Certified correct as passed Third Reading on the 31st day of October, 2022

Kate Ryan-Lloyd, Clerk of the Legislative Assembly

MINISTER OF HEALTH

BILL 34 – 2022

OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY AMENDMENT ACT, 2022

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 of the Opioid Damages and Health Care Costs Recovery Act, S.B.C. 2018, c. 35, is amended

(a) in subsection (1) by adding the following definitions:

"active ingredient" means an active ingredient set out in the Schedule;

"consultant" means a person who provides advisory services

(a) to a wholesaler in relation to the distribution, sale or offering for sale of opioid products, or

(b) to a manufacturer in relation to the sale of active ingredients or opioid products; **,**

(b) in subsection (1) by repealing the definition of* "cost of health care benefits" *and substituting the following:

"cost of health care benefits" means,

(a) in relation to an action under section 2 (1), the sum of

(i) the present value of the total expenditure by the government for health care benefits provided for insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness, and

(ii) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected to be provided for those insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness, and

(b) in relation to an action under section 2.1 (1), the sum of

(i) the present value of the total expenditure by the government of Canada for health care benefits provided for insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness, and

(ii) the present value of the estimated total expenditure by the government of Canada for health care benefits that could reasonably be expected to be provided for those insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness; **,**

(c) in subsection (1) by repealing the definition of* "health care benefits" *and substituting the following:

"health care benefits" means,

(a) in relation to an action under section 2 (1),

(i) benefits as defined under the *Hospital Insurance Act*,

(ii) benefits as defined under the *Laboratory Services Act*,

(iii) benefits as defined under the *Medicare Protection Act*,

(iv) benefits as defined under the *Pharmaceutical Services Act*,

(v) payments made by the government under the *Continuing Care Act*, and

(vi) other expenditures by the government, made directly or through one or more agents or other intermediate bodies, for programs, services, benefits or similar matters associated with disease, injury or illness, and

(b) in relation to an action under section 2.1 (1), expenditures by the government of Canada for programs, services, benefits or similar matters associated with disease, injury or illness; **,**

(d) in subsection (1) in the definition of* "manufacturer" *by adding "*active ingredient or*" before "*opioid product*" wherever it appears and by adding "*active ingredients or*" before "*opioid products*",

(e) in subsection (1) in the definition of* "opioid product" *by adding "*or active ingredient*" after "*a drug*" wherever it appears,

(f) in subsection (1) in the definition of* "opioid-related wrong" *by striking out "*a manufacturer or wholesaler*" in both places and substituting "*a manufacturer, wholesaler or consultant*" and by adding "*or 2.1 (1)*" after "*section 2 (1)*",

(g) by repealing subsection (6) and substituting the following:

(6) For the purposes of determining the market share of a manufacturer for a type of opioid product sold in British Columbia, the court must calculate the manufacturer's market share for the type of opioid product by the following formula:

$$\text{mms} = \frac{\text{mm}}{\text{MM}} \times 100\%$$

where

mms is the manufacturer's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

mm is the quantity of the type of opioid product manufactured by the manufacturer that is distributed, sold or offered for sale within British Columbia from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

MM is the quantity of the type of opioid product manufactured by all manufacturers that is purchased or dispensed within British Columbia for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the manufacturer to the date of trial.

, and

(h) by adding the following subsection:

(7) For the purposes of determining the market share of a wholesaler for a type of opioid product sold in British Columbia, the court must calculate the wholesaler's market share for the type of opioid product by the following formula:

$$\text{wms} = \frac{\text{wm}}{\text{WW}} \times 100\%$$

where

wms is the wholesaler's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

wm is the quantity of the type of opioid product that is distributed, sold or offered for sale by the wholesaler within British Columbia from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

WW is the quantity of the type of opioid product that is distributed, sold or offered for sale within British Columbia for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the wholesaler to the date of trial.

2 Section 2 (1) is amended by striking out "manufacturer or wholesaler***" and substituting "***manufacturer, wholesaler or consultant***".***

3 The following section is added:

Direct action by the government of Canada

2.1 (1) The government of Canada has a direct and distinct action against a manufacturer, wholesaler or consultant to recover the cost of health care benefits caused or contributed to by an opioid-related wrong.

(2) An action under subsection (1) is brought by the government of Canada in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the government of Canada may recover the cost of health care benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the opioid-related wrong committed by the defendant.

(4) In an action under subsection (1), the government of Canada may recover the cost of health care benefits

(a) for particular individual insured persons, or

(b) on an aggregate basis, for a population of insured persons

who have suffered damage caused or contributed to by the use of or exposure to a type of opioid product.

(5) If the government of Canada seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of opioid-related disease, injury or illness in any particular individual insured person, or

(iii) to prove the cost of health care benefits for any particular individual insured person,

(b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,

(c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual insured persons,

(d) despite paragraphs (b) and (c) of this subsection, on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in paragraph (b) of this subsection, and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and

(e) if an order is made under paragraph (d) of this subsection, the identity of particular individual insured persons must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed.

4 ***Sections 3, 4 and 10 are amended by adding "***or 2.1 (1)***" after "***under section 2 (1)***" wherever it appears.***

5 ***Section 3 (1) is amended by striking out "***if the government proves***" and substituting "***if the government, or the government of Canada, as the case may be, proves***".***

6 ***Sections 4 (2) and 7 (3) (e) are amended by striking out "***manufacturers or wholesalers***" wherever it appears and substituting "***manufacturers, wholesalers or consultants***".***

7 ***Section 5 is amended by striking out "***or***" at the end of paragraph (a), by adding "***, or***" at the end of paragraph (b), and by adding the following paragraph:***

(c) by the government of Canada under section 2.1 (1).

8 ***Section 6 is amended***

(a) in subsection (1) by striking out "section***" and substituting "***subsection***",***

(b) by adding the following subsection:

(1.1) No action that is commenced by the government of Canada within two years after the coming into force of this subsection for the recovery of the cost of health care benefits is barred under the *Limitation Act*. ***, and***

(c) in subsection (2) by adding "or (1.1)***" after "***subsection (1)***".***

9 ***Section 7 (2) is amended by striking out "***If the government is unable***" and substituting "***If the government, or the government of Canada, as the case may be, is unable***".***

10 The following section is added:

Joint and several liability of directors and officers

7.1 (1) A director or officer of a corporation who directs, authorizes, assents to, acquiesces in or participates in an opioid-related wrong committed by the corporation is jointly and severally liable with the corporation for the cost of health care benefits, or damages, caused or contributed to by the opioid-related wrong.

(2) Subsection (1) applies whether or not an action against the corporation for recovery of the cost of health care benefits, or for damages, has been commenced or concluded.

(3) A director or officer is not liable under subsection (1) if the director or officer proves, on a balance of probabilities, that the director or officer

(a) did not know, and in the exercise of reasonable diligence could not have known, that the corporation was committing an opioid-related wrong, or

(b) exercised reasonable diligence to prevent the corporation from committing the opioid-related wrong.

11 The Schedule is amended

(a) by adding "or active ingredients***" after "***the following drugs***", and***

(b) by striking out "Drugs containing any of the following active ingredients***" and substituting "***Drugs or active ingredients***".***

Commencement

12 This Act comes into force on the date of Royal Assent.