

Proclamation of New Legislation has potential to impact all private clinics in British Columbia

Cogentis Health Group Bulletin – January 2007

The recent decision by the BC Government to enact portions of the Medicare Protection Amendment Act (“MPAA”, formerly known as Bill 92) may have far-reaching implications for private healthcare in BC. As a result of the new legislation, government officials may now audit and inspect private facilities and have the judicial means by which to halt any businesses and practitioners found not to be compliant.

The legislation was imposed on December 1, 2006, when the Liberal Cabinet enacted two sections of the already passed Bill 92 legislation. The Bill itself was first passed, but not enacted, in December 2003. The government’s recent actions were targeted at the new private urgent care centre opened by the principals of False Creek Surgical Centre. A copy of the enacted legislation is contained below, however should be read in the context of the Medicare Protection Act which it is amending.

The enactment of the MPAA comes as the Government sets about its Conversation on Healthcare, a province-wide initiative to seek public input on health services delivery in BC.

Highlights of the new legislation include:

- The Medical Services Commission (MSC) may now appoint inspectors to audit the practitioners, the business and the managers of the business (including anyone aiding in this effort);
- It is retroactive to cases performed before this was enacted
- The MSC may apply for an injunction in the Supreme Court to prohibit practitioners, businesses and managers from providing these services if they contravene the Medicare Protection Act.

The legislation in its entirety has been described as draconian, specifically its injunctive relief, the retroactive nature of it, and the appointment of inspectors without cause. At this point, it is not clear whether auditors are to be appointed at “ministerial discretion” or if these powers are held by government bureaucrats.

In December 2006, the government first exercised these powers and is currently auditing a private clinic in BC. With these new powers, the government may audit the records of any private clinic for compliance with the MPAA. Audit parameters may include financial records, business and operational plans, and billing practices. Injunctions may be issued by the Supreme Court against clinics and practitioners who have contravened, or the government reasonably *believes* will contravene, the Act.

While it is unclear to what extent the Government intends to use this new legislation, the fact that it is now provincial law means that it may be used at any time under the current government or any future governments. With injunctive relief as its mechanism for compliance, the legislation may result in clinics that conduct business outside of the MPAA, being closed by the courts.

The Medical Protection Amendment Act may pose a serious threat to private healthcare throughout the province. Private clinic operators would be wise to consider the implications, and develop an orchestrated response to government, particularly in light of the Conversation on Healthcare currently under way.

About Cogentis Health Group

Cogentis is a health facilities management company providing services to physician owned, governed and controlled healthcare businesses in Canada. Cogentis principles believe that in working cooperatively with government and health authorities, we can deliver high quality patient care for all, allowing doctors to have a say in how care is provided, preserving the integrity of the public healthcare system and expanding available health services. For more information, contact Astrid Levelt (604)739-7899 or Dr. Lance Mitchell (250)595-1553.

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Enacted Sections of Medicare Protection Amendment Act

10 Section 36 is amended:

(a) in subsection (1) by repealing the definition of "practitioner" and substituting the following:

"practitioner" includes

(a) a former practitioner, and

(b) a medical practitioner who is not enrolled and to whom section 18 (1) applies; ,

(b) by repealing subsection (2) and substituting the following:

(2) The commission may appoint inspectors to audit

(a) claims for payment by practitioners and the patterns of practice or billing followed by practitioners under this Act,

(b) the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and, in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, and

(c) the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and who the commission on reasonable grounds believes

(i) in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, or

(ii) have contravened section 17, 18, 18.1 or 19. ,

(c) in subsection (4) by striking out "subsection (2)" and substituting "subsection (2) (a)",

(d) by adding the following subsection:

(4.1) An audit under subsection (2) (b) or (c) may be made in respect of billing or business practices followed by persons before the coming into force of this subsection. , **and**

(e) by repealing subsection (5) (a) and substituting the following:

(a) records of a person described in subsection (2) (b) or (c) or of a practitioner, and .

11 *The following section is added:*

Injunctions

45.1 (1) The commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17 (1), 18 (1) or (3), 18.1 (1) or (2) or 19 (1) or (2).

(2) The court may grant an injunction sought under subsection (1) if the court is satisfied that there is reason to believe that there has been or will be a contravention of this Act or the regulations.

(3) The court may grant an interim injunction until the outcome of an action commenced under subsection (1).