COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cambie Surgeries Corp. v. British Columbia (Medical Services Commission),* 2010 BCCA 396

Date: 20100909
Dockets: CA037741, CA037747

Docket: CA037741

Between:

Cambie Surgeries Corporation

Appellant
(Plaintiff)

And

Medical Services Commission of British Columbia, Minister of Health Services of British Columbia and Attorney General of British Columbia

Respondents
(Defendants)

And

Specialist Referral Clinic (Vancouver) Inc.

Respondents
(Defendant by Counterclaim)

- and -

Docket: CA037747

Between:

Cambie Surgeries Corporation

Respondent
(Plaintiff)

And

Medical Services Commission of British Columbia, Minister of Health Services of British Columbia and Attorney General of British Columbia

Respondents
(Defendants)

And

Specialist Referral Clinic (Vancouver) Inc.

Appellant
(Defendant by Counterclaim)

Before: The Honourable Madam Justice Saunders
The Honourable Mr. Justice Frankel
The Honourable Mr. Justice Groberman

On appeal from the Supreme Court of British Columbia, November 20, 2009
(*Schooff v. Medical Services Commission*, 2009 BCSC 1596,
Vancouver Registry Nos. S088484 and S090663)

Counsel for the Appellants:	Irwin G. Nathanson, Q.C. Marvin R.V. Storrow, Q.C
Counsel for the Respondents (Defendants):	George H. Copley, Q.C. Jonathan G. Penner
Place and Date of Hearing:	Vancouver, British Columbia June 24, 2010
Place and Date of Judgment:	Vancouver, British Columbia September 9, 2010

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Frankel

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] This is an appeal, with leave, from the granting of an injunction requiring the appellant medical clinics to allow inspectors from the Medical Services Commission (the "Commission") access to their premises and records in order to perform audits under s. 36 of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286.

[2] The clinics contend that certain provisions of the *Act* are unconstitutional. As the proposed audits may be aimed at documenting violations of those provisions, the clinics say that the chambers judge was required to consider the constitutionality of the impugned provisions before granting an injunction. The Commission, on the other hand, argues that its right to audit the clinics is not dependent on the impugned provisions, and that the injunction was, therefore, validly granted.

[3] In my view, for reasons that follow, the manner in which the application for an injunction came before the Supreme Court was irregular, and the chambers judge ought not, in the circumstances, to have granted the injunction. The *Medicare Protection Act* makes adequate provision for orders facilitating audits where such orders are needed. The extraordinary powers of the Supreme Court to grant an injunction need not have been engaged in this case. Further, the procedure that was followed in this case obscured the legal issues surrounding the making of the order, and created unnecessary difficulties.

The Legislation and the Underlying Action

[4] The *Medicare Protection Act* governs the administration of British Columbia's Medical Services Plan (the "Plan"), the primary public health insurance scheme in the province. Most residents of B.C. are enrolled as beneficiaries and most physicians are enrolled as practitioners entitled to payment for their services under the Plan. A number of the provisions of the *Act* are relevant to the appeal. Rather than setting them out in the body of these reasons, I have appended the relevant portions of the statute.

[5] In the normal course, practitioners bill the Commission for services performed for beneficiaries, and the Commission pays the practitioners in accordance with its established payment schedules. Section 14 of the *Act* allows enrolled practitioners to opt out of the normal payment arrangements and to bill patients directly.

[6] Unless a physician has opted out or is not enrolled in the Plan, s. 17 prohibits him or her from charging a beneficiary for the provision of a service covered by the Plan. Where a physician has opted out or is not enrolled, s. 18 prohibits him or her from charging a patient more than the amount that the Plan would pay for a medical service.

[7] Together, ss. 17 and 18 greatly restrict the scope for medical practitioners to bill patients directly for their services. Section 18 also prohibits "extra billing" – i.e., billing a patient for an amount beyond that which the Plan pays for a service.

[8] The clinics admit that they have engaged in practices that would violate the statutory prohibitions against direct and extra billing if those prohibitions are constitutional. Some patients have signed "acknowledgement forms" confirming their understanding that they are being billed for amounts in excess of those provided for under the Plan.

[9] The clinics contend, however, that ss. 14, 17 and 18 of the *Act* are unconstitutional. They allege that those provisions have the effect of preventing patients from using their own resources to obtain desired medical care in a timely manner. Relying primarily on *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791, the clinics argue that the impugned provisions of the *Medicare Protection Act* violate the rights of patients to life, liberty, and security of the person in a manner that is not in accordance with principles of fundamental justice, contrary to s. 7 of the *Canadian Charter of Rights and Freedoms*. They have commenced an action seeking a declaration that the impugned provisions are unconstitutional.

[10] The Minister of Health Services has filed a counterclaim, seeking a declaration that the acknowledgement forms signed by patients are of no effect. He

also seeks damages from the clinics for economic losses that the Province claims to have suffered as a result of the clinics' extra billing practices and of actions taken by the Federal Government under the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

[11] The Medical Services Commission has also filed a counterclaim, seeking interim and permanent injunctions under s. 45.1 of the *Medicare Protection Act* prohibiting the clinics from violating ss. 17 and 18 of the *Act*. In addition, the Commission's counterclaim seeks a warrant under s. 36 of the *Act* authorizing its inspectors to enter the clinics and inspect medical records in their premises. It also seeks an injunction in similar terms. Finally, the counterclaim seeks an injunction restraining the clinics from "hindering, molesting or interfering with its inspectors".

[12] The current appeal arises out of an interlocutory application by the Medical Services Commission seeking a warrant under s. 36, or, alternatively, injunctive relief allowing its inspectors to enter the premises of the clinics and inspect their records for the purpose of conducting an audit. The Commission also sought ancillary injunctive relief requiring the clinics to allow the inspectors access to their premises and records, and prohibiting them from interfering with the audit process.

The Reasons of the Chambers Judge

[13] The chambers judge began by considering whether she had jurisdiction to issue a warrant authorizing the Commission's inspectors to enter the clinics under s. 36(7) of the *Act*. Such a warrant may be issued by a "justice", a term which by virtue of s. 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, means a justice of the peace.

[14] The judge found that she had authority to issue a warrant because under s. 30(3) of the *Provincial Court Act*, judges of the Supreme Court are justices of the peace. She declined to act under s. 36, however, finding that it was preferable to proceed under the inherent jurisdiction of the Supreme Court. She did so for two reasons – first, she considered that her ability to consider equitable considerations was clearer when exercising inherent jurisdiction. She also thought it preferable that

her decision not be subject to judicial review by another member of the Supreme Court, as it would be if she made it in her role as a justice of the peace.

[15] The judge considered that the application presented an appropriate basis for the exercise of the court's jurisdiction to grant injunctions. She noted that the injunction was sought for the purpose of enforcing a public right, with the support of the Attorney General, and also noted that the statute itself did not provide for any penal sanction for refusing to cooperate in an audit, apart from a penalty for obstructing an inspector.

[16] The judge then set out to determine the appropriate test for the granting of the injunction:

> [107] A threshold issue is whether the order sought is interlocutory or final. The underlying premise of an interlocutory injunction is that the Plaintiff must demonstrate that, unless an injunction is granted, his or her rights will be nullified or impaired by the time of trial (see Robert J. Sharpe, *Injunctions and Specific Performance*, loose leaf (Aurora: Canada Law Book, 1992) at ¶2.550). That is not the underlying premise of this application. Instead, the Commission seeks to enforce its previous decision to audit. The Commission could have brought the application whether or not the Action existed, and I do not believe that the fact the Commission has brought the application as part of its counterclaim necessarily makes it an interlocutory application.
>
> [108] It is true that the Commission in its counterclaim seeks declarations that Cambie and SRC have contravened and will contravene ss. 17 and 18 of the *MPA*, and interim and permanent injunctions restraining such contraventions. However, this application is not for interlocutory restraining orders with respect to alleged contraventions of ss. 17 and 18 of the *MPA*. Instead, it is to compel Cambie and SRC to permit the audit to be done under s. 36 of the *MPA*.
>
> [109] As Mr. Nathanson for Cambie observed, once the audit is done, it is done. The Commission is not seeking an order that records be preserved until the audit is completed or some other interim form of relief. Counsel for the Commission, Mr. Copley, conceded that the application is in some respects for a final order.
>
> [110] I conclude that the Commission is seeking a final order with respect to the audit and I will assess the application on that basis.

[17] Having concluded that what was being sought was a final order, the judge referred to *RJR-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. She accepted that the normal test for the granting of an interlocutory injunction

requires a three-stage analysis: first, the applicant must demonstrate that there is a serious question to be tried; second, the applicant must show that it may suffer irreparable harm if the relief is not granted; finally, the court must determine whether the balance of convenience favours the applicant or the respondent.

[18] The judge then said:

> [114] If the injunction sought is a final order, as in this case, the first stage of the test is altered, in that the Court should go beyond a preliminary investigation and perform instead a more extensive review of the merits, with the anticipated results on the merits also being kept in mind at the second and third stages of the test. [Citation omitted.]
>
> [115] Thus, in these circumstances, it is not sufficient for the Commission to show a triable issue regarding its assertion that it is entitled to an audit, but instead it must establish on the balance of probabilities that the Commission is entitled under the legislation to perform the audit and that the audit has been refused.

[19] The judge proceeded to consider whether the *Medicare Protection Act* authorized an audit and whether the clinics had refused to allow one to proceed. Having found "on the balance of probabilities" that the statutory preconditions for an audit were satisfied, and that the clinics had refused to allow one, she concluded that the applicant had passed the first stage of the injunction test. She then proceeded to consider the questions of irreparable harm and balance of convenience, and concluded that an injunction ought to issue:

> [138] ... The public interest supports the enforcement of duly enacted legislation such as the *MPA*. There was no evidence that the audit will interfere with the ability of the Plaintiffs to pursue their constitutional challenge, especially if appropriate conditions are imposed. I am satisfied that the audit may cause the Clinics some inconvenience and possibly some expense (in the form of staff time), and that the private interests of the Clinics may thereby be affected. However there is nothing to suggest a countervailing public interest that would outweigh the public interest relied upon by the Commission. While the Clinics' challenge to the constitutionality of the legislation is a serious one, so is the defence to it as described by the Commission in its submissions. No conclusion can be reached as to the likely outcome of the challenge to the legislation, and I am satisfied that the balance of inconvenience favours granting the order sought, although not with immediate effect ....
>
> [148] I have concluded that the fair and just order in this case is that the injunction will be stayed for some months. During that time, counsel will attempt to reach agreement on the terms on which the audit will be

> conducted, and on the related issue of the scope of discovery (because to allow both full discovery and an audit could be unnecessary and possibly oppressive).
>
> [149] Absent further order, or agreement, the injunction ... will be effective on March 1, 2010.

[20] The Commission subsequently agreed not to take any steps to carry out the audit or to enforce the injunction pending the determination of these appeals.

Positions of the Parties on the Appeal

[21] The appellants contend that the judge correctly set out the test for the granting of the injunction, but say that she erred in not considering the constitutionality of the impugned legislation at the first stage of the *RJR-MacDonald* test. They say that because the audits are sought for the purpose of determining the extent of violations of ss. 17 and 18 of the *Medicare Protection Act*, the judge was required, at the first stage of the test, to reach a conclusion as to whether, on the balance of probabilities, those statutory provisions are constitutional. As the judge found that "[n]o conclusion can be reached as to the likely outcome of the challenge to the legislation", she ought not to have granted the injunction.

[22] The Commission also agrees that the judge correctly set out the test for the granting of the injunction. It says, however, that the judge was not required to reach any conclusion on the constitutionality of the impugned sections because the Commission's right to perform an audit does not depend on there being any violation (or even suspicion of a violation) of ss. 17 and 18 of the *Act*. In its submission, those sections are simply irrelevant to the issue of whether the Commission has the right to an audit.

The Test for an Injunction

[23] Unfortunately, despite the agreement of the parties that the trial judge correctly set out the test for the granting of an injunction in this case, it is my view that the test enunciated was incorrect.

[24] *RJR-MacDonald* sets out the test for the granting of an interlocutory injunction. The normal test for such an injunction is the familiar three-part test discussed by the chambers judge. The test is designed to address situations in which a court does not have the ability to finally determine the merits of the case, but must nevertheless decide whether an interim order should be made to protect the applicant's interests.

[25] *RJR-MacDonald* describes an exceptional category of cases where the court must undertake a more probing analysis of the strength of the applicant's case at the first stage of the analysis at 338-39:

> Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed Lord Diplock modified the American Cyanamid principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:
>
> > Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.
>
> Cases in which the applicant seeks to restrain picketing may well fall within the scope of this exception. Several cases indicate that this exception is already applied to some extent in Canada.
>
> ...
>
> The circumstances in which this exception will apply are rare. When it does, a more extensive review of the merits of the case must be undertaken. Then when the second and third stages of the test are considered and applied the anticipated result on the merits should be borne in mind.

[26] It is important to appreciate that the Court was not, in describing this special category of cases, purporting to redefine the tests for the granting of a final, as opposed to interlocutory, injunction. Rather, it was describing a test that is

applicable to a narrow class of interlocutory injunctions, where the granting or withholding of the injunction will have the practical effect of bringing the litigation to an end. In this category of cases, circumstances require that courts do their best to do justice between the parties, recognizing that a full hearing to finally determine the merits of the action will never take place.

[27] Neither the usual nor the modified test discussed in *RJR-MacDonald* has application when a court is making a final (as opposed to interlocutory) determination as to whether an injunction should be granted. The issues of irreparable harm and balance of convenience are relevant to interlocutory injunctions precisely because the court does not, on such applications, have the ability to finally determine the matter in issue. A court considering an application for a final injunction, on the other hand, will fully evaluate the legal rights of the parties.

[28] In order to obtain final injunctive relief, a party is required to establish its legal rights. The court must then determine whether an injunction is an appropriate remedy. Irreparable harm and balance of convenience are not, *per se*, relevant to the granting of a final injunction, though some of the evidence that a court would use to evaluate those issues on an interlocutory injunction application might also be considered in evaluating whether the court ought to exercise its discretion to grant final injunctive relief.

[29] In the case before us, the chambers trial judge concluded that the application should be treated as one for a final order, because the claim for an injunction could have been brought as an independent action. Having made that determination, however, the judge proceeded to apply the test for the granting of an interlocutory injunction. She fell into error in that regard.

[30] I agree with the chambers judge's conclusion that the application by the Commission for a warrant or injunction to facilitate an audit was an application for final relief. The application was not genuinely interlocutory – it was not an application for interim relief pending final determination of the litigation. Rather, it

was an application for summary determination of one aspect of the Commission's counterclaim.

[31] That aspect of the counterclaim was not closely connected with the balance of the litigation. As the Commission pointed out in argument, its statutory right to conduct an audit does not depend on it having suspicion that the impugned provisions of the statute are being violated, nor does it depend on it succeeding on the rest of the claim or counterclaim. It was, therefore, possible for the court to consider the Commission's application for injunctive relief on a summary basis, separately from the balance of the claim and counterclaims.

[32] In considering the Commission's application, however, the chambers judge was required to determine whether a final order should be granted, and should not have applied the interlocutory injunction test.

Should an Injunction Have Been Granted?

[33] On the face of it, the Commission established that it was legally entitled to conduct an audit under s. 36 of the *Act*. The first part of the test for the granting of a final injunction was, therefore, made out. Nonetheless, it is my view that, for reasons that follow, the court ought not to have granted injunctive relief in this case.

[34] While courts have jurisdiction to grant injunctions to enforce statutory obligations, the jurisdiction must be exercised carefully. Where, as here, there is a clear method of enforcement set out in the statute, the court should not grant injunctive relief unless the statutory provision is shown to be inadequate in some respect.

[35] There are a number of respects in which a statutory regime may be inadequate. For example, the penalty for breach of the statute may be so limited that a party chooses to treat it as a cost of doing business, and therefore flout the law (see Robert J. Sharpe, *Injunctions and Specific Performance* (Looseleaf Edition, Toronto: Canada Law Book, 1998-2009) §3.210; *A.G. v. Harris*, [1961] 1 Q.B. 74 (C.A.); *Alberta (Attorney General) v. Plantation Indoor Plants Ltd.* (1982), 133

D.L.R.(3d) 741 (Alta. C.A.), rev'd on other grounds [1985] 1 S.C.R. 366; *Attorney-General for Ontario v. Grabarchuk* (1976), 67 D.L.R. (3d) 31 (Ont. Div. Ct.).

[36] A statutory provision may also prove inadequate where a party who suffers harm is unable to invoke the provision (*MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048), or where serious danger or harm would result from the delay inherent in invoking a statutory remedy. There are, undoubtedly, other situations in which deficiencies in a statutory remedy militate in favour of the granting of an injunction.

[37] In the case before us, there is no basis on which the statutory provisions can be said to be deficient. They provide for inspections and audits, and allow the Commission to seek a warrant when it is necessary to enter a building in order to obtain information. The provisions specifically deal with audits, and are carefully tailored to ensure that they can be carried out. There is no basis, in this case, to expect that the clinics would refuse to allow inspectors access to documents if a warrant were issued. In the circumstances, it was unnecessary to resort to the injunction procedure.

The Scope of an Injunction

[38] While I would set aside the injunction on the basis that the statutory remedies were entirely adequate, I believe that some comment is also appropriate with respect to the scope of the injunction granted in this case. The injunction requires the clinics to permit inspectors to enter the clinics and to inspect records and make copies of them. If the statute had been deficient in this case, an injunction including those provisions might well have been appropriate.

[39] The injunction goes on, however, to prohibit the clinics from "hindering, molesting or interfering with the inspectors". The language appears to have been taken from s. 36(10) of the *Medicare Protection Act*. Unfortunately, it is common practice for parties to seek injunctions and similar orders in very broad terms, often parroting the language of a statute. A court should be cautious in adopting statutory language in an injunction. The purpose of a statute is to govern a wide variety of circumstances. Statutes are therefore often cast in broad terms, designed to cover

all foreseeable eventualities. An injunction, on the other hand, should be tailored to an individual case. It is an extraordinary remedy, and anyone who infringes an injunction is subject to the possibility of being found in contempt of court. Injunctions must, of course, be drawn broadly enough to ensure that they will be effective. They should not, however, go beyond what is reasonably necessary to effect compliance.

[40] In the case before us, there is no reason to suspect that the clinics will hinder, molest or interfere with inspectors if a court requires that they submit to inspections. The injunction did not need to include a provision prohibiting such activities, and it should not have done so.

Should the Chambers Judge have Granted a Warrant?

[41] The Commission applied for a warrant under s. 36(7) of the *Medicare Protection Act* to allow its inspectors to enter the clinic premises. Given that the chambers judge should not have issued an injunction, ought she to have, instead, granted a warrant?

[42] In my view, the inclusion of the claim for a warrant in the Commission's counterclaim was not appropriate. The statute contemplates a procedure for applying for a warrant before a justice of the peace. It does not contemplate such an application being by way of a statement of claim (or counterclaim) in a civil suit. I would not rule out the possibility that exceptional circumstances might justify an application for a warrant to be brought within a civil claim. There are, however, no such circumstances in this case. As I have already noted, there is no demonstrated connection between the litigation and the Commission's right to conduct an audit.

[43] The application for a warrant became entangled in the litigation, leading to a great deal of confusion. The parties and the chambers judge seemed, at times, to suggest that an audit could be used for the purpose of discovery in the litigation. In my view, that would not be an appropriate basis for conducting an audit. The statutory provisions allowing for an audit are designed to allow for the orderly administration and regulation of the Medical Services Plan, not as an adjunct to rights of discovery in litigation.

[44] There was also confusion over how the constitutionality of the legislation impinged on a warrant application. Had the warrant application been brought as a stand-alone application, I think it would have been apparent that the appellants, as persons seeking to be relieved of a burden imposed by statute, would have had the onus of applying to suspend the operation of the audit provisions of the statute, as those provisions relate to them, pending the conclusion of their constitutional challenge. Such an application would have clearly fallen within the scope of *RJR-MacDonald*, and much of the confusion over the applicable test would have been avoided.

[45] As matters now stand, the Commission is entitled, under the statute, to proceed with an audit. If it requires a warrant in order to enter premises so that it can conduct an audit, the *Medicare Protection Act* provides for an application to a justice of the peace for such a warrant. There is no reason that such an application should be part of the current litigation.

[46] If the appellants consider that an audit should not take place pending determination of their constitutional challenge, they are entitled to apply to a judge of the Supreme Court for an order exempting them from the relevant provisions of the *Medicare Protection Act* pending the determination of their challenge. Such an application could properly be brought as an interlocutory application in the extant proceedings. Such an application would clearly be an application for an interlocutory stay, and the *RJR-MacDonald* test would apply.

Conclusion

[47] In the result, I would allow the appeal, and set aside the injunction, without prejudice to:

1) the Commission's right to apply for a warrant in properly constituted proceedings before a justice of the peace.

2) the appellants' rights to apply in the Supreme Court for a limited exemption from particular audit provisions of the *Medicare Protection Act* pending the resolution of the litigation.

"The Honourable Mr. Justice Groberman"

I agree:

"The Honourable Madam Justice Saunders"

I agree:

"The Honourable Mr. Justice Frankel"

APPENDIX

Medicare Protection Act

R.S.B.C. 1996, c. 286

...

Definitions

1 In this Act:

...

"beneficiary" means a resident who is enrolled ...;

"benefits" means

(a) medically required services rendered by a medical practitioner who is enrolled under section 13, unless the services are determined ... by the commission not to be benefits, ...

(c) unless determined by the commission ... not to be benefits, medically required services performed

(i) in an approved diagnostic facility, and

(ii) by or under the supervision of an enrolled medical practitioner who is acting

(A) on order of a person in a prescribed category of persons, or

(B) in accordance with protocols approved by the commission;

...

"commission" means the Medical Services Commission ...;

...

"payment schedule" means a payment schedule established under section 26;

...

"plan" means the Medical Services Plan ...;

"practitioner" means

(a) a medical practitioner ...

who is enrolled under section 13;

....

Enrollment of practitioners

13(1) A medical practitioner or health care practitioner who wishes to be enrolled as a practitioner must apply to the commission in the manner required by the commission.

(2) On receiving an application under subsection (1), the commission must enroll the applicant if the commission is satisfied that the applicant is in good standing with the appropriate licensing body ....

(3) A practitioner who renders benefits to a beneficiary is, if this Act and the regulations made under it are complied with, eligible to be paid for his or her services in accordance with the appropriate payment schedule ....

Election

14 (1) A practitioner may elect to be paid for benefits directly from a beneficiary.

(2) An election under subsection (1) may be made by giving written notice to the commission in the manner required by the commission.

...

(7) If an election is in effect and the practitioner has complied with subsection (9),

> (a) the beneficiary must make a request for reimbursement directly to the commission, and
>
> (b) the beneficiary is only entitled to be reimbursed for the lesser of
>
> > (i) the amount that is provided in the appropriate payment schedule for the benefit, ... and
> >
> > (ii) the amount that was charged by the practitioner.

(8) If a practitioner makes an election under subsection (1), he or she must not submit a claim on his or her own behalf ... for services rendered to a beneficiary after the date the election becomes effective.

(9) As soon as practicable after rendering a benefit, a practitioner who has made an election under subsection (1) must give the beneficiary a claim form that is completed by the practitioner in the manner required by the commission.

...

General limits on direct or extra billing

17 (1) Except as specified in this Act or the regulations or by the commission under this Act, a person must not charge a beneficiary

> (a) for a benefit, or
>
> (b) for materials, consultations, procedures, use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit.

(2) Subsection (1) does not apply:

(a) if, at the time a service was rendered, the person receiving the service was not enrolled as a beneficiary;

(b) if, at the time the service was rendered, the service was not considered by the commission to be a benefit;

(c) if the service was rendered by a practitioner who

(i) has made an election under section 14 (1), ...;

(d) if the service was rendered by a medical practitioner who is not enrolled.

Limits on direct or extra billing by a medical practitioner

18 (1) If a medical practitioner who is not enrolled renders a service to a beneficiary and the service would be a benefit if rendered by an enrolled medical practitioner, a person must not charge the beneficiary for, or in relation to, the service an amount that, in total, is greater than

(a) the amount that would be payable under this Act, by the commission, for the service if rendered by an enrolled medical practitioner ....

...

(3) If a medical practitioner described in section 17 (2) (c) renders a benefit to a beneficiary, a person must not charge the beneficiary for, or in relation to, the service an amount that, in total, is greater than

(a) the amount that would be payable under this Act, by the commission, for the service ....

Payment schedules and benefit plans

26 (1) The commission

(a) must establish payment schedules that specify the amounts that may be paid to or on behalf of practitioners for rendering benefits under this Act...

Audit and inspection – practitioners and employers

36 (1) In this Part:

...

“practitioner” includes

(a) a former practitioner, and

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

....

(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.

(2.1) If the commission, on behalf of a prescribed agency, pays a practitioner, an owner of a diagnostic facility or a representative of a professional corporation for services rendered, or claimed to have been rendered, this Part applies to the services as though these services were benefits.

(2.2) The claims and patterns of practice or billing concerning a prescribed agency

(a) need not be under this Act, and

(b) can have arisen at any time since July 24, 1992.

(3) Medical records may only be requested or inspected under this section or section 40 by an inspector who is a medical practitioner.

(4) An audit under subsection (2) (a) may be made in respect of claims and patterns of practice or billing followed by practitioners before this Act came into force.

(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.

(5) An inspector may, at any reasonable time and for reasonable purposes of the audit, enter any premises and inspect

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

(b) records maintained in hospitals, health facilities and diagnostic facilities.

(6) The power to enter a place under subsection (5) or (12) must not be used to enter a dwelling house occupied as a residence without the consent of the occupier except under the authority of a warrant under subsection (7).

(7) On being satisfied on evidence on oath or affirmation that there are in a place records or other things for which there are reasonable grounds to believe that they are relevant to the matters referred to in subsection (5) or (12), a justice may issue a warrant authorizing an inspector named in the warrant to enter the place in accordance with the warrant in order to exercise the powers referred to in subsection (5) or (12).

(8) A person must, on the request of an inspector,

(a) produce and permit inspection of the records referred to in subsection (5) or (12),

(b) supply copies of or extracts from the records at the expense of the commission, and

(c) answer all questions of the inspector respecting the records referred to in subsection (5) or (12).

(9) If required by the inspector, a person must provide to the inspector all books of account and other records that the inspector considers necessary for the purposes of the audit.

(10) A person must not hinder, molest or interfere with an inspector doing anything that the inspector is authorized to do under this section or prevent or attempt to prevent the inspector doing any such thing.

(11) An inspector must make a report to the chair of the results of an audit made under subsection (2).

(12) An inspector may, at any reasonable time and for the purposes of the audit, enter any premises and inspect the payroll, financial and membership records of an employer or an association responsible for collecting and remitting premiums under this Act.

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) ....

(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).

Offences

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(4) A person who obstructs an inspector in the lawful performance of his or her duties under this Act commits an offence.