



**TOP
SECRET**

New Foundation for Our Health System

Minister's Advisory Committee on Health
(Jan. 2010)

- Focus on patients and families
- Principles
- Patient charter
- Process to engage Albertans in future decisions

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Alberta Health Act
Phase 1 (Fall 2010)

- Principles
- Patient charter
- Process to engage Albertans in future decisions

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Alberta Health Act
Phase 2

- Replacing the five statutes
- Establishing an independent, evidence-based entity
- Determine phasing of key issues arising from a new Alberta Health Act

Leaked document:

Political plan behind the Alberta Health Act: privatize much of Alberta's healthcare

The Alberta Health Act is part of a deliberate, long-term government strategy to reduce public healthcare, increase private insurance and expand privately delivered healthcare. Details of the Alberta Health Act Phase 2 appeared in a leaked government policy paper presented to the provincial Conservative Caucus this year. The policy clearly outlines an agenda for a comprehensive overhaul of health care legislation that would seriously undermine access and equity in health care.

The government document, titled *Alberta's Health Legislation: Moving Forward*, includes the following elements:

1. 'Replacing' existing laws including 5 key acts that protect public health care
2. Eliminating the opt-in/opt-out requirements for physicians - allowing doctors to practice on both sides
3. Reducing the services covered by Medicare
4. Expanding private insurance for necessary medical care

This vision is consistent with the agenda of Ralph Klein's "Third Way", an agenda that the public has consistently rejected.

MLA Raj Sherman stated publicly that the document *Alberta's Health Legislation: Moving Forward* was approved by the Minister and Deputy Minister of Health in early July, 2010 and later, presented to all government MLAs by MLA Fred Horne. According to Sherman, the controversial items of Phase 2 of the Alberta Health Act were discussed including:

- changing legislation from prescriptive to enabling and placing legislation under regulations
- expanding private insurance
- allowing doctors to work both inside and outside medicare

Allowing doctors to work both inside and outside Medicare

This change would allow doctors to work both for the public system, and for their own profit in the private sector at the same time. This change alone creates a tremendous business opportunity for doctors and health entrepreneurs to charge separately for extra services.

Longer wait times

Phase II - Legislation

Opt-in and Opt-out of Health Providers

Current State:

- Some health providers that bill for publicly-funded services (eg. physicians some dentists performing oral surgery) must choose to be fully in the health system or fully out. Other health providers (eg. midwives and pharmacists) can operate privately and publicly.

Issue:

- There is an unlevel playing field for health providers working in both the public and privately funded health system

Policy Shift:

- Apply the same constraints to all health providers and allow government the flexibility to regulate health provider commitment in the public system.

The requirement that doctors opt in or out is a critical protection for public health care in a system where there is a crisis-level shortage of doctors. With a physician shortage, limitations on private practice are needed in order to comply with the Canada Health Act provision of equal access to services for all. If physicians are busy with their private-pay patients, they will have less time for their medicare ones. This means longer waiting times in the public system. According to U of T lawyer Colleen Flood, "Countries that allow the free movement of physicians between the private and public systems, like the United Kingdom, New Zealand, Australia, have big problems with waiting lists."

Reducing services covered by Medicare

- A process to establish essential health services
- Benefit models for non-essential health services

Defining 'essential services' is the policy document's approach to cutting back what is covered in the Medicare basket. The plan calls for "fully-funded, partially funded, and unfunded services". It could effectively create a small core of publicly funded 'emergency' services, thereby delisting the balance of health care services and opening them to private insurance. More delisting would force Albertans to pay on their own for more and more treatments, diagnostics and care. Albertans already pay the highest costs in the nation out of their own pockets for health care.

This change would violate the Canada Health Act which calls for coverage of all "medically necessary" services. The definition of these services could be subject to legal challenges. However it is not clear if the Canadian federal government would choose to enforce the Canada Health Act.

Expanding private insurance

The planned Phase 2 of the Alberta Health Act would allow private insurance to cover more services, presumably delisted services, but possibly even publicly delivered services. Surprisingly, the document claims "Prohibiting private insurance limits choice." Choice is not limited — those

who can afford it can buy whatever health care services they want on the private market today. Private insurance limits choice to the half of Albertans who have private insurance through work for dental, vision, physiotherapy and other services already delisted.

Forcing Albertans to buy more private insurance and rely on it to cover services, is a major change and a clear Americanization of our health services.

The problems in our health care system stem from limited capacity whether that be nursing home beds, hospital beds, or health care professionals. Adding a parallel private insurance system will not increase capacity but will only shuffle the deck, allowing those with more money to get to the front of the line. Private insurance does not reduce costs either. According to the OECD, “Whatever the role played in a health system, private health insurance has added to total health expenditure.” (Organization for Economic Cooperation and Development, OECD). For more on the risks of private health insurance, see Parkland book, *The Bottom Line: the truth behind private health insurance in Canada*.

Phase II - Legislation

Private Insurance Options

Current State:

- Private insurance is prohibited for publicly-funded services
- There is no evidence that private insurance negatively impacts a public health system

Issue:

- Prohibiting private insurance limits choice in accessing publicly-funded health services within Alberta (e.g. private diagnostic facilities) and outside of Alberta (e.g. Mayo Clinic)

Policy Shift:

- Consider private insurance options for limited health services
- Regulations could enable and regulate scope and operation of private insurance

Eliminating Alberta's key Medicare laws

Phase 2 proposes consolidating existing health care legislation. It clearly advocates eliminating any protections other than those specifically dictated by the Canada Health Act. This is significant because nursing home standards, and the requirement that doctors opt-in or out of the public system as well as the prohibition on private insurance for services included in the Medicare basket are some of the those protections. These are currently enshrined in provincial legislation, such as the Nursing Homes Act, the Health Care Protection Act, the Health Care Insurance Act and the

Hospitals Act. The Hospital Act and Health Care Protection Act stipulate the limits on for-profit surgeries and how they are licensed and regulated.

Complying with the Canada Health Act is not enough to protect universal care and equal access to all services. These Alberta laws are all critical to the protection of the public health system.

The provisions of these Acts would be eliminated in the process of the ‘consolidation’ of legislation and conversion from legislation to regulation. According to the recommendations in the April 2010 Framework Document, that consolidation was to be part of Phase 1 but in September, 2010, the Minister’s Advisory Committee recommended that it be delayed.

From Legislation to Regulation

The Alberta Health Act gives great powers to the Health Minister to make health care changes through regulations, that are proclaimed without Legislature debate. Raj Sherman clarified that the intention of Phase 2 is to convert the provisions in Alberta’s Medicare laws into regulation. Passing the Alberta Health Act as an ‘enabling Act’ makes this possible and makes it possible for the Minister to eliminate or change these provisions without the debate required to actually change laws.

Legal compliance with Canada Health Act does not assure universal medical services

Parkland Institute’s *Review of the proposed Alberta Health Act* (www.parklandinstitute.ca) advised that this new law only refers to the minimum standards set by the Canada Health Act with no recognition that Alberta’s existing legislation goes well beyond that. Nursing home standards, the requirement that doctors opt-in or out of the public system and the prohibition on private insurance for services included in the Medicare basket are some of the those protections. The leaked policy paper shows clearly that the exclusion of those protections was no accident. It advocates that protections not directly dictated by the Canada Health Act should be changed or scrapped altogether.

Alberta Health Act Phase 2

- Replacing the five statutes

Devastating changes to Alberta's legal framework for Medicare

The Canada Health Act R.S.C. 1985, c. C-6 does not prevent private health services, private delivery, or private insurance. The Canada Health Act (the "CHA") provides the legislative mechanism to ensure that Government-of-Canada spending on health care supports publicly administered, comprehensive, universal, portable and accessible provincial health-care insurance plans.

Restricting the growth of a parallel for-profit health-care system is the role of provincial Legislatures, not the federal Canada Health Act. In Alberta, physicians choose to opt-in to the public health-care system (sections 6 and 7). There is no law against a physician setting up a wholly private practice, but the Alberta Health Care Insurance Act contains some powerful disincentives for physicians to go "private." Disincentives include a prohibition against allowing public funds to go to services provided by

opted-out physicians; in other words, the private system cannot receive subsidies from the public one.

In addition, the Alberta Health Care Insurance Act outlaws contracts for private insurance for services that are covered in the public system, and private insurance is also not allowed to pay for all or part of fees charged by physicians who opt-out of the public system (section 26). Without private insurance or public subsidies covering some or all of the costs of purchasing private health-care services, the price of private health care is out of reach for almost everyone, even the very wealthy. This is why there is a 100% opt-in rate among Alberta physicians to the public health care insurance plan. The various provisions governing opting-in, subsidization, and private insurance contained in the Alberta Health Care Insurance Act are the only barrier to the creation of a private health-care market.

— Summary of a Legal opinion on the Alberta Health Act, prepared for the Alberta Federation of Labour, available at www.FriendsOfMedicare.org

Removing key provisions in Alberta's Medicare laws opens the door for two-tier health businesses

The provisions in Alberta's Medicare laws are extremely important. The Canada Health Act requires "uniform terms and conditions" for public health care and it is these laws that protect the universality and equality of our health system.

It would be incredibly difficult to police doctors who are allowed to provide both insured and uninsured medical services to prevent them from extra billing. Doctors could quickly begin charging the public system for some services, and offering more for an extra fee and faster service if you pay for this. The egalitarian principle of "uniform terms and conditions" would soon be broken and "two-tier medicine" would become a reality.

The equality of Canadian health care is already being eroded by "boutique clinics" which enrol patients for \$3,000 or more a year for special access to doctors. The doctors continue to bill the government for insured services, claiming the \$3,000 is not for medical services, but for uninsured services. The reality is that the fee buys enhanced access to a doctor. So far governments have turned a blind eye to this practice.

Alberta Health Act sets the stage Phase 2 would badly damage Medicare in Alberta

The leaked government policy paper reveals a hidden healthcare agenda that would increase costs and exacerbate wait time problems. It is also a profound attack on the core Canadian value and key tenet of health care — access based on need not ability to pay. After the document became public the government responded that it was only a discussion paper. Since then neither the Premier or Health Minister has committed to maintaining the existing protections in Alberta's legislation or publicly spoken against any of the directions in the leaked report.

The agenda in the Alberta Health Act Phase 2 would mean two-tier health care. Only half of Albertans have access to health care insurance through their workplace and that number is shrinking. Shrinking the medicare basket and introducing private insurance would leave out the half who already do not have coverage. It would also increase the role of for-profit health care, and increase costs for Albertans who already pay the highest out-of-pocket costs in the nation for health care.



United Nurses of Alberta
www.una.ab.ca