

Health—Crown’s Right of Recovery of Healthcare Costs from Motor Vehicle Accidents

SUMMARY

What we examined

Background—The *Crown’s Right of Recovery Act* allows the government to recover healthcare costs that it incurs as a result of personal injuries suffered by Alberta residents¹ due to the wrongful act or omission of a third party. This right of recovery includes injuries caused by motor vehicle accidents (MVA). Most of the recovery regarding motor vehicle accidents comes from an amount called the aggregate assessment,² paid by automobile insurers. Each calendar year, the Minister of Health sets the aggregate assessment based on a cost estimate prepared by the Department of Health and other information received by the department. The department uses estimated healthcare costs because the calculation is done on an aggregate basis. To do this estimate, the department calculates the costs using primarily methodology from a dated Institute of Health Economics study.³ The Department of Treasury Board and Finance then collects the aggregate assessment from insurance companies.

The rest of the recovery from motor vehicle accidents comes from individual claims against parties causing motor vehicle accidents, where the wrongdoer does not have an insurer who contributed to the aggregate assessment. This includes claims where the wrongdoer’s insurer is from out of province. The government pursues those claims for healthcare costs it has incurred.

Objective of audit—To assess if the Department of Health has adequate processes to recover the government’s healthcare costs for motor vehicle accidents.

Scope of audit—We:

- tested a sample of individual claims for the 2012–2013 year
- tested the calculations of a sample of the cost estimates prepared to support the aggregate assessments up to and including the 2013 aggregate assessment
- reviewed other relevant documentation that the department used to support the aggregate assessment amounts

¹ For the purposes of this report, residents are defined as eligible residents of Alberta who have Alberta Health Care Insurance Plan coverage. The department’s website, <http://www.health.alberta.ca/AHCIP/registration-requirements.html>, explains the requirements for eligibility.

² Section 22(2) of *The Crown’s Right of Recovery Act* indicates the aggregate assessment is: “the minister’s estimate for that calendar year of the Crown’s cost of health services for personal injuries suffered by recipients as a result of the wrongful acts or omissions of wrongdoers in the use or operation of automobiles for which the wrongdoers were insured under motor vehicle liability policies when the injuries were caused.” Section 1(1)(i) defines recipient as “a person who receives health services for personal injuries.”

³ The methodology was developed as part of a 2003 study of motor vehicle accident costs done by Philip Jacobs and Doug Lier - *The Provincial Health Care Costs of Motor Vehicle Accidents for Third Party Liability in Alberta* (<http://www.ihe.ca/documents/2003-05paper.pdf>).

We did not test Treasury Board and Finance's processes to collect the aggregate assessment.

What we found

The aggregate assessment is set below the healthcare cost estimate the department calculates. The department has a process to establish the aggregate assessment. However, it sets the aggregate assessment below the estimate it calculates using the study methodology. The difference⁴ over 10 years (calendar years 2004–2013) as estimated by the department was \$165 million (\$826 million collected vs. \$991 million estimated costs).

Management advised us that the department has two competing objectives it is trying to balance. It wants to recover the healthcare costs incurred but at the same time the department wants to support a government priority of having reasonable automobile insurance rates. Because the second objective is a government priority, not the department's priority, this adds additional complexity to the process of setting the aggregate assessment.

Before preparing the final documentation to support the amount of the aggregate assessment set, the department consults with Treasury Board and Finance, the Insurance Bureau of Canada, automobile insurers and the Automobile Insurance Rate Board. The documentation describes the consultations, the amount of the healthcare cost estimate and the proposed aggregate assessment. It also indicates the effect that the proposed adjustment to the aggregate assessment may have on automobile insurance rates. But it does not describe the criteria for how the government measures what a reasonable automobile insurance rate is. For most of the years we examined, it does not describe the amount of the rates that would result from setting the aggregate assessment at different amounts, including one which is consistent with the cost it calculates using the study methodology. Nor does it explain the effect of other factors that could influence rates. Because this information is not included, the documentation doesn't explain why the amount proposed for the aggregate assessment is the appropriate amount that should be charged.

The department has also not publicly explained why it does not collect the full amount of the estimated healthcare costs or the effect it wants the aggregate assessment to have on automobile insurance rates.

Key factors affecting cost are not updated or complete. Some key factors in the calculation used to estimate healthcare costs for the aggregate assessment are updated each year. But the department lacks a process to assess if other key factors affecting cost (established in the 2003 study) are still relevant.

The study also did not include all the costs noted in the applicable legislation. Because each year's calculation updates the study's calculation, later years also do not include all costs contemplated under legislation that may be recovered.

In 2007 the department prepared an analysis of the advantages and disadvantages to using the study methodology as the basis for determining the cost estimate. The analysis did not consider

⁴ After the study was done, the department made two changes to the methodology. The department adjusted the rate used to calculate the capital cost surcharge and deducted an amount for motor vehicle accidents that the department was made aware of and where recovery was pursued on a claim-by-claim basis. The difference reported in this report reflects these changes as if they had been applied in prior years.

when or how the methodology should be updated or the cost involved. The department has not done a further analysis to determine the best way to update its cost estimates.

What needs to be done

The department needs to:

- publicly state its objectives in setting the aggregate assessment and report the extent to which the aggregate assessment recovers the department’s calculation of healthcare costs caused by motor vehicle accidents—See page 37.
- obtain additional information to demonstrate that the amount proposed for the aggregate assessment is the appropriate amount that should be charged given the competing objectives—See page 37.
- review the methodology it uses in the calculation of the aggregate assessment and put a process in place to periodically check whether the estimate calculated is a reasonable approximation of the Crown’s associated healthcare costs—See page 38.

Why this is important to Albertans

As the Minister of Health said in 2009, the *Crown’s Right of Recovery Act* is important legislation because “Alberta taxpayers should not be responsible for healthcare costs resulting from wrongful acts or omissions.”⁵

While the department believes it has achieved the appropriate balance, it may be setting the aggregate assessment too low or too high. The department also lacks a process to check whether the cost estimate calculation used in setting the aggregate assessment is a reasonable approximation of the Crown’s associated healthcare costs.

AUDIT OBJECTIVES AND SCOPE

The objective of our audit was to assess if the department has adequate processes in place to recover the Crown’s healthcare costs caused by motor vehicle accidents.

We examined the processes to recover healthcare costs through the aggregate assessment and individual claims. We tested a sample of individual claims for the 2012–2013 year and also tested the calculations of a sample of the cost estimates prepared to support the aggregate assessments up to and including the 2013 aggregate assessment. We reviewed other relevant documentation that the department used to support the amount of the aggregate assessment but did not test Treasury Board and Finance’s processes to collect the aggregate assessment. We substantially completed our audit on August 27, 2014 and did so in accordance with the *Auditor General Act* and the standards for assurance engagements set by the Chartered Professional Accountants.

Background

Before 1996, the department recovered only the hospitalization costs for Alberta residents who were injured due to the negligence of a wrongdoer. In 1996, the *Hospitals Act* was amended⁶ to allow the department to recover for the costs of other health services. In addition claim-by-claim recovery was eliminated for motor vehicle accidents where the wrongdoer was insured by an Alberta motor vehicle liability policy. Instead, the department was able to collect its estimate of

⁵ Alberta Hansard, May 11, 2009.

⁶ RSA 1980 CH-11 as amended by the *Health Statutes Amendment Act*, 1996 CH 22

the cost of healthcare services arising from motor vehicle accidents directly from insurers through the aggregate assessment. Where the wrongdoer was not insured by an insurer who contributed to the aggregate assessment, claim-by-claim recovery was still possible.

The *Crown's Right of Recovery Act* became law in 2012. The Crown's right to recover its healthcare costs from motor vehicle accidents, as well as the costs resulting from other types of accidents, was removed from the *Hospitals Act* and put in this Act. When the bill for the Act was introduced in the legislature in 2009, the Minister of Health said this law was important because, "Alberta taxpayers should not be responsible for healthcare costs resulting from wrongful acts or omissions."⁷

Our criteria for this audit are based on the department's responsibilities and applicable legislation.

FINDINGS AND RECOMMENDATIONS

Reporting the objectives of collecting revenue and preparing supporting rationale

Background

The *Crown's Right of Recovery Act*⁸ says that the aggregate assessment is "the minister's estimate for that calendar year of the Crown's cost of health services for personal injuries suffered by recipients as a result of the wrongful acts or omissions of wrongdoers in the use or operation of automobiles for which the wrongdoers were insured under motor vehicle liability policies when the injuries were caused."

In making this estimate the *Crown's Right of Recovery Regulation*⁹ allows the minister to take into account information prepared by the department, actuarial reports or other information received.

The Act also provides¹⁰ that in establishing the aggregate assessment, the minister is to:

- provide the proposed aggregate assessment to automobile insurers
- select a person to hear representations from insurers and provide a report to the minister if there are representations
- consider the report before establishing the figure

For the calendar year 2013, the amount of the department's calculation for MVA costs, using the study methodology, was \$133 million. However, the minister set the aggregate assessment at \$100 million. The department's cumulative calculation of MVA costs using the study methodology for calendar years 2004 to 2013 was \$991 million. The total aggregate assessment for the same time was \$826 million—a \$165 million difference.¹¹

⁷ Alberta Hansard, May 11, 2009.

⁸ Section 22(2)

⁹ Section 7b) *Crown's Right of Recovery Regulation*

¹⁰ Section 23

¹¹ After the study was done, the department made two changes to the methodology. The difference reported in this report reflects these changes as if they had been applied in prior years.

RECOMMENDATION 3: CLARIFY OBJECTIVES OF COLLECTING REVENUE AND PREPARE SUPPORTING RATIONALE

We recommend that the Department of Health:

- publicly articulate its objectives in setting the aggregate assessment
- report the extent to which the aggregate assessment recovers the department's calculation of healthcare costs caused by motor vehicle accidents

We also recommend that the Department of Health obtain additional information to demonstrate that the amount proposed for the aggregate assessment is the appropriate amount that should be charged given the competing objectives.

Criteria: the standards for our audit

The department should have processes to publicly report:

- its objectives for recovering healthcare costs caused by motor vehicle accidents
- the extent to which it estimates it is recovering these costs

The department should demonstrate that the amount proposed for the aggregate assessment is the appropriate amount that should be charged given the competing objectives.

Our audit findings**KEY FINDINGS**

The Department of Health:

- has not publicly stated its objectives in setting the aggregate assessment
- does not publicly report the difference between its calculation of healthcare costs of motor vehicle accidents and the aggregate assessment set
- does not consistently obtain all relevant information to support that the aggregate assessment proposed is the appropriate amount that should be charged given its competing objectives

When setting the aggregate assessment, the department has two competing objectives it is trying to balance. It wants to recover the healthcare costs incurred but at the same time it wants to support a government priority of having reasonable automobile insurance rates.

Since 2004, based on recommendations from the department, the minister has set the aggregate assessment on average at 83% of its calculation of healthcare costs using primarily the study methodology.

The first criterion is partly met because each year, the department discloses the amount of third-party recoveries in Schedule 1 of its financial statements. It also discloses general information on the aggregate assessment on its website. The criterion is not fully met because the department does not provide information to the public in either place about how its aggregate assessment differs from the estimate of healthcare costs of motor vehicle accidents using primarily the study methodology or why it sets the aggregate assessment lower than this calculation.

Each year, the department provides information for the minister on what the aggregate assessment should be. As part of its process, the department consults with Treasury Board and Finance, automobile insurers, the Insurance Bureau of Canada and the Automobile Insurance Rate Board. The department discloses the feedback received, its estimate of healthcare costs using primarily the methodology in the study, and the proposed final aggregate assessment. The documentation also indicates the estimated effect that the proposed adjustment to the

aggregate assessment may have on insurance rates. However, the documentation does not describe the criteria for determining how the government measures what a reasonable insurance rate is, what a reasonable rate is estimated to be, and the effect of any other factors in addition to the aggregate assessment which may cause the rate to change. For most of the years we examined, the documentation also did not indicate what the rate would be if the department collected the amount calculated using primarily the study methodology or the resulting rates of different levels of the aggregate assessment other than the proposed level.

Implications and risks if recommendation not implemented

Unless the department describes its objectives, external stakeholders will not have a standard against which to analyze the effectiveness of the setting of the dollar amount for the aggregate assessment.

Without obtaining additional information, the department can't demonstrate whether the proposed aggregate assessment is appropriate. It may be appropriate or it may be too low or too high.

Calculating the aggregate assessment

Background

The department begins its process for preparing the aggregate assessment by calculating the healthcare costs related to MVAs each year primarily using the methodology and cost data included in the study. After the study was done the department made two changes to the methodology.

The department updates the estimate of costs by calculating an adjustment factor. The adjustment factor includes the annual change in bodily injury claims, the change in severity and the change in cost of providing healthcare services.

After the initial calculation is done, the department consults with Treasury Board and Finance and then proposes an amount for the aggregate assessment. It gives the proposed assessment to the Insurance Bureau of Canada and automobile insurers and also gets feedback from a representative from the Bureau and from the Automobile Insurance Rate Board. The minister then sets the aggregate assessment in a Ministerial Order and advises the IBC and the automobile insurers of the amount set. The Minister of Treasury Board and Finance informs insurance companies of the amount they have to pay and collects it for the Department of Health.

RECOMMENDATION 4: CALCULATING THE AGGREGATE ASSESSMENT

We recommend that the Department of Health review the methodology it uses in the calculation of the aggregate assessment and put a process in place to periodically check whether the estimate calculated is a reasonable approximation of the Crown's associated healthcare costs.

Criteria: the standards for our audit

The department should have processes to:

- ensure the applicable legislation is followed
- monitor that objectives are being met—This includes a process to determine if the methodology used to prepare the calculation of MVA costs is a reasonable approximation of the Crown’s associated healthcare costs and a process to assess the best way to update its cost estimates.

Our audit findings**KEY FINDINGS**

The department:

- lacks a process to assess if all key factors affecting cost from the study continue to be relevant.
- prepares its estimate using a model from a 2003 study. The study did not include all the costs indicated in the applicable legislation.
- has not determined the best way to update its cost estimates.

The first criterion is met. The department is following the procedure in the Act to establish the aggregate assessment.

The second criterion is partly met as some key factors used in the calculation are updated every year. For example, the department includes each year’s change in bodily injury claims and the severity of accidents each year. It also updates the calculation for the change in the average cost of physician services and the inflation rate change to the ward rates. However, it lacks a process to assess if other key factors affecting cost from the study continue to reflect current actual results. These include assumptions concerning contributory negligence and weightings applied to different categories of injuries and costs.

Since the department’s initial cost estimate each year is an updated version of the study costs, it only includes the types of costs that were included in the study. The study considered most healthcare costs indicated in the applicable legislation but not homecare costs, community mental health costs, or physiotherapy costs for providers outside of the ministry. The study was silent on whether public health costs were included. The study also noted that long-term care costs were not included. The department has not done an analysis of whether it is possible to include an estimate of these costs in the calculation of MVA costs.

In 2007 the department included an analysis of the advantages and disadvantages to using the study methodology as the basis for determining the cost estimate. The analysis concluded that the study represented the most accurate data available. The analysis did not consider when or how the methodology should be updated or the cost involved. The department has not done a further analysis to determine the best way to update its cost estimates.

Implications and risks if recommendation not implemented

The estimate of healthcare costs that supports the aggregate assessment may not be a reasonable approximation of the Crown’s associated healthcare costs.

