



Future Care Cost Analysis: Assessing and Quantifying Future Needs

Bill 198 contains a number of significant tort reforms. Of particular note is the expansion of an injured person's right to sue in court for excess health care expenses.

Under Bill 59, a not-at-fault party could sue for health care expenses in excess of statutory accident benefits payable for medical care, rehabilitation and attendant care if his or her injuries met the definition of "catastrophic impairment."

Subsection 224(l) of the Insurance Act identifies what is included under health care expenses. This section of the Insurance Act specifies that "health care" includes all goods and services for which payment is provided by the medical, rehabilitation and attendant care benefits provided for in the SABS.

Under the SABS, Sections 14-19 identify the goods and services for which payment is provided and set out the time and monetary limits.

With Bill 198, not-at-fault parties with injuries that meet the verbal threshold criteria of death, permanent serious disfigurement and permanent serious impairment of an important physical, mental or psychological function can now sue in a tort claim for excess past and future health care expenses.

The implications of Bill 198's expansion of the right to sue for health care expenses are such that if the threshold criteria are met, the injured person can attempt, even in the event that the injury is not defined as catastrophic, to recover expenses above and beyond the monetary limits set out in the SABS.

To determine the potentially recoverable expenses, a Future Care Cost Analysis (FCCA) is an invaluable tool, as it identifies long-term needs and associated costs for an accident victim who has sustained a permanent and serious or a catastrophic injury.

Individuals who have chronic health needs or sustain catastrophic injuries that result in long-term or permanent disabilities face lifetime challenges. Managing these challenges effectively means anticipating needs in all aspects of their lives.

A Future Care Cost Analysis (FCCA), also known as a Life Care Plan, is a comprehensive study of the extraordinary goods and services, and the related expenditures that may be required by an individual who has experienced a serious or catastrophic injury or has chronic health needs. The objective of such an analysis is to identify those items and services which may be required to maintain his or her health, maximize his or her independence and safety, and replicate as closely as possible the lifestyle he or she would have experienced had the injury or illness not occurred. An analysis of the individual's status and function prior to and subsequent to the injury or illness sets the stage for a determination of anticipated needs and related costs.

The FCCA report is based upon comprehensive assessment, review and analysis of medical information according to accepted and evidence-based standards of practice and research. It identifies the need for ongoing medical management, further rehabilitation and options for long-term support. It should reflect the current and future needs of the ill or injured individual and outline the projected costs of goods and services from the onset of disability through life expectancy. The recommendations made in the report should reflect what is reasonable and in the best interests of the injured or ill person. A FCCA should not be a "wish list."

When Is It Indicated?

A FCCA may be considered to be a dynamic document. Changes to the recommendations are appropriate as new information about the individual comes to light. In the early stages of a file, a FCCA may be useful, perhaps in a simplified version, to set appropriate reserves. Later on in the management of a file, a FCCA is a valuable document for settlement purposes or in advance of trial.

A FCCA may be a useful tool in a wide range of cases, including, but not limited to:

- traumatic brain injuries
- spinal cord injuries
- amputations
- complex orthopaedic injuries
- fibromyalgia/chronic pain
- birth injuries

Who Develops the Plan? The FCCA report should be prepared by an impartial expert with knowledge, experience, training and skill in rehabilitation and long-term planning. The expert must be knowledgeable about the possible physical, cognitive, psychological and social problems related to various injuries and disabilities. A background in health care is preferable. He or she should be familiar with long-term care needs, their associated costs and the wide range of medical and therapeutic devices, services and experts in the field of rehabilitation. Knowledge of various pieces of insurance legislation is desirable.

What Is the Process?

A FCCA can be made based solely on a review of the medical/rehabilitation documents. An interview with the individual in his or her home environment is preferred, in order to obtain relevant information on the individual's past and current status. As well, supplementary information may be obtained from family members.

The process begins with a detailed review and analysis of the medical/rehabilitation documents. The documents may come from various sources: medical specialists, health professionals, vocational specialists and experts in home accessibility issues, among others. The information obtained from the documentation review will highlight:

- injuries and diagnosis, and any discrepancies in medical or rehabilitation opinions
- chronological summary of treatment and outcomes
- residual medical issues
- functional status: physical, cognitive, behavioural, psychological
- current treatment and attendant care
- potential medical complications

Following the file review, the consultant may find that additional assessments are required to complete the assignment (e.g., an updated neuropsychological assessment, an updated orthopaedic assessment, and a Form 1 examination). Any missing documents that may help formulate recommendations will be identified (e.g., school records, clinical records) at this time and requested.

The in-depth interview of the individual and his or her family and caregivers provides an opportunity to obtain a comparative history of the individual's functioning prior and subsequent to the injury or illness. Face-to-face interaction with the individual in his or her home environment is preferred, as this will provide the consultant the opportunity to ask questions and to obtain more specific information about the individual's status and concerns, as well as to assess the individual's home environment. At this time, an understanding of goods and services already provided may be gained, outstanding issues identified, attendant care reassessed and ongoing treatments identified. An authorization can be obtained from the individual that will facilitate contact with the medical and rehabilitation professionals who make up the treatment team.

Communication with medical and rehabilitation professionals may be warranted to clarify treatments and/or gather recommendations for ongoing treatment and support.

Recommendations are then formulated for service, equipment and, treatment that will maximize the individual's independence and maintain his or her quality of life. Recommendations will include replacement of services that the individual previously performed independently, equipment to compensate for physical and cognitive deficits, ongoing treatment and therapeutic support to address physical, cognitive and psychological issues and an outline of reasonable costs directly related to the injury or illness.

Research is conducted to determine the availability of goods and services, the current costs of these goods and services and the replacement requirements of these goods and services, and to confirm currently accepted standards of practice.

What Is Assessed?

Virtually all aspects of an individual's life are addressed in a Future Care Cost Analysis. Medical opinion regarding the course that the impairment or disability is expected to take as the person ages is taken into consideration. Depending on the nature of the injuries and the outcomes in the recovery process, the following issues may be considered:

- medications
- ongoing and future medical or therapeutic care
- supplies
- wheelchairs or mobility aids
- orthotics or prosthetics

- assistive devices
- housekeeping and home maintenance
- attendant care
- facility care
- dependent care
- transportation
- home modifications
- recreational activities
- educational needs
- vocational needs
- projected need for assessments
- potential complications

Peer Review and Critique

A critique is an analytic review of a Future Care Cost Report that has been prepared by another expert. When there are questions as to the objectivity and neutrality of the report and the reasonableness of its recommendations, a critique is a useful tool to examine the necessity of goods and services, the associated costs and the replacement periods suggested in the original report.

The critique takes an approach similar to the one used in preparing a comprehensive FCCA. It includes a detailed documentation review and, when possible, an in-depth interview.

When considering the previously prepared FCCA, the reviewer will take a close look at whether the recommendations are supported by the medical documentation. Close attention is paid to inconsistencies, errors and omissions. Once the inconsistencies or omissions are noted, a detailed review of each item is undertaken, looking at the reasonableness and necessity of each.

Why Have a Critique Done?

There can be significant savings for the insurer if the original FCCA is a "wish list" rather than a well-thought-out, substantiated report that provides for extraordinary expenditures that are reasonable and necessary-a report that provides a genuine baseline for discussion in mediations and settlements.

Arriving at a fair and just settlement, whether at mediation or at trial, is difficult in any case. As Future Care Cost Analysis or Critique reports are key documents brought to the settlement table or to trial, selecting a credible, knowledgeable expert can be instrumental in achieving a fair and satisfactory result.

For information on how Nancy Haston & Associates may be of assistance, please contact us at 1-800-465-1614 or email to rehab@nancyhaston.com.



Nancy Haston & Associates Inc. A Benchmark for Excellence.