



Legislative Framework Governing Private Healthcare in British Columbia

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August 6, 2006

This paper was written for the Canadian Institute Conference, "Establishing Private Healthcare Facilities", held on June 19, 2006 in Toronto, Ontario

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INTRODUCTION

The debate over the future of Canada's public healthcare system has been underway in British Columbia for some time. It assumed more prominence with the release in June 2005 of the Supreme Court of Canada decision in *Chaoulli v. Quebec (Attorney General)* and again earlier this year when the provincial Government, in its February 2006 Throne Speech, committed to a comprehensive review of how health services are delivered in British Columbia.

At the core of the debate is the role of the private sector in delivering medically necessary diagnostic and surgical services. Can increased private sector involvement enhance the ability of the public system to deliver improved health outcomes or would it, as some fear, do irreparable damage to the public system?

"Private" healthcare means different things to different people. For example, it may refer to private delivery of publicly funded services or it may mean private funding of services. In British Columbia, there is a well established system of private facilities that provide medical services that are either uninsured (eg. cosmetic, laser eye surgery) or that are paid for by third party insurers (eg. WCB). Similarly, there are a growing number of facilities providing publicly funded insured services through contracting out arrangements. However, the notion of privately funded and privately delivered services remains a relatively undeveloped and somewhat controversial concept in British Columbia.

LEGISLATIVE FRAMEWORK

The British Columbia *Medicare Protection Act*. R.S.B.C. 1996, c. 286 contains prohibitions against direct or extra billing of beneficiaries for medical services otherwise covered by the provincial Medical Services Plan and further prohibits the sale of private insurance for publicly insured benefits. The key provisions are summarized below:

- ▶ Subject to certain limited exceptions, no person may charge a beneficiary directly for a benefit (i.e. an insured service) or for “materials, consultations, procedures, use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit” (s. 17(1));
- ▶ A person requesting a benefit for a beneficiary must not be charged for the benefit in place of the beneficiary (s. 20.1);
- ▶ No person may provide, offer or enter into a contract of insurance with a resident for the payment, reimbursement or indemnification of all or part of the cost of services that would be benefits if performed by a practitioner (s. 45(1)); and
- ▶ A medical practitioner who contravenes the prohibition against extra or direct billing may be subject to an order by the Medical Services Commission cancelling his or her enrolment in the Medical Services Plan (ss. 15(1)(d), 15(2)).

In 2003, the Government introduced amendments to the *Medicare Protection Act* that would have further strengthened the prohibition against direct or extra-billing. For example, the amendments would have made it illegal for a physician or private clinic to charge any person in respect of an insured service or matters relating to an insured service. This was intended to catch the mechanism employed by some private facilities whereby someone other than the patient is billed for the medical services provided. The proposed amendments would also have strengthened the audit powers of the Medical Services Commission in respect of private facilities and would have imposed fines of up to \$10,000.00 for contraventions of the Act (\$20,000.00 for subsequent offences).

The amendments to the *Medicare Protection Act* were reported to be in response to pressure from Ottawa concerning British Columbia’s growing number of private clinics. While the amendments were passed by the Legislature in 2003, the Government subsequently decided not to proclaim them.

The provisions referred to above deal with the private funding of healthcare services. However, there are other provisions that contemplate the private delivery of services. For example, the British Columbia *Hospitals Act* contains provisions governing the approval and licensing of private hospitals, although the majority of facilities licensed as private hospitals operate as extended care facilities.

In addition, the College of Physicians and Surgeons of British Columbia has enacted Rules under the British Columbia *Medical Practitioners Act* governing the approval of non-hospital medical/surgical facilities. These Rules apply to all non-hospital facilities in which medical or surgical procedures requiring special resources or which constitute a special risk are performed. No such facility shall operate and no physician shall utilize or practice in such a facility unless the facility holds a certificate of approval issued by the College and the College has also approved the specific list of procedures to be provided at the facility. The College typically does not concern itself with the question of who pays for the services provided at these facilities.

PRIVATE DELIVERY OF HEALTHCARE SERVICES UNDER THE CURRENT LEGISLATIVE FRAMEWORK

Notwithstanding the provisions of the *Medicare Protection Act* referred to above, there are numerous private facilities operating in British Columbia. For example:

- ▶ There are currently about 65 accredited non-hospital medical/surgical facilities in British Columbia. The vast majority of these facilities provide non-insured services such as cosmetic surgery and laser eye surgery. However, a number of the facilities also provide a broader range of surgical services. For example, the Cambie Surgery Centre describes itself as the largest and most technologically advanced private surgical facility in Canada with 16,500 square feet of clinical space, 6 state of the art operating rooms, 11 recovery beds and 7 over night stay rooms. The Cambie Surgery Centre provides a full range of surgical services. While initially, the bulk of services were provided on behalf of third party insurers like the Workers' Compensation Board, the Centre now provides surgical services to members of the public who are willing and able to pay the Centre's fees. A number of other facilities operate in a similar manner.
- ▶ In 2005, the Copeman Healthcare Centre opened in Vancouver. The Copeman Clinic describes itself as an advanced health facility housing expert multi-disciplinary care teams that include clinical dietitians, exercise physiologist, lifestyle coaches, physiotherapists, psychologists and various other allied health professionals. Individuals join the Copeman Centre by paying an initial annual fee of \$3,500.00 and subsequent annual fees of \$2,300.00. For these fees,

patients get access to the Centre's staff physicians plus various ancillary services which are not insured benefits under the Medical Services Plan; and

- ▶ There are a number of private MRI and CT clinics in operation where patients pay directly for diagnostic services. Diagnostic services in British Columbia are only considered to be insured health services when performed in an approved hospital thus directly billing for these services in a private facility technically does not contravene the *Medicare Protection Act*.

THE FUTURE OF HEALTHCARE DELIVERY IN BRITISH COLUMBIA

The full impact of the Supreme Court of Canada decision in *Chaoulli* is not yet known. However, the Government of British Columbia has committed to undertaking a thorough review of the healthcare system in the Province. Specifically, in the speech from the Throne dated February 14, 2006, the Government announced a number of initiatives aimed at addressing the long term sustainability of the public healthcare system in the province including:

- ▶ defining and enshrining the five principles of the *Canada Health Act* in legislation, plus a sixth principle – the principle of sustainability;
- ▶ launching a province-wide conversation on health reform to improve and protect the public healthcare system for the long term; and
- ▶ creating a new foundation for healthcare innovation and renewal to examine successful health models now working around the world.

The Government is also committed to upgrading existing public hospitals and facilities through public/private partnerships (for example, the Abbotsford Hospital and Cancer Centre).

The Vancouver Board of Trade recently joined the debate by publishing a comprehensive paper in May 2006 entitled "Reforming the Canadian Healthcare System".

The paper's recommendations include:

- ▶ modelling the Canadian system on the systems in place in some European countries that effectively involve the private sector to support the work of the public system;

- ▶ amending the *Canada Health Act* to allow greater involvement of the private sector to meet the rights of Canadians to access timely and high quality healthcare;
- ▶ eliminating the prohibition against private insurance and private or direct payment for medically necessary surgical and diagnostic services;
- ▶ introducing competition into the Canadian healthcare system to stimulate progress towards greater efficiency and productivity; and
- ▶ changing rigid scope of practice rules to make healthcare professionals more productive.

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