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# Bill 116

## **An Act to enact the Mental Health and Addictions Centre of Excellence Act, 2019 and the Opioid Damages and Health Costs Recovery Act, 2019**

**The Hon. C. Elliott**

Minister of Health and Long-Term Care

### **Government Bill**

1st Reading      May 27, 2019

2nd Reading      December 3, 2019

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on Social Policy  
and as reported to the Legislative Assembly December 10, 2019)*

*(The provisions in this Bill will be renumbered after 3rd Reading)*



This reprint of the Bill is marked to indicate the changes that were made in Committee.  
The changes are indicated by underlines for new text and a ~~strikethrough~~ for deleted text.

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## EXPLANATORY NOTE

The Bill enacts two Schedules, the *Mental Health and Addictions Centre of Excellence Act, 2019* and the *Opioid Damages and Health Care Costs Recovery Act, 2019*.

### SCHEDULE 1 MENTAL HEALTH AND ADDICTIONS CENTRE OF EXCELLENCE ACT, 2019

Ontario Health shall establish and maintain, within Ontario Health, a Mental Health and Addictions Centre of Excellence. The functions of Ontario Health to be carried out through its Centre of Excellence are provided for.

### SCHEDULE 2 OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY ACT, 2019

The Schedule enacts the *Opioid Damages and Health Care Costs Recovery Act, 2019* and makes a complementary amendment to the *Limitations Act, 2002*.

The Act gives Ontario a direct and distinct action against manufacturers and wholesalers of opioid products (as defined in the Act) to recover the cost of health care benefits caused or contributed to by an opioid-related wrong. Ontario may recover the cost of health care benefits with respect to particular individual insured persons or on an aggregate basis, with respect to a population of insured persons. The Act sets out particular rules where Ontario seeks to recover the cost of health care benefits on an aggregate basis and presumptions where the rules are satisfied. There are also provisions dealing with the joint and several liability of defendants.

Statistical information and information derived from epidemiological, sociological and other relevant studies is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits in an action brought by or on behalf of a person in the person's own name or as a member of a class, or ~~by Ontario~~ in an action ~~it brings~~ under the Act.

The Act also changes the rule with respect to limitation periods. Section 6 of the Act permits ~~an action a proceeding~~ for damages or for recovery of the cost of health care benefits, alleged to have been caused or contributed to by an opioid-related wrong, to be commenced by Ontario before, or within 15 years after, that section comes into force. A complementary amendment is made to the *Limitations Act, 2002* to replace the general limitation period rule with the limitation period set out in section 6.

In an action that does not involve the recovery of the cost of health care benefits on an aggregate basis, the court may apportion liability of two or more defendants if certain criteria are met. The Act sets out factors for the court to consider in apportioning liability. Where there has not been an apportioning of liability, a defendant who has been found liable for an opioid-related wrong may commence an action against one or more of the other defendants found liable in the same action for contribution toward payment of the damages or the cost of health care benefits.

~~Any proceeding commenced by or on behalf of Ontario in relation to an opioid-related wrong that is ongoing when section 11 comes into force is required to proceed in accordance with the Act. Section 11 addresses ongoing class proceedings or proposed class proceedings in relation to opioid-related wrongs in which Ontario is or may be a class member.~~ Section 12 gives Ontario the authority to commence a class action in relation to an opioid-related wrong on behalf of itself and other Canadian jurisdictions. Section 13 addresses the effect of the Act on prior agreements purporting to bind Ontario in relation to compensation arising from an opioid-related wrong.

**An Act to enact the Mental Health and Addictions Centre of Excellence Act, 2019  
and the Opioid Damages and Health Care Costs Recovery Act, 2019**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Foundations for Promoting and Protecting Mental Health and Addictions Services Act, 2019*.**

**SCHEDULE 1**  
**MENTAL HEALTH AND ADDICTIONS CENTRE OF EXCELLENCE ACT, 2019**

**Preamble**

The Government of Ontario,

Recognizes that mental health is an essential element of health;

Believes that, for too long, the lack of attention to and investment in the mental health and addictions system has led to unnecessary delays in accessing care and caused unnecessary suffering;

Acknowledges the social and economic costs of mental illness and addictions, including the fact that mental illness and addictions are leading contributors to lost productivity and absenteeism in the workplace;

Supports the introduction and implementation of a mental health and addictions strategy and is committed to its long-term success;

Believes that the introduction, implementation and success of a mental health and addictions strategy depends on the sustained commitment of all sectors and levels of government;

Wants to maximize the value of its investments through a co-ordinated approach to mental health and addictions; and

Is committed to the creation of a fully integrated health care system in which mental health and addictions care is a core component.

**Purpose**

**1** The purpose of this Act is to lay a foundation to support a mental health and addictions strategy in Ontario.

**Definitions**

**2** In this Act,

“health service provider” means a health service provider within the meaning of the *Connecting Care Act, 2019*; (“fournisseur de services de santé”)

“integrated care delivery system” means an integrated care delivery system within the meaning of the *Connecting Care Act, 2019*; (“système intégré de prestation de soins”)

“mental health and addictions strategy” means the strategy referred to in section 3; (“stratégie en matière de santé mentale et de lutte contre les dépendances”)

“Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the Ministry of the Minister; (“ministère”)

“Ontario Health” means the corporation continued under section 3 of the *Connecting Care Act, 2019*; (“Santé Ontario”)

“regulations” means the regulations made under this Act. (“règlements”)

**Mental health and addictions strategy**

**3** The Minister shall develop and maintain a mental health and addictions strategy which recognizes that mental health and addictions care is a core component of an integrated health care system.

**Mental Health and Addictions Centre of Excellence**

**4** (1) Ontario Health shall establish and maintain, within Ontario Health, a centre to be known as the Mental Health and Addictions Centre of Excellence in English and Centre d’excellence pour la santé mentale et la lutte contre les dépendances in French.

**Functions**

(2) In furtherance of Ontario Health’s objects as set out in section 6 of the *Connecting Care Act, 2019*, Ontario Health shall carry out the following functions through its Mental Health and Addictions Centre of Excellence:

1. Putting into operation the mental health and addictions strategy.
2. Developing clinical, quality and service standards for mental health and addictions.
3. Monitoring metrics related to the performance of the mental health and addictions system.
4. Providing resources and support to health service providers, integrated care delivery systems and others related to mental health and addictions.
5. Any other functions that the Minister may direct.

**Compliance with regulations**

(3) Ontario Health shall comply with the requirements, if any, provided for in the regulations with respect to its Mental Health and Addictions Centre of Excellence.

**Reports**

(4) Ontario Health shall include as part of any annual reports it prepares, in accordance with such directives as may be issued from the Management Board of Cabinet from time to time, information respecting the functions carried out through the Mental Health and Addictions Centre of Excellence.

**Regulations**

5 The Minister may make regulations providing for the requirements mentioned in subsection 4 (3).

***Connecting Care Act, 2019***

**6 (1) Section 6 of the *Connecting Care Act, 2019* is amended by adding the following clause:**

(b.1) to support, through its Mental Health and Addictions Centre of Excellence, the mental health and addictions strategy provided for under the *Mental Health and Addictions Centre of Excellence Act, 2019*;

**(2) Subsection 46 (1) of the Act is amended by adding “the *Mental Health and Addictions Centre of Excellence Act, 2019*” after “under this Act” in the portion before paragraph 1.**

**Commencement**

**7 The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**Short title**

**8 The short title of the Act set out in this Schedule is the *Mental Health and Addictions Centre of Excellence Act, 2019*.**

**SCHEDULE 2**  
**OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY ACT, 2019**

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**Definitions and interpretation**

**1** (1) In this Act,

“cost of health care benefits” means the sum of,

- (a) the present value of the total expenditure by the Crown in right of Ontario for health care benefits provided for insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness, and
- (b) the present value of the estimated total expenditure by the Crown in right of Ontario for health care benefits that could reasonably be expected to be provided for those insured persons as a result of opioid-related disease, injury or illness or the risk of opioid-related disease, injury or illness; (“coût des prestations de soins de santé”)

“disease, injury or illness” includes problematic substance use, addiction and general deterioration of health; (“maladie, blessure ou affection”)

“health care benefits” means,

- (a) insured services as defined in the *Health Insurance Act*,
- (b) community services under the *Home Care and Community Services Act, 1994*,
- (c) payments under the *Homemakers and Nurses Services Act*,
- (d) services for which a facility fee is payable under the *Independent Health Facilities Act*,
- (e) care, services and accommodation under the *Long-Term Care Homes Act, 2007*,
- (f) drugs, substances or professional services funded under the *Ontario Drug Benefit Act*,
- (g) care, services and accommodation under any of the following Acts, before their repeal:
  - (i) the *Charitable Institutions Act*,
  - (ii) the *Homes for the Aged and Rest Homes Act*,
  - (iii) the *Nursing Homes Act*,
- (h) other expenditures by the Crown in right of Ontario, made directly or through one or more agents or other intermediate bodies, for programs, services, benefits or similar matters associated with disease, injury or illness; (“prestations de soins de santé”)

“insured person” means,

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

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

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

“manufacture” includes, for an opioid product, the production, assembly and packaging of the opioid product; (“fabrication”, “fabriquer”)

“manufacturer” means a person who manufactures or has manufactured an opioid product and a person who, in the past or currently,

- (a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of an opioid product,
- (b) for any fiscal year of the person, derives at least 10 per cent of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of opioid products by that person or by other persons,
- (c) engages in or causes, directly or indirectly, other persons to engage in promoting an opioid product, or
- (d) is a trade association primarily engaged in,
  - (i) advancing the interests of manufacturers,
  - (ii) promoting an opioid product, or
  - (iii) causing, directly or indirectly, other persons to engage in promoting an opioid product; (“fabricant”)

“opioid product” means any product that contains,

- (a) a drug set out in Schedule 1 to this Act, or
- (b) a drug prescribed by the regulations made under this Act; (“produit opioïde”)

“opioid-related disease, injury or illness” means disease, injury or illness caused or contributed to by an individual’s use or exposure to an opioid product, whether the opioid product is,

- (a) in the form in which it was manufactured,
- (b) combined with another drug or substance, or
- (c) used, or in the case of exposure is present, in a form or manner other than,
  - (i) as prescribed or advised by a practitioner, or
  - (ii) as recommended by the manufacturer of that opioid product; (“maladie, blessure ou affection liée aux opioïdes”)

“opioid-related wrong” means,

- (a) a tort that is committed in Ontario by a manufacturer or wholesaler and that causes or contributes to opioid-related disease, injury or illness, or
- (b) in an action under subsection 2 (1), a breach, by a manufacturer or wholesaler, of a common law, equitable or statutory duty or obligation owed to persons in Ontario who have used or been exposed to or might use or be exposed to an opioid product; (“faute liée aux opioïdes”)

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

“practitioner” means a person who,

- (a) is authorized under the *Medicine Act, 1991*, *Dentistry Act, 1991*, *Nursing Act, 1991* or *Veterinarians Act* to prescribe or advise on the therapeutic value, contents and hazards of a drug within the meaning of the *Drug and Pharmacies Regulation Act*, and
- (b) is not prohibited from prescribing a drug that is an opioid product; (“praticien”)

“promote” or “promotion” includes, for an opioid product,

- (a) the marketing of the opioid product, whether direct or indirect,
- (b) the distribution or sale of the opioid product, and
- (c) any research with respect to the opioid product; (“promouvoir”, “promotion”)

“type of opioid product” means an opioid product in the form of a pill, a capsule, an oral liquid, a powder, an injectable, a topical or a combination of any of these; (“type de produit opioïde”)

“use or exposure”, in relation to an opioid product, means ingestion, inhalation, injection, application or assimilation of the opioid product, whether intentional or otherwise; (“consommation ou exposition”)

“wholesaler” means a person who distributes, sells or offers for sale opioid products,

- (a) to pharmacies, distributors or other persons for resale, or
- (b) to hospitals, facilities or care centres for patient use. (“grossiste”)

**“Manufacturer”, exclusions**

(2) The definition of “manufacturer” in subsection (1) does not include,

- (a) an individual;
- (b) a wholesaler or retailer of opioid products who is not related to,
  - (i) a person who manufactures an opioid product, or
  - (ii) a person described in clause (a) of the definition of “manufacturer”; or
- (c) a person who,
  - (i) is a manufacturer only because clause (b) or (c) of the definition of “manufacturer” applies to the person, and
  - (ii) is not related to,
    - (A) a person who manufactures an opioid product, or
    - (B) a person described in clause (a) or (d) of the definition of “manufacturer”.

**Meaning of “related”**

(3) For the purposes of subsection (2), a person is related to another person if, directly or indirectly, the person is,

- (a) an affiliate, as defined in section 1 of the *Business Corporations Act*, of the other person; or
- (b) an affiliate of the other person or an affiliate of an affiliate of the other person.

**Meaning of “affiliate”**

(4) For the purposes of clause (3) (b), a person is deemed to be an affiliate of another person if the person,

- (a) is a corporation and the other person, or a group of persons not dealing with each other at arm’s length of which the other person is a member, owns a beneficial interest in shares of the corporation,
  - (i) carrying at least 50 per cent of the votes for the election of directors of the corporation, and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or
  - (ii) having a fair market value, including a premium for control if applicable, of at least 50 per cent of the fair market value of all the issued and outstanding shares of the corporation; or
- (b) is a partnership, trust or joint venture, and the other person, or a group of persons not dealing with each other at arm’s length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group of persons to receive at least 50 per cent of the profits or at least 50 per cent of the assets on the dissolution, winding up or termination of the partnership, trust or joint venture.

**Deemed affiliate**

(5) For the purposes of clause (3) (b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person, except if the other person or group of persons deals at arm's length with that person and derives influence solely as a lender.

**Formula for determining market share**

(6) For the purposes of determining the market share of a defendant for a type of opioid product sold in Ontario, the court shall calculate the defendant’s market share for the type of opioid product by the following formula:

$$dms = 100\% \times dm / MM$$

where,

dms = the defendant’s market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that defendant to the date of trial,



dm = the quantity of the type of opioid product manufactured or promoted by the defendant that is distributed or sold within Ontario from the date of the earliest opioid-related wrong committed by that defendant to the date of trial,

MM = the quantity of the type of opioid product manufactured or promoted by all manufacturers or wholesalers that is purchased or dispensed within Ontario for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the defendant to the date of trial.

#### **Direct action by Crown**

2 (1) The Crown in right of Ontario has a direct and distinct action against a manufacturer or wholesaler to recover the cost of health care benefits caused or contributed to by an opioid-related wrong.

#### **Action not subrogated**

(2) An action under subsection (1) is brought by the Crown in right of Ontario in its own right and not on the basis of a subrogated claim.

#### **Action independent of recovery by others**

(3) In an action under subsection (1), the Crown in right of Ontario 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.

#### **Recovery for individuals or on aggregate basis**

(4) In an action under subsection (1), the Crown in right of Ontario may recover the cost of health care benefits,

- (a) for particular individual insured persons who have suffered damage caused or contributed to by the use of or exposure to a type of opioid product; 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.

#### **Action brought on aggregate basis**

(5) If the Crown in right of Ontario seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

- (a) it is not necessary,
  - (i) to identify particular individual insured persons,
  - (ii) to prove the cause of opioid-related disease, injury or illness in any particular individual insured person, or
  - (iii) to 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) despite clauses (b) and (c), on motion by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b), and the order shall include directions concerning the nature, level of detail and type of information to be disclosed; and
- (e) if an order is made under clause (d), the identity of particular individual insured persons shall not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons shall be deleted from any documents before the documents are disclosed.

#### **Recovery of cost of health care benefits on aggregate basis**

3 (1) In an action under subsection 2 (1) for the recovery of the cost of health care benefits on an aggregate basis, subsection (2) applies if the Crown in right of Ontario proves, on a balance of probabilities, that, in respect of a type of opioid product,

- (a) the defendant breached a common law, equitable or statutory duty or obligation owed to insured persons who have used or been exposed to or might use or be exposed to the type of opioid product;
- (b) using the type of opioid product can cause or contribute to disease, injury or illness; and
- (c) during all or part of the period of the breach referred to in clause (a), the type of opioid product, manufactured or promoted by the defendant, was offered for distribution or sale in Ontario.

#### **Presumptions**

(2) Subject to subsections (1) and (4), the court shall presume that,

- (a) the population of insured persons who used or were exposed to the type of opioid product manufactured or promoted by the defendant would not have used or been exposed to the product but for the breach referred to in clause (1) (a); and
- (b) the use or exposure described in clause (a) of this subsection caused or contributed to disease, injury or illness or the risk of disease, injury or illness in a portion of the population described in that clause.

#### **Effect of presumptions**

- (3) If the presumptions under clauses (2) (a) and (b) apply,
  - (a) the court shall determine on an aggregate basis the cost of health care benefits provided after the date of the breach referred to in clause (1) (a) resulting from use or exposure to the type of opioid product; and
  - (b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in clause (a) of this subsection equal to its market share in the type of opioid product.

#### **Reduction or readjustment**

- (4) The amount of a defendant's liability assessed under clause (3) (b) may be reduced, or the proportions of liability assessed under clause (3) (b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in clause (1) (a) did not cause or contribute to the use or exposure referred to in clause (2) (a) or to the disease, injury or illness or risk of disease, injury or illness referred to in clause (2) (b).

#### **Joint and several liability in an action under s. 2 (1)**

- 4 (1) Two or more defendants in an action under subsection 2 (1) are jointly and severally liable for the cost of health care benefits if,
  - (a) those defendants jointly breached a duty or obligation described in the definition of "opioid-related wrong" in subsection 1 (1); and
  - (b) as a consequence of the breach described in clause (a), at least one of those defendants is held liable in the action under subsection 2 (1) for the cost of those health care benefits.

#### **Joint breach**

- (2) For purposes of an action under subsection 2 (1), two or more manufacturers or wholesalers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in the definition of "opioid-related wrong" in subsection 1 (1) if,
  - (a) one or more of those manufacturers or wholesalers are held to have breached the duty or obligation; and
  - (b) at common law, in equity or under an enactment, those manufacturers or wholesalers would be held,
    - (i) to have conspired or acted in concert with respect to the breach,
    - (ii) to have acted in a principal and agent relationship with each other with respect to the breach, or
    - (iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered damages as a consequence of the breach.

#### **~~Population-based evidence to establish causation and quantify damages or cost~~**

~~5 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits respecting an opioid-related wrong in an action brought,~~

- ~~—(a) by or on behalf of a person, in the person's own name or as a member of a class of persons under the *Class Proceedings Act, 1992*; or~~
- ~~—(b) by the Crown in right of Ontario under subsection 2 (1).~~

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

5 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits respecting an opioid-related wrong in an action,

- (a) brought by or on behalf of a person, in the person's own name or as a member of a class of persons under the *Class Proceedings Act, 1992*; or
- (b) under subsection 2 (1).

### **Limitation periods**

~~6 (1) No action that is commenced by the Crown in right of Ontario before, or within 15 years after, the coming into force of this section for 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 *Limitations Act, 2002*.~~

### **Certain actions revived**

~~(2) Any action described in subsection (1) for damages alleged to have been caused or contributed to by an opioid-related wrong is revived if the action was dismissed before the coming into force of this section merely because it was held by a court to be barred under or extinguished by the *Limitations Act, 2002*.~~

### **Limitation periods**

6 (1) No proceeding that is commenced by the Crown in right of Ontario for 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, or proceeding described in section 11, is barred under the *Limitations Act, 2002* or any other Act, if the proceeding was commenced before the coming into force of this section or within 15 years after it came into force.

### **Certain proceedings revived**

(2) A proceeding described in subsection (1) for damages alleged to have been caused or contributed to by an opioid-related wrong is revived if the proceeding was dismissed before the coming into force of this section merely because it was held by a court to be barred under or extinguished by the *Limitations Act, 2002* or any other Act.

### **Liability based on risk contribution**

7 (1) This section applies to an action for 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, other than an action for the recovery of the cost of health care benefits on an aggregate basis.

### **Two or more defendants**

(2) If the Crown in right of Ontario is unable to establish which defendant caused or contributed to the use or exposure described in clause (b) and, as a result of a breach of a common law, equitable or statutory duty or obligation,

- (a) one or more defendants causes or contributes to a risk of disease, injury or illness by making a type of opioid product available to insured persons; and
- (b) an insured person has used or been exposed to the type of opioid product referred to in clause (a) and suffers disease, injury or illness as a result of the use or exposure,

the court may find each defendant that caused or contributed to the risk of disease, injury or illness liable for a proportion of the damages or cost of health care benefits incurred, equal to the proportion of its contribution to that risk of disease, injury or illness.

### **Considerations**

(3) The court may consider the following in apportioning liability under subsection (2):

1. The length of time a defendant engaged in the conduct that caused or contributed to the risk of disease, injury or illness.
2. The market share a defendant had in the type of opioid product that caused or contributed to the risk of disease, injury or illness.
3. The degree of potency of the opioid product manufactured or promoted by a defendant.
4. The amount spent by a defendant on promoting the type of opioid product that caused or contributed to the risk of disease, injury or illness.
5. The degree to which a defendant collaborated or acted in concert with other manufacturers or wholesalers in any conduct that caused, contributed to or aggravated the risk of disease, injury or illness.
6. The extent to which a defendant conducted tests and studies to determine the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product.
7. The extent to which a defendant assumed a leadership role in manufacturing or promoting the type of opioid product.
8. The efforts a defendant made to warn practitioners and the public about the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product.
9. The extent to which a defendant continued manufacturing or promoting the type of opioid product after it knew or ought to have known the risk of disease, injury or illness resulting from use of or exposure to the type of opioid product.

10. The extent to which a defendant continued promoting the type of opioid product after it knew or ought to have known that the amount or dosage of the type of opioid product promoted did not reasonably reflect the health needs of the population of insured persons who were likely to use or be exposed to the type of opioid product.
11. Affirmative steps that a defendant took to reduce the risk of disease, injury or illness to the public.
12. Other considerations considered relevant by the court.

### **Apportionment of liability in opioid-related wrongs**

**8** (1) This section does not apply to a defendant in respect of whom the court has made a finding of liability under section 7.

### **Action or proceeding for contribution**

(2) A defendant who is found liable for an opioid-related wrong may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution toward the cost of health care benefits or the payment of damages caused or contributed to by that wrong.

### **Action or proceeding may be commenced even if damages or costs not paid**

(3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the cost of health care benefits or the damages caused or contributed to by the opioid-related wrong.

### **Apportioning liability and contributions: factors**

(4) In an action or proceeding described in subsection (2), the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in subsection 7 (3).

### **Regulations**

**9** The Lieutenant Governor in Council may make regulations,

- (a) prescribing drugs for the purposes of clause (b) of the definition of “opioid product” in subsection 1 (1);
- (b) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

### **Retroactive effect**

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

### **~~If proceeding already commenced~~**

~~**11** If a proceeding in relation to an opioid-related wrong is commenced by or on behalf of the Crown in right of Ontario and is ongoing as of the date this section comes into force,~~

- ~~— (a) the proceeding shall continue in accordance with this Act;~~
- ~~— (b) a step in the proceeding completed, and an order made, before this section comes into force continues to have effect unless,~~
  - ~~— (i) the step or order would be inconsistent with this Act, or~~
  - ~~— (ii) the court orders otherwise; and~~
- ~~— (c) a step in the proceeding that began but was not completed before this section comes into force must be completed in accordance with this Act.~~

### **Crown as class member**

**11** If a proceeding that includes a claim for 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 commenced by the Crown in right of Canada, the Crown in right of a province of Canada or the Government of a territory of Canada on behalf of a class or proposed class of which the Crown in right of Ontario is a member or proposed member and is ongoing as of the date this section comes into force, any such claim made on behalf of Ontario shall be subject to this Act, other than those provisions or portions of this Act constituting procedural law, in accordance with the rules regarding conflict of laws.

### **Class proceeding**

**12** (1) The Crown in right of Ontario may, under the *Class Proceedings Act, 1992*, commence an action under subsection 2 (1) on behalf of a class consisting of,

- (a) one or more of the Crown in right of Canada, the Crown in right of a province of Canada and the Government of a territory of Canada; and
- (b) a federal or provincial government payment agency that makes reimbursement for the cost of services that are in the nature of health care benefits within the meaning of this Act.

**Same**

(2) Nothing in subsection (1) prevents a member of the class described in that subsection from opting out of the class proceeding in accordance with the *Class Proceedings Act, 1992*.

**Effect of existing agreements**

**13** (1) In subsections (2) and (3),

“proceeding” means a proceeding,

- (a) in relation to an action under subsection 2 (1), including an action commenced under the *Class Proceedings Act, 1992*, or
- (b) ~~continued as~~ described in section 11 of this Act.

**Same**

(2) Despite any prior agreement that purports to bind the Crown in right of Ontario in relation to compensation arising from an opioid-related wrong,

- (a) the Crown in right of Ontario is not barred from commencing or ~~continuing participating in~~ a proceeding;
- (b) the evidence that may be brought against a party to the agreement in the course of a proceeding is not limited; and
- (c) the liability of, or the amount of compensation payable by, a party to the agreement in relation to an opioid-related wrong that is the subject of a proceeding is not limited.

**Compensation**

(3) If an agreement described in subsection (2) has been finalized by receiving the consent of all parties to the agreement and all necessary court approvals, if any, before the date this section comes into force, any compensation received by the Crown in right of Ontario under the agreement must be deducted from any compensation received by it as a result of a proceeding.

**Same**

(4) No compensation is payable by the Crown in right of Ontario and proceedings must not be commenced or continued to claim compensation from the Crown in right of Ontario or to obtain a declaration that compensation is payable by it as a result of the voiding of an agreement described in subsection (2).

**Same**

(5) A declaratory or other order of any court providing that compensation is payable by the Crown in right of Ontario as a result of the voiding of an agreement described in subsection (2) is not enforceable against the Crown in right of Ontario.

**AMENDMENTS TO THIS ACT****Amendments to this Act**

**14 (1) Clause (d) of the definition of “health care benefits” in subsection 1 (1) of the Act is repealed and the following substituted:**

(d) services for which a facility cost is payable under the *Oversight of Health Facilities and Devices Act, 2017*,

**(2) The definition of “health care benefits” in subsection 1 (1) of the Act is amended by adding the following clause:**

(g.1) services for which a facility fee was payable under the *Independent Health Facilities Act* before its repeal,

**AMENDMENTS TO OTHER ACTS*****Limitations Act, 2002***

**15 The Schedule to the *Limitations Act, 2002* is amended by adding the following:**

Opioid Damages and Health Care Costs Recovery Act, 2019	subsection 6 (1)
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**COMMENCEMENT AND SHORT TITLE****Commencement**

**16 (1) Subject to subsection (2), the Act set out in this Schedule comes into force on the day the *Foundations for Promoting and Protecting Mental Health and Addictions Services Act, 2019* receives Royal Assent.**

**(2) Section 14 comes into force on the later of the day subsection 1 (1) comes into force and the day subsection 84 (1) of Schedule 9 (*Oversight of Health Facilities and Devices Act, 2017*) to the *Strengthening Quality and Accountability for Patients Act, 2017* comes into force.**

**Short title**

**17 The short title of the Act set out in this Schedule is the *Opioid Damages and Health Care Costs Recovery Act, 2019*.**

## SCHEDULE 1

1 A product that contains a drug containing any of the following active ingredients is an opioid product for the purposes of this Act:

1. Anileridine.
2. Buprenorphine, including but not limited to buprenorphine hydrochloride.
3. Butorphanol, including but not limited to butorphanol tartrate.
4. Codeine, except for those products referred to in subsection 36 (1) of the *Narcotic Control Regulations* (Canada), including but not limited to codeine phosphate.
5. Diacetylmorphine.
6. Fentanyl, including but not limited to fentanyl citrate.
7. Hydrocodone, including but not limited to hydrocodone bitartrate.
8. Hydromorphone, including but not limited to hydromorphone hydrochloride.
9. Levorphanol.
10. Meperidine, including but not limited to meperidine hydrochloride.
11. Methadone, including but not limited to methadone hydrochloride.
12. Morphine, including but not limited to morphine hydrochloride and morphine sulfate.
13. Nalbuphine.
14. Normethadone, including but not limited to normethadone hydrochloride.
15. Opium, including but not limited to opium and belladonna.
16. Oxycodone, including but not limited to oxycodone hydrochloride.
17. Oxymorphone, including but not limited to oxymorphone hydrochloride.
18. Pentazocine, including but not limited to pentazocine hydrochloride and pentazocine lactate.
19. Propoxyphene.
20. Remifentanil.
21. Sufentanil.
22. Tapentadol, including but not limited to tapentadol hydrochloride.
23. Tramadol, including but not limited to tramadol hydrochloride.