabetes
  - 57th Annual Family Practice Review

Key 2021/22 GPAC Accomplishments

- The GPAC revised the Obstructive Sleep Apnea guideline in close partnership with the Beneficiary and Diagnostic Services Branch of the MOH. This included the development of a provincial referral form for Home Sleep Apnea tests. These referral forms were an essential part of a new accreditation process of Sleep Clinics across B.C..

- The GPAC developed several patient resource materials to accompany select guidelines. These materials were supported by HealthLink BC and were translated into several languages. Of note, a patient focus group was facilitated through the Patient Voices Network and Self-Management BC to inform patient resource materials related to viral hepatitis and cataract, and a focus group facilitated through Pain BC for the opioid use for chronic pain material.

- The GPAC hired an undergraduate Simon Fraser University Co-Op student who contributed to several GPAC projects on guideline development activities.

- The GPAC continued to strengthen its relationship with the First Nations Health Authority with Dr. Kelsey Louie (Family Physician, Victoria; Medical Officer, First Nations Health Authority Representative) representing the organization on the GPAC General committee.

- The GPAC strengthened its relationship with the DoBC Patterns of Practice Committee (POPC) by welcoming POPC Chair, Dr. Janet Evans, to the GPAC General committee. Including a representative from the POPC on the GPAC will help improve communication and education for primary care providers regarding appropriate service utilization.

- The GPAC collaborated with the BC Cancer's Family Practice Oncology Network (FPON) in the development of the Suspected Lung Cancer in Primary Care guideline. Of note, the Director of the BC Cancer Colon Screening Program was a working group member for the guidelines related to colorectal cancer (screening and diagnosis).

- The GPAC engaged with key stakeholders to complete several early targeted reviews of the Managing Pain guideline during its development. This helped foster stronger stakeholder relations with groups including the College of Physicians and Surgeons of BC (CPSBC), BC Center for Substance Use, Pain BC, and many others.

2. Advisory Committee on Diagnostic Facilities

The Advisory Committee on Diagnostic Facilities (ACDF) provides advice, assistance, and recommendations to the Commission in the exercise of the Commission's duties, powers, and functions under s.33 of the MPA.

The ACDF reviews applications from existing and proposed diagnostic facilities seeking approval to perform and bill the MSP for specific services. Based on Commission-approved policy, the ACDF may approve applications or recommend the Commission deny the request.

Between April 1, 2021 and March 31, 2022, the ACDF considered 42 applications related to electromyography, polysomnography (Level 1, overnight, attended), pulmonary function, radiology and ultrasound. Additionally, the ACDF Secretariat processed 167 home sleep apnea testing facility applications, approved as a group by the Commission.

Of the total applications reviewed by the ACDF, 40 requests were approved and 2 were recommended to the Commission for denial. The Commission upheld the denial recommendation for those 2 applications.

Projects Highlights for 2021-2022

Assignment of Payment

The MOH and Health Insurance BC (HIBC) implemented key changes concerning how Diagnostic Facilities Services' Assignment of Payment (AOP) forms are submitted.

On July 21, 2021, the MOH, in conjunction with the Ministry of Citizens' Services (Citizens' Services) enhanced security measures for the AOP submission process by requiring individuals who submit AOP forms on behalf of privately-owned facilities to authenticate themselves through a mobile BC Services Card. This additional layer of security assures system validation, helps to protect MOH servers from malicious attacks, and is a safe way for users to validate their identity online. Citizens' Services is developing a similar authentication process for health authority facilities.

Ultrasound Policy

On October 27, 2021, the Commission approved a revision to the ultrasound facility approval policy which enables qualifying Community Imaging Clinics (CICs) to provide 3 non-cardiac Doppler Studies.

This decision was an outcome of a multi-year pilot program which determined that the provision of non-cardiac Doppler studies at CICs can act as an important and valued part of the service delivery environment and can provide an important safety valve to accessing these studies when hospital services may be disrupted. Wider implementation is expected to benefit patient access and potentially relieve some pressure on hospital outpatient ultrasound services.

Transfer of Material Financial Interest

On June 25, 2021, the MOH implemented a new application for Transfer of Material Financial interest of an Existing Privately-Owned Diagnostic facility. Transfers of material financial interest are defined as cases where facility owners seek to transfer 10% or more of the shares in a corporation, partnership, or association that owns a diagnostic facility approved to bill the MSP for specific outpatient services.

The new application standardizes the process as authorized by the *Medical and Health Care Services Regulation* (s.43) and detailed in policy 3.1 (Transfer of Ownership) of the *Policies and Guidelines of the Medical Services Commission's Advisory Committee on Diagnostic Facilities.*

ACDF Mapping Tool Project Work

In May 2021, Diagnostic Services began work with Citizens' Services on a modification to the Mapping Tool that will allow expiry dates to be added, which will generate an automatic reminder to follow up with stakeholders on the status of their ACDF application. Diagnostic Services continues to test adjustments to the Mapping Tool, and it is expected that the project will carry forward to the next fiscal year.

Diagnostic Sleep Medicine Review

Since February 2019, the MOH, on behalf of the ACDF, has been conducting a review of how diagnostic sleep testing is delivered in B.C.

The review included an in-depth jurisdictional scan of diagnostic sleep testing policy and practices both in Canada and internationally, a literature and scientific review, and broad stakeholder engagement. This work has led to several outcomes and recommendations to improve the service delivery environment for the provision of diagnostic sleep testing.

Significant efforts this past year include:

- Development of a standard requisition for home sleep apnea testing (HSAT) and a new guideline for the assessment and management of obstructive sleep apnea in adults.
- Implementation of a comprehensive wait-time reporting system for all approved polysomnography (Level 1, overnight, attended) facilities.
- Authorization of stand-alone HSAT facilities to bill the MSP (professional fee component only).
- Creation and distribution of a Positive Airway Pressure Buyer's Guide to support both practitioners and patients.
- Ongoing efforts to assist the CPSBC with communicating and monitoring HSAT accreditation standards.

Of note, B.C. is the only jurisdiction in Canada to allow qualifying HSAT facilities to bill the provincial insurer. The ability for qualifying HSAT facilities to bill the MSP, along with formal accreditation of HSAT facilities through the CPSBC Diagnostic Accreditation Program, are significant advancements in the provision of diagnostic sleep testing.

To properly analyze capacity and billing data, the Commission imposed moratoriums on applications for new, expanded, or relocated facilities for both outpatient polysomnography and standalone HSAT.

Temporary Moratoriums on applications for Home Sleep Apnea Testing and Polysomnography (Level 1, overnight, attended)

On January 1, 2022, the Commission established a temporary moratorium on applications for standalone HSAT facilities across the province. The moratorium was intended to aid the ACDF and its supporting staff in better understanding the impact of B.C.'s recent added investment in diagnostic sleep testing.

The moratorium on applications for standalone HSAT facilities will remain in effect until December 31, 2026.

On September 16, 2020, the Commission extended the temporary moratorium on applications for new, expanded, or relocated polysomnography facilities. Originally scheduled to be lifted on September 30, 2020, the moratorium was extended to September 30, 2022.

3. Audit Committees

Audit and Inspection Committee

The Audit and Inspection Committee (AIC) is a four-member panel comprised of three physicians (one nominated by the DoBC, one nominated by the CPSBC and one appointed by the Commission) together with one member who represents the public.

The AIC has responsibility for overseeing two types of audits. Audits for patterns of practice are done to ensure that services billed to the MSP have been delivered and billed accurately. Audits for extra billing focus on whether beneficiaries are being charged for services in contravention of the MPA. The AIC decides whether on-site audits are appropriate and outlines the nature and extent of the audits. The AIC also reviews the audit results and makes recommendations to the Commission for further appropriate action.

Under s.10 of the *Medicare Protection Amendment Act 2003*, the audit powers of the Commission were expanded to allow audits on clinics as corporate entities, rather than just physicians.

Special Committees of the Medical Services Commission

The Commission's authority to audit claims from health care practitioners is assigned 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 the powers and duties necessary to carry out audits.

The Commission's authority to make orders regarding practitioners under s.15 and s.37 of the MPA is assigned to the Health Care Practitioners Special Committee for Audit Hearings (HCPSCAH).

Billing Integrity Program

The Billing Integrity Program (BIP) provides audit services to the MSP and the Commission. The Commission 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 Commission in the recovery of any funds billed inappropriately. It carries out the audit and inspection function on behalf of the AIC.

BIP Statistics 2021/22

- On-site audits conducted: 12
- Extra billing audits conducted: 2
- Issued audit reports: 10
- Estimated overbillings from audit reports: $7,952,554
- Number of settlements: 4
- Dollar amount of settlements: $2,079,926
- Practitioners who have a s. 15(2) sanction: 1
- Number of hearings: 0

BIP Statistics 2020/21

- On-site audits conducted: 9
- Extra billing audits conducted: 3
- Issued audit reports: 13
- Estimated overbillings from audit reports: $11,789,443
- Number of settlements: 7
- Dollar amount of settlements: $4,122,148
- Practitioners who have a s. 15(2) sanction: 1
- Number of hearings: 1

Service Verification Audits

Each year, survey letters are sent to patients to confirm they received practitioner services which have been billed to the MSP on their behalf. A minimum of 1,200 practitioners (100 per month) are chosen annually (at random) and letters are sent to approximately 50 of their patients who have received MSP billed services in the preceding 4 months.

A “select” service verification audit (SVA) may be initiated due to findings from a random service verification audit, follow-up of a previous audit, complaints received from the public/other doctors/referrals by licensing bodies and professional associations, or by atypical practitioner billing profiles.

Letters may be sent to some of the selected practitioner’s patients to confirm they received the specific services that have been billed to MSP on their behalf.

Letters were not sent out from April 2020 to July 2020 due to the COVID-19 pandemic. Letters resumed in August 2020 and starting in December 2020, the number of randomly selected practitioners was increased from the standard 100 per month to 120 per month in an attempt to make up the deficit. In November 2020, the Enhanced Audit Confirmation Letters (EACL) program was launched to allow for online responses.

SVA Stats 2021/22

- Number of SVAs conducted 1,433
- Number of letters sent to patients 71,702
- Response rate: 50%

SVA Stats 2020/21

- Number of SVAs conducted 875
- Number of letters sent to patients 43,768
- Response rate: 52%

4. Patterns of Practice Committee

The Patterns of Practice Committee (POPC) acts in an advisory capacity to the Commission. On behalf of the Commission, the POPC reviews, informs and educates physicians in regard to their pattern of practice and billings. The POPC has several main functions, which include:

- Education: to encourage appropriate patterns of practice and billing which can include general education sessions,
- discussions with Sections regarding findings from recent audits and educational letters
- producing the annual Mini Profile for all Fee for Service Physicians,
- providing a forum for physicians who wish to raise concerns about the audit process (Post Audit),
- nominating Medical Inspectors to the AIC and nominating Physician Hearing Panel members to the Commission,
- communicating with the Commission and other committees regarding policy issues and issues related to the MSC Payment Schedule,
- additional tasks as identified by the MoH, the Commission and/or The Physician Master Agreement (PMA).

The POPC met three times in 2021.

3. Reference Committee

The Reference Committee acts in an advisory capacity to the Commission in circumstances where a physician disputes the adjudication of a billing claim. The Reference Committee does, on occasion, perform a similar billing adjudicative services for patients billed directly by a physician, or when physicians provide services to third parties, such as insurance companies. Membership on the Reference Committee is limited to representatives of the DoBC.

The Reference Committee had no outstanding cases to close during 2021/22, having received none in the previous fiscal year.

In 2021/22, the Reference Committee received 2 new cases, which remained outstanding at the close of the fiscal year.

4. Requisition Committee

The Requisition Committee, established in 1997, is a joint committee of the DoBC and the MOH. This committee is on hold pending further review.

5. Other Delegated Bodies

Medical Services Plan

The Commission delegates day-to-day functions such as the processing and payment of MSP claims to HIBC.

MSP and PharmaCare operations were transferred to MAXIMUS BC effective April 1, 2005. The Commission receives regular updates regarding HIBC's service level requirements and program performance. Policy direction and leadership authority remains within the responsibility of the MOH – and under the Commission in relation to the MSP.

In 2021/2022, the MSP paid approximately 21,205 medical and health care providers $3.72 billion relating to more than 108.1 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 Commission to practitioners, groups, clinics, hospitals, and diagnostic facilities for each fiscal year.

Copies of the Blue Book are available online at: www.gov.bc.ca/msp/publications.

Coverage Wait Period Review Committee

New and returning residents are required to complete a wait period before provincial publicly funded health benefits begin. However, there are exceptional cases based on individual circumstances where the Commission may waive this requirement and enroll new residents before the coverage wait period has expired. The Commission has delegated the power to investigate and decide these cases to the Coverage Wait Period Review Committee (the Committee). The Terms of Reference for the Committee are established in Minute of the Commission 15-074.

The MOH received 296 waiver inquiries from April 1, 2021 to March 31, 2022, with 94 complete waiver request applications reviewed by the Committee, including 5 appeals.

A total of 16 waivers met the Committee's criteria for approval as established in the Terms of Reference.

From April 1, 2021 to March 31, 2022, the Committee denied 78 waiver requests:

- 17 denials were related to pregnancy and prenatal care during the wait period.
- 52 denials were related to conditions that were not diagnosed in the wait period and/or were not a financial hardship.
- 6 waivers could not be approved because waivers are not granted based on the possibility that health care costs may be incurred during the wait period.
- 3 waivers could not be approved because the individuals were covered under other insurance (e.g.: private insurance, interprovincial insurance, Insurance Corporation of BC).

Medical Services Commission Hearing Panels

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

Some hearings are required by the MPA, 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 Commission panels may be judicially reviewed or appealed (depending on the type of decision) by the Supreme Court of B.C.

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 Commission.

Eligibility (Residency) Hearings

A person must meet the definition of a B.C. resident, as outlined in s.1 of the MPA, to be eligible for provincial health care benefits. As per s.7.4 of the MPA, the Commission may cancel the MSP enrolment of individuals whom it determines are not residents of B.C. Individuals whose MSP coverage is cancelled have the right to appeal to the Commission.

Section 7.4 of the MPA requires that prior to making an order cancelling the MSP enrolment of a beneficiary, the Commission must notify the beneficiary of their right to a hearing. The Commission delegates the decision-making responsibility for residency hearings to select representatives. These individuals are appointed by the MSC Chair through a Minute of the Commission.

The Eligibility, Compliance and Enforcement Unit (ECEU) of the MOH investigated 707 residency cases between April 1, 2021 and March 31, 2022, verifying BC residency for 132 of these cases. There were 574 non-resident accounts identified, resulting in MSP account cancellations totaling $2,528,499 in hospital, MSP, and PharmaCare recoveries.

For the same time period noted above, the Commission received 32 new requests for eligibility (residency) hearings. There was 1 in-person hearing and 5 written hearings held, including some cases carried forward from previous fiscal years. There were 10 hearing requests withdrawn by the account holder or abandoned by the Commission. Of the 9 residency decisions rendered by the Commission, 7 resident eligibility claims were upheld. Residency hearings for 34 incoming requests were pending at the end of the 2021/22 fiscal year.

Out-of-Country Hearings

Provincial coverage may be requested for medical treatment outside Canada, when medically necessary treatment services are not available for a B.C. resident anywhere in Canada. To obtain provincial coverage for out-of-country medical treatment, the appropriate attending specialist in B.C. must send an application and the appropriate medical documentation to apply on behalf of the patient.

The Beneficiary and Diagnostic Services Branch (BDSB) of the MOH reviews applications on behalf of the Commission. The Commission publishes the *Medical Services Commission Out-of-Province and Out-of-Country Medical Care Guidelines* (January 19, 2011) to outline the provincial coverage for funding approval.

The Commission has established a review hearing process, wherein a review can be requested when coverage has not been approved by BDSB for medical treatment outside Canada. The MPA does not impose a duty on the Commission to hear and decide requests to review, but rather, it is the determination of the Commission to offer the option for review hearings.

From March 2020 to June 2021 the number of applications reviewed by BDSB decreased significantly from previous years, due to COVID-19 and travel restrictions. Out-of-country referrals continued through this time for B.C. patients requiring urgent (and often high-cost) procedures unavailable in Canada, such as Proton Beam Therapy or other cancer treatments. Since June 2021, with COVID-19 travel restrictions easing, the number of applications reviewed by BDSB have begun to increase.

From April 1, 2021, to March 31, 2022, BDSB received a total of 95 applications for out-of-country, elective medical treatment. Of those, BDSB approved provincial coverage for 50 applications and denied provincial coverage for 45.

In 2021/22, there were no hearings held by the Commission to review provincial coverage for out-of-province medical treatment.

Diagnostic Facility Hearings

Under s.33 of the MPA, the Commission may add new conditions or amend existing ones to an approval of a diagnostic facility in the province. This may be done either on application by the facility owner, or on the Commission's own initiative. Before taking action, and as per the MPA s.33(4), the Commission is required to provide the owner of a facility an opportunity to be heard.

A hearing before the Commission is usually requested for one of the following two reasons:

- The ACDF has recommended to the Commission that an application to amend or add new 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 MPA, the regulations, or a condition of the approval.

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

No diagnostic facility appeals were filed, and no hearings were held in 2021/22.

Hearings Related to Medical Practitioners

Audit hearings are held before the Commission for medical practitioners in relation to the MPA s.37, matters of repayment and/or s.15, de-enrolment from the MSP for "cause".

Audit Hearings for Repayment of Money and De-enrollment

Under s.37 of the MPA, the Commission may make orders requiring medical practitioners or owners of diagnostic facilities to make payments to the Commission. These orders are made following a hearing, in circumstances where the Commission determines an amount due to (a) an unjustified departure from the patterns of practice or billing of physicians in a 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.

Under s.15, the Commission may also determine that a practitioner should be de- enrolled from the MSP after providing them an opportunity to be heard. These are formal administrative hearings by the Commission. Practitioners are usually represented by legal counsel and the hearings may last one to three weeks.

Since the introduction of the Alternative Dispute Resolution (ADR) process in 2000, fewer audits proceed to formal hearings. The ADR process employs negotiation, both unassisted and assisted through a mediator, to encourage medical practitioners and the Commission to reach a negotiated settlement of s.37 and s.15 matters.

In 2021/2022, there were no audit hearings relating to a medical practitioner.

De-enrollment of Medical Practitioners for "Cause"

In 2021/22, one medical practitioner was de-enrolled from the MSP for "cause".

Hearings Related to Health Care Practitioners

Audit hearings are held before the HCPSCAH for health care practitioners in relation to either s.37 repayment matters and/or s.15 de-enrolment from the MSP for "cause".

Audit Hearings for Repayment of Money and De-Enrollment

The HCPSCAH exercises hearing powers over health care practitioners under the MPA, as specified by the Lieutenant Governor in Council, under s.4 of the MPA.

Under s.37 of the MPA, the HCPSCAH may make orders requiring health care practitioners to make payments to the Commission in circumstances where it determines, following a hearing, an amount due to: (a) an unjustified departure from the patterns of practice or billing of practitioner in a 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.

Under s.15 of the MPA, after providing a practitioner an opportunity to be heard, the HCPSCAH may also determine that a practitioner should be de- enrolled from the MSP. These are formal administrative hearings by the HCPSCAH. Practitioners are usually represented by legal counsel and the hearings may last one to two weeks.

Since the introduction of the ADR process, fewer audits proceed to formal hearings. The ADR process employs hearings, both unassisted and assisted through a mediator, to attempt to reach negotiated settlements related to s.37 and s.15.

There were no audit hearings related to health care practitioners in 2021/22.

De-enrolment of Health Care Practitioners for "Cause"

There were no health care practitioners de-enrolled from the MSP for "cause" during 2021/22.

Further Commission Highlights and Issues for 2021/22:

The Commission held 10 regular meetings from April 1, 2021 to April 1, 2022.

Physician Master Agreement and Subsidiary Agreements

As a result of negotiations between the Government of BC and the DoBC, a comprehensive *2019 PMA*, including five subsidiary agreements, was in effect until March 31, 2022. The PMA covers the relationship and economic arrangements between the Government of B.C. and the DoBC. The Commission is a signatory to the PMA and its subsidiary agreements.

Copies of the negotiated agreements are available online at:
https://www2.gov.bc.ca/health/msp/DoBC negotiated-agreements

The Physician Services Committee (PSC) is the senior body that oversees the relationship between the government and the DoBC, and the implementation and administration of the PMA and subsidiary agreements. The Chair of the Commission attends PSC meetings as a non-voting member.

Medical Services Commission Payment Schedule

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

In 2021/2022, 92 MOCs related to the *MSC Payment Schedule* were approved, resulting in 23 new fee items, including 1 new temporary fee created in response to the COVID-19 pandemic. This and other COVID-19 related fee items and fee item amendments will remain in effect until the effective date noted or until the end of the pandemic, as determined by the Public Health Officer:

1. Strategic Planning

The Commission reviewed and re-established its objectives at strategic planning session held in March 2022. The objectives for the Commission are:

- facilitating reasonable access to quality medical care;
- managing and monitoring the Available Amount;
- administering the MPA; and
- hearing appeals initiated by beneficiaries, diagnostic facilities, or physicians.

Looking to 2022/23, the Commission determined to pursue five strategic priorities in response to the core strategic issues. These will be undertaken with the understanding there may be new priorities contingent on the changing healthcare landscape:

- respond to episodic primary-care providers
- address growth of bundled medical services
- prepare for growth of AI in medicine
- apply AI to monitor billings
- monitor the court decision regarding the Cambie Surgeries Corporation

BC Services Card

The BC Services Card (BCSC) program is a partnership involving the MOH, Citizens' Services and the Insurance Corporation of BC (ICBC). As of September 2022, 96.6% of MSP beneficiaries had been issued a BCSC.

Throughout 2021/22, the major focuses of activity included implementing the medical model removal for a change of gender designation; the saturation project to increase card uptake; and partaking in the cross-government work on recording Indigenous names.

In January of 2022 the BCSC Program implemented the removal of the medical model of gender identification for individuals who want to change their gender designation on their BCSC. If a resident would like to update their gender on any of their BCSC, BC Driver's License and/or BCID, they can submit an updated foundation document or submit an application for change of gender designation to HIBC and ICBC. Individuals are no longer required to submit confirmation from a physician or psychologist to process this change.

The saturation project consisted of reaching out to existing MSP enrolled individuals who have not completed identity proofing to obtain a BCSC. The information gathered through saturation project efforts will be provided to the Review and Compliance program of the BDSB of the MOH for actioning as required.

The BCSC partnership is also a member to various cross-government working groups. These groups focus on the priority activities required to update government systems and services, including ensuring funding on system modernization that is required for inclusion of characters supporting Indigenous names for businesses, places, and people.

2. Presentations to the Commission

In 2021/22, the following topics were presented to the Commission:

- Midwifery Arbitration Ruling
- Updates on issues related to Virtual Care
- MSP Service Location Code project updates
- Telemedicine Survey Results from the CPSBC
- An update on implementation of the MOH Digital Health Strategy
- AIC framework and process updates
- Compliance Report Statistics
- Updates to the status of the implementation of Bill 92
- Updates to MSP coverage for beneficiaries as related to the COVID-19 pandemic

3. Commission-Related Legal Cases

The Commission monitors legal issues that arise in relation to the MSP, as part of its oversight of the MSP. From time to time, it is also actively involved in litigation as a named party.

Extra Billing/Private Clinic Issues

The purpose of the MPA is to preserve a publicly managed and fiscally sustainable health care system for B.C. in which access to necessary medical care is based on need and not on the ability of an individual to pay for services. As such, the MPA prohibits "extra billing", which is a charging to an MSP beneficiary for or in relation to an insured medical service.

Extra Billing Investigations

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

In 2021/22, the Commission commenced audits of 2 private clinics to determine compliance with the extra billing provisions of the MPA. The Commission has results from 1 audit pending from the 2020/21 fiscal year.

Extra Billing Litigation

In January 2009, Cambie Surgeries Corporation and others commenced litigation in the B.C. Supreme Court that challenged the validity of the extra billing provisions in the MPA, and the provision in the MPA that prohibits private insurance contract for insured services.

On September 10, 2020, the B.C. Supreme Court issued a decision in in *Cambie Surgeries Corporation v. British Columbia (Attorney General*), 2020 BCSC 1310, in which the Court confirmed that the provisions of the MPA related to extra-billing are constitutional. At that time, the limited injunction that had been in place in relation to aspects of extra-billing expired.

On December 8, 2020, the B.C. Court of Appeal issued a limited form of injunction in relation to extra-billing under the Act in *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2020 BCCA 349. On September 30, 2021, this injunction expired, and private surgical centres in B.C. are no longer lawfully permitted to treat patients whose medically necessary surgeries are scheduled for, or have not taken place by, the dates defined by the MOH wait time benchmarks for reasons of insufficient capacity in the public health system. Billing these patients privately would constitute extra-billing.

Cambie Surgeries Corporation appealed the B.C. Supreme Court, which the BC Court of Appeal heard in June 2021. The Court had not released its decision as of March 31, 2022.

Appendices

Appendix 1:
Members of the Medical Services Commission as of March 31, 2022

Representatives and alternate members of the Commission are appointed by Order of the Lieutenant Governor in Council (OIC). Information regarding Commission appointments is available on the B.C. government Central Agencies website:
Crown Agencies and Board Resourcing and Office.

Government of B.C. Representatives:

- Dr. Robert Halpenny (Chair)
- Dr. Heather Davidson (Deputy Chair)
- Mr. Colin Kinsley
- Alternate Members:
    - Ms. Stephanie Power – 1st Alternate
    - Dr. Ian Rongve – 2nd Alternate
    - Ms. Marie Ty – 3rd Alternate

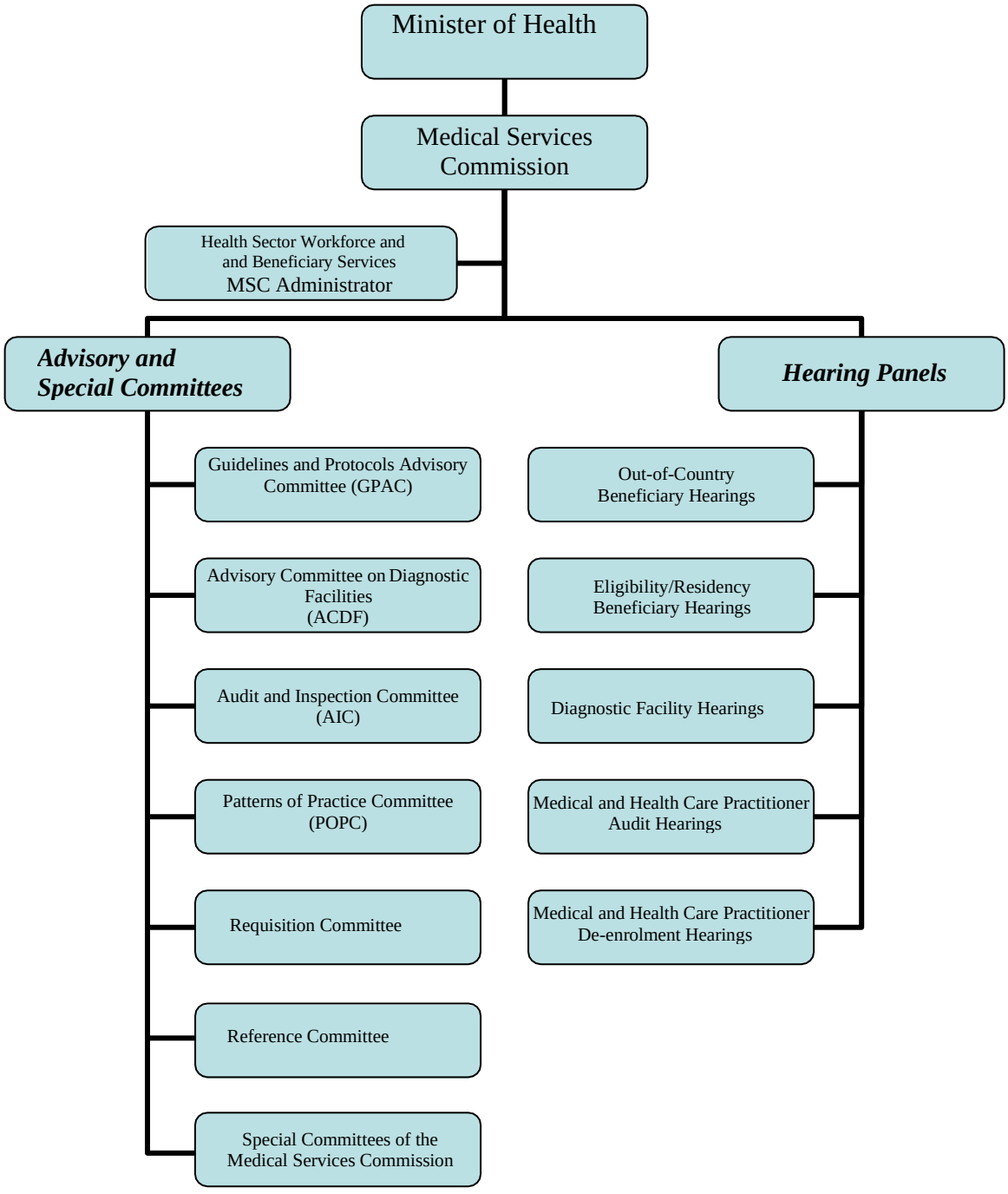
DoBC Representatives:

- Dr. Sam Bugis
- Dr. Alan Ruddiman
- Dr. William Cavers
    - Dr. Ramneek Dosanjh – 1st Alternate
    - Vacant – 2nd Alternate
    - Vacant – 3rd Alternate

Public (Beneficiary) Representatives:

- Ms. Ellen Godfrey
- Mr. Kenneth Werker
- Dr. Jillianne Code

Appendix 2:
Medical Services Commission Organization Chart



Appendix 3:
Medical Services Commission Mailing Address and Website

1515 Blanshard Street
PO BOX 9649 STN PROV GOVT
Victoria BC V8W 9P4

Email: MSC@gov.bc.ca

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

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