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WILL BRITISH COLUMBIA BECOME ANOTHER HEALTH CARE COST RECOVERY JURISDICTION?



HEALTH CARE COSTS RECOVERY ACT – BILL 22

On April 8, 2008 the Minister of Health introduced Bill 22, the *Health Care Costs Recovery Act*. The Bill would allow the Minister to pursue an independent cause of action against third party tortfeasors to recover the cost of past and future health services provided by the Ministry to injured plaintiffs. The Bill will not apply to legal proceedings commenced before it comes into force.

WHAT HEALTH CARE COSTS ARE RECOVERABLE?

Health care services includes hospital benefits, medical benefits, payments made under the *Continuing Care Act*, emergency health expenses and “any other act or thing, including, without limitation, the provision of any health care treatment, aid, assistance or service or any drug, device or similar matter associated with personal injury” for which an expense is paid by the Ministry or as prescribed.

Where a plaintiff has commenced an action for personal injury or death, the plaintiff must include a claim for health care services. The plaintiff must notify the Minister, in prescribed form, of the legal proceeding within 21 days of commencement of the proceeding. The Bill also provides that the Minister may intervene in or assume the conduct of the health care portion of a proceeding, or even commence its own action in respect of the recovery of its costs.

PRACTICAL IMPACT TO THE INSURANCE INDUSTRY

Notably, the Bill provides that where the insurer is aware of an insured that has or may have caused or contributed to the personal injury or death of another person, the insurer must, within 60 days after learning of the matter, notify the Minister in the prescribed form. The Minister may request specified documents from the insurer. The Bill also provides prescribed obligations with respect to settlement of claims including notice provisions and consent of the Minister.

If passed without revision, the *Act* will not apply to personal injury or death arising out of:

- a) a wrongdoer's use or operation of a motor vehicle if the wrongdoer has, when the injury is caused, coverage under a plan of insurance defined in the *Insurance (Vehicle) Act* of British Columbia (namely an ICBC insured);
- b) a tobacco related wrong as defined in the *Tobacco Damages and Health Care Costs Recovery Act*; or
- c) the course of employment if compensation is paid or payable by WCB out of the accident fund under the *Workers Compensation Act*.

In short, if the Bill is passed, insurers will be required to assess claims for costs associated with attendances at practitioners' offices among other aspects of plaintiffs' medical costs. Insurers will also have to develop systems to notify the Minister of potential claims for cost recovery. One has to wonder whether we will soon be utilizing the amount of medical expenses paid as a means of assessing pain and suffering awards as is done in many United States jurisdictions.

For greater details on the wording of the proposed legislation please see http://www.leg.bc.ca/38th4th/1st_read/gov22-1.htm.

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