

Alberta Doctors' Digest

When is universal health care not universal?

In a recent letter sent to Canada's provinces and territories, federal Minister of Health Jean-Yves Duclos highlighted his concerns regarding reports of patients paying out of pocket for medically necessary services such as MRIs, CT scans, and video or phone appointments between patients and health care practitioners, also known as virtual visits.

According to the health minister, the federal government was contemplating deducting around \$82 million in Canada Health Transfers (CHT payments) from provinces and territories, including almost \$14 million from Alberta. Readers will know that CHT payments are federal transfer payments provided under the *Canada Health Act* for the purpose of honouring the national criteria for publicly provided health care across Canada through various provincial health care plans.

As stated in Health Canada's letter though, these proposed deductions may be reimbursed if the provinces or territories carry out Reimbursement Action Plans to "eliminate patient charges and the circumstances that led to them." According to the minister of health, the government's overall goal is to "protect the principles of Medicare enshrined in the *Canada Health Act*."

Needless to say, this announcement has sent alarm bells ringing across the country.

Medical necessity

Under the *Canada Health Act*, to receive these CHT payments, provinces are required to pay for all services that are "medically necessary" and doctor services that are "medically required." The philosophy behind this decision is to ensure that Canadians are reimbursed for health services that are in fact necessary, while services that are mere desires, such as wart or tattoo removal, are paid personally. The focus of the federal government's review and threatened action is the question of exactly what "medically necessary" or "medically required" services are.

Neither of the two phrases "medically necessary" nor "medically required" are defined under the *Act* or, for that matter, in provincial health care insurance acts, leaving doctors in certain circumstances to ultimately decide what fits that definition.

Some believe that a "medically necessary" service is one which is scheduled in the *Schedule of Medical Benefits* regulation (SOMB) published by the Department of Health. In fact, the *Alberta Health Care Insurance Act* uses the phrase "Insured Services" to describe what the public system is obliged to fund, and that phrase includes both SOMB listed services and those that are medically required, thus adding to the confusion.

An example of how this definition comes into play in practice would be laboratory services. The SOMB contains no fee codes for lab services, yet few would argue that they are medically required and therefore should be funded by the Department of Health. A greyer area, however, might be an otherwise insured service, such as a hip replacement, which under the public system would be available within six to 12 months,

but if provided in a more expedited manner by a private provider might arguably be uninsured.

Or, as is the case in Alberta, what if an MRI or CT scan insured under the Health Care Insurance Plan and available in an AHS facility some months down the line is available in a private radiology clinic in the community for a price? Is that MRI only “medically required” if available through the public system?

These are the sorts of arguments that clinics like the Cambie Medical Clinic in BC have been putting before the courts to defend their practices of charging patients directly for surgical services. Readers may recall our previous article on the subject.

The line between needs and wants began to blur significantly during the COVID-19 pandemic as wait times for services such as diagnostic imaging skyrocketed. The question of whether patients can pay extra to skip the line and receive diagnostic imaging early certainly appears to divide people. And now, the increasing availability of non-hospital surgical facilities that offer a blend of publicly and privately funded services has heightened the scrutiny.

It is our understanding that legal opinions are being sought on the federal government's announcement and the whole issue of what is, and what is not, “medically required.”

One potential solution would be for the federal government to amend the *Canada Health Act* to insert a definition of medical necessity. However, as is a common theme in law, statutory definitions tend to either be too broad or too vague, which can result in further complexities, both practically and legally.

Regardless, the situation puts a direct spotlight on the dichotomy between the provincial and federal governments' philosophies towards health care. Whether upcoming elections will shift these mindsets remains to be seen.

Editor's notes:

The views, perspectives and opinions in this article are solely the author's and do not necessarily represent those of the AMA.

On April 6, 2023, the Supreme Court of Canada refused Cambie Surgeries Corporation et al.'s Leave to Appeal the decision of the British Columbia Court of Appeal's decision to dismiss Cambie's action against the Province. No Reasons were given (as is the custom of the Supreme Court), but the impact is that the Court of Appeal decision now stands.

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