



December 3, 2025

From: Katherine Fierlbeck
To: Health System Observers
Re: ALBERTA'S PROPOSED HEALTH INSURANCE CHANGES (II)

Alberta's proposed legislation making changes to public health insurance has the potential to create a dual public-private practice system that would be unique in Canada. Let's look at some of the legal intricacies of the proposed changes and whether they comply with the Canada Health Act.

All provinces, except Ontario, allow physicians to practice outside the provincial insured services plan. According to Health Canada's rubric, "non-participating physicians" practice "completely outside" provincial or territorial health insurance plans. Neither they nor their patients will be remunerated by the public plan, and they can therefore charge patients directly at any rate they choose. A second category of non-enrolled physician is "opted-out," a category that stems from Saskatchewan's 1962 effort to assuage physicians' fears of becoming government employees rather than independent practitioners.

The patients of opted-out physicians can request reimbursement from the public insurer for fees paid directly to the opted-out physician (up to the public fee schedule). While opted-out physicians were once considered (like non-practicing physicians) to be outside of public plans, Health Canada subsequently revised its definition of "opted-out physicians" to specify (somewhat confusingly) that they were in fact *inside* the public system (as recently explained in a C.D. Howe Institute *Commentary*). Provinces are not obliged to offer either non-participation or opted-out categories to physicians (some have only one category or the other; some have both; and Ontario has neither). Nor are they required to recognize Health Canada's definitional categories (any province, for example, would have full authority to cap even non-participating physicians' fees at the public rate).

In Bill 11, Alberta has clarified that "non-participation" is the single category of non-enrolled physicians, and has removed all references to "opting out" from the bill. It also creates a unique and new category of "flexibly participating" physicians, as we **outlined** yesterday.

Flexibly participating physicians are able to provide both insured health services and non-plan services. At present, enrolled physicians can bill patients directly for services only if they are not insured services (ie, if there is no provincial billing code for these services). What this means in practice is that all insured health services can also be provided outside of the plan, if they are provided by non-participating physicians or flexibly participating physicians. While neither non-participating physicians (nor their patients) can be reimbursed for these services, flexibly participating doctors can choose at any time to provide the same services either in or out of the plan at their discretion (or subject to any specifications provided by any forthcoming orders or regulations).

Some commentators have suggested that these proposed regulations may violate the *Canada Health Act*. However, this position rests on a faulty understanding of what the act says. The Globe and Mail's Andre Picard, for example, writes that the act "allows the federal government to claw back health transfers if provinces allow private payments for 'medically necessary' care."

While this was the overarching intent of Canadian medicare when it was introduced, the *Canada Health Act* does not in fact require all "medically necessary" care to be provided publicly.

In fact, it nowhere states that "medically necessary care" must be publicly insured. Rather, section 9 of the CHA merely states that all insured services must be insured (i.e., an insured service must be available to all eligible residents). Provinces determine for themselves what services they choose to insure; that is why insured services vary across provinces. In Alberta, insured services are, by definition, currently those medically necessary services provided by participating physicians. Even with the current legislation, this leaves a category of medically necessary services that are not insured (ie, those provided by non-participating physicians, or other regulated health professionals such as nurse practitioners or pharmacists).

In the same way, this new category of "non-plan services" may include medically necessary services, but they are (by definition) not insured services. And, as the *Canada Health Act* only stipulates that provinces and territories must provide insured services to all eligible residents, providing non-insured services, even when medically necessary, does not violate the act.

Tomorrow: The implications of the proposed changes to Alberta's healthcare system.

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