

Intelligence MEMOS



From: Katherine Fierlbeck and Rosalie Wyonch

To: Health System Observers

Date: March 4, 2024

Re: **HOW COME PRIVATE HEALTHCARE IS EXPANDING? ISN'T IT ILLEGAL?**

Why are for-profit private clinics providing more and more insured services when the *Canada Health Act* stipulates that “all” insured health services must be insured publicly?

Like the entire healthcare system, the answer is complicated, as outlined in a recent C.D. Howe Institute [paper](#) that examines the varying degrees of private and public healthcare across provinces.

First, it's important to acknowledge the significant power exercised by provinces over the scope of both public and private healthcare. They manage their insurance plans and can define “medically necessary” as they see fit. They also have constitutional jurisdiction over healthcare, while the federal government has only limited tools to direct health policy decision-making. The *Canada Health Act* does provide a common national framework and provinces must meet its conditions to receive federal health transfers. Notably, provincial healthcare legislation has evolved to accommodate the requirements set out in the act, but it varies across jurisdictions.

The second answer is that “insured services” are not a simple list of medically necessary services recognized by provinces. They are also defined according to who provides them.

For instance, the same service may or may not be an “insured service” depending on, say, whether it is provided by a GP or a nurse-practitioner, or by a physician who works inside or outside the public system. Even though the act requires that “all” insured services provided by medical practitioners “must” be covered publicly, legislation in all provinces except Ontario permits practitioners to offer the same services privately. This is because the act doesn't consider the services of non-participating physicians to be “insured services” – so doctors outside the public system are therefore not offering “insured services” under the *Canada Health Act*. These non-participating physicians can provide these services because, by definition, they are non-participating, making their services “uninsured.”

The third answer is that meaning of “insured services” also varies by location of service provision.

Medically necessary services provided in hospitals must be insured. But more and more services are provided in other settings. This explains the tension between Ottawa and the provinces about publicly insuring medically necessary diagnostic services provided at private clinics. Similarly, as “insured services” are generally limited to being provided within the province funding them, virtual healthcare accessed through out-of-province providers is generally not an insured service.

Overall, the best way to understand this legal complexity is to remember that any medical service can either be insured or uninsured, depending on who provides it, or where it is provided. In Ontario, for example, suturing a wound would be insured if done by a paramedic at a hospital but would be uninsured if provided by a nurse practitioner in a private primary care clinic.

In sum, the distinction between private and public healthcare is complicated. There is nuanced interaction of legislation and regulation between the federal and provincial/territorial governments as well as market and economic factors. But in this country, especially since the very mention of private health care creates controversy, discussion about the future direction of health care must be well informed. If we don't understand the status quo, we cannot meaningfully engage in this critical debate.

Katherine Fierlbeck is McCulloch Professor of Political Economy at Dalhousie University. Rosalie Wyonch is a Senior Policy Analyst at the C.D. Howe Institute.

To send a comment or leave feedback, email us at blog@cdhowe.org.

The views expressed here are those of the authors. The C.D. Howe Institute does not take corporate positions on policy matters.