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PRIVATE DIAGNOSTIC IMAGING CLINICS AND THE *CANADA HEALTH ACT*

Odette Madore
Economics Division

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PRIVATE DIAGNOSTIC IMAGING CLINICS AND THE *CANADA HEALTH ACT*

INTRODUCTION

On 26 April 2005, the federal Minister of Health, the Honourable Ujjal Dosanjh, wrote to four provinces – Alberta, British Columbia, Nova Scotia and Quebec – to communicate his concerns about private diagnostic imaging clinics that provide magnetic resonance imaging (MRI) and computed tomography (CT) scans. Although the letters have not yet been released publicly, they have been widely discussed in the media. According to media reports, the letters indicate that private clinics providing MRI and CT scans in these provinces may contravene the *Canada Health Act*.(1)

The purpose of this document is to summarize the debate over private diagnostic imaging clinics in Canada and to describe the process under way to facilitate resolution of federal-provincial differences over the interpretation of the *Canada Health Act*.(2)

NUMBER OF CLINICS

Health Canada estimates that there are currently 33 private MRI and CT scan clinics in Canada (see Table 1). Quebec has the highest number of private clinics that provide MRI and CT scans (18), followed by British Columbia (8), Alberta (6) and Nova Scotia (1). The number of private diagnostic imaging clinics has risen steadily in recent years in Canada, with a growth of 74% between 2001 and 2005, or an average annual increase of 15%.

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(1) Minister Dosanjh's letters deal only with private diagnostic imaging clinics that provide MRI and CT scans. They do not address issues related to private clinics that provide surgical services (such as orthopedic and cataract surgery) and that, like MRI and CT scan clinics, operate wholly outside of the publicly funded health care system. The federal Minister of Health also sent a letter to New Brunswick in relation to a private clinic that performs abortions in the province.

(2) This document does not set out to offer a legal interpretation of the Act; rather, it is based for the most part on Health Canada's assessment of possible cases of non-compliance as provided in Chapter 2 of the *Canada Health Act Annual Report, 2003-2004*.

TABLE 1

**Estimated Number of Private Clinics in Canada
That Provide MRI and CT Scans, 2001-2005**

	2001	2002	2003	2004	2005
British Columbia					
Provide MRI only	2	3	5	6	6
Provide CT only	0	0	0	1	1
Provide both MRI and CT	1	1	1	1	1
Subtotal	**3**	**4**	**6**	**8**	**8**
Alberta					
Provide MRI only	4	2	2	3	3
Provide CT only	0	0	0	0	0
Provide both MRI and CT	1	3	3	3	3
Subtotal	**5**	**5**	**5**	**6**	**6**
Quebec					
Provide MRI only	6	8	9	9	9
Provide CT only	0	0	2	2	3
Provide both MRI and CT	5	5	6	6	6
Subtotal	**11**	**13**	**17**	**17**	**18**
Nova Scotia					
Provide MRI only	0	1	1	1	1
Provide CT only	0	0	0	0	0
Provide both MRI and CT	0	0	0	0	0
Subtotal	**0**	**1**	**1**	**1**	**1**
TOTAL CANADA	**19**	**23**	**29**	**32**	**33**

Source: Canada Health Act Division, Health Canada, April 2005.

These private MRI and CT scan clinics are for-profit facilities that receive no government funding: physicians are not reimbursed by provincial health care insurance plans, and patients must pay the full cost of the services provided to them.

COMPLIANCE WITH THE *CANADA HEALTH ACT*

The *Canada Health Act* sets out five criteria that provincial governments must meet through their public health care insurance plans in order to qualify for the full federal cash contribution under the Canada Health Transfer (CHT), namely:

- *Public administration:* Each provincial health care insurance plan must be administered on a non-profit basis by a public authority, which is accountable to the provincial government for its financial transactions.

- *Comprehensiveness:* Provincial health care insurance plans must cover all "insured health services" that are "medically necessary" (hospital care, physician services and medically required surgical dental procedures which can only be properly carried out in a hospital).

- *Universality:* All residents in the province must have access to public health care insurance and insured health services on uniform terms and conditions.

- *Portability:* Provinces must cover insured health services provided to their citizens while they are temporarily absent from their province of residence or from Canada.

- *Accessibility:* Insured persons must have reasonable and uniform access to insured health services, free of financial or other barriers. This condition is emphasized by two provisions of the Act that specifically discourage private payment by patients, either through user charges or extra-billing, for services covered under provincial health care insurance plans.

How do private MRI and CT scan clinics relate to the *Canada Health Act*? According to Health Canada, these private clinics raise three intertwined issues – medical necessity (comprehensiveness), private payment (user charge provisions) and queue jumping (accessibility) – that may impede compliance with the Act.

With respect to medical necessity, Health Canada contends that, once a service has been determined by a province to be an insured service, it must be covered by the provincial health care insurance plan, regardless of where it is delivered. It is the view of the department that, under the *Canada Health Act*, MRI and CT scans are considered to be insured services when they are medically necessary. Therefore, MRI and CT scans provided both in hospitals and in private clinics must be publicly funded under provincial health care insurance plans; to do otherwise would be contrary to the intent of the Act.

With respect to private payment, Health Canada explains that the *Canada Health Act* prohibits charges to insured provincial residents for medically necessary health services. In cases where MRI and CT scans are considered to be medically necessary, patients should not pay to obtain these diagnostic imaging services. The Act requires that access to medically necessary health services be based on need, and not on the individual's ability to pay. Thus, private payments by insured persons for insured services such as medically necessary MRI and CT scans could contravene the *Canada Health Act*.

With respect to queue jumping, Health Canada is concerned that individuals who can buy diagnostic imaging services at private clinics may be getting faster access to health services in two ways. First of all, they gain access to the test itself. Secondly, they can then return to the public health care system for treatment, should such care be required, one step ahead of patients still waiting to obtain publicly funded diagnostic tests. As such, queue jumping may undermine the accessibility criterion of the *Canada Health Act*.

ENFORCEMENT OF PROVINCIAL COMPLIANCE WITH THE *CANADA HEALTH ACT*

The provisions of the *Canada Health Act*, and the Dispute Avoidance and Resolution (DAR) process introduced in April 2002, provide the framework for determining whether or not the four provinces that permit the provision of diagnostic imaging services by private clinics are in compliance with the Act.

The *Canada Health Act* is specific and targeted in its approach to provincial compliance. Private payment for insured health services is subject to *mandatory* dollar-for-dollar deductions in CHT cash transfers. Penalties for violations of the five criteria are *discretionary*, matched with the severity of the non-compliance and, before being levied, require recourse to the DAR process. Mandatory penalties with respect to user charges have been applied on a number of occasions since the inception of the Act. However, neither the Act's discretionary provisions nor the DAR process have ever been used.

The DAR process is designed to facilitate resolution of federal-provincial differences as to whether medically necessary services are being delivered in compliance with the *Canada Health Act*. Minister Dosanjh's letters to Alberta, British Columbia, Nova Scotia and Quebec invite provincial officials to begin high-level discussions with Health Canada, with the goal of working collaboratively toward ensuring that diagnostic services provided in private clinics are delivered in conformity with the Act's five criteria. Should these consultations with provincial officials prove inconclusive, the federal Minister of Health may send a letter to the provinces concerned, invoking the DAR process.

Once initiated, dispute resolution will precede any action taken by the federal government under the non-compliance provisions of the *Canada Health Act*. As a first step, the governments involved in the dispute will, within 60 days of the date of the letter initiating the

process, jointly: collect and share all relevant facts; prepare a fact-finding report; negotiate to resolve the issue in dispute; and prepare a report on how the issue was resolved. If, however, there is no agreement on the facts, or if negotiations fail to resolve the issue, any Minister of Health involved in the dispute may undertake to refer the issue to a third-party panel by writing to his or her counterpart.

Within 30 days of the date of that letter, a panel will be struck. The panel will be composed of one provincial appointee and one federal appointee, who, together, will select a chairperson. The panel will assess the issue in dispute in accordance with the provisions of the *Canada Health Act*, will undertake fact-finding and provide advice and recommendations. The panel will then report to the governments involved on the issue within 60 days of appointment.

The final authority to interpret and enforce the *Canada Health Act* remains with the federal Minister of Health. In deciding whether to invoke the discretionary provisions of the Act, the Minister will take the panel's report into consideration.

PRIVATE FOR-PROFIT OWNERSHIP OF MRI AND CT SCAN CLINICS

The letters sent by the federal Minister of Health do not address the issue of the private for-profit ownership of the diagnostic imaging clinics operating in the four provinces. The reason is that the *Canada Health Act* does not prohibit the delivery of insured health services by the private sector. Nor does the Act explicitly permit it, in the sense that no provisions in the legislation specifically encourage either the private or the public delivery of publicly funded health care. In other words, the *Canada Health Act* does not address in any way the issue of the ownership of health care delivery facilities and services.

The federal government does not have the power to regulate the delivery of health services in the provinces, because this is primarily a provincial responsibility. However, the federal government has often taken the view that the development of a private health care system would essentially undermine the public system and should therefore be opposed. Recently, for example, Minister Dosanjh stated that the present government does not support the expansion of private clinics and that he supports "public pay and public delivery."

CONCLUSION

Federal concern over private for-profit diagnostic imaging clinics has been building for a considerable time. Almost five years ago, in September 2000, the federal Minister of Health wrote to his counterparts in Alberta and Quebec to obtain more information on private MRI and CT scan clinics operating in those provinces. In July 2003, and again in April 2005, successive Ministers of Health wrote to those two provinces and to British Columbia and Nova Scotia to express continuing concerns about such clinics.

Should consultations with the four provinces prove inconclusive, the DAR process could be initiated with the view of ensuring that private clinics delivering diagnostic imaging services do so in compliance with the *Canada Health Act*. This process could also yield useful information and clarification on the role and impact of private for-profit health care delivery.

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