

1994 BILL 46

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 46

HOSPITALS AMENDMENT ACT, 1994

MR. SEVERTSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 46
Mr. Severtson

BILL 46

1994

HOSPITALS AMENDMENT ACT, 1994

(Assented to , 1994)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA
1980 cH-11

1 The Hospitals Act is amended by this Act.

2 Section 40 is amended

(a) in subsection (2) by adding "enforcing the Crown's right of recovery under Part 5," after "conducting medical research,";

(b) by adding the following after subsection (4):

(4.1) Notwithstanding subsection (3) or any other law, the Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown's right of recovery under Part 5, disclose information obtained under subsection (2).

Explanatory Notes

1 Amends chapter H-11 of the Revised Statutes of Alberta 1980.

2 Section 40 presently reads in part:

(2) For the purposes of assessing the standards of care furnished to patients, improving hospital or medical procedures, compiling medical statistics, conducting medical research, or for any other purpose considered by the Minister to be in the public interest, the Minister, or a person authorized by the Minister, may require that all or any of the following be sent to him or a person designated by him:

(a) medical and other records of any patient;

(b) extracts from and copies of any medical or other records of any patient;

(c) diagnoses, charts or any information available in respect of a patient.

(3) Information obtained from hospital records or from persons having access thereto shall be treated as private and confidential information in respect of any individual patient and shall be used solely for the purposes described in subsection (2) and the information shall not be published, released or disclosed in any manner that would be detrimental to the personal interests, reputation or privacy of a patient or the patient's attending physician or any other person providing diagnostic or treatment services to a patient.

(4) A person who knowingly and wilfully releases or discloses information obtained from hospital records to a person not authorized to receive the information is guilty of an offence and liable to a fine of not more than \$2000.

3 Section 58 is repealed.

3 Section 58 presently reads:

58(1) When as a result of a wrongful act or omission of another, a person suffers personal injuries and becomes a beneficiary,

(a) the beneficiary has the same right to recover the cost of insured services against the person guilty of the wrongful act or omission as he would have had if he had been required to pay for the whole cost of the hospital services which he received, and

(b) the Minister is subrogated to the right of recovery of the beneficiary in respect of the cost of insured services furnished and the Minister may maintain an action either in his own name or in the name of the beneficiary to recover the cost of the insured services to which he is hereby subrogated.

(2) A beneficiary, or his agent, shall promptly inform the Minister when the beneficiary or his agent has consulted a solicitor in respect of the damages sustained by him by reason of personal injuries and therewith shall inform the Minister of the name and address of that solicitor.

(3) The Minister may at any time engage a solicitor to prosecute recovery of the cost of the insured services to a beneficiary to which the Minister is subrogated and for that purpose may engage the solicitor of the beneficiary.

(4) The solicitor of a beneficiary who has been engaged by the Minister for the purposes of this section shall, in addition to proper disbursements, if any, be paid in accordance with a schedule of fees established by the Lieutenant Governor in Council, and a solicitor separately engaged for these purposes shall be paid his proper and reasonable fees and disbursements determined pursuant to the Alberta Rules of Court.

(5) A beneficiary may at any time settle his claim for damages sustained by reason of personal injuries, other than the cost of insured services to which the Minister is subrogated, but the claim of the Minister shall not be settled without the prior written consent of the Minister and any settlement made without his prior written consent is void.

(6) The obligation of an insurer to an insured person against whom a claim by a beneficiary for personal injuries and the cost of insured services could be made, shall not be discharged until the subrogated claim of the Minister is paid or settlement of it as aforesaid is made and the amount of the settlement is paid.

(7) In this section, "cost of insured services" means the difference between the amount that the person, as a beneficiary, is liable to pay

4 The following is added after section 79:

PART 5

CROWN'S RIGHT TO RECOVER HEALTH COSTS

Definitions

80 In this Part,

- (a) "beneficiary" means a person who receives health services for personal injuries;
- (b) "Crown" means Her Majesty in right of Alberta;
- (c) "Crown's cost of health services" means the direct and indirect costs of the Crown for health services as determined and calculated in accordance with this Part and the regulations;
- (d) "Crown's right of recovery" means the Crown's right, under this Part, to recover the Crown's cost of health services;
- (e) "Director" means the Director of Third Party Liability appointed under section 100;
- (f) "health services" means the following, whether provided inside or outside of Alberta:
 - (i) in-patient and out-patient services provided in a hospital or other facility;
 - (ii) health services as defined in the *Alberta Health Care Insurance Act*;
 - (iii) transportation services, including air and ground ambulance services;
 - (iv) public health services;
 - (v) mental health services;
 - (vi) drug services;
 - (vii) any good or service prescribed to be a health service by the regulations;
- (g) "settlement" means an agreement to terminate a legal dispute;
- (h) "wrongdoer" means a person whose wrongful act or omission results in personal injuries to a beneficiary.

to the hospital and the amount for which he would have been liable to the hospital if he were not a beneficiary.

4 Crown's right to recover health costs.

Crown's right
of recovery

81(1) If a beneficiary receives health services for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer, the Crown has the right to recover from the wrongdoer the Crown's cost of health services

- (a) for health services that the beneficiary has received for those personal injuries, and
- (b) for health services that the beneficiary will likely receive in the future for those personal injuries.

(2) If a beneficiary is contributorily negligent, the Crown is entitled to recover 100% of the Crown's cost of the beneficiary's health services less a percentage for the beneficiary's contributory negligence as determined under sections 82 and 83.

Determining
contributory
negligence

82(1) This section applies when a beneficiary has obtained a judgment against a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery before the Crown has obtained a judgment against or entered into a settlement with the wrongdoer based on the Crown's right of recovery.

(2) This section does not apply when the judgment obtained by the beneficiary implements or approves a structured settlement.

(3) If a beneficiary obtains a judgment that indicates that the beneficiary's claim has been reduced by a specified percentage because of the beneficiary's contributory negligence, the specified percentage in the judgment is the percentage of contributory negligence to be used to calculate the Crown's entitlement under section 81(2).

Determining
contributory
negligence

83 Unless section 82 applies, the percentage of contributory negligence to be used to calculate the Crown's entitlement under section 81(2) is,

- (a) if the Crown obtains a judgment against the wrongdoer, the percentage specified in the judgment, or
- (b) if the Crown enters into a settlement with the wrongdoer, the percentage specified in the settlement.

Commence-
ment of
Crown's right

84 The Crown's right of recovery arises for all purposes when the beneficiary receives health services for which there is a cost to the Crown for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer.

Interest

85(1) When the Crown obtains a judgment based on the Crown's right of recovery, the court shall award interest calculated in accordance with the regulations from the date that the Crown's right of recovery arose to the date of the judgment.

(2) The interest shall be awarded on that part of the judgment that represents the Crown's cost of health services for health services that the beneficiary has received to the date of the judgment.

(3) The rate of interest to be used to calculate the award of interest is the rate of interest for pecuniary damages that is established for each year under Part 1 of the *Judgment Interest Act*.

(4) For the purposes of enforcing a judgment, interest awarded under this section is included in the judgment.

(5) If a wrongdoer

(a) pays money into court in satisfaction of the claim of the Crown, or

(b) makes an offer of judgment specifying the terms on which the wrongdoer is willing to settle the claim of the Crown,

and the Crown does not accept the payment or the offer and obtains a judgment for an amount equal to or less than the amount paid into court or the amount offered, the court shall award interest from the date that the Crown's right of recovery arose only to the day the payment into court was made or the date of service of the offer of judgment, as the case may be.

(6) Except for the rate of interest referred to in subsection (3), Part 1 of the *Judgment Interest Act* does not apply to the Crown's right of recovery.

Limitation
period

86 The limitation period to commence an action based on the Crown's right of recovery is the period that ends 6 months after the expiration of the beneficiary's limitation period to commence an action against the wrongdoer.

Settlement

87(1) The Director may enter into a settlement respecting

the Crown's right of recovery.

(2) When the terms of a settlement are met, the Director may release a person from liability to the Crown in respect of the Crown's right of recovery.

(3) If the Director believes that the cost of pursuing the Crown's right of recovery in a particular case will exceed the benefit to the Crown, the Director may release a person from liability to the Crown in respect of that right without receiving any payment.

Director's
certificate

88(1) The Director may issue one or more certificates that set out

(a) the health services a beneficiary has received and the health services a beneficiary will likely receive in the future for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer for which there is a cost to the Crown, and

(b) the Crown's cost of those health services.

(2) For the purposes of the Crown's right of recovery, a certificate is *prima facie* proof of the health services referred to in subsection (1)(a).

(3) For the purposes of the Crown's right of recovery, after the health services for which there is a cost to the Crown have been determined, a certificate is conclusive proof of the Crown's cost of those health services.

(4) A certificate is admissible in evidence without proof of the signature, authority or office of the person purporting to have signed the certificate.

Priority of
beneficiary's
payments

89(1) Subject to subsection (2) and the regulations, payments to a beneficiary under a judgment obtained against or a settlement entered into with a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery have priority over payments to the Crown under a judgment obtained against or a settlement entered into with the wrongdoer that is based on the Crown's right of recovery.

(2) Subsection (1) does not apply to a payment received by the Crown under a judgment obtained against or a settlement entered into with a wrongdoer before the beneficiary has obtained a judgment against or entered into a settlement with the wrongdoer.

**Structured
settlements -
terms and
conditions**

(3) When the Crown has received a payment under a judgment obtained against or a settlement entered into with a wrongdoer before the beneficiary has obtained a judgment against or entered into a settlement with the wrongdoer, the Director may pay to the beneficiary an amount that does not exceed the payment received by the Crown if

- (a) the beneficiary subsequently obtains a judgment or enters into a settlement with the wrongdoer, and**
- (b) the Director believes that the beneficiary will not receive the full amount to which the beneficiary is entitled under the judgment or settlement.**

90(1) This section applies when

- (a) a beneficiary has entered into a structured settlement with a wrongdoer or obtained a judgment against a wrongdoer that implements or approves a structured settlement that is based on a claim that gives rise to the Crown's right of recovery, and**
- (b) the Crown has obtained a judgment against or entered into a settlement with the wrongdoer that is based on the Crown's right of recovery.**

(2) The Director, under subsection (3), may impose on the structured settlement terms and conditions authorized by the regulations respecting payments to the Crown under the Crown's judgment or settlement.

(3) Terms and conditions may be imposed if

- (a) the beneficiary dies or requires institutional health care on a permanent basis after the structured settlement is entered into or the judgment that implements or approves the structured settlement is obtained,**
- (b) the payments to or on behalf of the beneficiary under the structured settlement are to continue after the beneficiary dies or requires institutional health care on a permanent basis, and**
- (c) the Director believes that the structured settlement does not adequately provide for payments to the Crown under the Crown's judgment or settlement after the beneficiary dies or requires institutional health care on a permanent basis.**

(4) If the Director imposes terms and conditions under this section,

- (a) the terms and conditions form part of the structured settlement, and
- (b) the Crown is deemed to be a party to the structured settlement for the purpose of enforcing the terms and conditions.

Beneficiary's
duty

91 A beneficiary who consults a lawyer or has someone consult a lawyer on his behalf in respect of personal injuries suffered by the beneficiary as a result of a wrongful act or omission of a wrongdoer shall, as soon as possible after the consultation, provide the Director with the information prescribed by the regulations.

Information
from
beneficiary

92(1) The Director may request a beneficiary to provide information relating to the wrongful act or omission of the wrongdoer, the personal injuries that the beneficiary has suffered and the health services that have been received for those injuries.

(2) A beneficiary who receives a request to provide information under subsection (1) shall, as soon as possible, comply with the request.

Insurer's duty

93 An insurer who is notified of circumstances in which the Crown's right of recovery may arise shall, as soon as possible, notify the Director of those circumstances and provide the Director with the information prescribed by the regulations.

Information
relating to
health
services

94(1) The Director may request any person who has information respecting the health services provided to a beneficiary to provide the Director with that information.

(2) A person who receives a request to provide information under subsection (1) shall comply with the request as soon as possible.

(3) The provision of information under this section is subject to any solicitor-client privilege.

Structured
settlements

95 If a beneficiary enters into a structured settlement with a wrongdoer or obtains a judgment against a wrongdoer that implements or approves a structured settlement that is based on a claim that gives rise to the Crown's right of recovery, the wrongdoer shall, as soon as possible after the structured settlement is entered into or the judgment is obtained, provide the Director with a copy of the structured settlement.

Wrongdoer's
insurance

96 If

- (a) a beneficiary obtains a judgment against or enters into a settlement with a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery, and
- (b) the wrongdoer has insurance against liability in respect of the personal injuries suffered by the beneficiary,

the wrongdoer shall, as soon as possible after the judgment has been obtained or the settlement has been entered into, provide the Director with information respecting the insurance as specified by the Director and, if required by the Director, a copy of the insurance policy.

Order for
information
and
documents

97(1) If a beneficiary, insurer or other person fails to provide information under one or more of sections 91 to 94 or if a wrongdoer fails to provide a copy of a structured settlement under section 95 or information or a copy of an insurance policy under section 96, the Director may apply by originating notice to the Court of Queen's Bench for an order compelling the beneficiary, insurer or other person to provide the information or compelling the wrongdoer to provide a copy of the structured settlement or insurance policy.

(2) The Court may, subject to any conditions that it considers appropriate, grant an order compelling the beneficiary, insurer or other person to provide the information if it is satisfied that

- (a) the information is in the possession or under the control of the beneficiary, insurer or other person, and
- (b) the information is relevant to the Crown's right of recovery.

(3) The Court may, subject to any conditions that it considers appropriate, grant an order compelling the wrongdoer to provide a copy of the structured settlement if it is satisfied that the wrongdoer has entered into a structured settlement with a beneficiary that is based on a claim that gives rise to the Crown's right of recovery.

(4) The Court may, subject to any conditions that it considers appropriate, grant an order compelling the wrongdoer to provide information respecting the

wrongdoer's liability insurance or a copy of the insurance policy if it is satisfied that

- (a) the beneficiary has obtained a judgment against or entered into a settlement with the wrongdoer that is based on a claim that gives rise to the Crown's right of recovery, and
- (b) the wrongdoer has insurance against liability in respect of the personal injuries suffered by the beneficiary.

Offence

98(1) A beneficiary, insurer, other person or wrongdoer who fails to comply with an order obtained under section 97 is guilty of an offence and is liable to a fine of not more than \$10 000.

(2) Nothing in this section affects the remedies available to enforce an order obtained under section 97.

**Order for
medical
examination**

99(1) The Director may, after an action based on the Crown's right of recovery is commenced against a wrongdoer, apply for an order directing the beneficiary to submit to an examination by a physician under Part 14 of the *Alberta Rules of Court*, and that Part applies to the Crown's right of recovery.

(2) The Crown is responsible for the reasonable expenses incurred by the beneficiary as a result of an examination ordered under this section.

**Appointment
of Director**

100 The Minister may appoint a Director of Third Party Liability.

**Certain
powers of the
Director**

101(1) The Director may hire legal counsel for the purpose of recovering the Crown's cost of health services under this Part.

(2) The Director may establish forms for use under this Part.

(3) The Director may authorize a person to exercise any power or to perform any duty of the Director under this Part or the regulations made under this Part, including any power or duty that requires the Director to form a belief.

Regulations

102(1) The Lieutenant Governor in Council may make regulations

- (a) providing that the Crown's right of recovery does not apply or arise in certain circumstances;

- (b) prescribing a good or service to be a health service for the purposes of this Part;
 - (c) respecting the calculation of interest for the purposes of section 85;
 - (d) for the purposes of section 89,
 - (i) respecting the conditions and circumstances in which the priority of payment to the beneficiary operates, including special provisions for structured settlements, and
 - (ii) respecting the determination of amounts that have priority;
 - (e) respecting the terms and conditions that may be imposed on structured settlements under section 90;
 - (f) respecting the payment of legal counsel, physicians and other persons for services provided to the Crown for the purposes of the Crown's right of recovery;
 - (g) generally for giving effect to any of the purposes or provisions of this Part.
- (2) The Minister may make regulations
- (a) for the purposes of determining the Crown's cost of health services,
 - (i) respecting what is a cost of the Crown, and
 - (ii) respecting whether something is a capital cost or an operating cost and whether a health service has a capital cost;
 - (b) respecting the calculation of the Crown's cost of health services under the Crown's right of recovery, including
 - (i) the establishment of a capital cost factor to be used to determine capital costs, and
 - (ii) the establishment of discount rates to be used to determine future costs;
 - (c) prescribing the information to be provided to the Director under sections 91 and 93.

Transitional

103(1) *An action based on the Crown's right of recovery may be commenced only if the wrongful act or omission of the wrongdoer occurs after this Part comes into force.*

(2) A beneficiary's rights and the Minister's right of subrogation in respect of a wrongful act or omission that occurred before the coming into force of this Part is governed by the provisions of this Act in force when the wrongful act or omission occurred.

5(1) The Alberta Health Care Insurance Act is amended

(a) in section 13 by adding the following after subsection (1):

(1.1) The Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown's right of recovery under Part 5 of the *Hospitals Act*, disclose information acquired under this Act.

(b) by repealing section 16 and substituting the following:

Crown's right
of recovery

16 The Crown in right of Alberta is entitled to recover the Crown's cost of health services under Part 5 of the *Hospitals Act*.

(2) The Ambulance Services Act is amended by adding the following after section 34:

Crown's right
of recovery

34.1 The Crown in right of Alberta is entitled to recover the Crown's cost of ambulance services, air ambulance services and inter-hospital transfer services under Part 5 of the *Hospitals Act*.

(3) The Mental Health Act is amended

(a) in section 17

(i) in subsection (3) by adding "or enforcing the Crown's right of recovery under Part 5 of the Hospitals Act" after "or procedures";

(ii) by adding the following after subsection (5):

(5.1) Notwithstanding subsection (4) or any other law, the Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown's right of recovery under Part 5 of the *Hospitals Act*, disclose information obtained under subsection (3).

5 Consequential amendments.

(b) by adding the following after section 49:

Crown's right
of recovery

49.1 The Crown in right of Alberta is entitled to recover the Crown's cost of mental health services under Part 5 of the *Hospitals Act*.

(4) The Public Health Act is amended by adding the following before section 76:

Crown's right
of recovery

75.1 The Crown in right of Alberta is entitled to recover the Crown's cost of public health services under Part 5 of the *Hospitals Act*.

6 *This Act comes into force on Proclamation.*

6 Coming into force.