BILL NO. 322

Government Bill

1st Session, 64th General Assembly
Nova Scotia
2 Charles III, 2023

An Act to Amend Chapter 4 of the Acts of 2020, the Opioid Damages and Health-care Costs Recovery Act

CHAPTER 21
ACTS OF 2023

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 9, 2023

The Honourable Michelle Thompson
Minister of Health and Wellness

Halifax, Nova Scotia
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An Act to Amend Chapter 4 of the Acts of 2020, the Opioid Damages and Health-care Costs Recovery Act

Be it enacted by the Governor and Assembly as follows:

1 (1) Section 2 of Chapter 4 of the Acts of 2020, the *Opioid Damages and Health-care Costs Recovery Act*, is amended by

(a) relettering clause (a) as (ab);

(b) adding immediately before clause (ab), as relettered, the following clauses:

(a) "active ingredient" means an active ingredient set out in the Schedule;

(aa) "consultant" means a person who provides advisory services to

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

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

(c) striking out "and" at the end of subclause (ab)(i), as relettered;

(d) striking out the semicolon at the end of subclause (ab)(ii), as relettered, and substituting ", and**";**

(e) adding immediately after subclause (ab)(ii), as relettered, the following subclause:

(iii) the expenditures of the Government of Canada in relation to an action under subsection 3A(1);

(f) striking out "and" at the end of subclause (d)(iv);

(g) striking out the semicolon at the end of subclause (d)(v) and substituting ", and**";**

(h) adding immediately after subclause (d)(v) the following subclause:

(vi) expenditures by the Government of Canada for programs, services, benefits or similar matters associated with disease, injury or illness in relation to an action under subsection 3A(1);

(i) adding "active ingredient or**" immediately after "an" in the second line of clause (h);**

(j) adding "active ingredient or**" immediately after "an" in the third line of subclause (h)(i);**

(k) adding "active ingredients or**" immediately after "of" in the fourth line of subclause (h)(ii);**

(l) adding "active ingredient or**" immediately after "an" in the second line of subclause (h)(iii);**

(m) adding "active ingredient or**" immediately after "an" in the first line of paragraph (h)(iv)(B);**

(n) adding "active ingredient or**" immediately after "an" in the second line of paragraph (h)(iv)(C);**

(o) adding "or active ingredient**" immediately after "drug" in the first line of subclause (i)(i);**

(p) adding "or active ingredient**" immediately after "drug" in the first line of subclause (i)(ii);**

(q) striking out "or wholesaler" in the second line of subclause (k)(i) and substituting ", wholesaler or consultant**";**

(r) adding "or (1A)**" immediately after "3(1)" in the first line of subclause (k)(ii); and**

(s) striking out "or wholesaler" in the second line of subclause (k)(ii) and substituting ", wholesaler or consultant**".**

(2) Subsection 2(6) of Chapter 4 is repealed and the following subsections substituted:

(6) For the purpose of determining the market share of a manufacturer for a type of opioid product sold in the Province, the court shall 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 the Province from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial; and

MM is the quantity of the type of opioid product manufactured by all manufacturers that is purchased or dispensed within the Province 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.

(7) For the purpose of determining the market share of a wholesaler for a type of opioid product sold in the Province, the court shall calculate the

wholesaler's market share for the type of opioid product by the following formula:

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

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 the Province 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 the Province 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 Subsection 3(1) of Chapter 4 is amended by striking out "or wholesaler" in the second line and substituting ", wholesaler or consultant**".**

3 Chapter 4 is further amended by adding immediately after Section 3 the following Section:

3A (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) Where 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 to

(i) identify particular individual insured persons,

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

(iii) 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) notwithstanding clauses (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b), and the order must include directions concerning the nature, level of detail and type of information to be disclosed; and

(e) where an order is made under clause (d), 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 Subsection 4(1) of Chapter 4 is amended by

(a) adding "or (1A)**" immediately after "3(1)" in the first line; and**

(b) adding "or Government of Canada**" immediately after "Crown" in the second line.**

5 (1) Subsection 5(1) of Chapter 4 is amended by

(a) adding "or (1A)**" immediately after "3(1)" in the first line; and**

(b) adding "or (1A)**" immediately after "3(1)" in the third line of clause (b).**

(2) Subsection 5(2) of Chapter 4 is amended by adding "or (1A)**" immediately after "3(1)" in the first line.**

6 Section 6 of Chapter 4 is amended by adding immediately after clause (b) the following clause:

(ba) brought by the Government of Canada under subsection 3A(1);

7 Section 7 of Chapter 4 is amended by adding immediately after subsection (1) the following subsection:

(1A) No action or proceeding that is commenced by the Government of Canada before, or within 15 years after, the coming into force of this Section in relation to the recovery of the cost of health-care benefits, or for damages, alleged to have been caused or contributed to by an opioid-related wrong, is barred under the *Limitation of Actions Act* or by a limitation period under any other Act.

8 (1) Subsection 8(2) of Chapter 4 is amended by adding "or the Government of Canada**" immediately after "Crown" in the first line.**

(2) Clause 8(3)(e) of Chapter 4 is amended by striking out "or wholesalers" in the second line and substituting ", wholesalers or consultants**".**

9 This Act has effect on and after March 10, 2020.