
Fifth Session, Forty-second Parliament
2 Charles III, 2024
Legislative Assembly of British Columbia

BILL 12

**PUBLIC HEALTH ACCOUNTABILITY AND COST
RECOVERY ACT**

Honourable Niki Sharma
Attorney General

Explanatory Note

This Bill establishes for the government of British Columbia and the government of Canada a direct and distinct action against a person to recover the cost of health care benefits caused or contributed to by a health-related wrong.

BILL 12 – 2024

**PUBLIC HEALTH ACCOUNTABILITY AND COST
RECOVERY ACT**

Contents

- 1 Definitions
- 2 Direct action by government
- 3 Direct action by the government of Canada
- 4 Recovery of cost of health care benefits – products
- 5 Recovery of cost of health care benefits – risk
- 6 Private parties and proceedings
- 7 Joint and several liability in an action under section 2 (1) or 3 (1)
- 8 Population-based evidence to establish causation and liability and quantify damages or cost
- 9 Minister’s certificates to establish health care benefits and cost of health care benefits
- 10 Limitation periods
- 11 Liability based on risk contribution
- 12 Apportionment of liability in health-related wrongs
- 13 Joint and several liability of directors and officers
- 14 Retroactive effect
- 15 Class proceeding
- 16 No proceedings in relation to information provided
- 17 Application of this Act
- 18 Consequential Amendment
- 19 Commencement

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

Definitions

1 In this Act:

“**benefit recipient**” means

- (a) a person, including a deceased person, for whom health care benefits have been provided, or
- (b) a person for whom health care benefits could reasonably be expected to be provided;

“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 benefit recipients as a result of 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 benefit recipients as a result of disease, injury or illness, and
- (b) in relation to an action under section 3 (1), the sum of
 - (i) the present value of the total expenditure by the government of Canada for health care benefits provided for benefit recipients as a result of 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 benefit recipients as a result of disease, injury or illness;

“disease, injury or illness” includes the following:

- (a) physical or mental injury or illness;
- (b) problematic product use;
- (c) addiction;
- (d) general deterioration of health;
- (e) the risk of disease, injury or illness;

“education authority” means

- (a) a board or francophone education authority under the *School Act*, or
- (b) an authority under the *Independent School Act*;

“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*,
 - (vi) expenditures by the government, made directly or through one or more agents or intermediate bodies, for emergency health services provided under the *Emergency Health Services Act*, and

- (vii) other expenditures by the government, made directly or through one or more agents, other intermediate bodies or education authorities, for programs, services, benefits or similar matters associated with disease, injury or illness, and
- (b) in relation to an action under section 3 (1), expenditures by the government of Canada for programs, services, benefits or similar matters associated with disease, injury or illness;

“health-related wrong” means

- (a) a breach by a person of a common law, equitable or statutory duty or obligation owed to persons in British Columbia, or
- (b) a tort that is committed in British Columbia by a person and that causes or contributes to disease, injury or illness;

“joint venture” means an association of 2 or more persons, if

- (a) the relationship among the persons does not constitute a corporation, partnership or trust, and
- (b) the persons each have an undivided interest in assets of the association;

“manufacture” includes, for a product, the production, assembly and packaging of the product;

“person” includes a trust, joint venture or trade association;

“product” includes goods, a service and a by-product;

“promote” includes, for a product,

- (a) the marketing of the product, whether direct or indirect,
- (b) the distribution, dissemination or sale of the product, and
- (c) any research with respect to the product.

Direct action by government

- 2 (1) The government has a direct and distinct action against a person to recover the cost of health care benefits caused or contributed to by a health-related wrong.
- (2) For certainty,
 - (a) subsection (1) does not establish a right of action for any other person, and
 - (b) the cost of health care benefits recoverable under subsection (1) includes the cost of health care benefits in relation to the risk of disease, injury or illness.
- (3) An action under subsection (1) is brought by the government in its own right and not on the basis of a subrogated claim.

- (4) In an action under subsection (1), the government 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 health-related wrong committed by the defendant.
- (5) In an action under subsection (1), the government may recover the cost of health care benefits
 - (a) for particular individual benefit recipients, or
 - (b) on an aggregate basis, for a population of benefit recipients.
- (6) If the government 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 benefit recipients,
 - (ii) to prove the cause of disease, injury or illness in any particular individual benefit recipient, or
 - (iii) to prove the cost of health care benefits for any particular individual benefit recipient,
 - (b) the health care records and documents of particular individual benefit recipients or the documents relating to the provision of health care benefits for particular individual benefit recipients 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 benefit recipients,
 - (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), 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), the identity of particular individual benefit recipients must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual benefit recipients must be deleted from any documents before the documents are disclosed.

Direct action by the government of Canada

- 3** (1) The government of Canada has a direct and distinct action against a person to recover the cost of health care benefits caused or contributed to by a health-related wrong.

- (2) For certainty,
 - (a) subsection (1) does not establish a right of action for any other person, and
 - (b) the cost of health care benefits recoverable under subsection (1) includes the cost of health care benefits in relation to the risk of disease, injury or illness.
- (3) 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.
- (4) 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 health-related wrong committed by the defendant.
- (5) In an action under subsection (1), the government of Canada may recover the cost of health care benefits
 - (a) for particular individual benefit recipients, or
 - (b) on an aggregate basis, for a population of benefit recipients.
- (6) 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 benefit recipients,
 - (ii) to prove the cause of disease, injury or illness in any particular individual benefit recipient, or
 - (iii) to prove the cost of health care benefits for any particular individual benefit recipient,
 - (b) the health care records and documents of particular individual benefit recipients or the documents relating to the provision of health care benefits for particular individual benefit recipients 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 benefit recipients,
 - (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), 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), the identity of particular individual benefit recipients must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual benefit recipients must be deleted from any documents before the documents are disclosed.

Recovery of cost of health care benefits – products

- 4 (1) In an action under section 2 (1) or 3 (1), subsection (2) of this section applies if the government, or the government of Canada, as the case may be, proves, on a balance of probabilities, that, in respect of a product,
- (a) the defendant breached a common law, equitable or statutory duty or obligation owed to benefit recipients who have used or been exposed to or might use or be exposed to the product,
 - (b) using or being exposed to the product can cause or contribute to disease, injury or illness, and
 - (c) during all or part of the period of the breach referred to in paragraph (a) of this subsection, the product was offered for distribution, sale or use in British Columbia.
- (2) Subject to subsections (1) and (5), the court must presume that
- (a) the benefit recipients who used or were exposed to the product would not have used or been exposed to the product but for the breach referred to in subsection (1) (a), and
 - (b) the use or exposure described in paragraph (a) of this subsection caused or contributed to disease, injury or illness in a portion of the benefit recipients described in paragraph (a) of this subsection.
- (3) If the presumptions under subsection (2) (a) and (b) apply,
- (a) the court must determine the cost of health care benefits provided after the date of the breach referred to in subsection (1) (a) resulting from use of or exposure to the product, and
 - (b) each defendant to which the presumptions apply is liable for the proportion of the cost referred to in paragraph (a) of this subsection equal to the proportion of its contribution to disease, injury or illness.
- (4) In assessing the proportion of a defendant’s contribution to disease, injury or illness, the court may take into account anything it considers relevant, including a defendant’s market share in the product.
- (5) The amount of a defendant’s liability assessed under subsection (3) (b) may be reduced, or the proportions of liability assessed under subsection (3) (b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1) (a) did not cause or contribute to the use or exposure referred to in subsection (2) (a) or to the disease, injury or illness referred to in subsection (2) (b).

Recovery of cost of health care benefits – risk

- 5** (1) In an action under section 2 (1) or 3 (1), subsection (2) of this section applies if the government, or the government of Canada, as the case may be, proves, on a balance of probabilities, that
- (a) the defendant breached a common law, equitable or statutory duty or obligation owed to benefit recipients, and
 - (b) the benefit recipients referred to in paragraph (a) were exposed to the risk of suffering disease, injury or illness as a consequence of the breach.
- (2) Subject to subsections (1) and (5), the court must presume that
- (a) the benefit recipients who were exposed to the risk referred to in subsection (1) (b) would not have been exposed to that risk but for the breach referred to in subsection (1) (a), and
 - (b) the breach caused or contributed to disease, injury or illness in a portion of the benefit recipients.
- (3) If the presumptions under subsection (2) (a) and (b) apply,
- (a) the court must determine the cost of health care benefits provided after the date of the breach referred to in subsection (1) (a), and
 - (b) each defendant to which the presumptions apply is liable for the proportion of the cost referred to in paragraph (a) of this subsection equal to the proportion of its contribution to disease, injury or illness.
- (4) In assessing the proportion of a defendant’s contribution to disease, injury or illness, the court may take into account anything it considers relevant, including a defendant’s market share in a product.
- (5) The amount of a defendant’s liability assessed under subsection (3) (b) may be reduced, or the proportions of liability assessed under subsection (3) (b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1) (a) did not cause or contribute to the disease, injury or illness referred to in subsection (2) (b).

Private parties and proceedings

- 6** (1) It is not a defence to an action commenced by the government under section 2 (1), or by the government of Canada under section 3 (1), that a claim for a benefit recipient’s damages, alleged to have been caused or contributed to by a health-related wrong, has been adjudicated or settled.
- (2) It is not a defence to an action commenced in respect of a benefit recipient’s claim for damages, alleged to have been caused or contributed to by a health-related wrong, that an action commenced by the government under section 2 (1), or by the government of Canada under section 3 (1), has been adjudicated or settled.

Joint and several liability in an action under section 2 (1) or 3 (1)

- 7 (1) Two or more defendants in an action under section 2 (1) or 3 (1) are jointly and severally liable for the cost of health care benefits if
- (a) those defendants jointly committed a health-related wrong, and
 - (b) as a consequence of the health-related wrong, at least one of those defendants is held liable in the action under section 2 (1) or 3 (1) for the cost of those health care benefits.
- (2) For the purposes of an action under section 2 (1) or 3 (1), 2 or more persons, whether or not they are defendants in the action, are deemed to have jointly committed a health-related wrong if
- (a) one or more of those persons are held to have committed the health-related wrong, and
 - (b) at common law, in equity or under an enactment, those persons would be held
 - (i) to have conspired or acted in concert with respect to the health-related wrong,
 - (ii) to have acted in a principal and agent relationship with each other with respect to the health-related wrong, or
 - (iii) to be jointly or vicariously liable for the health-related wrong if damages would have been awarded to a person who suffered damages as a consequence of the health-related wrong.

Population-based evidence to establish causation and liability and quantify damages or cost

- 8 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and liability and quantifying damages or the cost of health care benefits respecting a health-related wrong in an action brought
- (a) by or on behalf of a person, in the person's own name or as a member of a class of persons under the *Class Proceedings Act*, if the cause of action is substantially similar to that of an action brought under section 2 (1) or 3 (1) of this Act,
 - (b) by the government under section 2 (1), or
 - (c) by the government of Canada under section 3 (1).

**Minister's certificates to establish health care benefits
and cost of health care benefits**

- 9 (1) A certificate
- (a) purporting to have been issued by or on behalf of
 - (i) a minister of the government for the purposes of an action under section 2 (1), or
 - (ii) a minister of the government of Canada for the purposes of an action under section 3 (1), and
 - (b) setting out the health care benefits that have been provided and will likely be provided for a benefit recipient or population of benefit recipients who have suffered damage caused or contributed to by a health-related wrong,
- is proof of those health care benefits.
- (2) A certificate
- (a) purporting to have been issued by or on behalf of
 - (i) a minister of the government for the purposes of an action under section 2 (1), or
 - (ii) a minister of the government of Canada for the purposes of an action under section 3 (1), and
 - (b) setting out the cost of health care benefits that have been provided and will likely be provided for a benefit recipient or population of benefit recipients who have suffered damage caused or contributed to by a health-related wrong,
- is conclusive proof of the cost of health care benefits.

Limitation periods

- 10 (1) No action under section 2 (1) that is commenced by the government within 15 years after
- (a) the coming into force of this Act, or
 - (b) the day on which the claim is discovered,
- is barred under the *Limitation Act*.
- (2) No action under section 3 (1) that is commenced by the government of Canada within 15 years after
- (a) the coming into force of this Act, or
 - (b) the day on which the claim is discovered,
- is barred under the *Limitation Act*.

- (3) Any action commenced by the government or the government of Canada for damages that are substantially similar to the cost of health care benefits and that are alleged to have been caused or contributed to by a health-related wrong is revived if the action was dismissed before the coming into force of this Act merely because it was held by a court to be barred or extinguished by the *Limitation Act*.

Liability based on risk contribution

- 11** (1) In an action under section 2 (1) or 3 (1), if the government, or the government of Canada, as the case may be, is unable to establish which defendant caused or contributed to the use or exposure described in paragraph (b) of this subsection and, as a result of a breach of a common law, equitable or statutory duty or obligation,
- (a) one or more defendants causes or contributes to a risk of disease, injury or illness by making a product available to benefit recipients or exposing benefit recipients to a product, and
 - (b) a benefit recipient has used or been exposed to the product referred to in paragraph (a) and suffers disease, injury or illness as a result of the use or exposure,
- the court may find each defendant that caused or contributed to the risk of disease, injury or illness liable for a proportion of the cost of health care benefits incurred, equal to the proportion of its contribution to that risk of disease, injury or illness.
- (2) The court may consider the following in apportioning liability under subsection (1):
- (a) the length of time a defendant engaged in the conduct that caused or contributed to the risk of disease, injury or illness, and the riskiness or recklessness of that conduct;
 - (b) the degree to which the conduct referred to in paragraph (a) of a defendant deviated from the ordinary standard of conduct in the defendant's industry, profession or business;
 - (c) whether a defendant breached a statutory duty or obligation in manufacturing or promoting the product;
 - (d) whether a defendant has a history of conduct similar to the conduct referred to in paragraph (a);
 - (e) the market share a defendant had in the product that caused or contributed to the risk of disease, injury or illness;
 - (f) the profits or revenues that a defendant received as a result of manufacturing or promoting the product;
 - (g) the degree of harmfulness of the product manufactured or promoted by a defendant;

- (h) the amount spent by a defendant on promoting the product that caused or contributed to the risk of disease, injury or illness;
- (i) the vulnerability of the population to which the product was promoted;
- (j) the degree to which a defendant collaborated or acted in concert with other persons in any conduct that caused, contributed to or aggravated the risk of disease, injury or illness;
- (k) the extent to which a defendant conducted tests and studies to determine the risk of disease, injury or illness resulting from use of or exposure to the product;
- (l) the extent to which a defendant assumed a leadership role in manufacturing or promoting the product;
- (m) the efforts a defendant made to warn the public about the risk of disease, injury or illness resulting from use of or exposure to the product;
- (n) the extent to which a defendant continued manufacturing or promoting the product after it knew or ought to have known the risk of disease, injury or illness resulting from use of or exposure to the product;
- (o) the extent to which a defendant continued promoting the product after it knew or ought to have known that the amount or dosage of the product promoted did not reasonably reflect the health needs of the population of benefit recipients who were likely to use or be exposed to the product;
- (p) affirmative steps that a defendant took to reduce the risk of disease, injury or illness to the public;
- (q) other considerations considered relevant by the court.

Apportionment of liability in health-related wrongs

- 12**
- (1) This section does not apply to a defendant in respect of whom the court has made a finding of liability under section 11.
 - (2) A defendant who is found liable for a health-related wrong in an action under section 2 (1) or 3 (1) may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution toward the cost of health care benefits caused or contributed to by that wrong.
 - (3) Subsection (2) of this section applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the cost of health care benefits caused or contributed to by the health-related wrong.
 - (4) In an action or proceeding described in subsection (2) of this section, the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in section 11 (2).

Joint and several liability of directors and officers

- 13** (1) A director or officer of a corporation who directs, authorizes, assents to, acquiesces in or participates in a health-related wrong committed by the corporation is jointly and severally liable with the corporation for the cost of health care benefits caused or contributed to by the health-related wrong.
- (2) Subsection (1) applies whether or not an action against the corporation for recovery of the cost of health care benefits 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 the health-related wrong, or
 - (b) exercised reasonable diligence to prevent the corporation from committing the health-related wrong.

Retroactive effect

- 14** A provision of this Act has the retroactive effect necessary to give the provision full effect for all purposes, including allowing an action to be brought under section 2 (1) or 3 (1) arising from a health-related wrong, whenever the health-related wrong occurred.

Class proceeding

- 15** (1) For the purposes of section 4 of the *Class Proceedings Act*, the government may bring an action under section 2 (1) of this Act on behalf of a class consisting of
- (a) one or more of the government of Canada and the government of a jurisdiction within Canada, and
 - (b) a federal or provincial government payment agency that makes reimbursement for the cost of services that are in the nature of health care benefits within the meaning of this Act.
- (2) Nothing in subsection (1) of this section prevents a member of the class described in that provision from opting out of the proceeding in accordance with section 16 of the *Class Proceedings Act*.

No proceedings in relation to information provided

- 16** No legal proceeding lies or may be commenced or maintained against a person because the person has, in good faith, provided information to the government or the government of Canada for the purposes of this Act.

Application of this Act

- 17** (1) This Act does not apply to the government, or the government of Canada, as a defendant.

- (2) This Act does not apply to the recovery of the cost of health care benefits for the recovery of which an action was brought under the *Tobacco Damages and Health Care Costs Recovery Act* before the coming into force of this Act.

Consequential Amendment

Health Care Costs Recovery Act

18 *Section 15 (2) (a) of the Health Care Costs Recovery Act, S.B.C. 2008, c. 27, is repealed and the following substituted:*

- (a) may only be used by the minister, the government and their agents and legal counsel for purposes of the government's recovery of the following:
- (i) past and future costs of health care services under this Act;
 - (ii) the cost of health care benefits under the *Public Health Accountability and Cost Recovery Act*, and .

Commencement

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